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

Present : Shri D.C.Sahoo, Chairperson
Shri B.C. Jena, Member
Shri S.K. Jena, Member

Dated the 26th day of February, 2005

Case No.39 of 2001

M/s Grid Corporation of Orissa Limited
Janpath,
Bhubaneswar …. **Applicant**

- Vrs. –

CESCO,
Janpath, Bhubaneswar. …. **Respondent**

For the petitioner : 1) Mr. N.C. Panigrahi, Advocate
2) Mr. D. Biswal, CGM(Fin), GRIDCO

For the respondent : Mr.Jaideep Gupta, Senior Advocate

1. The present matter has arisen from the petition dt.04.08.2001 filed by Grid Corporation of Orissa Limited (hereinafter referred to as **'Gridco')** under Section 28 read with Section 30 of the Orissa Electricity Reforms Act, 1995 (hereinafter referred to as the **'Orissa Act').** Gridco had alleged that the Central Electricity Supply Company of Orissa Limited the distribution and retail supply licensee in the area of the Central Zone in the State (herein after referred to as **'Cesco')** whose controlling shareholders were AES Corporation, USA, AES Orissa Distribution Company Pvt Ltd and Jyoti Structures Limited had not taken appropriate steps to maintain the supply of electricity to the consumers in the area of supply of Cesco.

2. After hearing the parties and the Commission being satisfied that there was an urgent necessity to vest the management and control of Cesco along with its undertakings, assets, interest and rights in an appropriate officer to ensure maintenance of continued supply of electricity in Cesco area to protect the interest of the consumers and public, by Order dated 27.8.2001 appointed a nominated officer of the State Government to take over the management and control of Cesco and manage the electricity supply activities in the Cesco area till further orders.

3. The management and conduct of the electricity activities of Cesco since then has been under an Officer nominated by the State Government.

4. Subsequent to the above, the Commission had held the proceedings under section 28 of the Orissa Act and these proceedings have continued till now. The Commission issued notices to the controlling shareholders, namely, AES Corporation, AES Orissa Distribution Company Pvt Ltd and Jyoti Structures Ltd. There have been number of hearings during the past three years. In these hearings, the Commission had repeatedly sought the controlling shareholders of Cesco to confirm whether they wish to continue with the business of Cesco and if so, to present an appropriate scheme to the satisfaction of the Commission for proper management and control of the business of Cesco. The Commission had allowed time to Cesco and to the controlling shareholders for the above purpose and the proceedings in the matter have been adjourned from time to time including on 6th December 2003, 6th January 2004, 10th February 2004, 12th February 2004, 27th February 2004 and 9th March 2004.

5. The Commission held a hearing on 12th March 2004 wherein Cesco's representatives requested four months' time for putting forward a plan for the management of Cesco. During the hearing on 12th March 2004, Cesco's representatives also filed a letter of AES Corporation addressed to the Principal Secretary, Government of Orissa, Department of Energy evincing their intention to be associated in the business plan to be prepared by Cesco.

6. On 15.4.2004, the Commission passed a detailed order directing Cesco to finalise and file the business plan approved by its Board of Directors duly agreed to by the Gridco and the State Government. The relevant part of the Order dated 15th April 2004 read as under: -

"6. At the hearing on 12th March 2004, CESCO's representative requested four months' time for putting forward a plan for the Management of CESCO. In support of this contention they filed a letter of AES Corporation addressed to the Principal Secretary, Govt. of Orissa, Department of Energy evincing their intention to be associated in the business plan under finalisation. During the hearing it was pointed out to CESCO's representative that the Commission is concerned that any business plan should ensure that the electricity supply is managed in an efficient and coordinated manner and it should ensure that there is no adverse effect on the maintenance of electricity supply in the area. Accordingly, any proposal which the majority shareholders of CESCO has may be discussed with GRIDCO and the State Government and they should ensure that the CESCO'S operations is carried out as a financially viable company and that CESCO discharges all its obligations towards purchase of electricity and other expenses such as salary, operation and maintenance expenses etc. including finalisation of various disputes with GRIDCO.

During the course of hearing CESCO's counsel stated that the petitioner's application was for an interim arrangement for CESCO's management and not for revocation of Licence of CESCO and if AES wants to manage CESCO, it should do so without any pre-condition.

7. Having heard the parties on the issues, the Commission holds as under:

(a) *Notwithstanding the dispute between CESCO and GRIDCO in regard to various issues, the Commission is of the opinion that there were circumstances existing on 27.8.2001 for the Commission to pass the order appointing a Chief Executive Officer for CESCO's undertaking and for vesting the management and control of the operation of CESCO in the Chief Executive Officer on the terms and conditions contained in the Orders dated 24.8.2001 and 27.8.2001.*

(b) *The above Orders were passed for ensuring maintenance of electricity supply to the consumers in the area of CESCO;*

(c) *It is for CESCO's management, namely, the stake holders and in particular, the consortium of AES Corporation and Jyoti Structures Limited, who are the majority and controlling shareholders* ***to have taken steps to satisfy the Commission*** *that they are in a position to manage and control the affairs of CESCO in a manner to ensure maintenance of electricity supply to the consumers in the CESCO area and also to discharge all the obligations of the Licensed business in an effective manner including payment of all amounts becoming due for the purchase of power, payment of salary, operation and maintenance expenses and other outgoings necessary for the business of CESCO. "*

8. In the circumstances mentioned above, the Commission hereby directs under section 28(4) and section 28(6)(a)(c) that CESCO shall within three months from the date of this order produce a Business Plan approved by its Board of Directors and supported by a special resolution of the meeting of its share holders called for the purpose, duly agreed to by GRIDCO and the State Govt., so as to satisfy the Commission of its ability to manage and conduct the business and affairs of CESCO in an efficient and safe manner to ensure continued supply of electricity in its area of supply and the ability of CESCO to *discharge all obligations arising out of the Licensed business including compliance with the interim orders set forth in the notice dtd.24.08.2001, payment of amounts becoming due to GRIDCO and others for purchase of electricity or discharge of loan liabilities, meeting all the operation and maintenance expenses and all other outgoings connected with the Licensed business. The majority and controlling stake holders of CESCO, namely the consortium of AES Corporation and Jyoti Structures Limited are to satisfy the Commission of its ability to manage and conduct the business and affairs of CESCO in an efficient and safe manner to ensure the continued supply of electricity in the area of supply of CESCO and the ability of CESCO to discharge all its obligations arising out of the Licensed business including the amounts becoming due to GRIDCO and others for purchase of electricity or discharge of loan liability, meeting all the operation and maintenance expenses and all other outgoings connected with the Licensed business.*

On the basis of the actions to be taken by CESCO in compliance with the aforesaid direction (in the above para), and consideration of the Business Plan proposed by it, the Commission may make such final order under section 29(1) as it deems fit and proper after following the procedure laid down in Section 29 or may otherwise proceed in accordance with law."

7. A business plan was presented to the Commission by Cesco on 15.07.2004. Cesco had filed the business plan without getting it approved by Gridco and the State Government. When the matter came up for hearing on 20.7.2004, Cesco requested for further time.

8. On 20.7.2004, the Commission passed an order refusing further time as the Commission was of the view that no fruitful purpose would be served by giving such time.

9. The Commission in its order dated 17.8.2004 referred to the above developments and directed as under:

> *"The Commission has perused the business plan presented by Cesco and its controlling shareholders, AES Corporation, AES Orissa Distribution Company Pvt Ltd and Jyoti Structures Ltd. The business plan does not contain any commitment for the due payment of all the amounts becoming due from Cesco to Gridco for the purchase of electricity. The business plan also does not contain an appropriate scheme for reduction of losses. The quantum of losses which Cesco had proposed to reduce during the next few years is much less than what is required for Cesco to come out of the financial difficulties. The business plan proceeds on the premise that Cesco will continue to rely on credit from Gridco and the State Government in conduct of its business and thereby increasing the financial exposure for Gridco and the State Government.*
>
> *The Commission had indicated during various hearings to Cesco and the controlling shareholders that the business plan should clearly provide for the due payment of all monies accruing due to Gridco and others as well as money required for payment of salaries, O & M expenses etc of Cesco. In the absence of any such commitment it is not possible to hold that Cesco's management will be able to maintain supply of electricity in the area of supply and conduct the business and affairs of Cesco in an efficient and safe manner. It is not appropriate for Cesco to continue to rely on the financial exposure of Gridco and the State Government to manage the business of electricity supply in the Cesco area. In this regard Cesco had failed in the past to comply with the various Commercial Agreements signed with Gridco and the State Government in regard to the payments of the Bulk Supply Tariff*

Loan Repayment, opening of Letter of Credit, maintaining Escrow Agreement etc.

In the circumstances mentioned above, the Commission holds that Cesco and its controlling shareholders have not been able to present a proper business plan for the management and control of the affairs of Cesco. The Commission holds that Cesco and the controlling shareholders of Cesco have not been able to satisfy the Commission that they will be in a position to ensure due performance of all obligations which Cesco as a distribution and retail supply licensee has assumed under the licence granted to Cesco by the Commission. Prima facie, there has been a breach of the terms and conditions of the licence granted to Cesco including in particular clauses 11.1 and 17 Cesco as a licensee has not shown to the satisfaction of the Commission that it is in a position to fully and efficiently discharge the duties and obligations imposed on Cesco under the licence. The Cesco has also not shown to the satisfaction of the Commission that it is in a position to procure adequate quantity of Power to ensure that all consumers receive safe, economical and reliable supply as Cesco has not been shown to have the financial support to duly discharge the amounts becoming due to the suppliers of electricity including Gridco. The financial position of Cesco in the absence of any financial support and commitment coming from the controlling shareholders is such that it is unable to fully and efficiently discharge the duties and obligations imposed on Cesco under the licence.

In the circumstances, during the course of the proceedings under section 28 of the Orissa Act the Commission, prima facie, has come to the view that a situation has arisen which calls for initiation of a proceeding under Section 19 of the Electricity Act, 2003 read with Section 18 of the Orissa Act, for revocation of *the Distribution and Retail Supply Licence granted by the Commission to Cesco. In terms of sub-section (3) of Section 19 of the Electricity Act, 2003, the Commission directs that notice to Cesco and its shareholders, namely, AES Corporation, AES Orissa Distribution Company Pvt Ltd, Jyoti Structures Limited and Grid Corporation of Orissa Limited be given of the initiation of the proceedings for revocation of the Distribution and Retail Supply Licence granted to Cesco on the grounds mentioned herein above and that each of the shareholders may show cause as to why the said licence may not be revoked by the Commission and also whether the Commission should pass any other Order in stead of revocation of the licence. The pending proceedings under section 28 of the Orissa Act shall hereinafter be held along with the proceedings initiated under section 19 of the Electricity Act read with section 18 of the Orissa Act*

A copy of this Order be sent to Cesco and the shareholders mentioned above and they shall treat the same as a notice under Section 19 of the Electricity Act, 2003 read with Section 18 of the Orissa Act to show cause within three months from the date of the receipt of the Order as to why the licence be not revoked under the provisions of the Electricity Act, 2003 read with the applicable provisions of the Orissa Act."

10. Accordingly, the revocation notice was issued to CESCO and the Shareholders vide Commission's letter No.1411 dt.18.08.04. The parties received the said notice on 19.08.04. Therefore, the time limit of three months of filing this show cause was 19.11.04.

11. CESCO through its advocate filed reply to this show cause on 18.11.04. Copies of the said reply to the show cause was served to the Department of Energy, Govt. of Orissa and GRIDCO to file para-wise comments, if any, on or before 30.11.04. A copy of this notice was also served to CESCO. In the meanwhile, on 23.11.04, the General

Secretary, Nikhila Orissa Bidyut Sramik Mohasangha filed a petition to be impleaded as interested parties in the hearing. The same was allowed.

12. GRIDCO and the Department of Energy, Govt. of Orissa filed petitions praying time to file para-wise comments till 15.12.2004.

13. On receipt of the para-wise comments from GRIDCO, Govt. of Orissa and the General Secretary, Nikhila Orissa Bidyut Sramik Mohasangha, the case was posted to 25.01.05 for final hearing.

14. CESCO on 18.11.04 has submitted a revised Business Plan along with the reply to the show cause notice dated 17.08.04. The salient features of the proposed Business Plan by CESCO and the comments received on the Business plan from GRIDCO and the State Government are contained in Appendix A.

15. The purpose of the Business Plan which the Commission required from the CESCO and its managing stakeholders, namely, the Consortium of AES Corporation and Jyoti Structures was to have a credible scheme for revival of the operation of the electricity distribution and retail supply in the Central Zone. Such a scheme should be in the nature of proposing clear solutions for meeting the financial obligations of CESCO on an ongoing basis besides the proposals for meeting the outstanding liabilities of the past period. It is fundamental to such a scheme that there is unambiguous and clear mechanism for CESCO to duly pay and discharge all the obligations of the licensed business in an effective manner including payment of all the amounts becoming due for the purchase of power, payment of salary, operation and maintenance expenses and other outgoings and there is no vacuum A perusal of the revised business plan of Cesco shows that the consortium of AES Corporation and Jyoti Structures has not approached the matter in the above perspective but only to show what things they can do in a limited way. The documents filed as Business

Plan is rather an information to the Commission as to what the consortium and Cesco can do at the best implying thereby that the consortium has no comprehensive solution and it is for the Commission to find solution for the remaining issues. This is wholly unacceptable from the distribution and retail supply licensee to whom a notice to show cause issued as to why the licence be not revoked.

16. The revised business plan does not show to the satisfaction of the Commission that Cesco will be in a position to discharge the obligations of the licensed business, namely, electricity distribution and retail supply activities in the Central Zone including payment of all amounts becoming due for the purchase of power from Gridco or for that matter from other sources. On the other hand, the business plan is totally vague in regard to the manner in which the deficit in the finances of Cesco will be taken care of. The approach of the AES Group of Companies who are controlling and majority shareholders of Cesco clearly appears to be that business of Cesco will be undertaken on a best endeavour basis without any obligation to ensure that the business will be conducted in an orderly manner without defaults in the discharge of various obligations arising in the course of such business. The Commission in its Order dated 15.4.2004 had specifically required the Cesco's management, namely, the stakeholders and in particular, the consortium of AES Corporation and Jyoti Structures Limited to satisfy the Commission that they are in a position to arrange and control the affairs of Cesco in a manner to ensure maintenance of electricity supply to the consumers in the Cesco area and also to discharge all the obligations of the licensed business in an effective manner. In terms of the above Cesco's management should have clearly specified the manner in which they would arrange Cesco to meet the deficit in the finances. In the revised plan the management of Cesco is only stating what they could do, according to them at the most and not that they will do what is required to revive Cesco and ensure that Cesco meets all the obligations. The Cesco's management has vaguely stated that the deficit will have to be met either through tariff increase or through support from others. The loss reduction proposed

by Cesco in the business plan is not also adequate. In the circumstances, there can be no two opinions as to the scope of the business plan presented, namely, that it does not give any proper plan for the due discharge of all obligations by Cesco in the conduct of its business. The business plan submitted by Cesco is not in compliance with the terms envisaged by the Commission in the Order dated 15.4.2004.

17. The Commission cannot act on the basis of such vague business plan which makes no commitment that are necessary to satisfy the Commission that Cesco under the management of the consortium of AES Corporation and Jyoti Structures Limited will discharge the obligations of the licensed business. The revised business plan is, therefore, not accepted by the Commission.

18. The Commission holds that Cesco and consortium of AES Corporation and Jyoti structures have failed to satisfy the Commission. The business plan has also failed to show to the satisfaction of the Commission in reply to the show cause notice as to why that the distribution and retail supply licence granted to Cesco should not be revoked as proposed in the Order dated 17.8.2004. In the circumstances the Commission having made necessary enquiries and having given adequate opportunities to Cesco's management (consortium of AES Corporation and Jyoti Structure Limited) and being satisfied holds that circumstances exist to revoke the licence under Section 19 of the Electricity Act, 2003, in particular, on the ground that Cesco has failed to show to the satisfaction to the Commission that Cesco under the above management will be in a position fully and efficiently to discharge the duties and obligations imposed on it by the licence.

19. The Commission, therefore, directs that the Distribution and Retail Supply Licence, 1999 (1 of 99) granted by the Commission to the Central Electricity Supply Company of Orissa Limited be revoked.

20. As mentioned herein above, Cesco at present, is under the management of an Administrator appointed by the Commission. In these circumstances and in order to give one further opportunity to Cesco, the Commission decides that the Order of revocation of the licence be kept in abeyance for a period of 45 days to enable the stakeholders of Cesco and in particular, the majority and controlling shareholders, namely, the consortium of AES Corporation and Jyoti Structures Limited, if considered appropriate to finalise a scheme for revival of CESCO on the following lines and if any such scheme is filed the Commission may consider the same on merits:

A. The scheme should be comprehensive to deal with the deficit in CESCO.s revenue and in particular (a) loss reduction and efficiency gain to be achieved to aggressively reduce such deficit; (b) the arrangement for financing the deficit during the transition; (c) availability of the required financing source to CESCO to meet the financial obligations of the licensed business in an effective manner including payment of all the amounts becoming due for the purchase of power, payment of salary, operation and maintenance expenses and other outgoings and there is no vacuum. All such payments are necessary to maintain the supply of electricity in the central zone to consumers. If the above payments are not fully met on an ongoing basis the CESCO will not be in a position to maintain the distribution system, procure the required electricity and maintain the supply. If the revocation of the licence is to be avoided there should be a definitive commitment on the part of the majority and controlling shareholders to arrange for the funds required by Cesco for the above. Effective from 01.4.2005 there shall be no default on the part of Cesco to make any payment;
B. Cesco will be required to achieve the T&D loss, collection efficiency and AT&C loss in the three years time viz. 1.4.2005 to 31.3.2008 as indicated below in percentage:-

	05-06	**06-07**	**07-08**
T & D Loss	36	33	30
Collection Efficiency	86	89	92
AT & C Loss	44.96	40.37	35.60

C. There should be a scheme for payment of outstanding past liabilities of CESCO as on 1.4.2005 in a progressive manner

D. In case there is any increase in the BST from the current level the effect of such increase or determination of RST shall be dealt with in accordance with the OERC (Terms and Conditions for Determination of Tariff) Regulations, 2004.

E. CESCO can apply to the commission for multi year tariff/ tariff principles.

21. In the event the consortium of AES Corporation and Jyoti Structures Limited agree to the above, the scheme be submitted to the Commission for consideration on or before 31.3.2005. Before submitting the scheme, AES Corporation and Jyoti Structures Limited should hold discussions with Gridco and the State Government and forward the comments of Gridco and the State Government to the Commission along with the scheme.

22. If the scheme as mentioned above is not received on or before 31.3.2005, the revocation shall take effect without any further hearing or proceeding. The Commission will thereafter issue necessary orders in regard to the licensed business in the Central Zone.

(S. K. JENA)	**(B.C. JENA)**	**(D. C. SAHOO)**
MEMBER	**MEMBER**	**CHAIRPERSON**

APPENDIX A

"Revised Business Plan of CESCO

2.1 This Revised Plan is for a period of five years ("Control Period") commencing
from the date of taking over the management of CESCO by CESCO Board ("Cut Off Date"). It may be noted that this Revised Plan supersedes the Business Plan in its entirety.

2.2 The Hon'ble Commission may appreciate that for ensuring the viability of the
sector, the business plan has to be realistic and based on ground realities. Through this Revised Plan, CESCO Board's effort has been to ensure that over a period of time, CESCO is converted into a financially self-sustaining entity and is able to provide quality power, at a reasonable price, to its consumers. The self-sustaining performance assumes the performance of, and commitment to, the actions and commitments addressed in this Revised Plan.

2.3 The final approval and agreement to enter this Revised Plan is subject to and
contingent upon obtaining the written acceptance and agreement of the shareholders of CESCO, the CESCO Board, GOO and OERC to the entry of this Revised Plan.

2.4 Targeted ATC Loss Reduction

2.4.1 To provide a reasonable estimate of the target Aggregated Technical and
Commercial Loss ("**ATC Los**s") reduction, CESCO Board considers it prudent to examine the loss reduction achieved by various other utilities in India, which have been going through similar process of reforms over the years. This will help us in developing a reasonable estimate for setting a target for the loss reduction.

2.4.2 CESCO Board has taken advice from ICRA, a consulting company of repute, while preparing the Revised Plan. ICRA has provided the loss level reduction achieved by various distribution utilities in the country. The Hon'ble Commission may note that the loss reduction achieved by other utilities range from 1% to 3% per annum on an average placed as Annexure I.

2.4.3 It is in this background that ICRA has provided its opinion that 15% reduction of ATC Loss over a period of 5 years is difficult, but achievable in most favorable conditions. It may also be considered that in November 2004, CESCO CEO, who is the overall in charge of CESCO and has detailed information about its current performance, presented to OERC that only 16% reduction of ATC Loss over a period of 5 years can be reasonably planned for CESCO. The other three private distribution companies of Orissa have also proposed 15% reduction of ATC Loss over a period of 5 years.

2.4.4 CESCO Board would like to reaffirm its commitment towards improvement of CESCO for the benefit of all stakeholders and the public at large. If the revised Plan is accepted and agreed upon by various referenced stakeholders, the CESCO Board shall endeavor to reduce ATC Loss by 17 % by the end of the Control Period **("Control Period Reduction Target" or "CPRT**"). CESCO Board believes that this target is very aggressive and CESCO requires committed support from all stake holders viz., shareholders, GRIDCO – as a bulk supplier, Govt. of Orissa (GOO), lenders to CESCO, and customers of CESCO to achieve this target. CESCO Board also expects regulatory certainty and support from this
Hon'ble Commission to help achieve this aggressive CPRT.

2.4.5 Based on the business plan submitted by CEO of CESCO to OERC, the ATC loss levels as on 30 th September 2004 is 52.24%. In case considered necessary by CESCO Board, pursuant to management takeover, it will ascertain the base level ATC Loss as on Cut-Off Date by carrying out an independent verification by a consultant / auditor of repute and will place the report of the consultant / auditor before the Hon'ble Commission for its approval.

2.4.6 ATC loss reduction achieved by CESCO will be calculated on yearly basis. ATC Loss reduction achieved during any year of the Control Period shall be calculated by deducting the ATC Loss at the end of the relevant year **(" Year End ATC"**) from the ATC Loss as on the end of the previous year **(" Year Start ATC"**). As per the industry wide prevalent practice, ATC Loss for a period will be calculated by the following formula: [1 - {(Billed Units in MU in the period / Input Units in MU in the period) X (Total collection in the period in Rs / Current Billed amount for the period in Rs)}] in percentage.

2.4.7 CESCO Board proposes to achieve CPRT with improvement targets over the years ("**Annual Reduction Targe**t" or **" ART"**) as follows:

Considering the time lag effect between the improvement projects implementation and results achievement, the Hon'ble Commission may appreciate that CESCO may not be able to meet the ART in a particular year but may over-achieve the target in the subsequent year(s). CESCO Board would like to submit that OERC shall consider CESCO's performance over the entire Control Period only, though for the purpose of Annual Revenue Requirement ("**AR**R"), the relevant ART may be considered.

2.5 Stakeholders' Support to meet Target ATC Loss

2.5.1 In the event of under-achievement of both ART and the Cumulative ART for any particular year of the Control Period, CESCO Board shall approach ODPL and GRIDCO for funds to meet the cash shortfall. The CESCO board is pleased that ODPL, CESCO's 51% shareholder, has agreed in principle to provide certain specified contingent funding towards achieving the target, with such contingent funding based on the terms contained in its letter attached as Annexure II. Such specified and contingent funding is the sole means by which ODPL will provide funds or any other type of financial assistance to CESCO. Pursuant to that letter, ODPL has indicated that during the Control

Period, it will be willing to extend funds to a maximum sum of Rs 6 crore (six crore only) per annum, until the earlier of either (a) the expiration of the Control Period or (b) the achievement of 17% ATC loss reduction, towards filling any gap that arises up to six crore per annum due to such underachievement of both ART and Cumulative ART targets. ODPL alone has agreed to extend this contingent funding, which funding will be repaid by CESCO to ODPL in the year subsequent to the year of achieving CPRT. It may be noted that ODPL in its letter has indicated that such contingent funding shall come only pursuant to acceptance of this Revised Plan by all stakeholders including GRIDCO, ODPL, and CESCO Board. GRIDCO, as the other principal shareholder of CESCO, has indicated its willingness to extend contingent financial support equal to 76.5% of the cash support extended by ODPL on similar terms. CESCO Board is willing to take over the management of CESCO subject to the above contingent funding being available from ODPL and the revised Plan being accepted and agreed upon by all stakeholders. ODPL is under no other financial obligation to CESCO under this Revised Business Plan.

2.6 Proposal to meet Revenue Requirement

2.6.1 Considering the current financial distress of CESCO, it is submitted that despite achieving ART and CPRT, it will not be able to generate enough cash to pay full BST Bill after meeting the mandatory and necessary expenditure for operation of CESCO. CESCO makes a submission that for smooth functioning of the electricity sector as a whole, it is important that all necessary expenses, including payment to power suppliers, are met on a regular basis.

2.6.3 It is prayed to the Hon'ble Commission to consider and approve the major principles of the proposed MYT mechanism placed at Annexure III as part of the Revised Plan, which essentially drawn from the order of the Hon'ble Commission dated 18 th June 2003 on Long Term Tariff Strategy in Case no. 8 of 2003.

2.6.5 In case the Hon'ble Commission considers other alternatives mechanism for bridging the Revenue Gap in place of the avenues identified in the above paragraph, CESCO Board makes a submission that it may not be possible for CESCO to arrange for any working capital loan either from its shareholders and/or financial institutions to bridge such a gap. Therefore, any such alternative mechanism shall also include viable source(s) of funding acceptable to the CESCO Board.

3 Reliance

3.1 To achieve the Target ATC Reduction, CESCO shall undertake the steps as enumerated above. However, considering the nature of the business, there are certain measures which can only be undertaken with effective support from governmental agencies. CESCO believes that all stakeholders, including GOO, are fully committed to make CESCO a turnaround case and help CESCO in achieving its financial viability in a commercially prudent manner. Accordingly, CESCO Board relies on the following while aiming to achieve CPRT and ARTs.

3.2 GOO shall make full payment of outstanding electricity bills of all its departments and offices of GOO on or before Cut Off Date, and ensure full payment of current electricity bills of its agencies, Public Sector Undertakings, and Public Institutions (together **"PS**U"s) drawing electricity from CESCO within the due dates of electricity bills raised by CESCO. Here it may be pertinent to note that Recently, CEO of CESCO has submitted a business plan to OERC and has proposed payment of full BST Bills subject to the following condition:

"Government and PSUs paying their current dues every month regularly along with the portion of their arrear dues. At least Rs. 10 crores (Rs. 6 Crs. current plus Rs. 4 crs. arrear) revenue has to be received every month from April 2005 onwards from Govt. and PSU to make CESCO enable to pay the full BST bill to Gridco".

Considering that GRIDCO is a 100% owned entity of GOO, in case of CESCO not receiving timely payments from GOO as envisaged above, it shall make payment of GRIDCO's BST Bill after adjusting for the unpaid current electricity dues from GOO and its PSUs. This will be subject to any existing orders from any court of law.

3.3 In order to control commercial losses, GOO shall provide law and order support effectively as requested by CESCO.

3.4 The OERC will pass MYT orders as per the framework suggested in Annexure III.

3.5 CESCO recognizes that as a public utility it might have to carry out the certain government/ social obligations with respect to rural electrification or social welfare schemes. However, the Hon'ble Commission would appreciate that CESCO endeavors to be a financially viable, commercial entity and it will not be possible for it to meet capital expenditure or supply obligations related to such schemes or any other non-commercial practices undertaken at the behest of Government unless suitably compensated by GOO for the same. CESCO also proposes that CPRT and ARTs will exclude any ATC loss due to electrification under any rural electrification scheme, social service project or any other non-commercial practices undertaken at the behest of Government or other authorities or because of any other social obligations.

4 Restructuring of past Liabilities and Receivables

It is proposed that CESCO Board shall reconcile all liabilities based on audited accounts or based on an independent review. The following principles are proposed for restructuring of all liabilities and receivables for approval of the OERC in accordance with industry-wide views as follows:

4.1 Past BST dues: CESCO recognizes that outstanding BST shall be recoverable by GRIDCO. The Hon'ble Commission may appreciate that this outstanding BST has been accumulated on account of under-recovery of cost from the consumers in the past due to various reasons beyond the control of the utility. Accordingly, the following is proposed:

4.1.1 The accommodation of Rs. 174 Crore provided by GRIDCO to CESCO during the initial years shall be consolidated with the outstanding BST amount.

4.1.2 No Delayed Payment Surcharge (“**DP**S”) shall be payable to GRIDCO.

4.1.3 During the transfer of CESCO management to CESCO Board in 1999, GRIDCO passed on to CESCO certain amount of receivables. It was also envisaged that the quality of these receivables would need to be assessed by CESCO’s auditor for final adjustment in the transfer balance sheet. As per the auditor’s report, a part of these receivables have been declared not collectible. Accordingly, it is proposed that the amount of such receivables passed on to CESCO shall be adjusted from BST dues to GRIDCO. Relevant Extract of the Internal Auditor’s Report and Director’s Report for the Year 1998-99 on this issue have been placed at Annexure IV for ready reference of the Hon’ble Commission.

4.1.4 Net outstanding BST be paid to GRIDCO with moratorium of 5 years on principal and thereafter it shall be payable in equal installments at the end of each year over 10 years period. No interest shall be payable during the entire period. These past liabilities shall be securitized through tariff increase reflecting such payments as proposed under MYT principles.

4.2 Considering the financial distress CESCO is facing, it is proposed that no interest shall be payable on outstanding loan amount due to GRIDCO. The principal amount will have a moratorium for 5 years and thereafter be payable in equal installments at the end of each year over 10 years period.

4.3 World Bank Loans: CESCO Board believes that it will be important that there is a commitment and certain sacrifice from all concerned including World Bank. It is proposed that CESCO Board shall approach World Bank, along with GOO and GRIDCO, for suitable lowering of interest rates and moratorium on principle. However, pending such agreement, the moratorium period and repayment period for the World Bank Loan has been considered based on the existing terms. Actual interest payment and repayment requirement would depend upon actual status of agreement reached amongst the DISCOMs, GOO, Government of India and World Bank.

4.4 As a part of the transfer, un-funded terminal benefits and liabilities towards employees were passed on to CESCO. Subsequent actuary valuations have shown results higher than the transfer amount. These valuations have been under dispute by GRIDCO. It is proposed that before the management takeover by CESCO Board, CESCO, in consultation with Hon’ble Commission, may appoint an experienced and reputed actuary valuer for undertaking this exercise for final reconciliation. All past liabilities created before privatization of CESCO shall then be funded by GRIDCO and liabilities created and unfunded post-privatization of CESCO will be funded by CESCO through its future ARRs and as per the MYT principles. CESCO alternately proposes that GRIDCO maintains the trust for the employees in employment on the date of transfer. The future liabilities on this account will be paid by CESCO subsequent to recovery through its ARR.

4.5 CESCO Board is of the view that to assess the financial losses accrued to CESCO, a detailed exercise has to be undertaken to assess the implications of several decisions taken in the past, for instance (i) the insistence of 32-35% Transmission & Distribution ("**T &** D") losses for determining tariffs though it was well known that the actual losses were higher, and (ii) overvaluation of GRIDCO and OHPC assets, etc.

7 Way Forward

7.1 CESCO Board proposes the following course of action for a smooth handover of the management of CESCO to CESCO Board if the Revised Plan is accepted and agreed upon by the shareholders of CESCO, the CESCO Board, GOO and OERC:

7.1.1 Before the Cut-Off Date
(a) Unanimous written acceptance of the Revised Plan by CESCO Board, ODPL, GRIDCO, GOO and the OERC.

(d) This Revised Plan is made expressly contingent upon obtaining a mutually acceptable resolution and settlement of all outstanding CESCO related petitions, litigations, arbitrations and/or disputes, including, but not limited to, the Bulk Supply Agreement, the Loan Agreement, and a mutual release of all past, present and future claims and/or counter-claims that arise out of the Share Acquisition Agreement, the Shareholders Agreement both dated August 31, 1999 and/or the Letter of Comfort dated 20 September 1999. Nothing herein shall release CESCO of any obligation contained in the Revised Plan. This Revised Plan also contemplates that CESCO will receive from stakeholders the specific items of support identified in this Revised Plan and the completion of the transition of management to the CESCO Board.

(h) The OERC passing appropriate order handing over the management of CESCO to CESCO Board, to be mutually agreed with the CESCO Board, from a date designated therein i.e. Cut Off Date.

(i) It is assumed that this Revised Plan will be accepted by OERC by 31 st January 2005.

7.1.2 Pursuant to Cut-Off Date

(a) OERC to provide transition management by instructing the CEO of CESCO to provide all necessary information and support to the CESCO Board for a maximum period of 3 months from the Cut Off Date. The CEO shall extend all support, as requested by the new management, for smoothly running the operations of CESCO during this transition period.

(b) Independent Review, including audit, in accordance with paragraph 8 below.
(c) CESCO Board submitting supplementary tariff application for FY 2005-06 in line with MYT principles (d) Pursuant to the independent review, CESCO shall apply for approval of

- apex as part of MYT,
- base level ATC Loss as on Cut Off Date,

- Base level data as on Cut Off Date as per the approved MYT principles,
- Treatment of any unfunded liability that CESCO Board could not have known without the Independent Review, and
- Any other item that the Hon'ble Commission may consider necessary on request of CESCO.

8 Independent Review

8.1 CESCO, immediately after Cut Off Date, shall engage consulting firm(s) of international repute to:

8.1.1 Carry out due diligence on CESCO on technical, financial, legal, human resources, appropriate level of staffing and other related matters.

8.1.2 Recommend the capital expenditure required during the Control Period to meet the load growth and performance improvement of CESCO, including the requirement to meet the Target ATC Reduction ("Capex").

8.1.3 Find out if there is any unfunded liability in CESCO's books of accounts and in such case shall approach the OERC to take appropriate decision so that CESCO does not inherit such unfunded liabilities.

8.1.4 Verify the data regarding ATC loss as on Cut Off Date.

9 Requirement of the Acceptance of the Revised Plan

9.1 The Revised Plan must have been approved by the OERC and must have received acceptance from the Government of Orissa, GRIDCO, CESCO, and ODPL.."

Assumptions for Projections

(a) Base ATC and End ATC are taken as 52% and 35% respectively. Actual ATC Loss of a year is assumed to be same as Yearly ATC which is taken at 49.5%, 46%, 42%, 38% and 35% respectively in 1 st , 2 nd , 3 rd , 4 th and 5 th year of the Control Period.

(b) During the Control Period, the average sales growth for the category of Domestic, Commercial & General, Industrial (Large and Medium) and Irrigation is projected at around 3%, 4%, 3%, and 5% per annum respectively and 0% for rest of the category of customers.

(c) Billing Loss at HT and LT as on Cut Off Date are taken as 11% and 44 % in absence of separate data on HT and LT available from CESCO.
(d) The average BST and RST are taken at Rs 1.33 per KWh and Rs 2.94 per Kwh respectively and no change has been assumed during the Control Period.

(e) The Capex plan is assumed to be funded as considered by CEO of CESCO. This is funded under APDRP scheme by Rs 74 crore grant from Government of India (25%), Rs 74 crore loan (25%) from Government of India and balance Rs 148 crore (50%) as counterpart funding from REC @ 8.5% interest rate .

(f) Investment required for load growth is not taken into account.

(g) Amount of World Bank Loan is taken at Rs 224.86 crore as stated by CEO, CESCO. It is assumed that repayment will commence from 2nd half of 1st year of the Control Period. The interest on loan on the entire amount @ 10.5% p.a.

(h) The A&G expenses of Rs 23 crore in the first year of Control Period are escalated by 7% every year. Expenses on account of intense and special mobile squad for disconnection drive are taken at Rs 4 crore in the first year and included in A & G expenses.

(i) R & M expenses are taken as 5.4% of opening balance of Gross Fixed Assets in the first year of Control Period valued provisionally at Rs 452 crore. Amount of up valuation is Rs 172 crore during transfer of assets to CESCO.

(j) Expenses on account of salary and others for the employees are taken at Rs 122 crore in the first year and the same amount is projected to be escalated by 6% every year for the next four years of the Control Period. The cost on account of voluntary retirement scheme, human resource development, introduction of new skill etc. are not considered.

(k) Past BST dues including DPS restructured are as follows:

Securitization of GRIDCO BST dues	**Rs. Crore**
Outstanding BST dues (principal) as stated by CEO, CESCO	**633**
DPS	**0**
Add Accommodation given to CESCO by GRIDCO	**174**
Less - Incremental provision on account of Internal Auditor Report (I) Provision for doubtful debts approximately Rs.182 cr. (ii) Increase in liability on wage revision approx. Rs.3.6 Cr. (iii) Increase in provision of current assets Rs.2.3 Cr.	**188**
Net outstanding BST to be served to GRIDCO approximately	**619**

The net outstanding amount is payable at 0% interest with moratorium period of 3 years on principal and thereafter to be repaid in 10 years.

(n) The outstanding GRIDCO loan including interest is taken as Rs 256 Crore as stated by CEO, CESCO. The interest on outstanding loan amount due to GRIDCO to be paid at 0% interest rate. The principal amount will have moratorium for 3 years and thereafter payable in equal installments at the end of each year over 10 years period.
(o) The past liability of around Rs 310 crore on account of terminal benefits of employees as on 31 st March 1999, as assessed by Life Insurance Corporation of India engaged by CESCO Board, since not paid by GRIDCO to CESCO will be owned by GRIDCO. It is for the time being taken that there is no further unfunded liability on this account as on Cut Off Date.

(p) ROE is 16% p.a. the Control Period.
(q) No corporate tax liability during the Control Period
(r) No unfunded liability is created in CESCO’s books of accounts till Cut off Date”

Annexure VI : CESCO's PROJECTED ANNUAL REVENUE REQUIREMENTS DURING CONTROL PERIOD

Year	Base Year	1	2	3	4	5
T&D Loss Level	39.8%	39.9 %	37.9 %	34.8 %	31.9 %	29.3 %
Billing Efficiency	60%	60%	62%	65%	68%	71%
Collection Efficiency	81%	84%	87%	89%	91%	92%
Yearly ATC	52.0%	49.5 %	46.0 %	42.0 %	38.0 %	35.0 %
Yearly Target		2.5	3.5	4	4	3
Units purchased from GRIDCO (MU)	3900	4002	3971	3876	3800	3756
Units Sold		2406	2465	2526	2589	2654
Bulk Supply Tariff (Rs/ Kwh)	1.33	1.33	1.33	1.33	1.33	1.33
Average Retail Supply Tariff (Rs/Kwh)	2.94	2.94	2.94	2.94	2.94	2.94
Revenue from Sale of Power (Accrual)	692	7.8	726	744	762	781
Revenue from sale of power (Cash basis)	561	595	631	662	694	719
Expenses						
Purchase of Power Power Purchase Bill paid per month Power Purchase Bill paid annually	519	533 44 533	528 44 528	516 43 516	506 42 506	500 42 500
Administration and General Expense Employee Expenses Repair and Maintenance	19 113 32	23 119 24	25 123 28	26 128 33	28 133 40	30 138 42
Loan: Principal repay for new Capex APDRP Counterpart funding		0 0	0 0	1 0	2 3	2 12
Loan: Principal Payment for past loan World Bank GRIDCO		11 0	23 0	23 0	23 0	23 0
Loan : Interest on loan for New Capex APDRP Counterpart funding		5 1	7 4	11 10	13 12	12 12
Loan : Interest on Past loan Interest on Past World Bank Loan Interest on GRIDCO Past Loan		23 0	21 0	19 0	17 0	14 0
Securitisation of past liabilities		0	0	0	0	0
Contingency		1	1	1	1	1
Total Expenses	681	740	761	767	776	785

Reasonable Return		12	12	12	12	12
Net Revenue Requirements	656	751	772	778	788	797
Less : Revenue from Sale of Power	561	595	631	662	694	719
Revenue Gap	-94	-156	-141	-116	-94	-78
Cumulative Revenue Gap		-156	-297	-413	-508	-586
Average Retail Supply Tariff Required to meet the Revenue Gap (Rs/ Kwh)		3.72	3.60	3.46	3.34	3.26
Percentage Increase in Tariff from Previous year		26.3 %	-3.1%	-3.9%	-3.4%	-2.4%

GRIDCO REPLY

Para.1 Background

1.1. That under para 1.1, it is recorded that in response to OERC order dated 18th August, 04 in the above case (Case No.39 of 2001) CESCO Board submits this revised Business Plan (Revised Plan) for kind consideration of the Hon'ble Commission.

In this connection, it may be stated that on 15.04.04, the Hon'ble Commission passed a detailed order directing CESCO to finalise and file a Business Plan approved by its Board of Directors and supported by a Special Resolution of the Meeting of its Shareholders called for the purpose and duly agreed to by Gridco and the State Government so as to satisfy the Commission and its ability to manage and conduct the Business affairs of CESCO in an efficient manner.

But the Business Plan submitted to the Hon'ble Commission at **Annexure-A** as stated above has neither been approved by the Board of Directors of CESCO nor supported by a Special Resolution of its Shareholders. As such, the mention of "CESCO Board" in the reply to the Commission is a mis-representation of facts. Moreover, the same has not been agreed to by GRIDCO.

1.2. The disclaimer is not acceptable.

1.3. That under Para 1.3 it is indicated that the CESCO Board had already discussed with Gridco in its capacity as a Bulk Supplier of power to CESCO. In this connection it may be stated that the AES ODPL nominee Directors had discussions with GRIDCO but the suggestion of Gridco has not been taken into consideration while preparing revised Business Plan.

1.4. The observation that till date CESCO is not able to pay its full bulk supply tariff bill (BST bill to Gridco) and has not been able to incur sufficient expenditure towards system improvement is not entirely correct. Huge investment under World Bank Finance has taken place within last few years for system improvement under CESCO.

More than Rs. 131 Crore have been spent by November, 04 under System Improvement in creating/uprating 33/11 KV

Substations, 11 KV/ LV Sub-stations and also by drawing new/uprated transmission lines both under 33 KV, 11 KV and LV. Further, expenditure to the tune of Rs.15 – 20 crore on the above account is likely to be incurred to complete the work by June, 2005. The details are enclosed herewith as **Annexure-1**.

Similarly, the average monthly collection have substantially developed after the AES management period. The average monthly collection/collection to billing performance before AES taking over, during the AES management and there after is furnished below for kind reference.

	Before AES take over	During AES management	After AES
Average monthly collection (Rs. In Crores)	25.32	33.77	44.95
Collection to Billing Performance (%)	60	72	79.76

From the above it is seen that there is substantial improvement in revenue performance after the AES left the CESCO business. Incidentally it may be mentioned that the improved performance is without any revision in retail tariff after AES left the business.

1.5. This is for the Hon'ble Commission to decide. However, in this respect the support of AES, one of the main stakeholders should be taken into account.

Para.2. Revised Plan

2.1. & 2.2. No Comments

2.3. There should not be any precondition. The final order of the Commission would be binding on all the stakeholders.

2.4 Targeted ATC Loss Reduction.

2.4.1 to 2.4.3 It is mentioned that the CESCO Board has taken advice from ICRA, a Consulting Company of repute while preparing the revised Business Plan.

In this connection, it may be stated that CESCO Board has not appointed ICRA nor any resolution to this effect is available for information of the Commission. ICRA might have been appointed as a Consultant by the AES ODPL and the observations of ICRA for preparing the Business Plan is irrelevant for Gridco and their views are not significant for drawing any conclusion regarding ATC loss reduction.

The fact remains that most of the reforming States have already achieved collection and billing performance of more then 95 % and their distribution loss range are much below than in Orissa system even if the management has not been privatised. As such reduction of ATC loss at a higher percentage may not be feasible in those States but in the CESCO system where distribution has been privatized and where the accumulated consumer arrears are more than from Rs.1000 crore (Equivalent to one and half years billing) and the distribution loss level is very close to 40% an ATC loss reduction programme of 6-7% per annum can easily be achieved. As such considering the present level of arrears and distribution loss a 25% loss (AT&C loss) reduction programme over a period of 5 years is reasonable and easily achievable and this was also recommended by the High Power Committee appointed by the Government of Orissa. The proposal of AES ODPL to reduce ATC loss by 17 % over a period of 5 years implies that they will not be in a position to achieve 100% collection efficiency within five years time i.e. after 10 years of privatisation. This was not intended in the Reform & Restructuring process of the Power Sector in the State. The ATC loss reduction can not have a single bench mark for the industry as a whole but depends upon (i) the quantum of consumer arrears (ii) level of distribution loss and (iii) the efficiency in the collection performance which will vary from utility to utility.

Substantial investment has already been made in the CESCO territory for system improvement, feeder metering, transformer metering etc., under the World Bank funding and APDRP etc. the benefit of which will accrue during the control period. Minor investment may be required to complete the Energy Audit Programme for feeder metering and transformer metering etc. As such the ATC loss reduction programme of 17% over a period of 5 years as indicated under Para.2.4.2 to 2.4.7 is not acceptable to Gridco.

2.4.4. The word used 'Endeavor' has no meaning. The AES ODPL has to give specific commitment for reduction of the ATC loss.

2.4.5. This is not acceptable. The order of the Commission in this regard will be final and binding on CESCO.

2.4.6 The formula for calculation of ATC loss will be decided by the Commission only.

2.4.7. The Time value of money is to be taken into account. If the loss reduction target is achieved towards end, funds are to be arranged by AES to be inducted into the Business of CESCO. In other words, any shortfall in the loss reduction target as decided by the Commission in a particular year will be compensated by infusion of equivalent amount of working capital into the business by AES ODPL.

Para.2.5. **<u>Stakeholders' Support to meet Target ATC Loss.</u>**

2.5.1 That under Para 2.5.1, it is indicated that in the event of under achievement of both ART and the cumulative ART (Annual Reduction Target) for any particular year of the control period, CESCO Board shall approach both ODPL and Gridco for funding to meet the cash shortfall. Further it is indicated that AES ODPL (CESCO 51% Shareholders) has agreed to provide contingent funding towards achieving the target to a maximum sum of Rs.6.00 Crore per annum until the earlier of either (a) the expiration of the control period or (b) the achievement of 17% ATC loss reduction, towards filling up any gap that arises upto Rs.6.00 Crores per annum due to such under-achievement of both ART and cumulative ART target. This funding will be repaid by CESCO to ODPL subsequently after achieving CPRT (Control Period Reduction Target).

Here it may be mentioned that, Gridco as the supplier of Bulk Supply of Power to CESCO can not afford short payment of monthly Bulk Supply Bills and also servicing of loans and other outstandings by CESCO to Gridco through installment etc. In fact, since privatization of CESCO during August-September 1999, till date. Gridco is financing the shortfall in BST payment of CESCO and the amount has accumulated to an alarming figure of Rs.1241.16 crore including DPS. As such AES ODPL after taking over the management of CESCO should undertake that (i) they will make necessary arrangement for effecting payment of the full monthly BST current dues of Gridco by establishing irrevocable Letter of CREDIT (LC) and (ii) also a Plan of Action for liquidation of over dues loan installment and arrear dues towards outstanding Bulk Supply of Power bills. Extra funds required to meet the above commitment should be generated by AES ODPL by improving in collection performance in CESCO for which adequate scope is available or by bringing working capital to the business or a combination of both. AES should accept full responsibility for the short fall from the approved ATC loss reduction programme and arrange funds to meet the shortfall in full being in charge of management.

Para.2.6. **Proposal to meet Revenue Requirement.**

2.6.1 This is not acceptable to Gridco. CESCO must pay its full BST and other dues to Gridco. The O&M and other expenses can not precedent over the BST dues of Gridco. Considering the huge arrear outstanding, it is possible on the part of CESCO to meet its full cash requirement in a month.

2.6.2 to 2.6.3 The Hon'ble Commission to decide.

2.6.4. This is not acceptable. CESCO may be allowed a tariff to cover it's full cost subject to AES meeting it's loss reduction programme approved by the Commission.

2.6.5. "It is mentioned that "CESCO Board" makes submission that it may not be possible for CESCO to arrange for any working capital loan either from its Shareholders and/or financial institutions to bridge such a gap. Therefore, any such alternative mechanism shall also include viable source(s) of funding acceptable to the CESCO Board."

In this connection, it may be stated that this was never discussed in CESCO Board and as such Gridco did not agree to such suggestion and the AES ODPL must arrange working capital at any cost to manage day to day cash requirement of the Company.

Para.2.7 **Loss Reduction Scheme**

2.7.1 Gridco has no objection subject to approval of OERC but AES should commit to a loss reduction programme approved by OERC.

2.7.2 The investment made through World Bank and also APDRP will substantially reduce the technical loss. Besides proper metering arrangement both for the retail consumers and energy audit programme will substantially contribute to the reduction of technical loss/commercial loss. The up-gradation/augmentation of the net work system is a continuous exercise. In fact major substations have been upgraded through World Bank funding. Further up-gradation of the existing system to support operation with information technology can be taken up with minor investment proposal and funds will not be a constraint if there is proper will to address such net work improvement. All these can be achieved with minor investment since major improvement has already been accomplished through World Bank funding.

2.7.3 Matter relates to Govt. of Orissa.

2.7.4 This point has already been clarified/discussed under Para.2.7.1. above.

Para.3. **Reliance.**

3.1. No comments**.**

3.2. In this para, "it is proposed that in case CESCO not receiving timely payment from Govt. of Orissa/other State PSUs, it shall make payment of Gridco BST bill after adjusting un-paid current electricity dues from Govt. of Orissa and its PSUs."

Gridco does not agree to such conditionality. Gridco is a commercial entity and have its commitment to its suppliers, Financial Institutions and other creditors. As such payment of dues by CESCO to Gridco towards BST and other loan instalments can not be linked to Government/PSUs payments to CESCO.

Further, Gridco can agree to above stipulations provided AES ODPL agrees to the fact that any default in payment of BST dues, loan instalments dues by CESCO to Gridco can be adjusted against the power purchase dues payable by Gridco to OPGC. Since both AES ODPL and AES Mouritious a Stakeholder in OPGC are both subsidiary Company of AES Trans. Power of USA., such an adjustment can be worked out by AES ODPL.

3.3. No comments.

3.4. It cannot be conditional – Commission's order shall have the binding effect on all the stakeholders.

3.5. No comments.

3.6. It is indicated that "any adverse change in the EHT/HT category load due to possible impact of open access and captive generation allowed pursuant to the electricity Act 2003 or any other reason beyond the control of CESCO will be excluded from the ATC loss calculation."

This is not acceptable. Moreover, the Business Plan is silent about any favourable change in the EHT/HT category load/mix.

3.7 The Company should go by its ground reality rather than carried away by identification made by CEO, CESCO.

Para.4. <u>Restructuring of past liabilities and Receivables.</u>

4.1.1. Independent review is not acceptable. The accommodation of Rs.174 Crore provided by Gridco to CESCO during the initial operation is now pending with the Hon'ble Commission for finalisation of rate of interest to be paid by CESCO to Gridco and also liquidation of the principal amount. The decision of the Commission is awaited.

4.1.2. The Delayed Payment Surcharge(DPS) as billed by Gridco to CESCO because of delayed in BST payment is as per the Bulk Supply Tariff Agreement. However, Gridco has already clarified its stand to waive DPS to the extent it has received waiver of DPS from the generators to be apportioned among Distcoms in proportion to their outstanding BST dues.

4.1.3. "It is indicated that during transfer of management of CESCO to the AES-ODPL in 1999 Gridco passed on certain amount of receivables and as per auditors report a part of such receivables has been declared not collectible."

When a revenue/receivable is not collectible and a provision is to be made in the Books of Accounts in a particular year or a revenue is to be written of in such a case the management should be satisfied that all possible steps including legal action has been initiated against the defunct consumers for realization of revenue. Further the revenue/receivables proposed to be written off has to be worked out based on the history of the particular consumer on case to case basis and not arbitrarily. The auditors report did not reflect any such action taken by the management to conclude that receivables from the consumers is not realizable and also details of steps taken in this regard including legal action. In absence of such exercise the receivables can not be treated as bad or no provision should be created on lump sum basis beyond the accounting practice that has been adopted during the past years. Moreover, the recommendation of Internal Auditor has not been accepted by the Statutory Auditor whose decision is final as per Clause 10.1. of Share Holders Agreement dated 31.08.1999. As such Gridco did not agree to any such adjustment on receivables against the BST dues of Gridco.

4.1.4. Gridco did not agree to the moratorium in the payment of outstanding of BST dues arising out of the proposed securitisation. Because of the default of the Distcos, Gridco has borrowed from Financial Institutions to pay to the generators, issued bonds to the generators and these agencies did not allow moratorium for payment of their interest as well as principal. As such any moratorium in the payment of outstanding BST dues even if it is securitised will create serious dislocation in the cash flow of Gridco and its commitments to various Financial Institutions, generators and other conditions. Further Gridco did not agree to the principle that no interest shall be paid during the securitisation period. This is simply based on the Commercial argument that Gridco has securitised its outstanding liability with the generators carrying stipulated rate of interest which Gridco is serving on regular basis.

4.2. The mis-management of CESCO has resulted in default by CESCO in paying the dues of Gridco. This has forced Gridco to default to the Financial Institutions/Generators. These over dues are paid partly by borrowing from Financial Institutions and the balance by securitisation with the generators. As such CESCO should revive its financial operation and generate sufficient resources to service the dues of Gridco so that Gridco can keep its commitments to the Financial Institutions and to the generators. This is also possible on the part of CESCO considering huge receivables from the consumers which is more than one and half years billing and also considering level of technical/commercial loss which can be reduced with ease in the initial years of operation.

4.3. No comments.

4.4. The CESCO Board has gone against the sprit of the Transfer Notification and also Gridco's finalisation of accounts with year ending March 1999 duly audited by CAG India. The actuary valuation made by CESCO Board with the L.I.C. of India who is not an actuary is in violation of the Transfer Notification and claiming amount towards terminal benefits from Gridco based on the actuary is also in violation of Transfer Notification. When the additional amount asked for by the CESCO Board towards terminal benefits is not in existence as per Transfer Notification, the question of dispute on this issue by Gridco does not arises. The contention that all past liabilities/created before privatization of CESCO shall be funded by Gridco is hypothetical and against the Transfer Notification. Further the alternative proposal that Gridco should maintain the Trust Fund of the employees in employment on the date of transfer is also out of question. This is a liability of the new management who have taken over day to day management of CESCO from Gridco as per the Transfer Notification.

However, it is suggested that based on the employee data, the Company should make appropriate assessment of its terminal liability by an independent actuary of repute and in case there is any shortfall this can be addressed through the Annual Revenue Requirement of CESCO while making its application to the Commission for revision of tariff.

4.5. There is no question of re-opening of issues, which are beyond the scope of the Transfer Notification as regards to T&D loss and determination of tariff etc. Through a due diligence process the privatization of Distcoms were carried out and all data were made available to the Companies for their study, interpretation and interaction with Gridco. Points raised by the company at different points of time before the privatization were clarified to them. The matter was further reviewed by a High Power Committee appointed by the Government under the Chairmanship of Mr. Soven Kanungo and also subsequently by the Orissa Electricity Regulatory Commission (OERC). Opening these issue at this juncture is of no consequence. The Commission has taken cognigence of the above fact and has passed appropriate orders as regards to the level of distribution loss.

Para.5.1 Force Majeure

Commission may decide.

Para.6. Projection to illustrate ARR, Revenue Gap.

The projection is based on assumption as explained under Para.1.2.4 in the Business Plan and Gridco's stand on the above assumption/parameters are explained in the previous paragraph. As such the revenue gap as shown in Business Plan as **Annexure-6** is hypothetical and are based on under performance of the Company.

Para.7 Way Forward

Para.7 of the draft Business Plan requires unanimous written acceptance of the revised Business Plan by CESCO Board, ODPL, Gridco, Govt. of Orissa and the OERC.

This is a conditionality and can not be acceptable. However a final order of the Commission will be binding on all the Stakeholders.

Para.7.1.1. Before the Cut-off date.

(d) Para.7.1.1 (d) requires that the revised plan is expressly contingent upon obtaining mutual acceptable resolution and settlement of outstanding CESCO related petitions, litigations, arbitrations and /or disputes. However such stipulations are not acceptable to Gridco. The AES, ODPL should unconditionally accept different operational parameters acceptable to OERC, Govt. of Orissa and Gridco and give a suitable Plan of Action for payment of current dues, settlement of outstanding dues of Gridco both for Bulk Supply Tariff & Loan instalments etc.

(e) Gridco has no objection to the proposal to carry out the reconciliation.

(f) This is subject to observation of Gridco as clarified under para.4.4. above.

(g) (h) & (i) **No Comments**

7.1.2. Pursuant to Cut-off date.

Subsequent independent review not acceptable – This conditionalities is not acceptable. Subsequent independent review is also not acceptable. The AES may do it for their own satisfaction without any financial burden on CESCO.

Para.8. Independent Review

That an independent consulting firm of International Repute is to be appointed by CESCO Board to carry out due diligence for CESCO on technical, financial, legal, human resources and appropriate level of staffing and other related matters recommended capital expenditure required during the control period including the requirement to meet the tarter etc. (loss reduction) and also to find out if there is any unbundled liability in CESCO Books of accounts. The objective behind this proposal is not known. As such, appointment of such so-called consulting forms of international repute is not acceptable to Gridco. Whatever is to be done has to be done by AES for their own satisfaction if so required. The recommendation of the Consultant should not in any way different than that approved by the Commission.

Para.9. Requirement of the Acceptance of the Revised Plan.

The order of Commission shall be binding on each and even each and every Stakeholder.

.

The Hon’ble Commission may please consider the above points before adjudicating the Business Plan filed by CESCO."

GOVERNMENT OF ORISSA COMMENTS

"2. That as regards the averments of clause 2.4.7 of the business plan furnished by CESCO, the Annual Loss Reduction Target is fixed at 2.5%, 3.5%, 4%, 4% and 3.00% for 1st, 2nd, 3rd, 4th and 5th year of the control period.

In this regard it is submitted that the Distribution sector has been privatised with the objective of bringing better management skills and practices and for enforcement of accountability to reduce commercial loss. Therefore the State govt. submits that Distribution loss of 25% in a span of 5 years with a minimum of 4% each year must be adhered to by CESCO and the target for reduction in distribution loss may be fixed by the commission accordingly.

3. That as regards averments of clause 2.5.1 of the business plan, it is submitted that the stakeholder, namely AES, Orissa Distribution Pvt. Ltd. has offered to provide funds to the tune of Rs.6 crores per annum, to meet the cash short fall, in the event of under-achievement in annual Loss Reduction Target (ART).

The State Govt., understands that in case there is under achievement in Annual Loss Reduction Target, CESCO would default in payment of its generators, like NTPC/OHPC etc., resulting in loss of incentive now being available to GRIDCO for timely payment.

The State Govt. therefore humbly submits that the promoter namely AES, ODPL should meet the entire cash shortfall due to under-achievement in ART every year during the five years of the control period.

4. That as regards averments of clause 2.6.4 of the business plan, it is submitted that in the business plan furnished by CESCO, it has been prayed that for meeting the years ARRs of CESCO, the Hon'ble Commission may provide for a tariff increase or subsidy support from GOO or recommend for grant from any agency or a combination of any of the above.

In this regard it may be submitted that, one of the objectives of the Power Sector Reform is to make the Power Sector self-sustaining. One of the principles for the determination of tariff by the Commission is that the tariff progressively reflects the cost of supply of electricity. As such there is no scope for provision of subsidy to CESCO. If the State Govt. feels that, any consumer or class consumers deserve to get subsidy it can provide subsidy to them in the tariff determined by the State Commission. There is no provision for subsidy to any licensee to meet its revenue loss.

5. That as regards averments of clause 2.7.3 of the business plan it is submitted that the State govt. is taking all possible steps for functioning of dedicated police stations and Special Courts as envisaged in Electricity Act, 2003. Achievement of Loss reduction target, fixed for any licensee, need not be a condition upon opening of such dedicated police stations or Special Courts."