

Present : **Shri D.K.Roy, Chairman**
 Shri H.S. Sahu, Member

- 1.1 Notice had been issued to CESCO (Opposite Party) on 03.11.2000 to file their counter/reply by 15.11.2000 and appear before the Commission on 21.11.2000 as per the provisions of OERC (Conduct of Business) 1996. CESCO filed its preliminary objections dt.02.12.2000 challenging the authority of the Commission as appropriate forum for dispute resolution. Also CESCO pointed out that without exhausting the options and recourses as available to the applicant in the agreements entered into, GRIDCO had moved in haste to the Commission.
- 1.2 The Commission took up the preliminary objections against the admissibility of the case before considering the prayer for keeping the proceeding in abeyance CESCO submitted to withdraw the preliminary objections.
- 1.3 The case was heard on 21.11.2000, 04.12.2000, 05.01.2001, 02.02.2001, 23.02.2001, 07.03.2001, 16.03.2001 and 23.03.2001.

2. Details of the Case

- 2.1 GRIDCO the transmission and Bulk Supply Licensee and CESCO, the Distribution and Retail Supply Licensee have entered into several agreements and understandings for smooth functioning and settlement of commercial transactions occurred from time to time between them.
- 2.2 The licensees entered into Bulk Supply Agreement and Loan Agreement on 18th September 1999 and Escrow Agreement on 11th July, 2000.
- 2.3 The parties have also signed the minutes of the meeting held between them along with OPGC and Union Bank of India on 16.09.2000 for regulating payment of outstanding dues.
- 2.4 GRIDCO in terms of the Bulk Supply Agreement supplies electricity in bulk to CESCO, and CESCO in turn is required to make payment to it for supply of electricity as per the provisions of said Agreement.

2.5 The Bulk Supply Agreement, inter-alia provides

- (a) Within 14 days after the end of each month, GRIDCO shall prepare and deliver to CESCO, an invoice, in accordance with the Bulk Supply Tariff specifying all the amounts payable by CESCO to GRIDCO under the terms of the Agreement or otherwise as per the direction of the Commission. GRIDCO shall give requisite details of the calculation of charges in respect of the relevant month in each monthly invoice.
- (b) Subject to clause 5.3 & 5.11 the amount of each monthly invoice shall become payable by CESCO on the date falling 30 days after the date of such monthly invoice, whereupon, CESCO, shall pay the full amount of such monthly invoice to GRIDCO, without deduction, set-off or with holding on any account whatsoever, unless otherwise agreed between GRIDCO and CESCO, or required under the prevailing law.

2.6 However, on the request of CESCO, GRIDCO has agreed to allow CESCO, an accommodation by way of deferment which shall not exceed Rs.174 crores, in regard to the discharge of its obligation to pay the monthly invoice, as the collection of receivables by CESCO, during the initial three years period from 1st September 1999 until 31st August 2002, is likely to be substantially lower than the aggregate of the monthly invoice and specified expenses. The deferment shall cease as soon as the outstanding amount towards monthly invoice aggregate to Rs.174 crores, or 30th September, 2002 whichever is earlier, and immediately thereupon CESCO shall be liable to pay to GRIDCO, the full monthly invoice as provided in clause 5.1 above without a right to any accommodation from GRIDCO. CESCO shall establish proper and secured mechanism including Letter of Credit to ensure timely payment of all such monthly Invoice notwithstanding that the collections in the central zone are lower than the Monthly Invoices payable to GRIDCO or otherwise CESCO is unable to meet the specified expenses.

- 2.7 There exists an Escrow and Security Agreement dated 30.11.1998, signed by GRIDCO, OPGC and Union Bank of India, in terms of which the entire receivables and payments from CESCO are to be utilized for payment of monthly invoices of GRIDCO in order to enable GRIDCO to duly pay and discharge the amount becoming due for power purchased by GRIDCO from OPGC. Subsequently, GRIDCO and CESCO have signed an Escrow Agreement dated 11.07.2000 in regard to the securitisation of payment of the amounts due from the CESCO to the Applicant. In terms of the Escrow Agreement M/s Union Bank of India (Respondent No.2) has been appointed by GRIDCO and CESCO as the Escrow Agent in terms of the said Agreement.

"2. CESCO hereby irrevocably and unconditionally authorizes the Escrow Agent to receive all receivables, for the electricity sold or supplied by CESCO and payments from the consumers and purchases of the electricity capacity and or energy from CESCO in the CESCO Escrow Account to be maintained by the Escrow Agent at the Bhubaneswar Branch and for facilitating the due collection, CESCO agrees with the Escrow Agent that the receivables may be collected at the various branches of the Escrow Agent or designated bank accounts of any other bank in the State of Orissa with an irrevocable agreement that all such amounts received in the Bank's branches or in the branches of designated banks shall be fully remitted to the CESCO Escrow Account. Any cash received towards payment of any receivables of CESCO shall be deposited by CESCO in the above accounts entirely within 48 hours and shall not be utilized for any other purpose.

3. CESCO shall not collect, give or credit, or make any adjustment against the receivables directly or through any other person except as provided in clause 2 above and shall ensure that no other person is authorized to utilize or appropriate any part of the receivables.

4. CESCO hereby irrevocably and unconditionally authorizes the Escrow Agent to utilize the proceeds in the Escrow Account for payment to be made to Grid on the terms and conditions contained in the agreement and that all such payments to

GRIDCO shall be made to GRIDCO Escrow Account No.16051 maintained with the Escrow Agent”.

- 2.8 GRIDCO and CESCO have also signed a loan agreement dated 18.09.1999, in respect of money due from CESCO to GRIDCO, as per the balance sheet of CESCO, when the Central zone distribution undertaking was transferred from GRIDCO to CESCO, as per Transfer Scheme Rules 1998. The amount under loan agreement will be due in addition to the bulk supply price payable by CESCO to GRIDCO under Bulk Supply Agreement.
- 2.9 CESCO has also signed a minutes of discussion on 16.09.2000 along with GRIDCO, OPGC and Union Bank of India wherein it was agreed that CESCO would deposit the collection of all receivables in the Escrow Account.
- 2.10 GRIDCO the applicant, has submitted that CESCO has been in breach of the above agreements between the parties, in regard to payment of amount falling due to the applicant and also in regard to the establishment of Escrow Mechanism as agreed to between the parties. As on 9th October, 2000, a sum of Rs.61.80 crores over and above Rs.174.00 crores allowed by way of deferment is due and outstanding from CESCO to the applicant on account of Bulk Purchase cost payable for the electricity supplied by the applicant to CESCO and the loan installments under the Loan Agreement. CESCO has also not established the Escrow mechanism with the Bank to ensure that all the receivables shall be available for making payments to the applicant. CESCO, therefore, has been in breach of the following.
- i) It has defaulted in authorizing the Union Bank to receive all the receivables for electricity sold or supplied by it and payments from the consumers and purchasers of electric capacity and/or energy, in the Escrow Account to be maintained by the Escrow Agent.
 - ii) CESCO has failed to make arrangements for opening of accounts in various branches of Union Bank or designated bank accounts of any other

banks with an irrevocable agreement that such amounts received in the bank's branches or in the branches of the designated banks shall be fully remitted to the Escrow Account.

- iii) CESCO has defaulted, in so far as it has utilized the money collected by way of sale of electricity for the purpose other than payment of dues of the applicant.
 - iv) CESCO has failed to establish the letter of credit for payment of Bulk Supply bills and loan installments of GRIDCO under the terms of the above mentioned Agreements.
- 2.11 GRIDCO has, therefore, prayed that the Commission should pass the following orders.
- i) Direct CESCO, to pay forthwith all outstanding amounts due to the Applicant along with DPS applicable.
 - ii) Direct CESCO to rectify the breach or in part in the fulfillment of the agreements entered into with the applicant.
 - iii) Direct CESCO, to put in place the Escrow mechanism, as envisaged in the Bulk Supply Agreement, Loan Agreement, and Escrow Agreement and duly fulfill and comply with the provisions of the said agreement including in regard to opening of accounts in the bank, collection of receivables in the Escrow Account, establishment of Letter of Credit.
 - iv) Restrain CESCO from utilizing any part of its receivables contrary to the agreement signed with the Applicant.
 - v) Award cost of the application.

- vi) Pass such further order or orders as the Commission may deem just and proper in the circumstances of the case.

2.12 In reply to the averments made by the applicant, CESCO, made some preliminary objections, but sought for time on the ground that, talks of compromise are going on with the applicant and the matter is likely to be resolved out of court.

2.13 Subsequently, a series of meetings were held between, GRIDCO and CESCO, one on 24.12.2000, 05.02.2001, 08.02.2001 for reconciliation of the outstanding dues of GRIDCO. After these discussions, GRIDCO reported on 23.02.2001 as follows.

- i) GRIDCO submits that the CESCO vide their letter No.1952 dated 13.02.2001 have confirmed that they have made arrangements for collection/deposit of their entire receivable through non-withdrawal accounts opened for the purpose in 15 branches of the Banks in respect of their field units. They have also confirmed through an irrevocable arrangement to transfer such deposits in all the 15 (fifteen) non-withdrawal accounts by way of demand draft to the Escrow Account, maintained with Union Bank of India, Main Branch, Bhubaneswar. No other mode of withdrawal of money has been allowed by them except the above remittances without written consent of GRIDCO and the Escrow Agent.

That in view of the said confirmation and the request of CESCO, the applicant has come forward to the State Government in its letter No.70 dt.14.12.2001 that the arrangements made by CESCO to ensure flow of all their entire collections of receivables to the Escrow Account maintained with Union Bank of India, Main Branch, Bhubaneswar the Escrow Agent for payment of Bulk Supply bills and loan installments of GRIDCO are satisfactory. Therefore the applicant has now no grievance on the issue of implementation of the Escrow Mechanism under the terms of Escrow Agreement by CESCO.

- ii) GRIDCO have computed the total outstanding amount as on 06.01.2001 to be Rs.304.54 crores, considering payment made by CESCO with reference to Bulk Supply bills of GRIDCO from September 1999 till November 2000 and the loan installments payable by CESCO from September 1999 till December 2000. The total outstanding amount thus calculated amounting to Rs.304.54 crores is reducible by Rs.174.00 crores towards deferment of the payments as agreed in terms of dis-investment of CESCO. The outstanding thus works out to Rs.130.54 crores.
- iii) GRIDCO submits that as against the outstanding amount of Rs.130.54 crores as on 06.01.2001, CESCO has claimed a disputed amount of Rs.36.84 crores which excludes the technical dispute. The break up of the same is as under.

		<u>(Rs. In Crores)</u>
1.	Bulk Supply Bills disputed upto Nov. 2000 considering BST rates applicable w.e.f. 01.02.2000	- 15.36
2.	EOU bill disputed upto November 2000	- 20.28
3.	Station consumption upto November 2000	- 01.20

		36.84

- iv) CESCO proposes issue of power bonds for an amount of Rs.180 crores towards part payment of outstanding dues up to December 2000 for Rs.107 crores, and the likely shortfall in payment to the applicant during January 2001 to July 2001 amounting to Rs.73 crores. The same had been discussed between CESCO, GRIDCO and NTPC for implementing the proposal of the issue of Bonds. Though the terms and conditions of the issue of bonds have been agreed to by both CESCO and GRIDCO, the confirmation of NTPC is yet to be received in this regard.

2.14 GRIDCO has argued as the cost of power for consumption during off-peak hours by EOU under CESCO has not been included in pool cost of power by the

Commission in their BST order dated 21.11.1998 and 30.12.1999, the same is being billed at marginal cost of procurement.

2.15 GRIDCO and CESCO had a further round of discussion on 13.03.2001, to reconcile the disputed amount and the following decisions were taken.

a) The matter regarding applicability of the BST rates @ 80.70 p/kwh or @ 85.50 w.e.f. 01.02.2000 should be clarified by OERC.

b) OERC should clarify the dispute about EOU billing.

c) As regards station auxiliary consumption, colony consumption, it is agreed that separate meter should record the colony consumption.

The average of 3 months colony consumption from March 2001 to May 2001 shall be considered as colony consumption per month and the BST bill shall be revised accordingly, for the previous period to account for colony consumption.

3. Observations of the Commission

3.1 We have heard the parties and have gone through the documents and papers submitted by the licensee in support of their arguments. We sustain GRIDCO's complaint that there has been default in timely payment of dues and that the terms of Bulk Supply agreement have been breached by CESCO by not making timely arrangement, not opening of Escrow Account and not opening of Letter of Credit so far. But we also note that GRIDCO has not been diligent enough for collection of its dues and has not taken timely steps in pursuing the matter of outstanding dues. At the time of Bulk Supply agreement GRIDCO seems to have been fully aware of the possibility of deficient cash flow from CESCO as evident from accommodation granted through loan agreement. Apparently due to this awareness, GRIDCO was initially indulgent in tolerating the delay in payment. It is only when the delay and default in payment of dues went beyond a point with pressure on GRIDCO from NTPC and other pressures that GRIDCO approached OERC to intervene and arbitrate on the issues of default. We have satisfaction to

note that during the course of arbitration proceeding, the ESCROW mechanism has been made operational, disputed arrears between GRIDCO and ESCROW has narrowed down and timely payment arrangements have been put in place.

3.2 Amount of outstanding

The outstanding position as on 06.01.2001 as submitted by GRIDCO is as under.

		<u>Rs. In Crores</u>
BST Bill	-	240.00
DPS	-	4.33
Loan installment	-	58.36
Penal interest	-	0.81

		304.54
Less payment deferred	-	174.00

Balance		130.54
Less amount disputed by CESCO	-	36.84

Net outstanding		103.70

- 3.3 GRIDCO has agreed to accept the bonds to be issued by CESCO amounting to Rs.180 crores out of which 107.00 crores relates to dues upto 31st December, 2000. This covers the entire undisputed amount of Rs.103.70 crores and hence CESCO can no more to be treated to be defaulter for dues as on 06.01.2001. The difference between the promised bond amount of Rs.180 crores and the undisputed arrears of Rs.107.00 crores works out to Rs.73 crores which is proposed to be fill the gap between the dues of CESCO for the period January to July 2001 and the amount like to be realised through ESCROW.

3.4 Amount disputed by CESCO

		<u>Rs. In Crores</u>
Bulk supply Bills disputed on account of BST rate	-	15.36
EOU bill disputed	-	20.28
Station consumption	-	1.20

	Total:	36.84

- 3.5 The BST order dt.30.12.99 issued by OERC which stayed by Hon'ble High Court of Orissa have been disposed off by Hon'ble High Court and the same has been remanded back to OERC for re-determination of tariff. The same is under consideration of OERC and disputed amount under this head can be worked out after a verdict is issued by this Commission.
- 3.6 Similarly disputes in regards to EOU billing is pending before the Hon'ble High Court. Once the same is disposed off the exact amount of outstanding can thereafter be worked out.

3.7 Station Auxiliary Consumption

- The Commission concurs with the view a separate meter should record the GRIDCO's colony consumption. The average of 3 months colony consumption from March 2001 to May 2001 shall be considered as colony consumption per month and the BST bill shall be revised accordingly, for the previous period to account for colony consumption.
- 3.8. As we find that the dispute regarding non-payment of dues have now been more or less settled between GRIDCO and CESCO, the Commission no longer feels it necessary to continue the proceedings. The proceeding is closed with the following order.
- i) CESCO and GRIDCO must strictly follow the terms and conditions laid down in the agreements they have entered into for smooth functioning and settlement of commercial transactions.
 - ii) GRIDCO and CESCO, must amicably resolve their disputes on billing arrangements for Bulk Supply and metering arrangements by 30th April, 2001. If necessary they can take the assistance of Director Tariff, OERC and an action taken report be separately filed with the Commission by GRIDCO and CESCO by 10th May 2001.

- iii) GRIDCO should take single point supply for colony consumption in grid premises and pay at bulk supply rate applicable for domestic consumers and the amount be adjusted in the BST bill. It is for GRIDCO to take appropriate steps to recover the same from the concerned GRIDCO employees and other users, if any.
- iv) GRIDCO and CESCO should negotiate and finalize by 31st May 2001, the terms with NTPC and OPGC for issue of bonds of Rs.180 crores by CESCO to GRIDCO, which are to be reassigned in favour of NTPC, failing which GRIDCO may approach the Commission for further action.
- v) CESCO shall open Letter of Credit by 30th April 2001 as per the terms of Bulk Supply Agreement and Loan Agreement.

(H.S. SAHU)
MEMBER

(D.K. ROY)
CHAIRMAN