ORISSA ELECTRICITY REGULATORY COMMISSION
BIDYUT NIYAMAK BHAWAN,
UNIT – VIII, BHUBANESWAR – 751 012
*** *** ***

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

CASE NO. 41, 42 &43/2007
CASE NO. 22/2008

NESCO, WESCO, SOUTHCO & CESU …. Petitioner

GRIDCO and Department of Energy, Govt. of Orissa & others .... Respondents

In the matter of: For Approval of Business Plan for the FY 2008-09 to FY 2012-13.

Date of Hearing: 23.5.2009 **Date of Order: 20.3.2010**

ORDER

1. In pursuance to Regulation 31 of OERC (Conduct of Business) Regulation 2004 and General Conditions of Distribution License Clause 7.9 of Appendix 4(A) the Licensees (DISCOMs) shall submit a Business Plan within three months of Distribution License coming in to force for such periods as the Commission may direct and shall update such plan annually. As per Commission's Long Term Tariff Strategy and Guiding Principles for Determination of Annual Revenue Requirement the tenure of first control period was over by March, 2008.

2. In compliance with the Section 3 of Electricity Act, 2003 Government of India had notified the National Electricity Policy and Tariff Policy on 12.02.2005 and 06.01.2006 respectively and also notified Rural Electrification policy on 30.08.2006. As per the mandates of above policies and in pursuance to Regulation 5 (f) of OERC (Terms and Conditions for Determination of Tariff) Regulation 2004 the Commission directed all the DISCOMs of the State and OPTCL vide their Lr. No. DD (FA)-297/07/1036 dtd.26.06.2007 to file their Business Plan for a period of five years starting with FY 2008-09.

3. NESCO, WESCO and SOUTHCO prepared a detailed Business Plan and submitted to the Commission on 14.08.2007 and CESU submitted it on 04.06.2008. The fillings of DISCOMs were registered as Case No. 41, 42 & 43 of 2007 in case of NESCO, WESCO and SOUTHCO and Case No. 22/ 2008 for CESU. The hearing in Case No. 41, 42 & 43 of 2007 was conducted on 14.09.2007 during which Commission, GRIDCO and OPTCL raised certain queries and sought clarification on some issues in the Business Plan of DISCOMs. The Reliance Managed DISCOMs furnished their replies in October 2007 to the queries raised during the said hearing. In the next hearing on 23.05.2008 NESCO, WESCO and SOUTHCO prayed before the Commission to grant them additional time to submit their revised Business Plan including turn around strategy after incorporating actual data for FY 2007-08 and other developments such as implementation of Intra-State ABT Regulation, RGGVY and BGJY implementation. The Commission allowed the prayer of REL managed DISCOMs to submit their Business Plan and allowed time up to June, 30th 2008 to file the complete Business Plan and turn around strategy. Accordingly, NESCO, WESCO and SOUTHCO filed their Business Plan along with turn around strategy with the Commission on 28.06.2008. Consequent upon the submission of Business Plan, a hearing was conducted on 26.08.2008 in which Commission sought the clarification of the Reliance Managed DISCOMs on the following issues. They are as follows:

(a) The effect of up-valuation of assets. The pleading of GRIDCO about zero coupon bonds in the books of account of OPTCL to be converted to equity for earning of RoE by OPTCL.

(b) Realistic figure of demand forecast.

(c) Loss at different voltage level.

(d) Loss of revenue due to addition of Kutir Jyoti consumers through rural electrification and rise of cross-subsidy incidental thereto.

(e) Definite time line for establishment of Police Stations and Special Courts.

4. In the subsequent hearing on 22.09.2008 the representative of the Govt. submitted their views on revised Business plan and turn around strategy of NESCO, WESCO and SOUTHCO. The REL managed DISCOMs made different projections regarding additional power purchase due to massive rural electrification during Business Plan period. The Commission observed that there was also lot of deviations between demand forecast of these companies and those of OPTCL in their respective Business

Plans. Hence all the DISCOMs including CESU were directed to reconcile their demand forecast with OPTCL in the presence of official of the Commission which was complied by them subsequently.

5. A separate hearing was conducted for CESU on 02.07.2008 in which CESU was directed to furnish adequate justification regarding the adoption of various operational parameters for 2008-09 which differs from those approved by the Commission in their retail supply tariff order dated 20.03.2008.In the subsequent hearing on the Business plan of CESU on 21.08.2008, Director (Tariff) of the Commission raised certain queries. The queries of the Director (Tariff) were complied by CESU and next date of hearing for Business plan of CESU in case no22/2008 was fixed on 08.05.2009.During the hearing on that day CEO, CESU made a brief presentation on the Business plan submitted by them for a period FY 2008-2013. The representative of Govt. of Orissa present during the hearing made a request to implead GRIDCO as a party in respect of CESU since interest of GRIDCO had not been suitably addressed by CESU in its Business plan. During the course of hearing, the Commission directed the representative of Govt. of Orissa to reply specifically on the question of maintenance of Distribution assets and its cost thereof which are owned by State Govt. created under RGGVY and BGJY scheme. The representative of the State submitted that those Distribution assets would be gradually handed over in a phased manner to the DISCOMs after they become fully operational.

Submission of REL Managed DISCOMs in their Business Plan and turn around strategy

6. The three Reliance Managed DISCOMs such as NESCO, WESCO and SOUTHCO attributed the following as the main reason for their deterioting performance over the years.

(a) Escrow related issues:

Due to non-relaxation of escrow by GRIDCO in spite of payment of 100% monthly power purchase bill, liquidity problem has threatened day to day operation.

(b) Substantial increase in power purchase cost and no corresponding increase in Retail Supply Tariff.

There has been no rise in retail supply tariff since last 8 years in spite of substantial increase in BSP. The rise in inflation has not even factored in while fixing retail supply tariff.

(c) No financial support including subsidy from the Govt. in spite of the recommendation of Kanungo Committee.

(d) Opening loss level and loss reduction:

The unrealistic level of opening distribution losses and low collection efficiency are the major factors for non-achievement of the target set by OERC in this regard. Despite their sincere efforts DISCOMs have failed to achieve the desired distribution loss level attributable to lean fund flow through State Govt. from World Bank and APDRP.

(e) In adequate investment:

Proper capital investments have not been possible in the last five years due to non-relaxation of Escrow and delay in receipt of APDRP fund etc.

(f) Other un-controllable factors:

Immediately after privatization DISCOMs of Orissa have faced natural catastrophes like super-cyclone, flood and drought of enormous magnitudes which have tremendous bearing on the financials performance of DISCOMs.

(g) Non-Amortization of Regulatory Asset

Due to cascading effect of all those above factors the desired out come of DISCOMs like NESCO, WESCO and SOUTHCO have fallen short of the target assigned to them by OERC. The REL managed DISCOMs have proposed a multi-pronged turn around strategy to recuperate them from abysmal performance. They are as follows:

PPA allocation amongst DISCOMs:

7. The entire existing generating capacity available and future capacity likely to be available for utilization of consumers of the State should be allocated to the four DISCOMs. The Economic Allocation Model (EAM) should be adopted while allocating PPAs among DISCOMs. Under this model capacity of each generating station is allocated amongst the DISCOMs based on analysis of the paying capacity, consumer mix etc. DISCOMs having favourable consumer mix i.e. more HT and EHT consumption may be given allocation from high cost generating stations. In other words the capacity from individual stations to four DISCOMs should be allocated in such a manner that the weighted average power purchase cost of each DISCOM should be able to meet the power purchase cost obligations considering the uniform retail supply tariffs in the State.

Restructuring of Payment Security Mechanism

8. DISCOMs have no control over the revenue management as the entire revenue of DISCOMs is escrowed to GRIDCO. The present escrow mechanism does not provide any opportunity to DISCOMs in managing their cash flows. DISCOMs are making payment of monthly bulk power purchase to GRIDCO on regular basis and the Letter of Credit (LC) for 105% of the BSP bills are provided by the DISCOMs. Hence, when DISCOMs are making full payment of monthly power purchase bills on regular basis and LC is in place, there is a need for review of escrow mechanism on entire receivables. If PPAs are allocated as prayed for within DISCOMs this type of problem would not arise. In case PPAs are not reassigned, DISCOMs have submitted that certain priorities are to be followed in payment to GRIDCO.

Review of Sectoral Truing Up

9. The revenue shortfall after truing up before prioritization was Rs.1145.66 crs which was adjusted from the revenue earned by GRIDCO after privatization. DISCOMs submitted that surpluses earned on account of trading/UI should be treated as a resource for all entities which should be ploughed back into the sector for improvement of efficiencies through investments. GRIDCO has been earning huge surpluses through trading and UI. The accurate matching of DISCOMs demand with generation availability is of considerable importance in determining the extent to which one benefits from the UI regime. As the DISCOMs are responsible for load management the consequential benefit accrued to the State through UI and trading should also be shared by them. Interlinked balance sheet among all entities in the value chain (Genco, Bulk supplier, Transco and DISCOMs) entail liquidity at the lowest rung of the value chain. Therefore, the ideal way by which liabilities can only be extinguished should be through the DISCOMs books of account. The surplus earned by GRIDCO should be utilized to set off the regulatory asset (past losses) of DISCOMs.

Terminal Benefits Liability – Restructuring of Zero Coupon Bonds

10. DISCOMs submitted that zero coupon bond of Rs.400 crs issued to GoO by GRIDCO to be transferred to the employee trust of DISCOMs and OPTCL. As these bonds were issued in the form of adjustment no cash was given by GoO for purchase of the bonds, there shall be no loss to GoO. In any case DISCOMs can not accept any

liabilities which relates to prior period of 31.03.1999 and need to be absorbed in the balance sheet of 31.03.1999.

Resource Optimization

11. The REL managed DISCOMs submitted that they can optimize resource on two front such as technological front and human resource front. Technical loss reduction is capital intensive in nature and will take some time to show positive result. DISCOMs are unable to implement AT&C loss reduction programme due to paucity of funds and poor credit worthiness. The REL managed DISCOMs propose to install SCADA that will monitor energy input- output upto 11 KV feeder. In addition to that they propose introduction of Automatic Meter Reading (AMR) system and IT tools like SAP and GIS to enhance efficiency and reliability of distribution system.

Due to resource constraint DISCOMs are not been able to recruit skilled man power in different areas of operation. However, the REL managed DISCOMs have inducted around 3000 employees in the last four years. Once there is financial turn around there will be a drive to recruit more skilled hands to manage the affairs of the DISCOMs.

Distribution Franchisee Operation

12. The REL managed DISCOMs have appointed Enzen Global Solutions Pvt. Ltd. as a franchisee in different geographical areas. After analyzing the improvements made by the franchisee in these areas DISCOMs would explore the possibilities to extend the same to other areas.

Realistic loss reduction target and treatment of Regulatory asset

13. The Commission while passing ARR and Tariff Orders for DISCOMs have set ambitious loss reduction trajectories, viewed in the context of ground realities to improve operational efficiencies in the sector based on certain assumptions like loan restructuring, reconciliation of BST dues which never materialized. The three Reliance managed DISCOMs have requested the Commission to consider the actual AT&C loss for FY 2007-08 as base losses and set the loss reduction target to the respective actual AT&C losses for FY 2007-08 considering the fund availability for APDRP work. They have further submitted that as APDRP funds are expected to materialize in near future, DISCOMs from the second year business plan i.e. FY 2009-10 have considered AT&C loss reduction as per the Abraham Committee Report. For FY 2008-09 DISCOMs considering the current performance level are

attempting to reduce the AT&C losses by 2-2.5% as the benefits of the different loss reduction measures shall come in the next year.

Incentive Mechanism

14. The Reliance managed DISCOMs submitted that to encourage employees for detecting and preventing the misuse of electricity they have been regularly providing a part of revenue collected from default cases as an incentive to the staff involved. They have proposed to implement two types of incentive mechanism such as One Time Settlement (OTS) scheme and provisional payment scheme. The incentive schemes for employees on account of arrear collection, de-hooking would continue as before.

Increase in Retail Supply Tariff

15. The Retail supply tariff of Orissa has not been increased since last 8 years at the cost of financial viability of the DISCOMs asserted the REL managed DISCOMs. They further submitted that considering the inflation into account there is substantial decrease in the RST on real terms. On the other hand the increase in BSP during FY 2007-08 has caused lots of hardship for WESCO and NESCO which were on the verge of turn around.

Support from Government as stakeholder

16. Before privatization, Government of Orissa had been providing subsidy support to electricity sector but it has withdrawn it once the distribution business was taken over by private investors where as Government of Delhi has been providing subsidy support still after the privatization. Not only Delhi, the DISCOMs submitted that Government of Andhra Pradesh, Uttar Pradesh and Karnataka have been providing subsidy support to their respective electricity sector. The State Government should play parental role by negotiating with Central Government for releasing more APDRP fund so that losses can be reduced. They further submitted that GoO needs to take action on settlement of NTPC bonds and zero coupon bonds. It should also take steps for adjusting the dues of the State Government and Government undertaking to the DISCOMs against outstanding BST dues with GRIDCO in case of default. Government should also provide administrative support for reduction of theft.

Role of Regulatory Commission

17. DISCOMs requested the Commission to recognize the actual loss levels and set sustainable loss reduction target for Business Plan period. They further requested the

Commission to recognize the past financial losses as regulatory asset and adjust the same with the surplus revenue earned by GRIDCO and allow recovery of balance regulatory asset in future years ARR in the Business Plan Period. The Commission is requested to carry out the sectoral truing up on regular basis at the end of year based on audited account. The Reliance managed DISCOMs requested that the shortfall liability as on 31.03.1999 on account of actuarial valuation done by M/s Bhudev Bhatacharya should be borne by GRIDCO / GoO by redirecting the bonds issued by GRIDCO on account of up-valuation to GoO to the Pension Trust of the respective companies.

Expectation from Employees

18. The REL managed DISCOMs submitted that the Employee Welfare Trust should take positive measures for encouraging the employees to bring the efficiency in the Sector. Employee Welfare Trust would be asked to encourage employee for positive contribution which would be rewarded through non-monetary/monetary recognition to the employee who excels during a giving period.

Role of Investor

19. The Reliance managed DISCOMs submitted that they are in a state of perpetual financial distress and totally helpless to seek for any equity infusion. Business viability alone is the major driver for capital infusion and therefore, all stakeholders need to contribute of a package which supports multiple interventions in the form of loan restructuring, equitable adjustment of sector surplus and investments etc. Multi year tariff fixation, truing up and equity amongst all the licensees is the need of the hour so that shareholders would be convinced to allow return on equity during the Business Plan Period to be ploughed back into the business towards funding of system improvement work.

Consumer Awareness

20. DISCOMs propose to organize campaigns for consumer awareness across the high loss areas to make the consumer aware of the incentive schemes of DISCOMs, discouraging the theft, misuse of electricity and encourage them to make timely payment.

Revised Business Plan of DISCOMs (From FY 2008-09 to 2012-13)
Controllable and non-controllable under MYT:

21. The Reliance managed DISCOMs have submitted that various petitions and appeals against OERC orders have been pending in different Tribunals and Courts. The outcome of those petitions would have bearing on the Business Plan submitted by them. Reliance managed DISCOMs and CESU propose the following factors as controllable and uncontrollable to be considered for control period and the need for true up at the end on each financial year.

Table-1

Item	(REL DISCOMs)	CESU
	Controllable / Non-controllable	
Power Purchase Cost	Uncontrollable in case of Fuel increase/Hydel failures	
Increase in Employee Expenses	Controllable (However, the impact of wage revision may be considered as uncontrollable)	Uncontrollable
Administrative & General Expenses	Controllable	Controllable
Repair & Maintenance Expenses	Controllable	Controllable
Interest Cost	Uncontrollable	
Depreciation	Controllable	Controllable
Taxes	Uncontrollable	Uncontrollable
Reasonable Return	Uncontrollable	Uncontrollable
Variation in sales	Uncontrollable	
Losses	Controllable	

The Reliance Managed DISCOMs request the Commission to approve the mechanism for recovery of increase in fuel and power purchase cost at Regular monthly or quarterly intervals as the licensee does not have any control on these cost.

Approach for Sales Projection

22. The Reliance managed DISCOMs and CESU have adopted 'Bottom up' approach for projecting the energy input to their utility. They submit that due to adoption of 'top down' approach the non-achievable loss is approved by the Commission as sales to the consumers. Hence, utilities loose on both account such as additional power purchase and uncollectible revenue due to non-billing. While projecting the sales to different categories NESCO, WESCO and SOUTHCO have analyzed the past trends of consumptions pattern for last six years i.e. FY 2001-02 to FY 2007-08. They have also factored in the impact of electrification due to RGGVY in projecting the sales of domestic, commercial and irrigation category. However, for HT and EHT category of consumers the consumption has been projected on current/past trend and other factors such as additional load from existing and new consumers etc.

Table-2
Summary of Sales Projection (MU)

	Sales	2008-09	2009-10	2010-11	2011-12	2012-13
CESU	**LT**	1799.74	2140.11	2773.68	3261.18	3635.78
	HT	823.95	844.19	865.18	887.95	1147.07
	EHT	939.85	1029.88	1138.52	1180.84	1414.68
	Total	**3563.54**	**4014.18**	**4777.38**	**5329.97**	**6197.53**
NESCO	**LT**	1078.38	1266.32	1465.54	1676.71	1900.56
	HT	678.10	704.48	731.90	760.39	790.00
	EHT	1617.48	1666.00	1715.98	1767.46	1820.49
	Total	**3373.95**	**3636.81**	**3913.42**	**4204.57**	**4511.04**
WESCO	**LT**	1065.70	1281.13	1509.48	1751.54	1856.63
	HT	1475.00	1518.31	1562.90	1608.81	1656.08
	EHT	1542.00	1572.84	1604.30	1636.38	1669.11
	Total	**4082.70**	**4372.28**	**4676.68**	**4996.73**	**5181.82**
SOUTHCO	**LT**	744.21	936.41	1131.10	1328.44	1528.60
	HT	249.83	259.82	270.21	281.02	292.26
	EHT	207.66	211.82	216.05	220.37	224.78
	Total	**1201.70**	**1408.04**	**1617.37**	**1829.84**	**2045.64**
All Orissa	**LT**	4688.03	5623.97	6879.80	8017.87	8921.57
	HT	3226.88	3326.80	3430.19	3538.17	3885.41
	EHT	4306.99	4480.54	4674.85	4805.05	5129.06
	Total	**12221.90**	**13431.31**	**14984.84**	**16361.09**	**17936.04**

Proposed AT&C Loss, Distribution Loss and Collection Efficiency Reduction Trajectory

23. The REL managed DISCOMs submitted that AT&C losses to be achieved at the end of the control period should be realistic and achievable. They have projected their AT&C loss trajectory on the recommendation of Abraham Committee set up by Government of India. The extract of the report is given below:

"AT&C Loss Reduction Targets
The Task Force examined the targets set for AT &C losses reduction and after taking into consideration experience of the Utilities felt that the targets should be recast in a manner ***that they are realistic and achievable based on the present level of AT&C losses in each State****. Accordingly the Task Force recommends the following targets depending on their present level of AT&C losses:*
i) Utilities having AT&C losses above 40%: Reduction by 4% per year
ii) Utilities having AT&C losses between 30 & 40%: Reduction by 3% per year
iii) Utilities having AT&C losses between 20 & 30%: Reduction by 2% per year
iv) Utilities having AT&C losses below 20%: Reduction by 1% per year
The targets will change from one slab to another on shifting of the AT&C losses from one level to another level"

They further submitted that this loss reduction trajectory shall be applicable only on completion of the APDRP projects and full payment by Govt. undertaking and Govt. Departments. The FY 2007-08 has been adopted by them as base year for AT&C loss reduction trajectory.

Table-3
Projected AT&C loss, Distribution Loss and Collection Efficiency (%)

	Existing Level	OERC Approved	Business Plan				
Particular	**2007-08**	**2008-09**	**2008-09**	**2009-10**	**2010-11**	**2011-12**	**2012-13**
CESU							
AT & C Loss	45.93%	32.84%	38%	33%	28%	25%	22%
Distribution Loss	41.50%	29.30%	36%	31%	26%	23%	20%
Collection Efficiency including Arrear (%)	**92.39%**	**95%**	**107%**	**105%**	**102%**	**97.5%**	**97.5%**
NESCO							
AT & C Loss	35.95%	29%	33.91%	30.63%	27.67%	25.64%	23.49%
Distribution Loss(Calculated)	31.2%	25.50%	29.84%	26.36%	23.86%	23.10%	21.85%
Collection Efficiency (%)	**93.1%**	**95.0%**	**94.2%**	**94.2%**	**95.0%**	**96.7%**	**97.9%**
WESCO							
AT & C Loss	38.89%	28.00%	36.36%	33.19%	30.06%	27.69%	25.51%
Distribution Loss(Calculated)	36.1%	25.0%	33.10%	30.49%	27.50%	25.65%	23.80%
Collection Efficiency (%)	**95.66%**	**96.56%**	**95.12%**	**96.11%**	**96.47%**	**97.25%**	**97.75%**
SOUTHCO							
AT & C Loss	49.10%	35%	46.12%	42.10%	38.06%	34.99%	31.94%
Distribution Loss(Calculated)	45.4%	30.42%	43.70%	39.75%	35.68%	32.98%	30.34%
Collection Efficiency (%)	**93.5%**	**94.0%**	**95.7%**	**96.1%**	**96.3%**	**97.0%**	**97.7%**

NESCO, WESCO and SOUTHCO have targeted AT&C loss reduction of only 2%, 2.5% and 3% respectively in FY 2008-09 as against 3%, 3% and 4% as recommended by Abraham Committee Report. They have attributed these lower targets of AT&C loss reduction in FY 2008-09 as APDRP funds would not be available to them before the said year. CESU has projected above AT&C loss reduction taking base year as FY 2007-08 and through different technical intervention such as pre-paid metering, distribution automation, AMR system, HVDS, use of AB cable and adoption of franchisee operation etc. in different loss prone area. When CESU has projected their distribution loss reduction trajectory the same has been calculated from the AT&C loss and collection efficiency for Reliance managed DISCOMs. CESU further prayed that present level of loss should be taken as opening loss level of Business plan period.

Power Purchase during control period

24. The DISCOMs have submitted the following projection towards the power purchase.

Table –4
Power Purchase (in MU)

DISCOMs	2008-09	2009-10	2010-11	2011-12	2012-13
CESU	5718.00	6347.00	7351.00	8104.00	8339.00
NESCO	4810.00	4940.00	5140.00	5465.00	5770.00
WESCO	6102.00	6290.00	6450.00	6720.00	6800.00
SOUTHCO	2134.00	2338.00	2515.00	2730.00	2935.00

O&M Cost

Employee cost and A&G cost:

25. Reliance managed DISCOMs have requested the Commission to allow employee expenses basing on 6th Pay Commission recommendation and 6.26% inflation rate which is average CPI of the year 2005 to 2007. For FY 2008-09 30% increase on account of wage revision has been considered and 6.26% increase to account for inflation has been considered for Business Plan period. The arrears of wage revision has been proposed to be paid in three installments starting from FY 2010-11 to 2012-13. CESU has proposed an employee cost of Rs.163.19 cr in FY 2008-09 which would be increased to Rs.242.66 cr. Reliance managed DISCOMs have also requested the Commission to allow 7% increase over the gross A&G expenses in FY 2007-08. In addition to this A&G expenses they have also requested to allow additional A&G expenses for spot billing, energy audit, consumer indexing, pole scheduling, opening of consumer care centre etc. as per actuals. Such additional expenses may be subject to true up based on the actual expenditure. They have assumed additional 5% A&G cost to meet the increase in A&G expenses towards load growth and various initiatives for reduction of losses. CESU has requested the Commission to accept the A&G cost of Rs.26.29 cr in FY 2008-09 which should be escalated @ 7% per annum reaching Rs.34.46 cr. by 2012-13

Repair and Maintenance Expenses:

26. For R&M expenses the Reliance managed DISCOMs proposed to spend 5.4% of GFA on R&M activities. They have further proposed 3.5% of opening GFA for R&M of new assets created under programme such as RGGVY, BGJY. CESU has requested the Commission to allow 5.4% of GFA as R&M expenses which shall rise Rs.41.87 cr to Rs.94.63 cr by 2012-13.

Table –5
O&M Expenses (Rs. Crore)

	2007-08 (Base Year)	2008-09	2009-10	2010-11	2011-12	2012-13
CESU	164.17	231.35	260.64	295.08	333.99	371.75
NESCO	123.70	164.41	179.14	221.33	235.12	247.34
WESCO	133.50	214.59	244.26	292.29	307.68	321.87
SOUTHCO	131.61	176.16	189.77	221.54	238.09	248.24

Provision for Bad and Doubtful Debts

27. The Reliance managed DISCOMs submitted that employing a single performance measure (AT&C loss) for determining operational efficiencies and Annual Revenue

Requirement is essential to ensure the turn around in the Orissa Power Sector. Considering the past accumulated losses and huge liabilities, it would be extremely difficult for them to arrange working capital finance. So they have requested the Commission to consider the bad debts equivalent to collection inefficiency to enable them to recover their entire cost. CESU has requested the Commission the provision of bad debt as prescribed by the Commission might not be truly be adequate and sufficient to cover such loss.

Depreciation, Short-Term Loan and Return on Equity

28. Reliance managed DISCOMs have requested the Commission to consider the depreciation on Straight Line Method based on OERC (Terms and Condition of Determination of Tariff) Regulation 2004, LTTS Order and at pre-92 rates. The CESU has calculated average rate @ 3.76% as rate of depreciation following OERC norm. Reliance managed DISCOMs have also requested the Commission to allow interest on working capital linked to the prevailing Prime Lending Rate (PLR) for short-term borrowing of SBI. CESU has requested the Commission to capitalize 40% of the opening interest amount and 100% for the addition to the interest on long-term loan as per Standard 16 issued by ICAI. Reliance managed DISCOMs have proposed Return on Equity @ 16% post tax on the original equity investment as well as any additional investment made in the DISCOMs out of business cash flows.

Capex Plan of DISCOMs during Business Plan Period

29. CESU, NESCO WESCO SOUTHCO have proposed an investment of, Rs 2343 Cr. Rs 1330.35 Cr,1223.82Cr and Rs.1226.77 Cr respectively, on capital expenditure schemes for the years 2008-09 to 2012-13 in the following areas:

a. To meet the growth in load across the consumer categories
b. To achieve reduction in losses as targeted
c. To increase efficiency and productivity
d. To augment/replace/retrofit old/obsolete/under-rated equipment;
e. To meet Environmental, Safety, Regulatory and other Statutory requirements;
f. To purchase routine Tools and equipments
g. To implement an IT plan that integrates various functionalities in the DISCOM revenue cycle
h. SCADA System
i. Other miscellaneous expenditure of capital nature.

DISCOMs hope to achieve the above objectives specifically through the following activities

a) Increase in 33 KV and 11 KV lines to bring down LT/HT line ratio.

b) Increase in numbers of 33 KV substations to improve voltage levels and extend reach areas.

c) Installation of breakers on 33 KV and 11 KV side.

d) DTR meters and Consumer indexing to support energy audit.

e) Rural Electrification works under RGGVY Scheme.

f) Automation of the processes by IT intervention in technical as well as commercial areas.

From Rs.2343 crs proposed by CESU in this regard, Rs 1500 Cr. will be diverted for investment plan on capacity expansion & Rs.843 Cr for loss reduction. CESU has also proposed to arrange Rs.632 cr from its internal resources. In addition to the above, CESU has also submitted an additional investment proposal to the tune of Rs.200.22 crores for system improvement work, with an anticipation of financial support from the Govt. NESCO has proposed Rs.1330.35 cr. for Capex during Business Plan period which includes RGGVY, BGJY, APDRP, System improvement, SCADA implementation and DTMS. Out of Rs.1330.35 cr NESCO proposes to spend Rs.160 cr. on system improvement and Rs.13.23 cr on SCADA implementation and DTMS. NESCO hopes to arrange the balance amount from State Government and Capex planning programme. The NESCO has also submitted an investment proposal for system improvement work amounts to Rs.185.42 Crores with an anticipation that the Govt. support for such investment shall be available. WESCO proposes an amount of Rs.1223.82 cr on Capex Plan which includes RGGVY, BGJY, System Improvement, APDRP, SCADA implementation and DTMS. It proposes to spend Rs.57 cr on system improvement and balance amount shall be arranged from the Govt support or from Capex planning. WESCO also proposes to spend an additional amount of Rs.208.14 crores for system improvement work with anticipation of Government support. SOUTHCO proposes an amount Rs.1226.77 cr on Capex Plan during the Business Plan period. Out of this amount Rs.35.74 cr shall be spent on system improvement work. The balance amount is proposed to be arranged from State Govt. support or from Capex planning. The additional investment proposal for system improvement work as submitted by SOUTHCO amounts to Rs.248.82 crores with anticipation that the Govt. support for such investment shall be available.

Financing of Capital Expenditure Plan

30. The three Reliance managed DISCOMs have submitted that as per RGGVY Scheme and as agreed by GoO the entire fund shall be treated as 100% grant. In view of this Government of Orissa will be the owner of the asset and DISCOMs would get consequential benefits. For APDRP scheme they have proposed to arrange counterpart funding from REC and PFC @ 12%/Annum. Similarly they have proposed to avail long-term loans from REC/PFC at the interest rate of 12% / Annum. They have requested the Commission to pass on interest on long-term loan such as World Bank, APDRP, REC and interest on security deposit etc. They have calculated interest on security deposit @6% on closing balance of security deposit amount estimated for next five years.

Table - 6
Interest and Capital Payment on Long-Term Loan (Rs. Crs.)

Licensees	FY2008-09		2009-10		2010-11		2011-12		2012-13	
	Interest	Principal	Interest	Principal	Interest	Principal	Interest	Principal	Interest	Principal
NESCO	22.85	9.13	23.48	10.28	26.87	12.37	32.55	15.81	33.77	19.25
WESCO	24.21	9.10	23.72	10.08	27.65	11.19	33.51	14.15	34.95	17.66
SOUTHCO	14.88	7.26	17.87	7.73	21.86	11.39	23.46	14.65	23.80	16.53

GRIDCO Loan and BSP Outstanding

31. The Reliance managed DISCOMs have requested to amortize the past losses of them with surplus revenue earned by GRIDCO. As a part of amortization of past losses the GRIDCO loan and outstanding BSP dues to the extent of Rs.543 cr, Rs.231 cr in case of NESCO and SOUTHCO should be set off against GRIDCO's surplus amount. WESCO has not considered anything against this head in the Business Plan period due to above reason.

Power Bond

32. The Reliance managed DISCOMs have stated that there is no outstanding amount left to be paid to GRIDCO under this head. They have fully discharged the bond obligation at the interest rate of 8.5% (tax free). The above statement is subject to review appeal pending before the OERC on the last Business Plan order dtd. 28.02.2005 and clarificatory Order 20.07.2006.

Opening balance difference in Bad and Doubtful debts and provisioning towards terminal benefits.

33. All the Reliance managed DISCOMs have requested the Commission to accept the acturial valuation on terminal benefit by M/s Bhudev Chartjee to be funded by GRIDCO to employee trust on the first day of privatization. They have also submitted that regarding bad and doubtful debts their petition against receivable audit is pending before the Commission.

Objection to Business Plan and its Rejoinder by DISCOMs

34. GRIDCO submitted its views on the turn around strategy of presented by DISCOMs on 15.07.2008. Govt. of Orissa had also submitted its views on the above turn around strategy of DISCOMs on 10.09.2008. In response to objections and views of GRIDCO and State Govt. DISCOMs submitted their rejoinders between 19th to 22nd September 2008. Due to mismatching of forecasted power purchase and sales between Business Plan of OPTCL and DISCOMs Commission directed all the DISCOMs and OPTCL to reconcile the figures related to power purchase and sales in the presence of the staff of the Commission. Accoridingly DISCOMs submitted their revised Business Plan incorporating the revised purchase and sales forecasts to the Commission through a presentation on 23.05.2009.

Objections raised by OPTCL

35. The salient features of objection raised by OPTCL, in response to the Business Plan submitted by the, NESCO, WESCO, SOUTHCO have been outlined below:-

(a) NESCO has projected higher growth in LT side & under estimated the growth in EHT/HT category.

(b) DISCOMs have not identified any load centre properly.

(c) DISCOMs needs to replace the defective 33 KV breakers in its 33/11 KV sub-stations to avoid fault reflection on OPTCL system.

(d) In case of failure of grid sub-stations having LILO arrangement due to tower collapse etc. the power supply remains suspended for 15 to 20 hours. Although OPTCL is making arrangement to connect those sub-stations through ring system DISCOMs are advised to devise schemes to avail emergency power supply through alternative 33 Kv link line.

(e) The SCADA protocol of the DISCOMs should match with that of OPTCL.

(f) The rate of interest as taken by DISCOMs i.e 12 to 13 percentage seems to be high.

(g) The proposal of three DISCOMs for increase in employee expense by 6.2 % linked to CPI & 30 % on account of wage revision needs to be carefully scrutinized by the Commission.

(h) The A&G loss projected by the three DISCOMs are higher than the norms fixed by OERC.

(i) The bad & doubtful debt projected by the three DISCOMs should be in line with the LTTS adopted by the Commission.

(j) OPTCL has submitted a list of feeders for all the DISCOMs on which renovations & or construction has to be carried out.

(k) SOUTHCO needs to phase out the existing 11 KV distribution system at Berahampur & Raigada Grid sub-stations & upgrade them to 33 KV systems for easy maintenance & better power supply. This proposal needs to be included in Business Plan.

(l) Similarly WESCO needs to upgrade its sub-station at Jharsuguda & Brajarajnagar.

Objection raised by GRIDCO

In response to the Business Plan submitted by the three Reliance managed DISCOMs the GRIDCO has submitted as follows:

Privatization issues

36. Past period issues raised by the DISCOMs relates to the bidding conditions of distribution privatization, so DISCOMs require clear understanding of the disinvestment & bidding process adopted by GRIDCO. The opening distribution loss level was based on the reports of consultants who had made extensive study on this matter. Even the bidders were advised to make their own study. GRIDCO is supposed to extend the required technical, managerial & operational support in day to day running of the distribution business. As management of the DISCOMs is vested with Reliance Energy Ltd. the financial support should come from them. The REL has violated the shareholders agreement and diluted the 51% equity in favour of its associated companies. Subsidy withdrawal by State Govt. was pre-condition for privatization which was well within the knowledge of the private investors prior to the

privatization. However, State Government is extending capital subsidy to DISCOMs through different RE programme such as MNP, RGGVY and BGJ. The claim of DISCOMs regarding terminal benefit and provision for doubtful debt is in violation of transfer scheme 1998. The zero coupon bond issued by GRIDCO to Govt. is as per Notification of the Sate Government dtd. 01.04.1996.

GRIDCO has retained the entire loss in its book as on 31.03.1999. OERC has carried out truing up exercise starting from 01.04.1996 basing on audited accounts.

Issue of financial turn around of DISCOMs:

37. GRIDCO has long-term PPAs with the generator. Section 13(1) of Orissa Electricity Reform Act-1995 mandates GRIDCO to manage Electricity requirement of the state. Single buyer model recognized by the commission is in the interest of the state. GRIDCO has no profit motive & has endeavoured to act in the interest of the state by trading surplus power in off peak season and buying costly power to meet the need of the State at the time of power crisis. The GRIDCO has to pay the generators Rs.2912.77 cr (excluding DPS) where as its receivable from DISCOMs was at Rs.2868.30 cr as on 31.03.2008. GRIDCO has been utilizing the UI and trading income to bridge the revenue gap approved by the Commission between FY 2006-07 to 2008-09 although inter-State UI is meant for ISGS and its beneficiaries. Although REL is a majority stakeholder in the DISCOMs the financial contribution of GRIDCO to DISCOMs is more than that of REL in term of 49% equity, outstanding BST, loan interest and bond dues.

Sectorial truing up is not feasible as utilities are independent of each other and LTTS Order envisage utility specific truing up which has already been carried out by OERC vide Case No. 29, 30 & 31 of 2007.

Bench marking of loss basing on actual AT&C loss level in FY 2007-08 is not acceptable. The adoption of Abraham Committee Report proposed by DISCOMs is not proper as it is recommended in different context. The loss reduction target fixed by OERC in the tariff order is low compared to the target envisaged by Kanungo Committee i.e. 5%. The distribution loss as approved by OERC in the Tariff Order for FY 2008-09 should be the base loss figure for the first year of Business Plan and loss figure for subsequent years should be decided by OERC so as to make DISCOMs a commercially viable and efficient utilities. Loss reduction should not be conditional to APDRP funding.

The adjustment of the State Govt. and Govt. undertaking dues to DISCOMs against outstanding BST dues to GRIDCO is not acceptable. If at all, the DISCOMs want to adjust BST dues, then they should do it against the dues payable by them to Govt. on account of IBRD and APDRP Loan. Reliance should support DISCOMs to raise loan and infuse equity capital to meet its investments and working capital requirement.

Business Plan should not override LTTS dtd. 18.06.2003. The 'Bottom of Approach' for projecting the energy input requirement may be adopted taking into account the loss level approved by OERC while projecting sales. The projected demand for electricity by CEA for different States during XI Plan Period may be considered instead of sales projection made by the DISCOMs. As per LTTS, interest on working capital may be considered on the basis PLR for short term borrowing from SBI. Provision of bad and doubtful debts should be within 2.5% of annual revenue billing and in case of shortfall in collection, DISCOMs should avail short-term loan.

GRIDCO has adjusted excess payment against the outstanding BST dues for the previous years as per OERC Tariff Orders. The adjustment of BST outstanding and loan dues against surplus of GRIDCO as proposed by DISCOMs is not acceptable. DISCOMs had defaulted in servicing the power bond pledged to NTPC for which NTPC has returned it to GRIDCO on 31.03.2007. Hence the claim of DISCOMs on power bond is without any substance. Even Hon'ble ATE in their order dtd. 31.03.2006 had held that the DISCOMs are liable to pay interest @ 12% per annum for power bond.

Objection by Dr. D V Ramana, Member SAC, OERC

38. He submitted that distribution loss of CESU during last five years was in the range of 39% to 43%. He is apprehensive of projected loss reduction target in the range of 36% to 20%. He urged CESU to strengthen Business Plan by giving details of loss for each category of consumers supported by detail action plan to achieve loss reduction. He observed that the DISCOMs are reluctant to undertake comprehensive energy audit and they are unable to spend approved amount on repair and maintenance. He had given certain suggestion on improvement of collection efficiency. They are namely

- Determine collection percentage for each category of consumers
- Drill down those to sub-divisional and consumer level
- Involve consumers at sub-divisional level

- Develop suitable mechanism to share information about non-payment with local consumers through newsletter or news paper.

Active participation of Sate Government for sustainable development of power sector vis-à-vis Business Plan of DISCOMs.

39. OERC vide in its Lr. No. OERC/SECY/09/1070 dtd. 15.05.2009 had asked State Government to submit its views on capital investment by the Government in DISCOMs, facilitation of DISCOMs by Government to obtain loan, distribution loss reduction trajectory of DISCOMs and administrative support etc. of Government of Orissa.

Views of the State Government

40. The State Government submitted that the allegation of DISCOMs that due to ineffective functioning of the energy police station and Special Court is the main reason behind non-achievement of targeted distribution loss is not correct. The high loss in distribution sector is attributable to the management failures of the licensees. Government is not duty bound to provide revenue subsidy to the DISCOMs. As per Electricity Act, 2003 only when there is specific direction to subsidize any category of consumer through tariff then only the question of revenue subsidy will arise. Government has been consistently following subsidy withdrawal policy since 31.03.2009. The State Govt. has been extending capital subsidy to the DISCOMs under various schemes of Central and State Govt. such as MNP, Kutir Jyoti, RGGVY, BGJ etc. DISCOMs must achieve the loss reduction target set by OERC. It is unfair to compare reform model of Delhi with Orissa.

Under Section 13 (1) of Orissa Electricity Reform Act, 1995 GRIDCO is the principal company to determine electricity requirement in the State in co-ordination with generating companies, OERC, State Govt, CEA etc. which is not been inconsistent with Electricity Act, 2003 further GRIDCO has been notified by the State Govt. as the State Designated Entity for execution of Power Purchase Agreement with the power developers. The single buyer model of adopted by OERC in accordance with the Orissa Electricity Reform Act, 1995 and in the overall interest of the State. The surplus power traded by GRIDCO lowers the bulk supply price for the subsequent year for which the retail supply tariff has been remained unchanged over the years.

Allocation of PPA to DISCOMs would not bring efficiency in loss reduction strategy rather it would make the private companies profit oriented. GRIDCO has still payable to generators, FIs, Banks and others which includes payment to NTPC as against the huge outstanding payable to GRIDCO by the four DISCOMs. DISCOMs should first settle their dues to GRIDCO before submitting any proposal for assignment of PPA to them. The State Government has similar views as that of GRIDCO on adjustment of UI earning of GRIDCO. The sectoral truing up as proposed by the DISCOMs is not relevant after unbundling of power sector.

The opening loss of GRIDCO and actuarial valuation of terminal benefits in pursuant to the Transfer Scheme 1998 was a well known fact to all bidders participated in the privatization process. So the proposal of redirecting zero coupon bond issued by GRIDCO on account of up-valuation of the assets towards pension trusts is entirely misconceived. No Govt. dues and PSU dues should be adjusted against GRIDCO dues payable by DISCOMs since Govt. has separate budgetary provision for payment of bills by different departments. DISCOMs are free to disconnect their power supply like other individual customers.

DISCOMs should take effective measures to introduced franchise mechanism for sustaining the performance efficiency in terms of billing and collection pursuant to the terms of the Quadripartite Agreement executed by the DISCOMs for implementation for RGGVY Scheme. With regard to going APDRP schemes it is regrettable that DISCOMs have failed to avail the benefit of the scheme, as it could not arrange counter funding and Reliance who is in its managements has failed to extent financial support. The very purpose of placing the Business Plan before the Hon'ble Commission is defeated by proposing loan from PFC/REC for APDRP and system development. This should have been done by capital infusion in terms of equity into the system. It is incorrect on the part of DISCOMs to state that GRIDCO has fully discharged NTPC bond on behalf of DISCOMs. The representative of the Govt. stated that the cabinet memorandum on keeping in abeyance the upvaluation of assets upto 2011 had been concurred by the Finance Department and the same is awaiting approval of the Government. With respect to claiming of O&M expenditure for the assets created under RGGY & BGJY, the issue would be clarified shortly.

Rejoinder By DISCOMs

41. GRIDCO being a 49 % equity partner in DISCOMs can not wash off its hand in the matter of management of the utilities. DISCOMs are unable to arrange loans for capital investment as they do not have first charge over their receivable or their distribution asset. Although DISCOMs had been able to reduce the commercial loss in

the initial year of privatization but they could not sustain the development in subsequent year due to non-availability of funds, inadequate tariff, insufficient staff and massive rural electrification. Even Hon'ble ATE has also observed that the reason behind shortfall in achievement of reduction of distribution loss is due to slow progress in investment, non-receipt of APDRP fund, World Bank assistance and so also non-relaxation of Escrow by GRIDCO in favour of DISCOMs.

Technical loss of DISCOMs can be attributed to long distance feeder lines due to low density of customer base. The commercial loss is basically due to lack of support from Government in the form of Energy Police Station and Special Court. There has been no retail tariff revision for numbers of years in succession in spite of rise in BSP which has led to cash crunch for day to day maintenance. Non-relaxation of escrow on time basis has affected the critical repair and maintenance activities. Escrow relaxation should be on monthly basis after payment of monthly dues to GRIDCO. To cope up with the situation a comprehensive truing up is required between DISCOMs & GRIDCO with proper restructuring and consideration of past losses. DISCOMs feels that the sectoral truing up is necessary like in most of the other States such as Delhi, Maharashtra etc., where the truing is carried up by respective ERC for all the entities of the sector such as Generators transmission and distribution licensees. Due to up valuation of assets prior to the privatization tariff had been increased to two to three times for which tariff during last few years had been kept constant as a rectifying method. The State Govt. should adopt a parental role as in Delhi and provide support both financial and administrative during transitional phase. It is not out of context that CESU during initial year of reform had also received cash support from GRIDCO. The success story propounded by GRIDCO is meaningless unless DISCOMs thrives. PPAs with generators should be allocated to DISCOMs as in the case of Gujarat, Delhi and Rajasthan etc. which has also been mandated by OERC Intra-State ABT Regulation. As per Section 86 (1) (b) of the Act power procurement by the DISCOMs can only be regulated by OERC not by GRIDCO. The allegation of GRIDCO about profit motive of DISCOMs is not true since in case of reassignment of PPA to DISCOMs, the revenue earned, if any, from sale of surplus power would reduce the revenue requirement of the DISCOMs, and in turn will help in reducing the regulatory assets and or retail tariff to the consumers.

DISCOMs proposed the loss incurred during FY 2007-08 as the base for projecting loss reduction target in the business plan since it accept the fact that they are not in a position to meet the target specified by the Hon'ble Commission in the Retail Tariff Order for FY 2008-09. With regard to the sales projection it is to submit that CEA projection is based on actual data up to 2004-05, while Reliance Managed DISCOMs have considered actual data upto 2007-08. After incorporation of OPTCL the DISCOMs have been bearing transmission charges along with BSP. In addition to that the BSP of NESCO in particular in FY 2007-08 had increased 1.6 times than the BSP of the preceding year i.e. FY 2006-07. In response to the GRIDCO suggestion of seeking REL support in arranging the financial assistance, the REL managed DISCOMs would like to submit that lenders/investors provide the loans on the basis viability of the beneficiary business and guarantee of return. With regard to the GRIDCO loan & BSP out standings the Reliance managed DISCOMs expect similar treatments as was carried out during sale of CESU. With regard to the bad & doubt full debt it is to submit that the differential claim amounting Rs 106.73 crores compared to GRIDCO is based on audited accounts giving the true & fair financial statement approved by the Board of REL managed DISCOMs.

On the observation and objection of Dr. D V Ramana CESU submitted that the collection percentage is 100% in case of HT and EHT category of consumers. CESU has planned to implement one time settlement (OTS) during FY 2009-10 to recover its old arrear. CESU has taken several steps for reduction of commercial loss and technical loss which together constitute AT&C loss but it is limited due to paucity of funds. Without the support through APDRP or relaxation of Escrow with GRIDCO it would be a difficult task for CESU. CESU also submitted that it had started to measure losses at section level. Till date the exercise of ring fencing of loss was completed in 43 sections out of 239 sections. Once Section level energy audit is completed respective section engineers could be made accountable to monitor and reduce loss. CESU has set an objective of 100% metering in FY 2009-10. Accordingly 50,000 installations would be metered by September, 2009 in first phase and remaining in second phase.

Commission Observation

42. The Business Plan of distribution companies deals with several issues starting from AT&C loss, capital investment for system improvement and expansion, IT intervention and consumer services etc. All those issues have a direct impact on tariff. The Business Plan is a product of Multi-Year Tariff Strategy adopted by the Commission which is also supported by the National Tariff Policy. The Commission

had issued the Long-Term Tariff Strategy (LTTS) order dtd. 18.6.2003 vide Case No. 08/2003 in which different cost components in the ARR of DISCOMs are divided into two categories such as controllable and not-controllable. The electricity business involves future risks as any other business. Licensees are allocated those risks where it is best placed to manage and mitigate them. The utilities have to improve upon their own performance within a stipulated time frame by upgrading their managerial skills and efficiency by scrupulously adhering to certain operational norms like reduction in the level of loss, attending to a certain level of billing and collection efficiency, setting a target for investment and avoiding cost overrun in execution of project, etc. The Business Plan is a document in which the DISCOMs chart out their plan to carry on their business in the control period as per the norms spelt out in the LTTS order. Hence, Business Plan Order (Case No. 115/2004) for control period 2004-05 to 2007-08 was a fall out of our earlier LTTS Order. The time period of LTTS Order has also come to an end as on 31.03.2008. In the meantime, the Commission has issued Consultative paper on Long-Term Tariff Strategy inviting suggestions from all the stakeholders. A turn around strategy is a strategy which is adopted by any specific utility to pull it out from the abyss of business failure and put it on the track of viable business model. It has no relationship with business plan as business plan is a off-shoot of multi-year tariff strategy in which specific norms are provided to make tariff more predictable. On the other hand the turn around strategy is a tactics to be adopted by DISCOMs to be successful in their business endeavour. It does not require any regulatory approval unlike in case of Business Plan which is a statutory requirement. Therefore, we must restrict our approval to Business Plan only and do not offer any comment on turn around strategy which the DISCOMs are free to adopt to achieve the various operational parameters stipulated in the Business Plan. What strategy is to be adopted is best left to the distribution companies in order to achieve the target of performance parameters fixed by the Commission in the Business Plan.

Reference year and Base year

43. In the LTTS Order passed vide Case No. 8/2003 dtd. 18.06.2003 enunciating the guiding principle for determination of the Annual Revenue Requirement of distribution licensees in the State on a long-term basis, the Commission had fixed a control period. The control period set out in the said Order was fitting into the Business Plan Period so that performance parameters like loss reduction, investment etc. were compatible with each other. The control period of last LTTS Order has

elapsed with financial year 2007-08. Now, fixation of a reference year has a lot of significance on the finances of the licensees and consumers' tariff. Tax audit, as also company audit report of all the DISCOMs are available with us upto 2007-08. We can safely rely on the key performance data of DISCOMs derived from those reports. Therefore, it will be appropriate to accept FY 2007-08 as base year of the current Business Plan period. For fixing the reference year we have little problem as any target for the whole control period depends upon the first year of the control period basing on which target for the rest of the years are fixed. In our case it is undoubtedly FY 2008-09 as the reference year.

44. Survival of any business centers round the profit and loss of that entity. Electricity utilities are no exception to it. They have to collect the charges of electricity which they purchase for resale in the 'license area'. Purchase and selling parameters are therefore, key elements to assess the viability of utilities as the Business Model. The Commission had discussed these issues thread-bare during the hearing of this case. OPTCL while formulating their transmission plan for future years and so also while submitting their Business Plan for their organization for next control period have submitted a set of data regarding purchase of electricity by each DISCOM every year during the control period. While scrutinizing the power purchase data submitted by DISCOMs and that of OPTCL the Commission found out severe data inconsistencies. DISCOMs were directed to reconcile those figures with OPTCL in the presence of officials of OERC. Several rounds of discussions were held subsequent to which DISCOMs and OPTCL have reached a consensus on estimated power purchase figures.

Power Purchase for FY 2008-09

45. In the meantime actual power purchase figures of FY 2008-09 of DISCOMs are available with the Commission. As actual figures are available, in all fitness of thing it will be appropriate to accept it as our concurrence for the first year of the Business Plan i.e. FY 2008-09.

Power Purchase of DISCOMs for FY 2009-10 and 2010-11

<u>CESU</u>

46. The month-wise power purchase data for current Financial Year upto December, 2009 is available with us. It is seen that CESU has not been able to meet its full requirement of power in the months of October to December, 2009. Therefore, it will be logical to

accept the trend of power purchase for CESU during April to September, 2009 as a basis for forecasting power purchase during FY 2010-11. The average of the first six months of power purchase is prorated for the whole year to arrive at the estimated power purchase in FY 2009-10 which is found to be 6377.3 MU. It will be prudent to add power purchase for additional sale in HT and EHT during FY 2010-11 to arrive at projected power purchase figure of FY 2010-11. Therefore, the projected power purchase for CESU will be 6377.3+42.7 MU (additional) = 6420 MU. We approve a power purchase figure of 6420 MU for CESU for FY 2010-11.

NESCO

47. The month-wise power purchase data for current Financial Year up to December, 2009 is available with us. Therefore, it will be logical to accept the trend of power purchase for NESCO during last six months (July to December, 2009) as a basis for forecasting power purchase during FY 2010-11. The average of the last six months of power purchase is prorated for the whole year to arrive at the estimated power purchase in FY 2009-10 which is found to be 4783.6 MU. It will be prudent to add power purchase for additional sale in HT and EHT during FY 2010-11 to arrive at projected power purchase figure of FY 2010-11. Therefore, the projected power purchase for NESCO will be 4783.6+338.2 MU (additional) = 5121.8 MU. We approve a power purchase figure of 5122 MU for NESCO for FY 2010-11.

WESCO

48. The month-wise power purchase data for current Financial Year up to December, 2009 is available with us. Therefore, it will be logical to accept the trend of power purchase for WESCO during last six months (July to December, 2009) as a basis for forecasting power purchase during FY 2010-11. The average of the last six months of power purchase is prorated for the whole year to arrive at the estimated power purchase in FY 2009-10 which is found to be 6385.5 MU. It will be prudent to add power purchase for additional sale in HT and EHT during FY 2010-11 to arrive at projected power purchase figure of FY 2010-11. But there will be reduction of power purchase of 141.1 MU due to less drawal in EHT. Therefore, the projected power purchase for WESCO will be 6385.5 - 141.1 = 6244.4 MU. We approve a power purchase figure of 6244 MU for WESCO for FY 2010-11.

SOUTHCO

49. The month-wise power purchase data for current Financial Year upto December, 2009 is available with us. Therefore, it will be logical to accept the trend of power purchase for SOUTHCO during last six months (July to December, 2009) as a basis for forecasting power purchase during FY 2010-11. The average of the last six months of power purchase is prorated for the whole year to arrive at the estimated power purchase in FY 2009-10 which is found to be 2316.8 MU. It will be prudent to add power purchase for additional sale in HT and EHT during FY 2010-11 to arrive at projected power purchase figure of FY 2010-11. Therefore, the projected power purchase for SOUTHCO will be 2316.8+50.8 MU (additional) = 2367.6 MU. We approve a power purchase figure of 2368 MU for SOUTHCO for FY 2010-11.

50. Power purchase figures of the rest of the years of the Business Plan (2011-12 to 2012-13) have been submitted by DISCOMs in consultation with OPTCL. As DISCOMs have themselves forecasted those figures, we approve it without any change. Our approval of power purchase of DISCOMs in Business Plan Period is summarized in the table below:

Table - 7
Power Purchase (In MU)

Licensees	FY 2008-09	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13
CESU	5672.61	6377.30	6420.00	7,722.21	7,868.09
NESCO	4544.98	4783.60	5122.00	5,464.96	5,769.54
WESCO	6378.45	6385.50	6244.00	6,720.04	6,800.04
SOUTHCO	2175.78	2316.80	2368.00	2,848.00	3,083.00
All ORISSA	**18771.8**	**19863.20**	**20154.00**	**22755.2**	**23520.7**

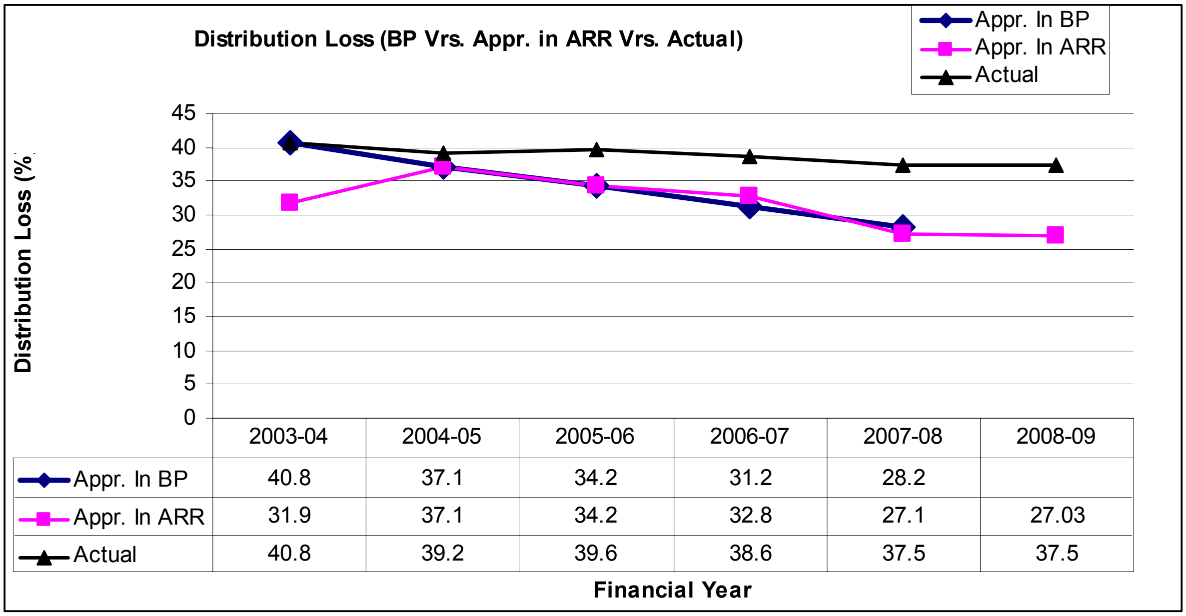
Here we want to clarify that for the purpose of projection of power purchase for the year 2010-11 to 2012-13, the actual power purchase for 2008-09 and the likely purchase for 2009-10 have been indicated in the Business Plan but the power purchase now so projected will not be taken for the purpose of truing up for 2008-09 and 2009-10. The power purchase approved for 2008-09 and 2009-10 in the ARR of the DISCOMs for these years will be taken as the basis for truing up.

Distribution Loss

51. As per MYT principle approved by the Commission the distribution loss is a controllable input of tariff. The Commission has approved a loss reduction trajectory in their Business Plan Order for control period 2004-05 to 2007-08. As per MYT

principle any loss incurred by DISCOMs beyond the level approved in Business Plan is to be entirely borne by them. Let us see how the DISCOMs have fared in achieving the loss reduction trajectory. From the Table-9 and Graph-1 given below it can be seen that in none of the year the DISCOMs have achieved Business Plan loss level or loss level approved for them in the ARR of the respective years.

Graph -1
All Orissa Distribution Loss Level



	2003-04	2004-05	2005-06	2006-07	2007-08	2008-09
Appr. In BP	40.8	37.1	34.2	31.2	28.2	
Appr. In ARR	31.9	37.1	34.2	32.8	27.1	27.03
Actual	40.8	39.2	39.6	38.6	37.5	37.5

52. Therefore as per MYT principle, the DISCOMs have been bearing the un-achieved part of the distribution loss. This has resulted in the erosion of the liquidity base of DISCOMs including approved amount of R&M, ROE and even the depreciation as total revenues of DISCOMs is escrowed with GRIDCO. After adjustment of GRIDCO dues in the escrow account there is nothing is left for DISCOMs even to carry out essential maintenance work. In this situation, investment for system improvement and loss reduction, from out of the revenues collected has not been possible. Serious efforts have not been made to access the capital market for the said purpose. Now, the happenings in DISCOMs have been taking a positive turn. In their own admission DISCOMs are hopeful of reducing the distribution loss to a level much below what is today through investment in their network. But as R-APDRP funds are yet to materialise we take a pragmatic view of fixing targets for the DISCOMs to reduce loss. Again distribution loss does not depend solely on investment only. There are several factors like motivation of employees, proper planning and project implementation which make distribution loss reduction target a reality. DISCOMs are in the path of turning around through investments in human

resources and technological inputs. They have been submitting to the Commission their achievement in metering and strengthening of network through upgradation of transformers, improving LT : HT ratio through HVDS, replacement of bare conductor through AB cable, etc. The Commission has been directing GRIDCO from time to time to relax escrow for these works. Therefore, with a number of energy police stations in place, there can be no excuses now for DISCOMs in regard to substantial reduction in losses from theft and illegal abstractions. Although we are the pioneers in privatization of DISCOMs in the whole country we have been left far behind in achieving distribution loss levels which other States have already achieved. The distribution loss level of different states are given below for better appreciation.

Table -8
Distribution Loss (%) of States

Sl. No.	State Name	2001-02	2002-03	2003-04	2004-05	2005-06	2006-07
1.	Andhra Pradesh	26.81	30.11	27.73	23.96	20.06	18.65
2.	Bihar	51.70	37.98	36.66	38.88	43.96	50.67
3.	Chhatisgarh	33.75	37.86	42.55	28.06	31.06	31.71
4.	Delhi	43.97	45.82	43.66	45.40	42.22	33.00
5.	Gujarat	26.87	28.52	24.20	30.43	27.91	24.87
6.	Haryana	39.22	37.65	32.07	32.11	30.51	33.35
7.	Karnataka	33.83	24.57	23.29	26.08	29.77	25.91
8.	Kerala	32.21	27.45	21.63	22.48	23.50	19.11
9.	Madhya Pradesh	44.55	43.31	41.44	41.30	40.07	39.24
10.	Maharashtra	37.28	34.01	34.12	32.40	31.60	31.64
11.	Rajasthan	43.06	42.61	43.74	44.68	39.92	35.60
12.	Tamil Nadu	16.06	17.31	17.16	19.28	18.66	19.54
13.	Uttar Pradesh	37.62	34.16	35.17	34.39	32.63	33.49
14.	West Bengal	31.67	25.93	31.01	28.54	24.84	23.64
15.	Jharkhand	26.39	21.19	25.35	19.62	26.82	26.21
16.	Orissa	47.47	40.75	40.75	39.21	39.60	38.57

Source: Central Electricity Authority

53. From the above table it is seen that the distribution loss in Orissa is the third highest in India. This distribution loss has created a vicious cycle resulting in poor cash inflow, poor maintenance resulting again in high distribution loss. Therefore, DISCOMs have to launch a determined onslaught on losses in distribution. They are very optimistic in their Business Plan about curbing their present distribution loss level to a acceptable limit by 2012-13. We fully agree with their proposal and do not find any justification to deviate from the trajectory of the last Business Plan and continue to fix target reducing the distribution loss without any interruption.

Table-9
Distribution Loss Approval (in %)

	2007-08	2008-09	2009-10	BUSSINESS PLAN APPROVAL				
	Actual-Aud.	Actual Aud.	Approved in ARR	2008-09	2009-10	2010-11	2011-12	2012-13
DISTRIBUTION LOSS (%)								
CESU	41.48%	40.34% *	26.30%	29.30	26.30	25.37	24.00	23.00
NESCO	31.17%	34.57%	23.00%	25.50	23.00	18.46	18.40	18.35
WESCO	36.13%	33.55%	22.50%	25.00	22.50	19.93	19.70	19.60
SOUTHCO	45.49%	47.78%	27.92%	30.42	27.92	27.82	26.50	25.50
ALL ORISSA	**37.48%**	**37.50%**	**24.45%**	**27.05**	**24.47**	**22.22**	**21.70**	**21.20**

* Performance Review

Now, the Commission directs that distribution loss percentage shall be utilized as an instrument for determination of number of units to be sold to various consumers from year to year and for determination of expected revenue from the charges which they collect from consumers. The sale at EHT along with total sale has been projected by the various distribution companies. The loss at EHT is considered zero as distribution companies purchase power at the EHT Bus. Non-maturing of EHT loads during the first five years after reform had created havoc in various estimates proposed in the Staff Appraisal Report of World Bank in April, 1996. To be fair to everybody the Commission directs that any wide fluctuations in EHT consumptions will be given due consideration at the time of revenue requirement from year to year while re-estimating the distribution loss. The distribution loss now approved may undergo change if there is unforeseen variation in EHT sale of more than 10% from what has been projected by DISCOMs during the remaining period of Business Plan.

Collection Efficiency:

54. The DISCOMs of Orissa have a fair track record of improving their collection efficiency. It has been constantly improving from a meagre 78.72% in FY 2000-01 to 92.90% in FY 2007-08. The Commission has adopted the principle of allowing a uncollectible amount or bad debt at 2.5% of the total revenue billed to the consumers in their MYT strategy. The DISCOMs are empowered to disconnect the power supply to consumer premises through Electricity Act, 2003 and OERC Distribution (Condition of Supply) Code, 2004 for non-realization of electricity bills. They have also geared up their revenue collection drive through different schema like OTS and incentive to employees scheme, etc. The State Government has also instructed different departments to pay their energy bills from special allocation made for it. In spite of this instructions of Government if some bills still remains unpaid then the Commission has been insisting at the various performance review meetings to

disconnect those consumers or else fix pre-paid meters in the premises of all the Government consumers. Let us examine the collection efficiency parameters in different DISCOMs of Orissa.

Table -10
Collection Efficiency (%)

DISCOMs	Approved by the Commission for FY 2008-09	FY 2008-09 (Performance Review/Audited)
CESU		
LT	-	85.00
Over All	95.00	91.80
NESCO		
LT	-	73.00
Over All	95.00	92.50
WESCO		
LT	-	73.00
Over All	96.60	93.86
SOUTHCO		
LT	-	89.00
Over All	94.00	94.21

From the above table it is clear that although the overall collection efficiency has improved considerably the LT collection efficiency has remained way behind. Particularly in case of NESCO and WESCO there has been tremendous scope for improvement in LT collection efficiency which will ultimately improve considerably the over all collection efficiency of those DISCOMs. Therefore, if DISCOMs mobilize all the resources available with them it will not be a difficult task for them to reach a overall collection efficiency of 99% in the last two years of the Business Plan period except the initial years of FY 2008-09, 2009-10 and 2010-11 where we have already approved the target in the tariff order of the said year. After all it is their money they have to collect it from the users of services to remain in the business. The approval of the Commission for target collection efficiency of the DISCOMs for the Business Plan period is given below:

Table -11
Approved Collection Efficiency (%)

Licensees	2008-09	2009-10	2010-11	2011-12	2012-13
CESU	95	98	98	99	99
NESCO	95	98	98	99	99
WESCO	96.6	98	98	99	99
SOUTHCO	94.0	98	98	99	99
All Orissa	95.4	98	98	99	99

AT&C Loss:

55. There are three different but inter-connected performance criteria namely billing efficiency, collection efficiency and AT&C loss which is derived from a product of the first two. In the last Business Plan order in Case No. 115/2004 the Commission directed that the AT&C loss shall be the criteria for determining the performance of the distribution companies that provides them the latitude for improvement in either or both in distribution loss and collection efficiency. It shall be used for the purpose of calculation of incentive and penalty at the year end. The concept of transmission and distribution loss shall be utilized as an instrument for determination of number of units to be sold to various consumers from year to year and for determination of expected revenue from the charges. Now, the Commission also reiterates the same principle which shall be valid in this control period also. As the last Business Plan period is over and Audit report for the same period is available with us it will be proper to review the actual AT&C loss level attained by different DISCOMs vis-à-vis the target given to them. The table-13 given in the next page shows the same.

From the said Table-12 it is seen that none of the DISCOMs have attained the target AT&C level assigned to them. During different tariff hearing, so also in the performance review meetings, the DISCOMs have cited numbers of reasons for not being able to achieve the same. They advance the plea of dearth of funds for loss control drive and allege inadequate administrative support from Government, etc. But now things have started looking up. DISCOMs have proposed to invest in their ageing network through APDRP and by arranging funds through loans from REC and PFC etc. Govt. has also begun extending its support through opening of Energy Police Stations and special Courts to arrest power theft. DISCOMs also expect to invest in system improvement work including DTMS and SCADA. They are very optimistic of reducing their distribution loss so also the AT&C loss by investment and proper planning. As per guidelines of the Restructured APDRP during XI Plan notified by Government of India on 22.12.2008 to be eligible for the assistance under APDRP the utilities have to commit to stick to the following loss reduction trajectory.

- Utilities having AT&C loss above 30% : Reduction by 3% per year.
- Utilities having AT&C loss below 30%: Reduction by 1.5% per year.

Table-12

Target vrs. Actual AT&C Loss and other Figures for DISCOMs in Control Period FY 2003-04 to 2007-08

	2003-04			2004-05			2005-06			2006-07			2007-08		
	Approved in BP	Approved in ARR	Actual (Aud)	Approved in BP	Approved in ARR	Actual (Aud)	Approved in BP	Approved in ARR	Actual (Aud)	Approved in BP	Approved in ARR	Actual (Aud)	Approved in BP	Approved in ARR	Actual (Aud)
PURCHASE OF POWER (MU)															
CESU	3,899.5	3,981.6	3,899.5	3,872.9	3,872.9	3,849.3	3,930.0	3,930.0	4,185.5	3,990.0	4,164.0	4,623.7	4,050.0	4,842.0	5,203.6
NESCO	2,645.8	2,722.0	2,645.8	2,955.1	2,955.1	2,985.7	3,308.1	3,308.1	3,407.6	3,317.1	4,169.0	3,998.7	3,320.1	4,497.0	4,654.9
WESCO	3,784.2	3,773.6	3,784.2	4,028.6	4,028.0	4,051.0	4,150.0	4,150.0	4,188.5	4,200.0	4,600.0	4,670.6	4,263.0	5,496.0	5,377.1
SOUTHCO	1,607.0	1,580.0	1,607.0	1,613.3	1,613.3	1,613.4	1,800.0	1,800.0	1,702.2	1,856.0	1,750.0	1,827.0	1,920.0	1,818.0	1,976.9
ALL ORISSA	**11,936.5**	**12,057.2**	**11,936.6**	**12,469.8**	**12,469.2**	**12,499.5**	**13,188.1**	**13,188.1**	**13,483.8**	**13,363.1**	**14,683.0**	**15,119.9**	**13,553.1**	**16,653.0**	**17,212.5**
SALE OF POWER (MU)															
CESU	2,349.1	2,749.7	2,349.0	2,362.5	2,362.5	2,252.3	2,515.2	2,515.2	2,391.6	2,673.3	2,789.9	2,611.6	2,835.0	3,423.1	3,045.1
NESCO	1,490.6	1,773.5	1,490.6	1,832.1	1,832.1	1,809.2	2,150.3	2,150.3	2,144.2	2,255.7	2,855.5	2,670.2	2,357.3	3,327.4	3,203.8
WESCO	2,307.6	2,600.8	2,307.7	2,658.9	2,658.9	2,577.3	2,863.5	2,863.5	2,605.3	3,024.0	3,047.7	2,972.4	3,197.3	4,122.3	3,434.6
SOUTHCO	925.0	1,091.9	924.8	984.1	984.1	959.9	1,152.0	1,152.0	1,003.2	1,243.5	1,172.5	1,034.3	1,344.0	1,264.9	1,077.6
ALL ORISSA	**7,072.3**	**8,215.9**	**7,072.1**	**7,837.6**	**7,837.6**	**7,598.7**	**8,681.0**	**8,681.0**	**8,144.2**	**9,196.5**	**9,865.6**	**9,288.4**	**9,733.5**	**12,137.6**	**10,761.1**
DISTRIBUTION LOSS (%)															
CESU	39.8	30.9	39.8	39.0	39.0	41.5	36.0	36.0	42.9	33.0	33.0	43.5	30.0	29.3	41.5
NESCO	43.7	34.8	43.7	38.0	38.0	39.4	35.0	35.0	37.1	32.0	31.5	33.2	29.0	26.0	31.2
WESCO	39.0	31.1	39.0	34.0	34.0	36.4	31.0	31.0	37.8	28.0	33.7	36.4	25.0	25.0	36.1
SOUTHCO	42.4	30.9	42.5	39.0	39.0	40.5	36.0	36.0	41.1	33.0	33.0	43.4	30.0	30.4	45.5
ALL ORISSA	**40.8**	**31.9**	**40.8**	**37.1**	**37.1**	**39.2**	**34.2**	**34.2**	**39.6**	**31.2**	**32.8**	**38.6**	**28.2**	**27.1**	**37.5**
COLLECTION EFFICIENCY (%)															
CESU	81.2	90.0	82.1	83.0	83.0	83.5	86.0	86.0	88.9	89.0	89.0	92.8	92.0	92.0	94.05
NESCO	88.1	90.0	85.5	92.0	92.0	95.6	93.0	93.0	90.2	94.0	94.0	88.7	94.0	94.0	93.2
WESCO	88.3	90.0	88.0	90.0	90.0	91.7	92.0	92.0	93.7	94.0	94.0	94.3	96.0	96.0	92.9
SOUTHCO	84.2	90.0	88.2	89.0	89.0	100.5	91.0	91.0	95.3	93.0	93.0	94.3	94.0	94.0	94.1
ALL ORISSA (*)	**85.3**	**90.0**	**85.5**	**88.2**	**88.2**	**91.0**	**90.4**	**90.4**	**91.6**	**92.4**	**92.5**	**92.4**	**94.1**	**94.2**	**93.41**
AT & C LOSS (%)															
CESU	51.1	37.8	50.6	49.4	49.4	51.1	45.0	45.0	49.2	40.4	40.4	47.6	35.6	35.0	44.9
NESCO	50.4	41.4	51.8	43.0	43.0	42.1	39.6	39.6	43.2	36.1	35.6	40.7	33.3	30.4	35.9
WESCO	46.2	38.0	46.4	40.6	40.6	41.7	36.5	36.5	41.7	32.3	37.7	40.0	28.0	28.0	40.7
SOUTHCO	51.6	37.8	49.3	45.7	45.7	40.2	41.8	41.8	43.9	37.7	37.7	46.6	34.2	34.6	48.7
ALL ORISSA (*)	**49.4**	**38.7**	**49.3**	**44.5**	**44.5**	**44.7**	**40.5**	**40.5**	**44.7**	**36.4**	**37.9**	**43.3**	**32.4**	**31.4**	**41.6**

(*) NB: AT & C Loss of All ORISSA has been calculated based on average collection efficiency of DISCOMs

56. Unfortunately, the assistance under APDRP is not available for private distribution companies of Orissa under Restructured APDRP guidelines. But Government of India commits to consider participation of private utilities in APDRP after 31.07.2010. It is very likely that DISCOMs of Orissa might become eligible for the APDRP scheme after the said date. DISCOMs are optimistic and confident of being able to draw upon system improvement loans from REC/PFC by mortgaging their distribution assets. Therefore, considering APDRP fund that may in all probability and most likely start flowing from FY 2010-11 and investment through debt fund by DISCOMs, it would be appropriate to give our approval of AT&C loss calculated basing on target distribution loss and collection efficiency during the Business Plan period as follows.

Table- 13
AT&C Loss Approval (In %)

Financial Year	2007-08	2008-09	2009-10	BUSSINESS PLAN APPROVAL				
	Actual Aud.	Actual Aud.	Approved in ARR	2008-09	2009-10	2010-11	2011-12	2012-13
AT & C LOSS (%)								
CESU	45.93%	45.23%	27.78%	32.84	27.77	26.86	24.76	23.77
NESCO	35.88%	39.48%	24.54%	29.23	24.54	20.09	19.22	19.17
WESCO	40.65%	37.63%	24.05%	27.55	24.05	21.53	20.50	20.40
SOUTHCO	48.73%	50.80%	29.36%	34.59	29.36	29.26	27.24	26.25
ALL ORISSA	**41.89%**	**41.89%**	**25.96%**	**30.40**	**25.98**	**23.77**	**22.48**	**21.99**

As per Regulation 5(5)(H) of OERC (Terms and Conditions for Determination of Tariff) Regulations, 2004, the licensee if it makes more profit than the approved return on account of improved performance, the Commission shall treat the profit beyond the approved return on sharing basis between licensees, consumers and tariff balancing reserve. Therefore, achievement in AT&C loss reduction level, better than the target shall be treated accordingly. We expect and direct that the licensees must achieve the minimum AT&C loss target for 2009-10 onwards as fixed above.

57. Now we summarize our approval of power purchase, sales, distribution loss and collection efficiency for the Business period from FY 2008-09 to 2012-13.

Table-14

Licensees	FY 2008-09	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13
CESU					
Purchase (MU)	5,672.6	6377.3	6420.0	7722.2	7868.1
AT & C Loss (%)	32.84	27.77	26.86	24.76	23.77
Dist. Loss (%)	29.30	26.30	25.37	24.00	23.00
Sales (MU)	4010.5	4700.1	4791.2	5868.9	6058.4
Collection Efficiency (%)	95	98	98	99	99

Licensees	FY 2008-09	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13
NESCO					
Purchase (MU)	4,545.0	4783.6	5122.0	5465.0	5769.5
AT & C Loss (%)	29.23	24.54	20.09	19.22	19.17
Dist. Loss (%)	25.50	23.00	18.46	18.40	18.35
Sales (MU)	3386.0	3683.4	4176.5	4459.4	4710.8
Collection Efficiency (%)	95	98	98	99	99
WESCO					
Purchase (MU)	6,378.5	6385.5	6244.0	6720.0	6800.0
AT & C Loss (%)	27.55	24.05	21.53	20.50	20.40
Dist. Loss (%)	25.00	22.50	19.83	19.70	19.60
Sales (MU)	4783.8	4948.8	4999.6	5396.2	5467.2
Collection Efficiency (%)	96.6	98	98	99	99
SOUTHCO					
Purchase (MU)	2,175.8	2316.8	2368.0	2848.0	3083.0
AT & C Loss	34.59	29.36	29.26	27.24	26.25
Dist. Loss	30.42	27.92	27.82	26.50	25.50
Sales (MU)	1513.9	1669.9	1709.2	2093.3	2296.8
Collection Efficiency (%)	94	98	98	99	99
All Orissa					
Purchase (MU)	18,771.8	19863.2	20154.0	22755.2	23520.7
AT & C Loss (%)	30.40	25.98	23.77	22.48	21.99
Dist. Loss (%)	27.05	24.47	22.22	21.70	21.20
Sales (MU)	13694.3	15002.2	15676.5	17817.8	18533.3
Collection Efficiency (%)	95.4	98	98	99	99

58. The Commission in their Order dtd. 18.06.2003 in Case No. 8/2003 had outlined the Multi Year Tariff (MYT) Principle for determination of ARR and Retail Supply Tariff of Distribution Licensees. The tenure of the said order was concurrent with our old Business Plan Order (Case No. 115/2005) the control period of which has already elapsed with FY 2007-08. In the meantime Commission has floated a Consultation Paper for setting out the guiding principle for new MYT regime. After consideration of views received from all the stakeholders, Commission will pass appropriate order shortly. Till such date the guiding principles set by the Commission in the earlier MYT order dated 18.06.2003 is being followed for determination of Annual Revenue Requirement of DISCOMs for 2008-09 to 2012-13 and also have been followed in the present Business Plan Order. However, Commission may revisit the present Business Plan order, if the necessity so arises as a result of any change in earlier guiding principles in future.

Capital Investment of NESCO, WESCO and SOUTHCO

59. The Commission vide its order dated 28.2.2005 in case No.115 of 2004 among other things had observed the following with reference to shareholders agreement.

"(i) The Commission agrees with the views of the Government of Orissa that the 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.

(ii) 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.

(iii) Distcos 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".

60. Reliance Energy Limited had challenged the above portion of the order of the OERC before the Appellate Tribunal for Electricity in Appeal No.75 of 2005. The Appellate Tribunal for Electricity vide its order dated 13.12.2006 inter alia vide para 24 have held as under:-

"24. We are to point out that the Discoms, being independent corporate entities, alone are the licensees and with respect to their operations and activities connected with distribution licenses, the Discoms could be preceded or could be held responsible and/or actionable for omissions or commissions. Appellant being a shareholder of the Discoms and the remaining shareholders being GRIDCO and employees of the Discoms, it is obviously clear that as against the appellant herein, OERC has no jurisdiction as rightly contended by the learned counsel for the appellant."

In our considered view, the OERC has neither the authority nor jurisdiction to issue the directions to the appellant herein and it has exceeded its authority on a misconception and out of over enthusiasm to assert its power.

While setting aside the observations of the Commission that "the shareholders must undertake appropriate steps to provide requisite financial support to the company", the Appellate Tribunal for Electricity vide para 37 and para 38 have observed as under:-

"37. The appellant is not the licensee to distribute power nor it is amenable to the jurisdiction and authority of OERC. The learned counsel is unable to point out any express provision either in the Orissa Electricity Reform Act, 1995 or in the Electricity Act, 2003 which confer jurisdiction on the OERC to issue the impugned directions to the appellant herein. The power to regulate, if any could be exercised against the licensee/s or alike acting or operating under the said two enactments like Discoms in the case on hand. In our considered view, the OERC has neither the authority nor jurisdiction to issue the

directions to the appellant herein and it has exceeded its authority on a misconception and out of over enthusiasm to assert its power. Hence, the contention advanced by Mr. R. K. Mehta learned counsel for respondent No.1 deserves to be rejected.

38. We hold that insofar as the appellant is concerned OERC has acted without jurisdiction and the direction issued by OERC against the appellant are liable to be set aside and accordingly they are set aside. However, we make it clear that with respect to the orders passed by OERC against the Discoms, we are not called upon to examine the correctness or validity on merits as the Discoms have not preferred appeals. Points 'A' to 'C' are answered in favour of the appellant and against respondents. The content of minutes of meetings referred to by Mr. R. K. Mehta is of no assistance at all nor it could confer jurisdiction on OERC. That apart OERC is not the competent forum to enforce the agreements or stipulations agreed therein."

61. Even though the Appellate Tribunal for Electricity has found the directions of the OERC with regard to calling upon the shareholders to provide the requisite financial support not legally tenable, it has clearly spelt out the way out from the present impasse through which the three Reliance Managed Company and GRIDCO are passing through. In this connection the observations of the Appellate Tribunal for Electricity in para 40 and 41 are relevant which are extracted below for ready reference.

"40. We expect <u>not only the Discoms but also the shareholders 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</u>. 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 <u>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</u>. 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 utilised to settle the dispute in the interest of Reform in the State of Orissa."

62. From the directions and observations of ATE it is clear that though there is no legal compulsion on the part of the REL, the majority of shareholders to invest capital in the three Discoms, a solution is to be found out in the line of the observations made by ATE vide para 40 and 41 of the order dt.13.12.2006. Commission would, therefore, expect that the REL, the majority shareholders should seriously reconsider

their stand and come forward for management and operation of the three Discoms in the overall development of the power sector in the State to the benefit of the consumers at large.

63. While it is expected that the REL, the majority shareholders, in the meantime should take appropriate pro-active action to assist three DISCOMs by way of fresh investment of capital. Attempts should be made by GRIDCO and the State Govt. to free some of the assets hypothecated, so that the DISCOMs could raise some amount of loan from the financial institutions for upgradation and renovation of the aged and dilapidated distribution network in the State. GRIDCO, the other shareholder of the companies, DISCOMs could raise their proportionate capital as equity. Both the shareholders Reliance Infra and GRIDCO should discuss and settle the issue of equity infusion.

64. NESCO, WESCO and SOUTHCO have planned the following capital investment in the next five years.

Table – 15
NESCO Proposed Capital Expenditure during next 5 years (Rs Crore)

Particulars	2008-09	2009-10	2010-11	2011-12	2012-13
RGGVY	379.64	414.74	87.20	0.00	0.00
BGJY	0.00	34.00	34.00	5.00	5.00
APDRP Scheme	25.76	68.71	68.71	17.18	17.18
System Improvement Schemes	10.00	10.00	30.00	50.00	60.00
SCADA and DTMS	3.31	8.85	1.08	0.00	0.00
Total	**418.71**	**536.30**	**220.99**	**72.18**	**82.18**
Capital Expenditure without RGGVY and BGJY	**39.07**	**87.56**	**99.79**	**67.18**	**77.18**

Table – 16
WESCO Proposed Capital Expenditure during next 5 years (Rs Crore)

Particulars	2008-09	2009-10	2010-11	2011-12	2012-13
RGGVY	247.14	500.00	150.00	0.00	0.00
BGJY	0.000	42.00	42.00	0.00	0.00
APDRP Scheme	22.20	59.18	59.18	14.80	14.80
System Improvement Schemes	9.00	10.50	12.50	12.50	1.250
SCADA and DTMS	3.23	10.92	1.37	0.00	0.00
Total	**281.57**	**622.60**	**265.05**	**27.30**	**27.30**
Capital Expenditure without RGGVY and BGJY	**34.43**	**80.60**	**73.05**	**27.30**	**27.30**

Table – 17
SOUTHCO Proposed Capital Expenditure during next 5 years (Rs Crore)

Particulars	2008-09	2009-10	2010-11	2011-12	2012-13
RGGVY	252.86	585.26	150.00	0.00	0.00
BGJY	0.000	43.00	43.00	0.00	0.00
APDRP Scheme	27.04	22.11	22.11	18.02	18.02
System Improvement Schemes	20.74	15.00	0.00	0.00	0.00
SCADA and DTMS	1.89	6.56	1.16	0.00	0.00
Total	**302.53**	**671.93**	**216.27**	**18.02**	**18.02**
Capital Expenditure without RGGVY and BGJY	**49.67**	**43.67**	**23.27**	**18.02**	**18.02**

The asset addition under RGGVY and Biju Gram Jyoti Yojana shall be entirely funded by Govt. of India and Govt. of Orissa. The responsibility of licensees is only to upgrade and maintain those assets. Regarding capital expenditures, other than under RGGVY and BGJY, the companies have to avail equity and long term loans from financial institutions for undertaking, system improvement works and various work under APDRP.

65. The three DISCOMs, namely, WESCO, NESCO and SOUTHCO issued secured non convertible and redeemable bonds of Rs.400 crores (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 bonds are secured by:-

(i) Mortgage of immovable property

(ii) Hypothecation of immovable assets

(iii) Pari-passu first charge on the receivables of issuer companies.

66. 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..

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

68. The issue before the Commission in respect of the Rs.400 cr. 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. Regarding item (a) Commission in their RST Order dtd. 20.03.2008 2008-09 had dealt in details in para 379 to 391 which are reproduced below:

379. Extract from the Commissioner's Order dated 23.03.2007 of 2007-08 on Re-securitization of NTPC Bunds amounting to Rs.400 Crores is reproduced below (Case No.57, 58, 59 & 60 of 2006):

Re-securitisation of NTPC Bonds

WESCO, NESCO & SOUTHCO issued bonds worth Rs.400 crore in favour of GRIDCO to be assigned to NTPC w.e.f 1st October, 2000 @ 12.5% interest. The Commission in its last tariff order has allowed interest @ 8.5% (tax free) on those bonds as per the recommendation of Alhuwalia Committee. The Commission in its order advised the Govt. to pass on the benefits to the end users of electricity on account of the reliefs that would be available if securitisation shall be effected in line with the one time settlement scheme approved by the Govt. of India to be made effective on 01.10.2001. But, GOO has not yet communicated its decision. As a result, the licensee while proposing their revenue requirement have calculated the interest impact @ 12.5% per annum w.e.f. 1st October, 2000 onwards. The interest liability for the year 2007-08 along with differential interest for the past years i.e. (12.5% - 8.5%), as projected by the three DISTCOs on this account amounts to Rs.36.05 crore, Rs.50.00 crore and Rs28.07 crore for WESCO, NESCO and SOUTHCO respectively. As detailed in the Commission's order for FY-07, the Commission is waiting for the response of the Govt. of Orissa on the proposal to re-securitise the *bonds of Rs.400 crores issued to GRIDCO by the DISTCOs, which have been in turn endorsed to NTPC, under the one-time securitization scheme under the Alhuwalia Committee recommendations.*

The Commission has also pursued this matter with GRIDCO, which is currently negotiating with NTPC on the re-securitisation of these bonds.

The Commission has perused the directions of the Hon'ble ATE on this issue. GRIDCO has filed appeal against the order Hon'ble ATE to the Hon'ble Supreme Court. Pending judgement of Hon'ble Supreme Court in this matter the Commission assess the interest @8.5% on the loan amount of Rs.400 crore as applicable for NTPC tax free bonds. Accordingly, the Commission approves the interest @ 8.5% on the aforesaid loan as detailed below:-

Table - 41

(Rs. in crore)

Source	***WESCO***		***NESCO***		***SOUTHCO***	
	Prop.	*Appr.*	*Prop.*	*Appr.*	*Prop.*	*Appr.*
NTPC Bond	*39.91*	*8.76*	*64.71*	*14.20*	*50.35*	*11.05*

380. WESCO, NESCO and SOUTHCO in their tariff filling for FY 2008-09 request the Commission to allow differential interest on Bonds @ 4% from 1st October 2006 on the Annual Revenue Requirement 2008-09, stating the reason they clarified that the proposal given by the Commission to restructure and securitize the bond under one time settlement scheme has not been accepted by the Govt. of Orissa. As such the licensees are required to pay the interest at the original rate of 12.5% per annum as against 8.5 % per annum allowed by the Commission. This rate will take effect from 01.10.2000.

381. The three DISTCOs viz WESCO, NESCO and SOUTHCO have further stated that GRIDCO settled the outstanding dues of Power Bonds with NTPC through "One Time Settlement" with waiver of interest of such bonds by Rs.91.50 crores. This has been exhibited in the annual account of NTPC. Under such circumstances the DISTCO submitted that GRIDCO may be directed to give the detailed of the settlement amount which shall be reimbursed by the DISTCOs to GRIDCO after adjustment of past payment.

382. As regards one time settlement dues payable by GRIDCO to NTPC, covered under the power bond of Rs.400 crores issued by WESCO, NESCO and SOUTHCO to GRIDCO, both GRIDCO and NTPC came to a settlement the extract of which is reproduced below:

The outstanding amount payable by GRIDCO to NTPC towards power purchase included a sum of Rs.400 crore as on 31st August 2000. Pursuant to the minutes of meetings dated 09.09.2000 and 24.10.2000, the three DISTCOMs (WESCO, NESCO and SOUTHCO) together issued 12.5% Secured Non convertible bonds of Rs.400 crore to GRIDCO and GRIDCO transferred these bonds to NTPC to liquidate its power purchase liability of Rs.400 crore as on 31.08.2000. The DISTCOMs were to service the bonds directly to the bondholder. In case the DISTCOMs fail, as a fall back arrangement, NTPC was to have the first charge on pari-passu basis along with other first charge holders on the receivables of GRIDCO.

The three DISTCOMs were not regularly servicing the bonds. The interest accrued up to 31st March 2007 on the Bonds of Rs.400 is Rs.295 crore. The three DISTCOMs have made payment of interest aggregating to Rs.110.80 crore only. NTPC adjusted Rs.276.70 crore which was to be refundable to GRIDCO pursuant to CERC tariff orders, against the default of DISTCOMs which GRIDCO did not accept. NTPC issued notice for regulation of Power to GRIDCO for payment of outstanding dues linked to Rs.400 crore bonds on 17.01.2007.

In order to resolve the settlement of outstanding payments, meetings were held between GRIDCO and NTPC on 26/27.12.06, 09.02.07 (with Govt. of Orissa), 15.03.07, 20./21.03.07 and 24.03.07 (with Govt. of Orissa). After prolonged discussions, in order to reach a onetime settlement of NTPC dues, applicable exclusively between NTPC and GRIDCO, the following has been resolved:-

1. *GRIDCO will make onetime settlement of the entire power purchase dues payable to NTPC linked to the bonds of Rs.400 crore and ensure payment to NTPC by 31.03.2007.*
2. *As a full and final settlement GRIDCO shall pay Rs.216 Crore (Rupees two hundred sixteen crore only) to NTPC by 31.03.2007 towards GRIDCO's Power Purchase liability payable by GRIDCO to NTPC covered under the bonds issued by DISTCOMs to GRIDCO and transferred by GRIDCO to NTPC, after considering adjustment of Rs.276.70 crore made by NTPC and the amount of Rs.110.80 crore paid to NTPC by DISTCOMs directly.*
3. *On receipt of full payment of the above settled amount from GRIDCO by NTPC, the entire bonds of Rs.400 crore issued by DISTCOMs to GRIDCO and transferred to NTPC by GRIDCO shall be re-transferred by NTPC to GRIDCO by 31st March 2007.*

Sd/- *Sd/-*

Director (Finance & Corp. Affairs)
GRIDCO
Dated: 31.03.2007
Bhubaneswar

Director (Commercial)
NTPC Ltd.
Dated : 31.03.2007.
New Delhi

383. *It is revealed from the above that GRIDCO has settled the bond with NTPC in the following manner:*

Table – 42

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

384. 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 31.03.2007 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%.

385. On the other hand, GRIDCO in its reply has stated that the three DISTCOs namely, WESCO, NESCO and SOUTHCO issued secured, non-convertible and redeemable debentures of Rs.400 crore (WESCO Rs.103 crore, NESCO Rs.167 crore and SOUTHCO Rs.130 crore) in favour of GRIDCO to securitise the BST and loan instalment dues payable by them to GRIDCO and these debentures (Power Bonds) were issued on 1st October, 2000 with a moratorium of 4 years for payment of principal. The principal was to be paid in 3 instalments @30%, 30% & 40% on 01.10.2005, 01.10.2006 and 01.10.2007 respectively.

386. These bonds, pursuant to minutes of discussion, were transferred to NTPC by GRIDCO on 31st March, 2001, to securitise the power purchase dues payable by GRIDCO to NTPC amounting to Rs.400 crore which was payable till August, 2000. The DISTCOs were to service the bonds directly to NTPC along with interest. The DISTCOs however failed to service the bonds. Consequently NTPC, relying on the agreed fall back arrangement requested GRIDCO to pay the default amount. GRIDCO, however, consistently insisted that NTPC as the Bond holder and pursuant to the subscription agreement and debenture trust deed is entitled to recover the default amount by enforcing the securities subject to which the debentures were issued. NTPC however did not proceed as per the terms of the debentures and issued notice to regulate the power supply to GRIDCO if the default amount is not paid by 31.03.2007. NTPC, before issue of notice for regulation of power supply, had adjusted a sum of Rs.276.70 crore against the bonds which was payable by NTPC to GRIDCO pursuant to the orders of CERC.

387. On a reference of the matter by GRIDCO to 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 08.03.2007. GRIDCO, with the approval of the Commission in their order dated 31.03.2007, 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.

388. Pursuant to the direction of the State Govt. GRIDCO called upon to the three DISTCOs to pay the default amount under the bonds. Instead of making any payment, all the DISTCOs unilaterally made adjustment against such bond dues in default in their 2005-06 accounts which were approved by their respective Board on majority of votes. GRIDCO has objected to the unilateral and arbitrary adjustment.

> 389. *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 DISTCOs (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.*
>
> 390. *The Company Law Board is yet to fix a date for hearing of GRIDCO's application.*
>
> 391. *The Commission is aware that the matter is listed in Supreme Court (Civil Appeal filed by GRIDCO in BSP matter). The Commission therefore will take a final decision in this regard, after pronouncement of the judgement of Hon'ble Supreme Court in the said matter. As such, the Commission for the time being does not consider any interest on Rs.400 crore of bond to be included as a part of revenue requirement of DISTCOs so as not to burden the consumer as GRIDCO is being allowed interest on the loans taken for payment to NTPC."*

69. So far as the settlement of the dispute regarding servicing of bond is concerned, there is no change in the status. Hence, the matter will be decided after pronouncement of the judgment of Supreme Court.

70. Commission find that, WESCO, NESCO and SOUTHCO, in their audited accounts for the year 2006-07 and 2007-08 have not shown any liability towards the Bond, which were earlier appearing in the audited accounts upto FY 2005-06. In this connection the comments of the Auditor SRB Associates, Charted Accountant for the FY 2006-07 is mentioned 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" to that extent."

    Therefore, Commission is of the opinion that since the matter is sub-judice in the Apex Court. WESCO, NESCO and SOUTHCO are directed to reflect the same in their audited accounts, till the case is finalized.

71. Regarding item (b) of para 68, the DISCOMs submitted that on the strength of the above stated security clause of the bond subscription agreement, no financial institution is releasing loan to WESCO, NESCO and SOUTHCO. Unless the immovable asset hypothecated against the bond security are made free of charge it would be difficult on their part to get any loan from financial institutions.

72. GRIDCO on its part submits that any ceding of charges to be agreed to by GRIDCO in favour of REC should be without prejudice to the rights and contentions of GRIDCO in the proceedings pending before the Company Law Board, Eastern Bench filed under Section 117 (C) of Companies Act, 1956. Further, GRIDCO states that it has the first and paramount charge over the movable assets of DISCOM. GRIDCO may consider allowing DISCOMs to create a second charge in favour of REC which will be subject to first charge in favour of GRIDCO. If the value of movable assets are in excess of the amount due to GRIDCO towards principal and interest under the bonds, DISCOM creating the second charge in favour of REC should be acceptable to REC. If GRIDCO allows first charge or a pari pasu charge to be created in favour of REC, then GRIDCO may marginalize its claim over the assets as security. If GRIDCO allows 50% of the existing assets to be charged to REC as a first charge, GRIDCO will be marginalizing its security to the extent of 50%. Therefore, GRIDCO insists that DISCOMs should create only a second charge subject to GRIDCO's charge in favour of REC.

73. Since the financial institution are not agreeable to the second charge on the assets nor GRIDCO is agreeable to cede its first charge even partly, the Commission is of the opinion that pending final settlement regarding redemption of 400 crore NTPC bond as observed by ATE vide Para 40 and 41 of their Order dtd. 13.12.2005 in Appeal No. 75 of 2005, there should be amicable settlement between GRIDCO and DISCOMS to enable DISCOMS to avail some amount of loan for system improvement work which is urgently required. As the assets value of the DISCOMs are far in excess of their liabilities to GRIDCO, particularly on account of NTPC Bond, there is no rationality in refusing to release a part of the assets for some borrowings from REC/PFC or other financial institutions for immediate and unavoidable CAPEX for system upgradation of distribution network. Therefore, Commission would like to address this issue in a more flexible manner than to stick to the literal interpretation of the security clause. It is neither fair nor justified to hypothecate the entire assets of DISCOMs only for a bond amount of Rs.400 crore. Hence, GRIDCO must take appropriate steps to amend the security clause only in respect of ceding of the first charge in a manner so as to secure for service of the Rs.400 crore of bond by way of mutual consent between DISCOMs and GRIDCO, even though the matter is still before Supreme Court vide CA No.759/2007.

Security Clause of the Bond Subscription Agreement (The Second Schedule Herein above Referred To of the Bond Subscription Agreement) provides 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. Item (H) of the Bond Subscription Agreement states the following:

"WESCO is also seized and possessed of and sufficiently entitled to movable fixtures and fittings more particularly described in Part-II of the First Schedule hereunder written (hereinafter referred to as the "Movable Propoerties") (the Immovable properties and the Movable Properties are hereinafter collectively referred to as the "Properties").

The Part-II of the First Schedule referred to above gives description of the property on which GRIDCO has a charge which is reproduced below:

Part-II

Description of Movable Properties

The Whole of the movable properties of WESCO including accessories, equipments, furniture, fittings, fixtures and all other movable assets, both present and future, whether installed or not and whether now lying loose or in cases or which are now lying or stored in or about or shall hereafter from time to time during the continuance of the security of these presents.

From the above Clause Commission finds that it will be difficult for NESCO, WESCO and SOUTHCO to get any loan from the financial institution for system improvement works by hypothecating the assets. However, asset created out of the loan from World Bank are not coming within ambit of this Clause. Clause 3.2 (viii) of the Security and Conditions Precedent states the following:

"(viii) WESCO creates security in favour of GRIDCO by way of mortgage hypothecation of its entire immovable properties and fixed assets other than those, which are charged/mortgaged in favour of other lenders as on October 1, 2000 Subject to obtaining prior consent from any such other senior lenders."

In other words GRIDCO has no charge over the asset created out of World Bank loan by State Government. However, Government consent is to be obtained for mortgage those assets.

Under these circumstances Commission would like to adopt a pragmatic approach where by the interest by GRIDCO is protected as well as DISCOMs avail loan from financial institutions for system improvement work by mortgaging to the financial institutions. Further, since all the revenue earned by DISCOMs for supply of power to the consumers are escrowed in favour of GRIDCO, there is no risk for GRIDCO to cede the first change or release a part of the total accumulated assets for the purpose of the hypothecation by DISCOMs in favour of the prospective lending financial institutions.

74. The DISCOMs issued Bonds to GRIDCO on 01.10.2000. The assets as on 31.3.2001 based on the audited account for the three REL comes to Rs.1114.97 crore as per the book value as indicated below:-

Table – 18

Position as on 31.3.2001	NESCO	WESCO	SOUTHCO	TOTAL
Gross Fixed Asset	307.51	325.41	276.32	909.24
Capital Work in progress	56.54	79.69	69.50	205.73
Total	405.10	364.05	345.82	1114.97

The latest available balance sheet i.e. 2007-08 reveals the following figure:

Table – 19

Position as on 31.3.2008	NESCO	WESCO	SOUTHCO	TOTAL
Gross Fixed Asset	545.74	542.36	399.50	1487.60
Capital Work in progress	51.58	34.19	73.64	169.41
Total	576.55	597.32	473.14	1647.01

As revealed from the above tables the capital formation during the seven years i.e. from 2001-02 to 2007-08 is only Rs.532.04 cr (Rs.1647.01 Cr. – Rs.1114.97 cr.). The funding of this capital expenditure is mainly through capital contribution from consumers and the World Bank loan for which the State Government stands as guarantor. A picture of the consumer contribution and World Bank loan utilized for capital formation during the seven years period reveals the following:

Table – 20

(Rs. Crore)

Capital contribution from Consumers	NESCO	WESCO	SOUTHCO	Total
As 31.03.2008	164.09	112.59	97.22	373.90
As on 31.03.2001	50.30	51.38	47.35	149.03
Contribution to the asset creation during seven years after 31.03.2001.	**113.79**	**61.21**	**49.87**	**224.87**

Table – 21

(Rs. Crore)

Loan from World Bank	NESCO	WESCO	SOUTHCO	Total
As 31.03.2008	91.28	90.96	72.59	254.83
As on 31.03.2001	48.08	48.39	39.55	136.02
Contribution to the asset creation during seven years after 31.03.2001 out of World Bank Loan.	**42.57**	**43.20**	**33.04**	**118.81**

The investment for system improvement from the loan availed by DISCOMs other than World Bank loan and consumer contribution is negligible which shows that no financial institution is interested to fund the DISCOMs towards their Capex. The total loan availed as on 31.03.2008 from other sources i.e. APDRP is given below:

Table – 22

(Rs. Crore)

	NESCO	WESCO	SOUTHCO	Total
Loan from PFC/REC	**11.45**	**9.86**	**5.13**	**26.44**

(a) It is, therefore, our considered advice that GRIDCO should agree to allow DISCOMs to create first charge over the immovable assets as security to REC/PFC, such of the assets as have been added after 31.03.2001. GRIDCO is also backed by a robust mechanism of escrow in which all the revenues of the DISCOMs are pledged to the account of GRIDCO. Therefore, GRIDCO should have normally no objection to cede the first charge on the unencumbered asset of the Company in favour of REC/PFC on the assets added after 31.03.2001. Further, the servicing of Capex loan to be obtained from the financial institutions also must find mention in the priority of release of fund from the Escrow account for which the Commission would take appropriate steps in these directions.

(b) However, GRIDCO and DISCOMs shall abide by the decision of Supreme Court after pronouncement of the judgment.

Capital Investment of CESU

75. The CESU has proposed the following capital expenditure along with the source of funding in Annexure-VI of the Business Plan which is reproduced below:

Table – 23

CAPEX PLAN OF CESU FOR FY 2008-13

Sl.No.	Description	2008-09	2009-10	2010-11	2011-12	2012-13	Total
I	**CAPITAL INVESTMENT PLAN ON CAPACITY EXPANSION (in Rs.Crore)**						
1	Investment for addition of 470 MVA	150.0	645.0	136.5	137.8	144.7	1214
2	Investment in the upgradation of DTRs by 988 MVA	22.5	53.1	56.3	42.2	46.0	220
3	Boundary Wall at Primary S/s (90 nos.)	4.5					5
4	Construction of DTRs' plinth mounted including wall and gate	20.0	22.0	11.0			53
5	Breakers	4.5	0.0	0.0	0.0	0.0	5
6	Refurbishment	1.0	1.0	0.5	0.5	0.5	4
	Total Investment for Capacity Expansion	**203**	**721**	**204**	**181**	**191**	**1500**
II	**CAPITAL INVESTMENT PLAN ON LOSS REDUCTION PROGRAM (in Rs.Crore)**						
7	Metering Activities	19.7	29.6	29.6	19.8	19.8	118

Sl.No.	Description	2008-09	2009-10	2010-11	2011-12	2012-13	Total
8	Upgradation of t 33 KV,11 KV & LT Line	34.6	73.8	77.5	96.2	53.2	335
9	Conversion from 1P2W to 3P4W	6.0	13.2	14.5	12.8		46
10	Energy Audit	6.9	12.1	8.4			27
11	HVDS	31.6	41.8	44.8	48.2	52.0	218
12	Sub-Station Automation	4.7	0.1	0.1	0.1	0.1	5
13	AB Cable	6.0	10.0	10.0	10.0	10.0	46
14	Testing Facility	0.5	0.3	0.1	0.1	0.1	1
15	Capacitors	5.0	6.0	2.0	2.0	2.0	17
16	Consumer Call Center	0.1					0
17	IT infrastructure	2.0	2.0	4.0	1.0	1.0	10
18	AMR Systems	12.0	1.5	1.5	1.5	1.5	18
	Total Investment for Loss Reduction program	**129.0**	**190.3**	**192.5**	**191.6**	**139.7**	**843**
	TOTAL CAPITAL INVESTMENT	**332**	**911**	**397**	**372**	**331**	**2343**
	SOURCE OF FUNDING (in Rs.Crore)						
		2008-09	**2009-10**	**2010-11**	**2011-12**	**2012-13**	**Total**
	Through RGGVY	118	595				**713**
	Through BGJY	25	78	78	78		**259**
	Through APDRP Funding	120	180	180	60	200	**739**
	Through Internal Resource/ Loan by CESU	69	59	139	234	131	**632**
	Total	**332**	**911**	**397**	**372**	**331**	**2343**
	Internal Resources	**65**	**134**	**185**	**160**	**272**	**816**

CESU has submitted its audited account for the FY 2007-08. The fixed asset as an 31.03.2008 works out to Rs.894.37 crs which include capital work in progress amounting to Rs.67.31 cr. All the assets of CESU except assets created out of World Bank Loan are unencumbered. The outstanding loan from World Bank as on 31.03.2008 amounts to Rs.204.51 cr. The State Govt. may allow CESU to pledge the assets created for Rs.204.51 cr out of World Bank loan, to the financial institution such as REC and PFC to avail loan for capital works.

Active participation of State Government for sustainable development of power sector

76. Since 1996-97 budgetary support to the power sector has been fully withdrawn. Apart from reducing the burden on the State's Consolidated Fund, by the withdrawal of budgetary support, the State has also derived other gains from power sector in the shape of dividends, interest payments and electricity duty. Electricity duty collected during 1995-96 was Rs.121.35 crores and this has increased to Rs.359.38 crores in 2008-09. The State also received dividends of Rs.611.24 crores from OPGC till 31.3.09. The average annual dividend from OPGC is Rs.75.00 crores. The stake sale

in OPGC also fetched Rs.603.20 crores to the State Govt. Simultaneously, disinvestment of the distribution companies fetched Rs.159 crores to the power sector which was utilized by GRIDCO to discharge the old liabilities of NTPC and other financial institutions.

77. Thus, insofar as the State's finances are concerned, electricity reforms along with other steps taken helped in wiping out the revenue deficit and reducing fiscal deficit of the State Govt. and contributing to a healthy surplus on both counts. It can be safely said that it is the power sector reforms which is the pace setter for fiscal restructuring and other reforms undertaken in the State for sustainable growth. Since power is the key to attracting investment and maintaining growth and consequential improvements in employment and standards of living, Govt. as a major stakeholder cannot afford to overlook the needs of the power sector to achieve growth and development.

78. Before power sector reform was undertaken w.e.f. 01.04.1996, the State Government was providing subsidy around Rs.250 crore per annum on the average. If the State had continued to give subsidy to the power sector and resorted to borrowings and debt to expand the sector, the revenue deficit of the Govt. would not have been brought under control and a surplus would not have been achieved at the pace at which it has actually been achieved. The State has indeed benefited considerably from the power sector reforms. But the continued indifference to the sector since then does not bode well for the power sector which is now facing the results of this neglect. The entire electricity network is in a state of near collapse and requires massive support, if the Govt. is keen about continued growth and development. The Regulatory Commission has attempted to achieve some stability in the tariff regime, despite the fact that there has been a general rise in prices al-round. The price of electricity has remained constant for the last 9 years. Though this has been beneficial to the consumers, it has not been of much help to the DISCOMs. With AT&C losses not showing much improvement, the continued trend of a steady tariff would not enable the DISCOMs to ensure increased repair and maintenance of an aged network and maintain quality supply.

79. The alarmingly high level of theft of electricity in causing revenue loss to the tune of hundreds of crore of rupees every year. These revenue loss caused by the dishonest consumers are naturally passed on to the honest consumers in the form of high tariff. In this connection, Hon'ble Prime Minister Dr. Man Mohan Singh has commented

“Electricity theft is the cancer of power sector. We need to come down on it heavily as it is seriously affecting the financial viability of the sector as a whole and the effect on our economy may well prove disastrous.” Thus, the greatest stumbling block standing on the way of sustainable development power sector in Odisha in order to ensure quality supply of power at affordable rate is the present unsustainable level of aggregate Technical and Commercial loss of 41.89% (in 2008-09). This needs to be brought down to a sustainable level of 15% as quickly as possible because 1% of AT&C loss reduction in monetary terms works out to Rs.50 crore per annum to the power sector. The menace of AT&C can be tacked in two ways.

First, strong and determined action should be taken by State Govt. to give exemplary punishment to those unscrupulous consumers and employees of the DISCOMs who very often connive with the former. This is basically a governance issue which State Government alone can tackle. Equal initiative should also be taken by the DISCOMs to identify the dishonest employees who are actively abetting theft of electricity in the State.

Second, the aging and dilapidated distribution network should be renovated and upgraded on a war footing during the business plan period ending on 31.03.2013. To start with, at least Rs.5000 crore should be invested for such renovation and upgradation during 2010-11 to 2012-13 jointly by DISCOMs and State Government. While Distribution Company should invest Rs.2550 crore representing their 51%, State Government should invest Rs.2450 crore through GRIDCO, being the 49% share holder.

80. Recently, the State Government in an affidavit filed on 22.12.2009 in Case No. 35/2005 has stated as under:

As regards the issue raised in Para (ii) of the order dtd. 22.08.09 regarding infusion of capital by way of additional equity, it is respectfully submitted that the State Government 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 of infuse capital in the above measures is subject to similar commitment by REL to infuse their capital.

81. Further, Secretary, Energy Dept. in the 10th meeting of the State Advisory Committee meeting held on 18.2.2010 has stated as under :

“26(l) There is need to improve system and service efficiency Bankers are not providing loans to DISTCOs in view of their poor financial condition Rs.3000 and odd crore investment is needed for the distribution companies in the next

2-3 years to prevent the system from callipering. It may be noted that though the financial situation of the State govt. have improved to some extent, there has been increase in demand on State resources on various social welfare programmes and Govt. is not in a position to provide any subsidy of the power sector per se or to any category of consumers. But State govt. have approached to the 13th Finance Commission to provide fund for system upgradation in the distribution sector and some fund may likely be recommended by the 13th Finance Commission, the report of which is yet to be made public. As per the indication given by the 13th Finance Commission during the course of discussion it was stipulated that out of specified amount if recommended by the Commission, 50% would be given by the Central Govt. and the balance 50% would be borne by the State Govt. and distribution companies. While State govt. would bear 25%, GRIDCO and distribution companies would bear the remaining 25%.

m. Since at present the distribution companies have not yet been able to infuse capital for system up gradation of the distribution network, Govt. is considering to give a loan about 2000 crore to distribution companies at a reasonable rate of interest through GRIDCO. The principal and interest is to be paid back to the State govt. through GRIDCO through its escrow account as all receivables of the distribution companies are being deposited in the escrow account. This is at an initial stage and no formal govt. order has yet been taken but, this is an indication of govt. seriousness to extend its help and play its facilitating role effectively to bring about overall improvement of power sector for the ultimate benefit of the consumers of the State."

In the meantime the State is understood to have asked the four distribution companies to submit an Integrated Investment Plan of Rs.3200 crore covering a period of 4 years.

82. The budgetary support by the State Govt. should be in such a manner that it should have the least impact on tariff. If capital investment is made in the shape of equity the return on equity would be @ 16% in the annual revenue requirement. If capital investment is provided as a loan carrying the usual rate of interest @ 12%, this would have a direct bearing on the tariff. Govt. therefore should provide a minimum budgetary allocation of Rs.2450 crore during the period 2010-11 to 2012-13 through a subordinate and interest free loan. This would soften the impact on the finances of the DISCOMs as they would not be required to pay the interest. The impact on the consumer would be negligible as the interest-free subordinated loan repayment will come up only after all other senior bank and FI loans have been fully serviced and this will enable the DISCOMs to service them later with ease. The budgetary support of Rs.2450 crore should be allocated to the DISCOMs in proportion to the number of consumer of the DISCOMs as on 01.04.2009 (i.e. CESU 39%, NESCO 21%, WESCO 19.5% and SOUTHCO 20.50%). On the other hand the four DISCOMs must bring in loan capital of Rs.2550 crore towards their 51% share in proportion to the loan capital to be invested by State Government through GRIDCO in the respective DISCOMs.

83. There should not be direct release of fund to DISCOMs for capital expenditure or special repair and renovation of distribution network. This should be routed through a separate account to be opened by GRIDCO and progress of CAPEX Schemes is to be monitored through a committee consisting of Secretary, Energy Department, CMD, GRIDCO, EIC, Electricity, MD/CEO of DISCOMs subject to overall supervision of OERC. The committee should fix the time line for release of fund and completion of the projects as per the time schedule fixed GRIDCO and DISCOMs should strictly adhere to those time schedule.

84. Since the State Govt. holds 49% of the shares and the distribution companies hold 51% of the shares of the DISCOMs it is absolutely necessary for the State Govt. and the distribution companies to have a thorough discussion as to how they would jointly address the serious issue of existing high level of AT&C and the urgent need to ensure quality power supply to the consumers at an affordable price by suitable investment of capital for upgradation, renovation and expansion of the existing impoverished distribution network as well by effectively addressing the issue of rampant theft of electricity in the State.

85. To sum up we direct as under

(i) The DISCOMs should reduce their AT&C loss during the Business Plan period as approved by us in Para 56 and Table 13.

(ii) The DISCOMs should also endeavour to reduce distribution loss as approved by us in Para 57 and Table 14. Any loss and gain arising out of deviation from the approved benchmark shall be to the account of the licensee and as such shall not be considered for truing up exercise.

(iii) GRIDCO should take steps to allow the DISCOMs (WESCO, NESCO and SOUTHCO) to create, first charge over the immovable asset as security to REC / PFC on the assets added after 31.3.2001. This works out to Rs.413.23 cr. Upto 31.3.2008excluding assets created out of World Bank loan (Rs.532.04 cr – Rs.118.81 cr).

(iv) Both GRIDCO and DISCOMs shall mutually identify the assets created after 31.03.2001 for Rs.413.23 crore upto 31.3.2008 that are to be hypothecated against the loan to be availed from the financial institutions such as REC & PFC. The assets created during 2008-09 and that may be created thereafter can also be hypothecated.

(v) The State Govt. may allow DISCOMs to pledge the assets created for Rs.254.83 crore out of World Bank loan, to the financial institution such as REC and PFC to avail loan for capital works.

(vi) The Reliance managed DISCOMs are directed to make provision for the GRIDCO power Bond of Rs.400 crore in their Balance sheet till the matter is decided by Supreme Court (Para – 70).

(vii) State Govt. and DISCOMs are to take effective co-ordinated action to curb theft of electricity as indicated in Para - 79.

(viii) State Government may commit at least Rs.2450 cr. to be infused for capital investment during FY 2010-11 to 2012-13 for system improvement of distribution network of the four distribution companies. These Reliance managed company on their part must bring in at least Rs.1556 crore (Rs.2550 cr. – Rs.994 cr. by CESU) as additional equity/loan from different sources including internal resources towards capital investment during the period 2010-11 to 2012-13 for system improvement works.

CESU must also arrange Rs.994 crore from different sources including internal resources for system improvements in proportion to the loan capital/ equity investment to be made by State Govt./ GRIDCO during 2010-11 to 2012-13.

(ix) Finally, Commission directs all the four DISCOMs to file detailed project reports on the proposed investment incorporating terms and conditions of loan, the total cost involved, details of assets addition due to such investment, technical justification of such investment in various areas, technical loss reduction due to such investment and a cost benefit analysis of the entire project may be submitted to Commission for approval.

86. The applications of NESCO bearing Case No.41/2007, WESCO bearing Case No. 42/2007 and SOUTHCO bearing Case No.43/2007 and CESU bearing Case No.22/2008 are disposed of accordingly.

Sd/-	Sd/-	Sd/-
(B. K. MISRA) **MEMBER**	**(K. C. BADU)** **MEMBER**	**(B. K. DAS)** **CHAIRPERSON**