

ORISSA ELECTRICITY REGULATORY COMMISSION

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

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

Case No.43/2009

NESCO	Petitioner
Vrs.		
GRIDCO	Respondent

In the matter of: An application challenging the improper calculation of rebate on payment of BST bill by NESCO to GRIDCO for the month of April, 2007.

For Petitioner - Mr. G.B. Swain, DGM (F), NESCO.

For Respondent - Mr. R.C. Mishra, Sr. G.M.(F), GRIDCO

Date of Hearing : 30.05.2009

Date of Order : 31.07.2009

ORDER

GRIDCO served monthly energy bill to NESCO on 04.05.2007 for Rs.55.14 crore towards bulk supply of power for the month of April 2007, as per the rate approved by the Commission vide BSP Order dated 22.03.2007. Against this bill NESCO, advised the Branch, Union Bank of India, Balasore to release an amount of Rs. 43.37 crore to GRIDCO (within the rebate date) towards BSP and transmission bill for the month April, at the pre-revised rate i.e. at the rate applicable for 2005-06. NESCO in its filing stated that the company was liable to pay the BST Bill at BSP rate applicable for 2005-06 in view of the Orders of Appellate Tribunal dated 13.12.2006 and Hon'ble Supreme Court dated 20.04.07. For the delay in remitting the amount, GRIDCO granted 2% rebate on transmission charges and 1% on the balance BSP Bill to which NESCO filed objection.

2. Mr. G.B. Swain, DGM (F), WESCO and NESCO submitted the following during hearing as follows:

- (i) NESCO contended that GRIDCO received the full amount of the bill of Rs.55.14 crore in two parts i.e. Rs.43.37 crore before rebate date of 5th May, 2007 and balance amount of Rs.11.77 crore (55.14 - 43.37) 3 days after the rebate date i.e. on 8th May 2007 through LC negotiation with Banker, notwithstanding the request submitted by the DISCOM to the Bank appraising the status of various relevant cases before Hon'ble Supreme Court, ATE etc.
- (ii) As stated by NESCO, GRIDCO instead of negotiating the LC with Bank on 8th May 2007, could have negotiated LC on 7th May (i.e. within 48 hours as per Agreement, since 6th was a Sunday) and allowed 2% rebate on full amount of the bill or else GRIDCO could have waited till 03.06.2007 (the time limit of one month of the bill date) during which payment would have been received from escrow account of NESCO without any LC Negotiation.
- (iii) For this action of GRIDCO, NESCO was deprived of the rebate of 1% as well as paid interest @13.75% to bank on 8th May 2007 onwards (for 28 days) on LC amount and LC negotiation charges; and hence was doubly burdened.
- (iv) In view of above NESCO prayed the Commission to allow 2% rebate to NESCO on full amount of BSP as well as transmission bill amounting to Rs.1.10 cr. (2% of Rs.55.14 cr.) taking into consideration the spirit of the terms and conditions of LC, BST Agreement and in line with the orders of the Commission.

3. Mr. R.C. Mishra, Sr. GM (F), GRIDCO stated as follows:

- a. NESCO had intentionally, unreasonably and unilaterally instructed the Union Bank, Balasore branch not to pay the full amount of bill to GRIDCO for the month of April, 2007, which was in violation of the Tariff (BSP) order dtd.22.03.2007 of the Commission for the year 2007-08. Hence, NESCO is not entitled to full rebate over and above the rebate what has been allowed by GRIDCO.
- b. NESCO used to pay the monthly bills of GRIDCO within 48 hours of the presentation either by remittance of cash through escrow account or by availing Secured Over Draft (SOD) or by both. For payment of bills of April,

2007, NESCO had the fund to pay full amount of bill and claim rebate of 2%. Instead of resorting to this practice, NESCO did not pay the full bill deliberately.

- c. When GRIDCO did not get the full bill amount within the rebate date, it has negotiated the LC as per terms and conditions of LC accepted by the Bank and Bank has duly accepted the negotiation of LC and credited the balance payment due to GRIDCO.
- d. NESCO was allowed rebate in conformity to the orders of the Commission. Since full payment of Bulk Supply bill including transmission charges was not received within 48 hours of the presentation of bill through LC on presentation by GRIDCO, the rebate was allowed in the following manner: -

i. 2% on full amount of transmission bill of Rs.8.21 cr.	-	Rs.16.42 lakh
ii. 1% on full amount of BSP bill of Rs.46.93 cr.	-	<u>Rs.46.93 lakh</u>
Total rebate on Rs.55.14 cr.	-	Rs.63.35 lakh
	Or	Rs.0.63 cr.

- 4. After going through the submission made by NESCO and GRIDCO and perusal of the connected documents Commission finds that it is the NESCO which initiated action by instructing Union Bank to pay lesser amount i.e. 43.37 cr. against the bill of Rs.55.14 cr. (8.21 cr. transmission bill + 46.93 cr. BSP bill). This was done by NESCO on the plea that the company was liable to pay the BST bill for 2006-07, at the rate applicable for 2005-06 in view of the orders of Appellate Tribunal dtd.13.12.2006. There was no sufficient ground for issuing such an avoidable instruction to Union Bank. On the other hand there was no legal difficulty on the part of GRIDCO to ensure receipt of full payment by invoking the letter of credit, which GRIDCO did, but after a delay of 24 hours from the permissible date of rebate. In this context the extract of the BST order of the Commission dtd.22.03.2007 is reproduced below: -

“Rebate

For payment of bills through a letter of credit on presentation/upfront by cash within two working days, a rebate of 2% shall be allowed. If the payments are made by a

mode other than through a letter of credit but within a period of one month of presentation of bills, by the Distribution Licensee, a rebate of 1% shall be allowed”.

Under such circumstances, NESCO lost rebate of 1% on the bill amount of 46.93 cr. which amounts to 46.93 lakh. At the same time they had to pay additional LC charges @13.75% on the balance amount of Rs.11.77 cr. (46.93 - 35.16). Commission does not approve the behavior of NESCO in issuing unwarranted instruction to Union Bank and as such has to bear the burden of LC charges of 13.75% on 11.77 cr. for which there is no escape. However, Commission feels that GRIDCO did not utilize the authority given to it to encash the LC within the stipulated period of rebate. Moreover, Commission further observes that this is the only instance where NESCO had made default. In the remaining months of FY 2006-07, there was no dispute between GRIDCO and NESCO so far as payment of BST is concerned. The spirit of Commission's BSP order dtd.22.03.2007 on payment of rebate quoted above is to enforce timely payment to GRIDCO by DISCOMs. This mechanism does not have any intention to put any licensee to financial loss.

Hence, Commission directs that the loss of rebate of 1% on Rs.46.93 cr. which amounts to Rs.46.93 lakh is to be made good by GRIDCO and directs GRIDCO to adjust the same from the BST bill of NESCO for the month of September, 2009 to be raised in October, 2009.

5. Accordingly, the matter is disposed of.

(B.K. Misra)
Member

(K.C. Badu)
Member