
Shri H.S. Sahu, Member

Case No.15 of 2001

..... **Petitioner**

- Vrs. -

.... **Respondent**

: Shri B.K. Mohanty, Director (Comm.)

: Shri N.D. Chawla, Managing Director &
Shri S.C. Lal, Advocate

Date of argument : **05.5.2001**

Date of Order : 18.6.2001

ORDER

An application was filed by M/s. Grid Corporation of Orissa Ltd. (herein after, for short, GRIDCO), Janpath, Bhubaneswar for approval of the billing for supply emergency power to M/s. Western Electricity Supply Company of Orissa Ltd. (herein after, for short, WESCO), Burla, Dist. Sambalpur for supplying the same to M/s Indian Aluminium Company (herein after, for short, INDAL), Hirakud during the shutdown of their CPP during the month of February, 2000.

2. The facts that have emerged are :-

INDAL is an EHT consumer with a contract demand of 40 MVA in the licenced area of WESCO. On 22.1.2000 INDAL requested Managing Director, WESCO for supply of back up power of 70 MVA from 0000 hrs of 1st February, 2000 to 2400 hrs of 29th February, 2000 in order to take up shut down of their CPP to attend to the vibration problem of the TG set.

3. On 24.1.2000, the Executive Engineer, SED, Sambalpur informed the SE, Grid Operation, SLDC, Bhubaneswar for drawal of 70 MVA of load for INDAL as against their contract demand of 40 MVA with a request to issue necessary despatch instruction for proposed extra drawal from grid.
4. On 29.01.2000 the Sr. General Manager of GRIDCO intimated the Managing Director, WESCO that the permission given to INDAL for drawal of 70 MVA of power from Orissa grid vide their message dtd.27.1.2000 is withdrawn due to commercial reasons.
5. On the same day i.e. 29.01.2000 the Managing Director, WESCO intimated the Sr. General Manager, GRIDCO that 70 MVA power supply to INDAL was sought in terms of Grid Code to facilitate planning and despatch of loads and the question of withdrawing permission on the basis of any commercial reason does not arise. WESCO further clarified that the commercial relationship with GRIDCO is based on the Bulk Supply Agreement approved by OERC. In these documents, WESCO pointed out that there is no provision for denying any off take of power by WESCO for their consumer on any commercial ground. Thereafter, WESCO requested for supply of power immediately to enable the consumer to go ahead with the maintenance work already planned. (Annex-1, GRIDCO-P)
6. GRIDCO in their letter No.38 dtd.31.1.2000 intimated WESCO that the power requested cannot be supplied out of the quantity of power approved by OERC as per tariff order dtd.30.12.99 effective from 01.02.2000 as the requirement asked is over and above the approved drawal of power by OERC for WESCO for that Financial Year. In order to supply this additional power, GRIDCO has to procure costlier power from NTPC generating station which is approx. Rs.2 per unit. If WESCO agrees to pay for this additional power at NTPC rate as per actual rate during February, 2000, GRIDCO has no objection to supply this additional power (Annex-2, GRIDCO-P).
7. Further in letter dtd.02.02.2000 Director (Commercial) GRIDCO intimated MD, WESCO that as agreed on 01.02.2000 between CMD, GRIDCO and CMD, BSES, additional power requirement of INDAL will be met by GRIDCO provided WESCO agrees to pay GRIDCO the cost of power at which GRIDCO will purchase this

additional power from NTPC stations of Eastern Region. Further GRIDCO stated that in the absence of any confirmation by WESCO and in view of the huge outstanding on WESCO and non-compliance of terms & conditions of BSA, GRIDCO decided that M/s. INDAL's requirement for the month of February, 2000 will be met by GRIDCO directly.

8. On 4th February, 2000 (Annex-3, GRIDCO-P) WESCO intimated GRIDCO that as per the discussion between CMD, BSES and CMD, GRIDCO, GRIDCO should supply power as usual but rate would be on the basis of the cost they would incur for additional power from NTPC. So far as the rate to be charged to INDAL by WESCO is concerned the matter will be decided by WESCO. The question of GRIDCO directly supplying power to consumer does not arise.
9. The transaction of power with WESCO for the month of February, 2000 is given below.

Details	Energy in MU	SMD in MVA
1. Total consumption by WESCO	250.29510	516.033
2. Station consumption	0.34794	
3. Net consumption by WESCO (1-2)	249.94716	516.033

10. BILLING

- (a) GRIDCO served a bill on WESCO for the month of February, 2000 (Annex-1 of WESCO-R) on 10.3.2000 indicating energy drawal of 249.94 MU and Simultaneous Maximum Demand of 516.033 MVA at the BST rate of Rs.200/KVA and Energy Charge of 85.5 paise/unit. No separate rate was charged for power supply to INDAL.
- (b) On 22.3.2000 a revised energy was served for the month of February, 2000 by GRIDCO for the transaction of power to WESCO on the following parameters.

Total consumption by INDAL during 2/2000	33.01387 MU
Monthly average consumption of INDAL considering Nov., Dec., Jan., 2000	1.863 MU
NTPC power drawal by INDAL	31.1503 MU
Consumption by INDAL including 4% trans. loss	32.4482 MU
Net WESCO consumption	218.79 MU
Maximum Demand	516.033 MVA

WESCO was billed for 218.79 MU @ 85.5 paise/unit and for INDAL consumption of 32.4482 MU @ 190.14 paise/unit and SMD of 516.033 KVA @ Rs.200/KVA.

11. According to GRIDCO's petition dtd.11.1.2001, the energy bill for the month of February, 2000 was objected by WESCO on the ground that the energy charges for INDAL has been billed @ 190.14 paise/unit i.e. the rate of NTPC power drawn by INDAL. Further WESCO stated that the power supplied to INDAL as agreed should have been sent on the basis of composite rate billed by NTPC. Therefore, WESCO requested GRIDCO to withdraw an amount of Rs.122596000 against the demand charge of 61.298 MVA recorded in Aluminium Company feeder No.1 during 2000 which, according to WESCO, is not payable by them. Besides WESCO requested GRIDCO to obtain OERC's approval for levying the energy charges at NTPC rate since the same is a deviation from the BST order of OERC. The minutes of joint discussion between WESCO and GRIDCO on 30.10.2000 also recorded that WESCO had stated that GRIDCO should bill WESCO at the NTPC rate only if GRIDCO had drawn power from NTPC during February, 2000. For this purpose WESCO wanted copy of NTPC bill and approval of OERC for this transaction.
12. GRIDCO agreed to submit copy of NTPC bill and seek approval of OERC for this transaction. In line with the agreed minutes of 30.10.2000 the energy bill for the month of February, 2000 was revised and submitted by GRIDCO to WESCO on 03.01.2001 as per the details given below.

Simultaneous Max. Demand of WESCO	516.033 MVA
Less maximum demand of INDAL	61.298 MVA
Net system demand of WESCO	454.735 MVA
Billing demand charge	454.735 MVA @ Rs.200/KVA
Energy charge for WESCO	216.933 MU @ 85.5 paise/unit
NTPC power drawn by INDAL	33.013 MU @ 242.799 paise/unit

13. GRIDCO has requested the Commission that the aforesaid energy bill may please be approved and the guidelines to deal such cases in future may also be prescribed.
14. In response to the aforesaid application of GRIDCO, WESCO has submitted that the relationship between GRIDCO as a bulk supplier of energy and WESCO as a retail

supply licensee is governed by the Bulk Supply Agreement (for short, BSA) entered into between themselves. Besides that, the energy charges are regulated by the Bulk Supply Tariff fixed by OERC from time to time. Any deviation in tariff charged by GRIDCO has to be approved by OERC. The BSA between WESCO and GRIDCO and the BST order of OERC have not laid any restriction for drawal of power from grid except in time of shortage. Similarly, any dispute raised by the party with regard to energy bill raised by GRIDCO has to be resolved by Hon'ble OERC. In the present case the revised bills for sale of energy for the month of February, 2000 raised by GRIDCO are under dispute.

15. WESCO in Para 5 of the petition stated that the bill for February, 2000 ought to have been billed @ 85.5 paise/unit and Rs.200/KVA. The following are the grounds of objection.
 - (i) The cost of power of TSTPS for the month of February, 2000 is shown as 242.799 paise/kWh whereas as per BST order dtd.30.12.99 in the Case No.12/99 the OERC has approved a rate of 193.13 paise/unit and transmission cost at 28 paise/unit, thus making a total of 221.13 paise/unit. Therefore, the cost of TSTPS power charged for INDAL at 242.799 paise/kWh is excessive and arbitrary.
 - (ii) In the bill of February, 2000 dated 22.3.2000 the Energy Charges for 32.4487 MU supplied for INDAL includes the Demand Charge. Therefore, it was not open for GRIDCO to raise Demand Charge twice in the BST bill for February, 2000 for SMD of 61.298 MVA recorded by INDAL as the NTPC rate is inclusive of Demand Charge.
 - (iii) WESCO quoted the BST orders of the Commission for 1999-00 to state that any consumption in excess of the projected requirement by DISTCOs can be paid as an year-end adjustment if necessary after the accounts are finalised.
 - (iv) WESCO has prayed that bill dtd.22.3.2000 and subsequently revised bill dtd.03.01.2001 are arbitrary and should not be approved by the Commission. GRIDCO should be directed to revise the bills for the month of February, 2000.

16. (a) GRIDCO in its rejoinder dtd.18.4.01 has pointed out that the tariff order dtd.30.12.99 has been stayed by the Hon'ble High Court of Orissa and remanded back to the Hon'ble Commission for re-determination. The BSA between GRIDCO and WESCO stipulates that monthwise forecast of drawal should be submitted by WESCO to GRIDCO and GRIDCO has planed the procurement on the least cost basis which will be approved by OERC. In this case drawal, procurement and approval vide Bulk Supply Tariff order dtd.30.12.99 has been objected by WESCO in the Hon'ble High Court. Therefore, the transaction in the month of February, 2000 should be as per the bi-lateral arrangement agreed between GRIDCO and WESCO.
- (b) GRIDCO further stated that the contention of WESCO to implement BST order dtd.30.12.99 and at the same time BST order dtd.21.11.98 is contradictory. The claim of WESCO to bill the NTPC power as stipulated in the BST order of 1998-99 is, therefore, not correct. Similarly, in view of the non-operation of BST order dtd.30.12.99, para 6.41 regarding payment for the drawal in excess of the projected requirement as an year end adjustment is also not operative.
- (c) GRIDCO further submitted in this rejoinder that the maximum demand of INDAL has not been included in the Simultaneous Maximum Demand (SMD) of the bill dtd.03.01.01. GRIDCO has, therefore, requested that WESCO may be directed to pay the amount as raised in bill dt.03.01.01 in full as the transaction is specific and both the parties agreed to before the transaction took place.
17. WESCO in their rejoinder dtd.12.5.01 stated that the revised bill dtd.03.01.01 has been billed @ 2.43 paise/unit and as requested that the Commission may take this fact into consideration while adjudicating the matter referred to the Commission.
18. The Commission has considered the facts and figures presented in the written and oral submissions of both the parties.

- (a) The distribution licensee namely WESCO in accordance with Condition 19.1 of the Distribution & Retail Supply Licence took reasonable steps which included requesting GRIDCO for procurement of adequate quantity of power to ensure availability of power by one of its major consumer; namely INDAL.
- (b) In accordance with Condition 16.4 of the Transmission and Bulk Supply Licence, the licensee could purchase power to meet short term purchases but it should have submitted the details of such purchase for approval by the Commission within 30 days of the effective date of purchase, which has not been complied with by GRIDCO thereby violating condition 16.4 of said licence. The facts of the licence condition should be noted by GRIDCO and such transgressions should not be repeated in future.
- (c) GRIDCO in terms of its licence for Transmission & Bulk Supply is obliged to meet the requirements of the distribution companies. In case of any disagreement on account of commercial transactions the facts should have been brought to the notice of the Commission and GRIDCO should not have taken the unilateral decision of refusing the requirements of INDAL as requested by WESCO on 'commercial reasons'.
- (d) In GRIDCO's letter No.45 dtd.02.02.2000 GRIDCO intended to meet the requirement of INDAL directly. As INDAL is a consumer of WESCO, GRIDCO has no authority to supply power to INDAL directly. By planning to supply power to INDAL directly GRIDCO shows evidence of an intention to violate the Bulk Supply Licence conditions. GRIDCO should not have taken recourse to such a kind of planning which is a violation of its licence conditions.
- (e) The Commission examined the request of WESCO for billing the entire consumption for the month of February, 2000 at the ruling BST rate. The Commission finds that the consumption of WESCO for the month of February, 2000 includes consumption of INDAL in excess of its normal monthly requirement and projections of WESCO for February, 2000 to meet the specified purpose of shut down programme of CPP of INDAL. On an

analysis of EREB global account, the bills of NTPC submitted by GRIDCO for February, 2000, the Commission finds that GRIDCO has actually drawn 107 MU power from NTPC TSTPS. We also find that WESCO had agreed to GRIDCO's proposal of being billed at NTPC rate for INDAL's consumption prior to the transaction. The letter dtd.4th February, 2000 (Annex-3, GRIDCO petition) and the minutes of discussion dtd.30.10.2000 stands testimony to this fact. Therefore, the Commission feels it reasonable for agreeing with the view expressed by GRIDCO, that in this particular case the transaction for INDAL's consumption should be treated as a bi-lateral arrangement as it was agreed to prior to the date of actual consumption.

19. The Commission finds that the consumption of WESCO for the month of February, 2000 includes consumption of INDAL in excess of its normal monthly requirement to meet the specified purpose of the shut down programme of the CPP. Therefore, the Commission directs that the quantum of energy drawn by WESCO for meeting the specific requirement of shut down of CPP of INDAL should be billed at NTPC rate of February, 2000. Out of the total consumption of February, 2000, after deducting the consumption covered under the aforesaid transaction for INDAL the balance should be billed at the approved BST rate.
20. The next issue is to determine the actual cost of the power purchased by GRIDCO for the month of February, 2000 for WESCO.
 - (i) GRIDCO has already clarified in its rejoinder dtd.18.4.01 that the maximum demand of 61.298 MVA recorded in aluminium company feeder No.I & II has been deducted from the monthly SMD reading of 516.033 MVA for the month of February, 2000. Billing for the demand has been made on 454.735 MVA. Therefore, the grievance of WESCO regarding double billing of the maximum demand charge gets addressed.
 - (ii) For determination of cost of NTPC power for this month GRIDCO has calculated the rate of NTPC power to be charged to INDAL for February, 2000 as 243.38 paise/unit (GRIDCO's reply dtd.17.5.01). This includes 7.72 paise/unit towards transmission loss of GRIDCO calculated @ 4% for

utilisation of GRIDCO's transmission system. GRIDCO has also claimed 36.46 paise/unit towards weighted average transmission charges calculated @ 40 paise/unit during peak hours and @ 35 paise/unit during off-peak hours.

21. The computation of transmission loss in the GRIDCO's system is done based on the meter readings available at the inter-connection of GRIDCO's network with the generators, inter-state tie lines and the DISTCOs. Therefore, for the purpose of accounting the losses are calculated on the basis of the aforesaid meter readings and allowed as a pass through in the expenditure. Thus there is no necessity of separately claiming the transmission loss from WESCO by GRIDCO for the wheeling of additional power to INDAL as the losses on this account constitutes a part of the transmission loss of GRIDCO system.
22. As the power purchased from Talcher Super Thermal Power Station was meant for supply to a distribution company there is absolutely no justification of adding either the transmission loss or the wheeling charges which is applicable only when an industry is directly supplied power by a central thermal power station by utilising the transmission system of GRIDCO which is not a case here. Therefore, transmission loss and wheeling charges should not be billed for this transaction for utilisation of NTPC power by WESCO. GRIDCO should accordingly revise the bill dtd.03.01.01. However, GRIDCO has to be reimbursed for any variation of rates for payment of income tax, foreign exchange variation or fuel price adjustment as and when raised by NTPC for the month of February, 2000. As per the directions of Hon'ble High Court of Orissa the tariff for the year 1999-00 has been remanded to the Commission for re-determination. The licensees shall have a claim for revision of the bill for February, 2000, if found necessary, on account of re-determination of tariff by the Commission for the year 1999-00 for that portion of consumption which is being billed at BST rate.
23. Therefore, we are to direct that BST Bill for February, 2000 for WESCO be revised by GRIDCO accordingly.

(H.S. SAHOO)
MEMBER

(D.K. ROY)
CHAIRMAN