

ORISSA ELECTRICITY REGULATORY COMMISSION

**BIDYUT NIYAMAK BHAWAN
UNIT-VIII, BHUBANESWAR - 751 012**

Dated Bhubaneswar the 20th day of March, 2008

Case No. 55 of 2006

In the matter of : **Revision of Bulk Supply Price of GRIDCO for FY 2007-08 passed in case No.55 of 2006 vide order dt.22.03.2007 for purchase of power by DISTCOs.**

ORDER

This is a follow-up to the Order dated 22.03.2007 in case No. 55 of 2006 fixing Bulk Supply Price of GRIDCO for FY 2007-08 in exercise of Commission's regulatory power under Section 86(1)(b) of the Electricity Act, 2003. In the aforesaid Order, the Commission has fixed the procurement prices of DISTCOs under section 86(1)(b) of the said Act and, view of the single-buyer model prevailing in State of Orissa under existing BSAs, the procurement prices so fixed turns out to be the Bulk Supply Prices of GRIDCO. The necessity for this follow-up Order has arisen because the prices fixed in the aforesaid Order dated 22.03.2007 were based on a partial and provisional truing up exercise up to 2005-06 for WESCO, NESCO SOUTHCO and up to 2003-04 in case of CESU and now after the final truing up exercise, it has become necessary to revise the prices fixed in the said Order. The regulatory power of the Commission under section 86(1)(b) of the Act can always be exercised from time to time when circumstances warrant such exercise. In this connection Section 62(4) of the Electricity Act, 2003 is relevant, which states that, "*No tariff or part of any tariff may ordinarily be amended more frequently than once in any financial year, except in respect of any changes expressly permitted under the terms of any fuel surcharge formula as may be specified*". It is also noteworthy that, regulatory price-fixation is a quasi-legislative function of the Commission.

2. The Commission while determining the revenue requirement of GRIDCO for the FY 2007-08 had estimated recovery to the tune of Rs.153.33 crore towards past liabilities of DISTCOs which was payable to GRIDCO. In addition to this a gap of Rs.464.86 crore was left to be bridged through earning from UI trading by GRIDCO. The break up of Rs.153.33 crore along with the actual receipt upto January, 08 as reported by the GRIDCO is given below :

DISTCOs	OERC approval of receivable in FY 07-08 Tariff Order	Actual receipt upto Jan, 08 of FY 07-08
WESCO	36.83	4.40
NESCO	41.36	18.47
SOUTHCO	31.91	-
CESU	43.23	-
TOTAL	153.33	22.87

3. A perusal of the cash flow statement furnished to the Commission on 03.03.08 by GRIDCO from April, 2007 to January 2008 indicates a cash surplus of Rs.329.28 crore. This earning is on account of realization of UI income of Rs.207.71 crore. GRIDCO is not expecting any UI income during February and March, 08 and projects no trading income from February, 2008 onwards. GRIDCO has also reported that WESCO has failed to pay the bill of January, 08 till 3rd of March, 2008 and may fail to pay the BSP bill for one month during the current financial year. They propose to utilize the surplus cash towards repayment of loans from financial institutions and banks and to meet the unfunded liability of Pension Trust Fund. GRIDCO, however, carries an outstanding liabilities of about 2063 crore to various generators which includes the power purchase dues of GRIDCO upto 31 March, 1999 and the non-payment of power dues by DISTCOs to GRIDCO thereafter.
4. The strength of the power sector lies in liquidating the outstanding power purchase liabilities which, in turn, could lead to reduction of liability by DISTCOs to GRIDCO and improved cash flow to attend to maintenance & system improvement provided DISTCOs collect the receivables from the consumers.
5. In this connection the orders of the Commission in the BSP order dtd. 22.03.2007 for FY 2007-08 in Case No. 55/2006 vide Para 5.35.16.2 to 5.35.16.7 are giving below for reference:

After taking into consideration the past liabilities of Rs.644.38 crore by GRIDCO, the Commission leaves a gap of Rs.464.86 crore and expects GRIDCO to bridge the same by export earnings, UI charges and recovery of receivables of DISTCOs. Shortfall, if any, after such adjustment shall be recognized as regulatory asset and the carrying cost thereof shall be passed on to ARR for the next year i.e. 2008-09 onwards.

It is very much imperative that the back to back arrangement between DISTCOs and GRIDCO should be scrupulously followed so that GRIDCO is in a position to at least recover Rs.153.33 crore. In view of this the following directions are issued:

As on 31.03.2006, the regulatory gap of NESCO, SOUTHCO and CESU arrived on the basis of truing up exercise of the distribution licensees provisionally works out to Rs. 253.94 crore, Rs. 260.44 crore and Rs. 435.34 crore respectively. The Commission is now allowing Rs.41.36 crore to NESCO, Rs.31.91 crore to SOUTHCO and Rs.43.23 crore to CESU out of the accumulated regulatory assets for recovery during the FY 2007-08 through tariff. It is directed that GRIDCO may recover these amounts through the existing escrow arrangement in monthly installment and adjust it towards the outstanding dues of these companies.

Similarly, Rs.36.83 crore may be realised from the escrow account of WESCO by GRIDCO for adjustment against the receivables from WESCO.

The Commission would like to clarify that the recoveries now directed are over and above the amount which these companies are required to pay as per various subsisting agreements with them.

As indicated in the Business Plan, any collection out of arrears from the consumers shall have to be deposited with GRIDCO for liquidation of past outstanding dues as GRIDCO is carrying a burden of power purchase liability of about Rs.2063 crore to various generators and the interest

component of this passed on to the consumers through tariff every year. Liquidation of GRIDCO's dues will reduce the interest burden and in turn, will be helpful both for GRIDCO, DISTCOs as well as the consumers.

6. In course of truing up exercise it is observed that there is substantial amount of regulatory asset that remains to be recovered/adjusted as per the tariff orders passed for the distribution companies in Case Nos 57, 58,59 & 60 of 2006 which was passed on 23rd March, 2007. In para 6.6.13 the details of regulatory assets company wise as furnished is given below :

Position as on 31st March, 2006

WESCO	: No gap	184.17 crore	surplus
NESCO	: (-)	253.94 crore	
SOUTHCO	: (-)	260.44 crore	
CESU	: (-)	435.44 crore	

7. In this connection, an extract of para 6.6.13.2 of the Distribution Tariff order 2007-08 given below for ready reference to further amplify the issue in question.

The Truing-up exercise carried out by the Commission is on a provisional basis only. The Commission intends to hold a meeting of all stakeholders like the DISTCOs, GRIDCO and OPTCL subsequently in the financial year FY 2007-'08 to discuss and debate the principles and quantum of truing-up for the licensees before freezing on these numbers. However, given the huge quantum of truing-up requirement, the Commission provisionally has allowed the following amount towards truing-up for the FY 2007-'08:

Table – 55

Truing-up amounts allowed by the Commission of the DISTCOs in FY 2007-08 (Rs. Crores)

	WESCO	NESCO	SOUTHCO	CESU	Total
<i>Truing-up allowed in FY 2007-'08 ARR</i>	-	41.36	31.91	43.23	116.50

The Commission in their Tariff Order for FY 2007-08 directed DISTCOs to file their comments on truing up exercise by 15.05.2007. The submissions were received on 21.07.2007 and Commission heard the matter on 24.07.2007 and directed both DISTCOs and the respondent GRIDCO to carry out the following directions.

- (a) DISTCOs should come up with element wise analysis of figures justifying their claim.*
- (b) Written submission by the three DISTCOs to be submitted separately to the Commission narrating the reason for disagreement with the principle set out by the Commission in truing up exercise.*
- (c) Discrepancies in Opening balance figure between GRIDCO and DISTCOs to have an impact in truing up figures which need to be agreed to*
- (d) The Commission directed both GRIDCO/ DISTCOs to submit their respective claims for arriving at mutually acceptable figures on opening balance after deliberation in public hearing.*
- (e) The Commission further directed that the written submission or other submission if any by GRIDCO and DISTCOs through affidavit should reach the Commission within two weeks from the date of hearing.*

8. In accordance with the order quoted above, on 15.12.2007, the Commission again heard both DISTCOs/GRIDCO, based on filing made by DISTCOs and respondent GRIDCO.

The Commission after hearing both the parties directed the following:

- (a) Auditing of receivables as directed by the Commission must be completed before 28th February, 2008 by SOUTHCO, WESCO, NESCO have to submit their report by 31.12.2007 and 31.01.2008 respectively.*
- (b) Delayed Payment Surcharge calculated as per the orders of the Commission shall be submitted within 15 days i.e. before 31.12.2007.*
- (c) Joint reconciliation statement of the arrears on BST dues shall be submitted on or before 31.12.2007.*

All the above directions have not been complied with by the DISTCOs. Hence, the Commission will pass the final order after the DISTCOs file their compliance as per the direction of the Commission.

9. Pending finalisation of the truing up exercise, the figures of regulatory asset arrived upto 31st March, 2006 may undergo some change. On the basis of aforesaid figures we are going to decide about the manner in which the DISTCOs

shall be in a comfortable position to pay back their dues to the GRIDCO. GRIDCO, in turn, will be able to liquidate the dues to generators and other financial institutions.

10. In that context, we may revisit the BSP fixed by us for the distribution companies for the year 07-08 as provided for under Section 62(4) of the Electricity Act, 2003. A reduction in BSP at this stage can be thought of, as GRIDCO has been able to liquidate Rs.464.98 crore of power purchase liability which was left as a gap to be met out of trading and UI and has come to cash surplus situation even after liquidating the power purchase liability. A way has to be found out how best the Rs.153.33 crore is also realised from the DISTCOs & utilised for benefit of the power sector as a whole.
11. The dismal performance of the distribution companies even to collect the amount billed to the consumers affects seriously the functioning of the utilities leaving no funds to carry out consumer service and operation maintenance work. The performance review of the utilities indicates that combinedly the four utilities failed to collect 124 crore out of 501 crore of LT bills served to the consumers which works out to 28% of LT revenue. Reliance Group of Companies account for 15 crore of non collectable revenue per month. This issue should be addressed separately. However, a reduction of bulk supply price of GRIDCO will be helpful in reducing the financial liability of DISTCOs. This will bridge the gap of 153.33 cores left uncovered in the revenue requirement application of GRIDCO.
12. Besides, it is also noted that WESCO has failed to reach the target of EHT sale figure of 1680 MU which was projected by them at the time of tariff hearing of 07-08. There may be a reduced sale to the tune of 180 MU to EHT consumers which will reduce the revenue earning. Over and above this, WESCO have to pay Rs.36.83 crores towards power purchase and loan liabilities to GRIDCO to reduce its past liabilities as per the tariff order of 07-08.

13. Cash flow situation of GRIDCO is a positive indication for which the Commission can take a decision for reduction of GRIDCO bulk supply price. This will not affect the financial viability of GRIDCO and help distribution companies for a liquidation of their legal liabilities. Hence, we may decide to reduce the bulk supply price payable by these companies to be effective from 01.04.2007 upto 31st of March, 2008.
14. This will establish the credibility of Orissa Power Utilities before the lending institutions as they would be able to meet the contractual obligation of servicing power bonds in time. Non-payment of these bonds in the past have led to threat of stoppage of supply by Central Generating Station & reduction of Central Plant assistance to the State of Orissa.
15. With the existing Bulk Supply tariff and through other activities, GRIDCO may end up the year with a cash surplus whereas there is apprehension that WESCO would fail to clear the Bulk Supply cost to GRIDCO. On the other hand all the DISTCOs are not able to discharge their past liabilities to GRIDCO not even Rs.153.33 as directed in the tariff order of 2007-08. Hence, there is need to readjust the Bulk Supply Price for 2007-08 with a view to reduce the liabilities of distribution companies to GRIDCO. This would not involve any flow of cash physically from GRIDCO's to the DISTCOs. It would merely reduce the liabilities of DISTCOs to GRIDCO and in turn this would result in reduction of liabilities of GRIDCO to other financial institutions and to generators by way of reducing the interest and payment of principal etc. The cash surplus that is accrued to GRIDCO at the existing rate of Bulk Supply tariff should be effectively utilised within the power sector. This is to be done with the sole objective of reducing the liabilities of DISTCOs as well as GRIDCO which ultimately help the consumers for keeping the Retail Tariff at the existing level or avoiding any increase to the extent required depending on their annual revenue requirement to be accepted on prudential norms.

16. The reduction, thus, will be utilised in full for adjusting the receivables from the DISTCOs to the GRIDCO during the year 07-08. Any additional realisation over and above the estimated 153.33 crores as specified in 07-08 shall be adjusted towards the outstanding past liabilities of DISTCOs as specified in para 5.35.16.7 of BSP order for 2007-08. The quicker liquidation as clarified in the said para will reduce the recurring interest liability.
17. In para 7.24.5 of the Distribution Tariff order of 07-08 the Commission had indicated that there could be an amendment to existing tariff structure after taking into the consideration the truing up figures without any further public hearing. The para is extracted below :
- We have already stated that the truing up figures of GRIDCO and DISTCOs are provisional subject to finalization after discussion with all the stakeholders. DISTCOs, GRIDCO, OPTCL are directed to file their comments within 15th May 05 regarding the figures indicated in the order about truing up figures. The Commission will review the submission of the licensees before finally freezing the figures. If required there could be an amendment to the existing tariff structure without any further public hearing after taking into consideration the truing up figures.*
18. Based on the trend of consumption recorded upto January, 08 from April, 07, it is estimated that the sale projection of 16653 MU in 07-08 may go up to 17021.9 MU. Company wise drawl for the last 10 months & annual projection is included in the table given in para -19.
19. Accordingly, the revised bulk supply price to reduce the input cost of DISTCOs shall be as indicated below for the period 01.04.07 to 31.03.08 and the expected reduction in the revenue requirement is:

	WESCO	NESCO	SOUTHCO	CESU	TOTAL
Energy Drawl (MU) from 4/07 to 1/08 actual	4416.82	3834.18	1631.17	4302.73	14184.90
Energy Drawl (MU) 07-08 revised	5300.2	4601	1957.4	5163.3	17021.9
BSP rate(pre-revised)paise	175.67	125.8	76.3	121.7	
BSP rate (revised)paise	157.25	125	70	101.5	
Difference paise	18.42	0.8	6.3	20.2	
Amount reduction(Rs.in Cr.)	97.63	3.68	12.33	104.30	217.94

20. As such this additional amount of Rs.217.94 crore along with the amount of Rs.22.87 crore already paid by DISTCOs to GRIDCO upto January, 2008 and any amount that might have been paid in the meantime over and above Rs.22.87 crore shall be entirely adjusted towards liabilities of DISTCOs to GRIDCO to repay the outstanding loan including interest along with securitized BST dues as on 31.03.2005.
21. This arrangement will be advantageous for GRIDCO, DISTCO as well as the consumers. A substantial part of the regulatory assets stands reduced to the extent of recovery by DISTCO from GRIDCO. This releases the consumers from substantial rise in tariff. The liability of the distribution companies gets reduced to GRIDCO. GRIDCO's liability to the generators gets reduced which, in turn, will lead to a decline in the interest liability.
22. In view of that the bulk supply price as determined above shall be made applicable from 01.04.2007 to 31.03.2008 as indicated in para -19.
23. In paras 5.1.1 to 5.1.6 of the BSP order for FY 2007-08, Case No.55 of 2006, the Commission has spelled out the legal status of GRIDCO and has held that in fixing Bulk Supply Price it was exercising its regulatory power under section 86(1)(b) of the Electricity Act, 2003. GRIDCO being a deemed trading licensee

carrying on the business of supply of electricity in bulk. The prices at which it sells power to DISTCOs under BSAs are outside the purview of Section 62 of the Electricity Act, 2003. In that view of the matter it is open to the Commission any time to revisit the regulated price fixed under Section 86(1)(b) of the Act and revise the same for justifiable reasons such as the result of a truing up exercise. Indeed, as already stated, while determining the distribution tariff for FY 2007-08, the Commission had clearly indicated that the BSP structure was open to revision as a result of final truing up exercise.

24. Case No. 55 of 2006 is accordingly finally disposed of.
25. The revision of BSP for FY 2007-08 is without prejudice to the orders that may be passed by the Hon'ble Appellate Tribunal for Electricity in Appeal No. 58/2007 & 59/2007 which is now pending.

(K. C. Badu)
Member

(S. K. Jena)
Member

(B. K. Das)
Chairperson