

**Case No. 122/2009**

**Order No.1**

**13.11.2009**

Mr. Debasish Saha, CGM (Fin.), OPTCL, Mr. S.K. Das Gupta, CEO, CESU, Mr. B.P. Mohapatra, CFO, CESU, Mr. G.B. Swain, DGM, CSO for WESCO/NESCO/ SOUTHCO and Mr. P.K. Pradhan, CEO, WESCO are present. The filings made by the respondents are taken into record.

2. Heard the parties at length.
3. Mr. Debasish Saha, CGM(Fin), OPTCL stated that as per clause 11 of the Transfer Scheme, the transmission charge shall be duly secured by a first charge over the receivables of GRIDCO from the DISCOMs and other open access customers in favour of OPTCL. The Commission vide its order dated 13.7.2007 passed in Case No.29 of 2006 and also in the ARR and Tariff order of OPTCL from FY 2009-10 at para 314 had directed that the Receivables of DISTCOs are escrowed in favour of GRIDCO as there is no escrow arrangement between DISTCOs and OPTCL. OPTCL will bill the distribution companies for the use of transmission services on the basis of meter reading at the delivery point to the DISTCOs serving copy to GRIDCO. This bill will be paid by GRIDCO to OPTCL from the receivables of DISTCOs escrowed with them. The above order of the Commission was silent regarding the Letter of Credit (LC) and the amount of LC by DISTCOMs in favour of OPTCL. Accordingly to the order of the Commission OPTCL has been billing directly to DISCOMs and the same is paid by GRIDCO to OPTCL out of the collections from the DISCOMs.
4. He stated that though OPTCL is not facing difficulties regarding billing and collection of transmission charges from the DISTCOs, but facing difficulties in claiming TDS certificates from them. The tax is being deducted at source (TDS) by DISCOMS starting from April, 2009 on transmission charges before making payment. It is the statutory obligation of the person responsible for paying such sum pursuant to the

provisions of the Income Tax Act, 1961. The statement of TDS shall be issued to the payee whose income tax has been deducted. The DISTCOMs are facing problem in issuing TDS certificate to OPTCL due to the absence of a firm payment mechanism between the petitioner and DISCOMs as they are making payment to GRIDCO under the existing arrangement. Till today there is no escrow arrangement between DISCOMs and the petitioner. In order to secure a firm payment mechanism between the petitioner and the DISTCOMs, it is essential that the DISCOMs need to open irrevocable and revolving letter of credit in favour of the petitioner, in addition to having an escrow arrangement through GRIDCO to ensure realization of the transmission charges by the petitioner in case of default by the DISCOMs.

5. Mr. Saha further stated that OPTCL has prayed the Commission to issue an appropriate direction to the DISCOMs on the following proposal with regard to payment security mechanism in respect of its monthly dues receivables from DISCOMs.
  - i) OPTCL shall have first and paramount charge over the receivables of DISCOMS to a secure payment of transmission charge,
  - ii) The DISCOMs shall open irrevocable and revolving Letter of Credit in favour of OPTCL which can be negotiated through our banker Union Bank of India. The minimum amount to be secured by the LC during a year shall be 110% of the average monthly transmission charge invoiced by OPTCL to concerned DISCOM during the 12 months period ended 31<sup>ST</sup> December of the preceding year.
  - iii) GRIDCO shall issue a standing instruction to the DISCOMs permitting the DISCOMs to release the payment against the monthly transmission charge bill of OPTCL from the existing Escrow Accounts.
  - iv) OPTCL shall be entitled to recover its receivable from the DISCOMs from by existing Escrow arrangement with GRIDCO on a first charge basis in case of default by the DISCOMs.

6. Mr. G. B. Swain, DGM, CSO on behalf of R-Infra managed DISCOMs submitted in reply to the averment in Para 8(i) of the petition that the Commission has already clarified this issue at para 314 in the ARR & Transmission tariff Order for FY 2009-10 of OPTCL regarding transmission charge payment mechanism.

In reply to the averment in para 8(ii) of the petition respondents NESCO and WESCO have already opened their irrevocable LC amounting to Rs.45 crore and Rs.60 crore respectively. The process has been initiated to enhance their limit of Rs.55 crore in case of NESCO and Rs.90 crore in case of WESCO in favour of GRIDCO as per Clause 6 and 7 of the Escrow Agreement executed between the DISCOMs and GRIDCO in respect of monthly bills raised by GRIDCO as well as OPTCL. The L.C. is made to cover as required amount of 100% payment to GRIDCO for BSP as well as transmission charges upto December, 2009.

In regard to the averment in para 8(iii) of the petition respondents NESCO, WESCO and SOUTHCO are making payment of monthly bills both for Bulk supply Price and transmission charges through their Escrow agents i.e. Union Bank of India to the account of GRIDCO and which in turn making payment to the petitioner towards its transmission charges. In regard to the averment in para 8(iv) of the petition respondents have already made Escrow agreements with GRIDCO and all the receivables are escrowed to GRIDCO and the petitioner is also having first charge in case of default of the respondents.

Regarding deduction of TDS and issuance of certificate of TDS, it is submitted that there is an Appeal pending before the Hon'ble Commissioner of Income Tax on this matter and the decision is awaited.

However, the respondents are deducting TDS @2% on the transmission charges as per S.194 of the I.T. Act, 1961 since May, 2009.

7. Mr. Das Gupta, CEO, CESU stated that as per clarificatory letter dated 06.6.2006 of the Commission, the petitioner may raise the bill directly on DISTCOMs with copy to the GRIDCO. The payment shall be made to GRIDCO which in turn pay to the petitioner- OPTCL, as GRIDCO has got Escrow arrangement with the DISTCOMs. Accordingly the petitioner has preferred the bill directly on DISCOMs and the payment is being released to GRIDCO for onward payment to OPTCL. The payment in respect of transmission charges bill is made to GRIDCO, the DISCOMs are facing difficulties to deduct TDS and issuing of TDS certificate in favour of OPTCL. Without TDS certificate, the petitioner cannot claim refund from the Income Tax Authority. CESU has no reservation on the payment of transmission charge bill directly to OPTCL instead of paying through GRIDCO. CESU has been paying BSP and transmission charge bills regularly since September, 2006 within the due date by availing over draft facility from Union Bank of India, Main Branch, Bhubaneswar. The Escrow agreement executed between GRIDCO and the then CESCO is still subsisting in between CESU and GRIDCO. In case of CESU fails to pay the bills of GRIDCO/OPTCL, it is obligatory on the part of the Union Bank of India – Escrow agent, to transfer the claim of GRIDCO from the Escrow account of CESU. The Banker refused to issue irrevocable L.C. in favour of GRIDCO as CESU is unable to provide 100% security against the said L.C. The irrevocable, revolving L.C. is a much inferior payment security mechanism than the present Escrow arrangement. In an event the payment made through the L.C. in a particular month is not replenished by CESU, the banker will not honour the L.C. in the next month. He also stated that holding the revolving of L.C. as a payment security mechanism will not serve the purpose of GRIDCO/OPTCL rather opening of L.C. incurs additional cost

towards L.C. commission and issuance charges which will ultimately burden the consumer of CESU.

8. The Commission heard the parties at length and made the following observations;

- i) Any direction issued by the Commission in the tariff order regarding payment mechanism is in accordance with Clause 11 (Para 3 & 4) of the Orissa Electricity Reform (Transfer of transmission and Related Activities) Scheme, 2005. The extract of such Para is reproduced below:

*“(3) The Transferee shall charge for the transmission of energy as per the tariff, terms and conditions determined by the Commission from time to time and till further orders of the Commission or any agreements being finalized between the Transferee and others, the transmission capacity shall be made available by the Transferee to the Transferor and the Transferor shall make payment for the capacity so made available:*

*Provided that from the date of the transfer and till the tariff for the transmission of electricity by the Transferee is separately determined by the Commission, the Transferee shall charge the Transferor rate per Kwhr as fixed by OERC.*

*(4) The Transmission and other charges payable by the Transferor to the Transferee shall be duly secured by a first charge over the receivables of the Transferor in favour of the Transferee to ensure that the transmission services are available for transmission of electricity to the distribution licensees in the State without interruption and to maintain the supply of electricity to public in the State.”*

- ii) It was confirmed by the parties that so far as receipt of transmission charges by the OPTCL, no difficulties are being faced

in the present arrangement, DISCOMs are facing difficulties only in issuing TDS to OPTCL. DISCOM, while making payment to GRIDCO may certify the total transmission charges payable less TDS deducted on behalf OPTCL and GRIDCO while making payment to OPTCL may indicate accordingly for satisfying Income Tax Authorities. Further, the companies (DISCOMs & OPTCL) may mutually agree to any commercial arrangement with regard to billing and payment of bills. So as to meet the objective of the Income Tax Authorities to ensure payment of income tax at the source.

- iii) Hence at this stage the Commission is not inclined to interfere on the day to day affairs of the petitioner, unless the same is disputed by both OPTCL & the DISCOMs.

9. In the above circumstances, this is not a fit case for admission. Accordingly the matter is disposed of.

Sd/-  
**(B.K. Misra)**  
Member

Sd/-  
**(K.C. Badu)**  
Member

Sd/-  
**(B.K. Das)**  
Chairperson