

ORISSA ELECTRICITY REGULATORY COMMISSION

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

Present : Shri B.K. Das, Chairperson
Shri K.C. Badu, Member
Shri B.K. Misra, Member

Case Nos.35, 36 & 37 of 2009

In the matter of: Truing up of the ARR of GRIDCO and redetermination of the BSP for FY 2008-09.

For Petitioners - Mr. L. Pangari, Advocate and Mr. G.B. Swain, DGM (F),
WESCO, NESCO and SOUTHCO

For Respondent - Mr. L.N. Mohapatra, Advocate

Date of Hearing : 22.05.2009

Date of Order : 18.07.2009

ORDER

The petitioners (NESCO, WESCO & SOUTHCO) have filed their applications before the Commission to reduce BSP for the FY 2008-09 considering the truing up impact of GRIDCO for the period from FY 2000 to FY 2008. In addition, the petitioners have sought the direction of the Commission to GRIDCO to adjust the surplus payment made by DISCOMs towards costly dues of power bonds.

2. The petitioners have averred that the order dated 13.08.2008 of the Hon'ble Supreme Court in Civil Appeal No.5722 of 2006 in the matter of charging maximum trading of 4 paise/unit has relieved GRIDCO from paying the excess margin received over the said 4 paise. Accordingly, petitioners have appealed that the provisions made by GRIDCO for an amount of Rs.615.04 cr. comprising Rs.148.36 cr. during FY 2007-08 and Rs.466.68 cr. during FY 2006-07 provided to meet the contingent liability arising out of refund obligation pursuant to the Hon'ble ATE order are not required to be provided in the GRIDCO's Accounts anymore and needs to be reversed.

3. Petitioners have further submitted that Hon'ble OERC carried out the truing up computation of GRIDCO for the period FY 1996-97 to FY 2004-05 provisionally, based on audited accounts. The petitioner has segregated the truing up requirement of GRIDCO into two parts, pre-privatisation and post privatization. The petitioners have asserted that the negative truing up requirement for the pre-privatisation period from 1996-97 to 1998-99 amounting to Rs.1145.66 crore are not to be passed on to the DISCOMs in any form and pass on of the losses prior to 01.04.2006 by way of the Regulatory Assets was contrary to the concept of reform and transfer scheme.
4. Petitioners have also underlined that the losses for the period prior to privatization (31.3.1999) were required to be taken over by the State Government by way of providing subsidy in line with the practices followed by other states. In addition the surpluses earned on account of trading/UI charges should have been treated as a resource for all entities for the sector and need to be ploughed back into the sector by way of investments to improve the efficiency.
5. Petitioners further submitted that the revenue earned from trading/UI was not considered in the approved ARR and the losses for the prior period of privatization were being adjusted against surplus earned by GRIDCO, the Bulk Supply Tariff has substantially increased. Moreover the allowance of Rs.480 cr. and Rs.464.86 cr. towards repayment of the principal during FY 2006-07 and FY 2007-08 are contrary to the provision under OERC (Terms and Conditions for determination of Tariff) Regulation, 2004. In the truing up exercise of GRIDCO the repayment of principal are not to be considered as part of ARR.
6. GRIDCO in its reply has questioned the maintainability of the said applications of petitioners on the ground that neither GRIDCO has made an application nor Hon'ble Commission has taken up a suo-motu proceeding for truing up exercise and as such DISCOMs are not entitled to truing up exercise in respect of another licensee i.e GRIDCO. Further, the applicants have not quoted applicable provisions of law in their applications and hence these are not maintainable.
7. GRIDCO has referred to Section 62(4) of the Electricity Act, 2003 which stipulates that no tariff or part of any tariff may ordinarily be amended, more frequently than once in any financial year, except in respect of any changes expressly permitted under the terms of any fuel surcharge formula as may be specified. Therefore, these provisions do not stipulate reworking of truing up in respect of BSP of FY 2008-09.

8. GRIDCO further submitted that WESCO being aggrieved by the Commission's order dtd.20.03.2008 (Case No.61 of 2007) for determination of the ARR of GRIDCO for FY 2008-09, filed review petition before the Commission which was dismissed by the Commission vide its order dtd.12.08.2008. WESCO has filed an appeal against the review Order of the Commission before Hon'ble ATE which is registered as Appeal No.29 of 2009 and is still subjudice. As the matter is subjudice seeking reduction of BSP for same FY 2008-09 on the ground of truing up exercise is not maintainable and liable to be rejected.
9. In regard to GRIDCO's reply, the petitioners have submitted that the tariff could be amended u/s.62(4) of Electricity Act, 2003 necessitated by the Order of Hon'ble Supreme Court dtd.13th August, 2008 in the aforesaid Civil Appeal. The petitioners have also referred to Commission's order dtd.20.03.2008 wherein BSP for FY 2007-08 was retrospectively revised. No appeals for BSP order of FY 2008-09 have been preferred by NESCO.
10. We have heard the petitioners, WESCO, NESCO, SOUTHCO and the respondent GRIDCO on question of admission. The petitioners have prayed to reduce the BSP for the FY 2008-09 considering the truing up impact of GRIDCO for the period from FY 2000 to FY 2008 and also to direct GRIDCO to adjust the surplus payment made by DISCOMs towards costly dues of power bonds.
11. The petitioners have based their prayer in pursuance to judgment dtd.13th August, 2008 of Hon'ble Supreme Court in Civil Appeal No.5722 of 2006. GRIDCO had earlier filed appeal before Hon'ble Supreme Court against the Order of Hon'ble ATE restricting it to charge maximum trading margin of 4 paise/unit and refund the excess margin received over the said 4 paise. This case began with Shri Gajendra Haldea, who filed a petition before Hon'ble Central Electricity Regulatory Commission (hereafter CERC) seeking direction to GRIDCO not to charge trading margin exceeding 4 paise/Kwh notified under CERC regulation applicable to an inter-state electricity trader and return excess amount on account of purchase and sale transaction undertaken by GRIDCO. CERC in its judgment dated 05.04.2006 stated that GRIDCO was deemed to be an intra-state electricity trader and not inter-state electricity trader and did not limit its profits on sale of electricity for consumption outside the State. Shri Haldea aggrieved by this judgment of Hon'ble CERC had filed an appeal before the Hon'ble ATE seeking reversal and stay of the above order, which was registered as Appeal No.81 of 2006.
12. Hon'ble ATE in its order dated 16.11.2006 held that the transaction of sale of surplus energy to PTC was in nature of interstate trade/trading attracting the application of Regulation 2 of CERC (fixation of Trading Margin) Regulations, 2006, wherein an

inter-state trader can only charge maximum trading margin of 4 paise/unit. Hon'ble ATE further directed that GRIDCO should refund the excess amount charged by it and it could be given back to the consumers. Aggrieved by this Order GRIDCO filed the Civil Appeal No.5722 of 2006 before Hon'ble Supreme Court, which was disposed on 13th August, 2008 by the Apex Court.

13. In view of the Order dated 13.08.2008 of the Hon'ble Supreme Court the petitioners (NESCO, WESCO & SOUTHCO) have averred that GRIDCO kept a provision of Rs.615.04 cr. aside in view of the Hon'ble ATE order to refund the excess amount to the consumer charged by GRIDCO above the 4 paise margin fixed under CERC Regulation. Now that Hon'ble Supreme Court has given the ruling not to refund the excess amount back to the consumers, the GRIDCO has landed with surplus of Rs.615.04 cr. The learned counsel for the petitioners argued that this amount be trued up against the GRIDCO's account which would consequently lead to downward revision of BSP for 2008-09. The provision of Rs.615.04 cr. Comprised of Rs.148.36 cr. during FY 2007-08 and Rs.466.68 cr. during FY 2006-07.
14. GRIDCO in response to the applications of the petitioners for truing up of the ARR of GRIDCO and re-determination of BSP for year 2008-09 has questioned the maintainability of the application being barred by law by virtue of provisions u/S.62(4) of the Electricity Act, 2003.
15. The Commission after careful examination of the facts stated above would like to clarify that during FY 2007-08 and FY 2008-09 while finalising the expected aggregate revenue, the revenue earnings from export of power was not taken in the account. In this regard extracts of the Commission's observation vide para 5.35.13.4 of the BSP order 2007-08 and Para 408 of BSP on 2008-09 are reproduced below:

"5.35.13.4 While finalising the expected aggregate revenue for 2007-08, the revenue earning by GRIDCO from export of power has not been taken into account on the ground that the trading of surplus power involved some risks and uncertainties which should not be transmitted to consumers in terms of tariff burden. Therefore, the Commission has not considered the power to be purchased and revenue to be earned from trading of surplus power to outside states. The Commission feels that GRIDCO is free to purchase additional power from any source and trade in the open market. The extra revenue earned due to trading of power by GRIDCO shall bridge the gap to some extent in its revenue requirement for 2007-08 and also reduce the burden of the consumers of the State by way of liquidating past liabilities.

408. While finalizing the expected aggregate revenue for 2008-09, the revenue earning by GRIDCO from export power has not been taken in to account on the ground that trading of surplus power involved certain risk and uncertainty which should not be

transmitted to consumer in term of tariff burden. Therefore, the Commission has not considered the power to be purchased and revenue to be earned from trading of surplus power to outside states. The Commission feels that the GRIDCO is free to purchase additional power from any source and sell it in open market. The extra revenue earned due to trading of power shall bridge the gap to some extent in its revenue requirement for 2008-09 and also shall reduce the burden of consumer of the states by way of liquidating the past liabilities.”

16. It is clear from the above order of the Commission that the BSP rate was designed without considering the revenue as well as expenditure on power purchase utilized for export purpose. The income from export of power is accounted for in truing up exercise after availability of audited accounts. As regards reversion of the provision of Rs.615.03 Cr. claimed by DISCOM, the Commission would like to point out that GRIDCO had originally made a provision of Rs.615.03 Cr. (466.67 Cr. for FY 2006-07 and Rs.148.36 Cr. for FY 2007-08) in the annual accounts for the year 2006-07 and 2007-08 in anticipation of refund of entire amount beyond the maximum trading margin of 4 paise/kWh as per the order of the Appellate Tribunal for Electricity (ATE), subject to outcome of the Civil Appeal No.5722 of 2006 filed in the Supreme Court. In this regard extract of the Note to Audited Account of 2007-08 of GRIDCO (Item-25) is reproduced below.

“Prusuant to the Order of Appellate Tribunal for electricity and Supreme Court, the company has made provision of Rs.148.36 crore during 2007-08 (Previous year Rs.466.68 Cr.) for meeting the liability on account of trading of power which has been ascertained on prudent basis (in line with AS29 issued by ICAI) pending final disposal of the case.”

The ATE has held that GRIDCO was entitled to charge only trading margin over the average cost of procurement of electricity for the surplus power sold to PTC. Further, ATE directed CERC to work out a methodology by which the refund of excess amount charged by GRIDCO could be given back to consumers. The Supreme Court in their order dated 13.8.2008 in Civil Appeal No.5722 of 2006 set aside the order dated 16.11.2006 of ATE and consequently the provision of refund was not called for.

17. After getting the order of the Supreme Court, GRIDCO reversed the provisions of Rs.615.03 Cr. in the FY 2008-09 as per the ARR of 2009-10 filed with the Commission. In this regard, TRF-26 of the ARR filing of GRIDCO is depicted below for reference.

PROFIT & LOSS ACCOUNT FOR THE YEAR ENDED

Previous Year-2007-08			
Current Year - 2008-09			
Ensuing Year-2009-10			
	FY-07-08 (Actual)	FY-08-09 (Estt)	FY-09-10 (Estt)
INCOME	3,348.25	2,479.44	2,291.40
Revenue from Sale of Power(Distco's)	2,094.80	2,206.96	2,288.10
Revenue from Sale of Surplus Power including UI	1,124.06	196.11	-
Revenue from Sale to CPP's	27.78	37.59	3.30
Revenue from Inter State Wheeling	-	-	-
Revenue from Wheeling to CPP's	-	-	-
Unschedule Interchange	-	-	-
Other Misc. Receipts	101.62	38.78	-
	FY 2007-08 Actual	FY 2008-09 Estimate	FY 2009-10 Estimate
EXPENDITURE	2,522.46	2,469.82	2,877.07
Purchase of Power	2,517.38	2,451.80	2,863.15
Operation Maintenance, Administration General and other expenses	5.08	17.97	13.77
Less :Expenses Capitalised	-	-	-
Net Expenses Charged to Revenue	5.08	17.97	13.77
Depreciation	0.00	0.04	0.15
Profit (before interest & finance charges)	825.80	9.62	(585.67)
Interest & Finance Charges	260.49	187.82	128.49
Less :Interest charged to Capital Work-in-Progress	-	-	-
Interest Charged to revenue	260.49	187.82	128.49
Profit before tax for the year	565.31	(178.19)	(714.16)
Provision for Taxation & Others	0.02	-	-
Contribution to contingency Reserve	-	-	-
Profit After Tax	565.29	(178.19)	(714.16)
Net prior period credit/charges & others	0.77	-	-
Provision towards Trading of Power	-	615.03	-
Profit/(Loss) Transferred to Balance Sheet	566.06	436.84	(714.16)
Balance of profit and loss account brought forward from last year	(765.44)	(199.39)	237.45

	FY 2007-08 Actual	FY 2008-09 Estimate	FY 2009-10 Estimate
Statutory reserves and Appropriations	-	-	-
Amount available for distribution & transfer to general reserve	-	-	-
Proposed Dividend	-	-	-
Corporate Tax on Dividend	-	-	-
Transfer to General Reserve	-	-	-
Balance carried to Balance Sheet	(199.39)	237.45	(476.71)

(Bracket figure indicates negative)

18. The Commission however, had not considered the amount of Rs.615.03 Cr. discussed above, for the purpose of calculation of ARR for 2006-07, 2007-08 and 2008-09. In this regard Table-37 of BSP order for the FY 2006-07 and Table-49 of the BSP order of 2008-09 is reproduced below for better clarify of the position.

Table - 37
Revenue Requirement of GRIDCO for FY 2006-07

		2006-07	
A	Expenditure	Proposed	Approved
	Cost of Power Purchase	2106.86	1756.84
	Employee costs	3.11	1.75
	Repair & Maintenance	0.00	0.00
	Administrative and General Expenses	2.83	1.65
	Provision for Bad & Doubtful Debts	-	-
	Other expenses (ERLDC Charges)	1.32	1.32
	Depreciation	-	-
	Interest Chargeable to Revenue	383.38	204.34
	Sub-Total	2497.50	1965.90
	Less: Expenses capitalised	-	-
	Total expenses	2497.50	1965.90
B	Special appropriation		
	Carry forward of Previous Losses	1653.73	-
	Repayment of Principal	512.75	480.12
	Contingency reserve	-	-
	Total	2166.48	480.12
C	Return on Equity	23.62	-
	TOTAL (A+B+C)	4687.60	2446.02
D	Less Miscellaneous Receipt	173.16	36.96
E	Less receivable from DISTCOs	-	110.10
F	Less receivable from outside States	-	20.00
G	Total Revenue Requirement	4514.44	2278.96
H	Expected Revenue (Full year) from DISTCOs	1460.79	1774.44
I	GAP (+/-)	-3053.65	-504.52

Table – 49
Revenue Requirement of GRIDCO for FY 2008-09
(Rs. in Crore)

		2007-08	2008-09	
A	Expenditure	Approved	Proposed	Approved
	Cost of Power Purchase	2103.11	2577.68	2351.75
	Employee costs	2.03	3.87	3.33
	Repair & Maintenance	-	0.35	-
	Administrative and General Expenses	1.74	2.41	2.41
	Other expenses (ERLDC Charges)	1.32	1.32	1.32
	Interest Chargeable to Revenue	158.12	169.79	127.72
	Sub-Total	2266.32	2755.42	2486.53
	Less: Expenses capitalized	-	-	-
	Total expenses	2266.32	2755.42	2486.53
B	Special appropriation			
	Carry forward of Previous Losses	644.38	50.93	-
	Repayment of principal		481.87	-
	Total	644.38	532.80	-
C	Return on Equity	-	60.62	-
	TOTAL (A+B+C)	2910.70	3348.84	2486.53
D	Less Miscellaneous Receipt	3.30	3.30	3.30
E	Less receivable from DISTCOs	153.33	-	219.83
F	Less receivable from outside States	30.00	-	16.24
G	Total Revenue Requirement	2724.07	3345.54	2247.16
H	Expected Revenue (Full year) from DISTCOs	2259.21	2439.22	2152.23
I	GAP (+/-)	(-)464.86	(-)906.32	(-)94.93

19. The Commission has been undertaking truing up requirement of the DISCOMs and GRIDCO regularly during the filing of Annual Revenue Requirement on the basis of available Audited accounts. Commission in the last ARR exercise (FY 2009-10) conducted provisional truing up of GRIDCO upto available audited accounts for FY 2007-08. This truing up exercise is provisional since the receivable audit of the DISCOMs is yet to be finalized which has a bearing on receivables of GRIDCO.
20. In the present cases the provision of Rs.615.03 cr. made by GRIDCO towards trading of power is reversed during FY 2008-09, consequent upon the final Order of Hon'ble Supreme Court in the Civil Appeal No.5722 of 2006 dtd.13th August, 2008. The Commission, therefore, expects that this amount of Rs.615.03 cr. would be reflected in the audited accounts of GRIDCO for FY 2008-09. The Commission after availability of audited accounts for FY 2008-09 would undertake the truing up requirement in the subsequent ARR of GRIDCO for FY 2010-11. Even if GRIDCO lands in a positive gap after considering the above amount of Rs.615.03 crore, in truing up exercise, this

should be accounted for in liquidating the past liabilities of GRIDCO as directed by the Commission vide para 408 of BSP and 2008-09 which has been reproduce in para-15.

21. It may be appreciated that the Commission in their order dtd.20.3.2008 in Case No.55, suo moto revised the BSP rates downwards for the FY 2007-08 and the same rate continued for the FY 2008-09.

Hence, request of DISCOMs to revise BSP for 208-09 downwards merely on the ground that GRIDCO has made a surplus of Rs.615.03 crore in the financial year 2007-08 & 2008-09 does not merit consideration at this stage. Accordingly, at this stage we do not propose to go into the merits of the case in regard to the reversal of the provision of Rs.615.03 crore towards contingent liability in terms of the ATE order dt.16.11.2006. How this reversal would be dealt with would be taken up along with the ARR of 2010-11.

22. Accordingly these cases are disposed of.

Sd/-
(B.K. Misra)
Member

Sd/-
(K.C. Badu)
Member

Sd/-
(B.K. Das)
Chairperson