

**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 No.82/2009

M/s. WESCO

.... **Petitioner**

Vrs.

M/s. GRIDCO, OPTCL, SLDC &
M/s. Viraj Steel & Energy Limited

.... **Respondents**

In the matter of: Permission for purchase of Surplus Power.

For the Petitioner: Mr. L. Pangari, Advocate for WESCO, Mr. G.C. Mohanty,
DGM (Com), WESCO, Mr. Manas Kumar Das, GM (PT),
CSO (WESCO, NESCO and SOUTHCO).

For the Respondents: Mr. A.K. Satpathy, GM(PP), GRIDCO, Mr. N.R.
Mandhata, GM(R&T), OPTCL, Mr. K. B. Ray, DGM (SO),
OPTCL, Mr. B.R. Mishra, GM, SLDC, Mr. D.K. Gupta,
DGM (ERI), Viraj Steel & Energy Ltd. and Mr. S.C.
Mohanty, Law Officer, Deptt. of Energy, Govt. of

Date of Hearing: 20.7.2009

Date of Order: 14.8.2009

ORDER

In the instant case, WESCO - the distribution licensee is the petitioner and Grid Corporation of Orissa Ltd. (GRIDCO), Orissa Power Transmission Corporation Ltd. (OPTCL), Sr. G.M. (Power System), SLDC, Mancheswar, Bhubaneswar and M/s Viraj Steel & Energy Ltd. (VSEL), Gurupalli, Rengali, Dist. Sambalpur are the four respondents.

2. The petitioner – WESCO in its petition has submitted as under:

M/s. Viraj Steel & Energy Ltd. (VSEL) has a Captive Generating Plant (CGP) of 28 MW within the licensed area of WESCO. The VSEL consumes a part of the power for its captive requirement and had approached WESCO expressing its desire to sell 5 MW of surplus power to WESCO at a competitive rate of Rs.1.50/kwh. WESCO intends to purchase the said surplus power from VSEL. It will help to meet a part of its area demand, and in turn, will relieve the state grid and GRIDCO, the bulk supplier to the extent of power injected by VSEL in a power shortage scenario. Accordingly WESCO has made an agreement with M/s VSEL for purchase of 5 MW of power for one month from 01.06.2009 to 30.06.2009 at a price of Rs.1.50/kwh. The period of energy sale may be extended as per mutual agreement between the parties. The delivery point of such power shall be at the interface point at the 33/11 KV S/S of VSEL where VSEL is connected with the 33 KV system of WESCO. The transmission losses, say a nominal value of 2% shall be accounted for while computing the monthly energy bill by VSEL. Accordingly, the PPA has been signed by WESCO with M/s VSEL on 09.6.09.

3. In support of the petition, the petitioner-WESCO has stated that the following would be the advantages for WESCO :
- i) The agreed rate of Rs.1.50/kWh is less than the bulk supply purchase price approved by the Commission for WESCO for the year 2009-10 i.e. Rs.1.54/kWh excluding transmission charges of 20.5 paise/unit and SLDC charges 0.5 paise/unit approximately.
 - ii) OPTCL transmission charges of 20.5 paise/unit is saved to WESCO for the quantum of power supplied by VSEL to WESCO.
 - iii) In addition to the above, there will be saving in EHT transmission loss on the quantum of power purchased and saving in drawal of power from state power pool.

4. Regarding the payment mechanism by WESCO to VSEL, WESCO has stated that at present it is meeting its Bulk Supply bills of GRIDCO and transmission charges bills of OPTCL through an Escrow mechanism. As per the order of the Commission dt.29.05.09 in Case No.63/09 regarding payment of bill amount by WESCO to M/s. Aryan Ispat and Power Pvt. Ltd., GRIDCO shall relax Escrow after full adjustment of the transmission charges of OPTCL and current bulk supply cost of power (current BSP) of GRIDCO to WESCO. The petitioner – WESCO has submitted that on similar lines, Escrow may be relaxed for payment of monthly bill of VSEL by WESCO from Escrow Account. Accordingly, WESCO has made the following prayer:
- (i) To permit WESCO to purchase upto 5 MW surplus power available from CGP of VSEL and allow the cost as a pass through in the Revenue Requirement of WESCO in FY 2010.
 - (ii) To relax Escrow and allow WESCO to make payment of monthly bill raised by VSEL from Escrow account.
 - (iii) Issue direction to SLDC to facilitate such process.
5. The ground taken by GRIDCO and State Govt. in their counter are almost the same. Their objections can be summarized as under:
- (i) Due to acute power shortage in the State, the State Government have issued direction in letter .No. 4648- 4668 dated 22.04.09 and No. 7098 dt. 04.07.2009 under Section-11 of the Electricity Act, 2003 to all CGPs to optimise their generation and inject all the surplus power to the State in public interest. The conduct of VSEL to sell its surplus power to the WESCO is therefore against such directions of the State Government issued under Section -11 of the Act, 2003 and against public interest.
 - (ii) GRIDCO has been notified as the “State Designated Entity” vide Government Resolution dated 18.8.2006 for execution of Power Purchase Agreements with the developers generating energy like hydro power, wind power, power from agriculture waste etc. along with thermal power. The said Resolution of the State Government supports a Single Buyer Model

approved by the Commission in their tariff orders issued from time to time. GRIDCO is, therefore, mandated by the Government and OERC to procure power from all sources including CGPs to meet the demand of the State.

- (iii) It is worthwhile to mention that while the functioning of the DISCOM leaves much to be achieved and they are unable to pay adequate attention to the vital aspects of their core business of distribution like reduction of the T&D and AT&C losses, collection efficiency and consumer service, indulging in direct purchase of power against the policy of the State is highly objectionable and not intended to serve the public interest.
- (iv) The Commission is aware of the fact that GRIDCO has to procure costly power from various sources to tide over the power crises prevailing from mid June 2009 till the on set of monsoon and in that process has incurred huge losses because the said costly power has been supplied to the DISCOMs at much lower rate fixed by the Commissioner in the tariff order. The cheaper power going to be purchased by WESCO should be made available to GRIDCO in accordance with the policy of the Government. The underlying intention of the Government in the Resolution dt.18.8.2006 is that GRIDCO will purchase both costly and cheap power, so that loss accrued on purchase of costly power can be compensated by purchase of cheap power.
- (v) It is also humbly submitted that the confederation of CGPs has always demanded to increase the rate per KWH generated by the CGPs. Considering the same, Hon'ble Commission had revised the rate during February, 2009. The circumstance under which this particular CGP is willing to supply power to WESCO at half the rate fixed by the Hon'ble Commission appears to be contradictory to the decision of the Hon'ble Commission. It also appears to be an unholy deal between WESCO and VSEL.
- (vi) In case the price quoted by VSEL to sell power to WESCO is accepted by Hon'ble Commission, the interim order dated 28.02.2009 of the Hon'ble Commission effective till 30.6.2009 may have to be reviewed and a

uniform rate has to be fixed after hearing all the parties for sale of surplus power in the State and the cost should be at par with what has now been offered by VESL to WESCO.

- (vii) The application of WESCO for purchase power from VSEL is against Govt. policy, the interest of the consumers and runs contrary to the price fixed by the Hon'ble Commission after due deliberation.
 - (viii) If WESCO is allowed to procure power from VSEL it will open a floodgate for other to follow suit which will ultimately be detrimental to the interest of GRIDCO and to the interest of the State.
 - (ix) VSEL may be directed to sell its entire surplus power to GRIDCO as per the policy of the Government issued vide resolution dt.18.8.2006 and directions issued in letter No.4648 - 4668 dt.22.4.2009 and No.7098 dt.04.7.2009 under Section 11 of the Electricity Act, 2003.
6. In addition to that indicated in para-5, the additional submissions of GRIDCO which have not been covered under the submissions of the State Govt. are as follows:
- (i) In the ARR of 2009-10, it has already been taken care of regarding the procurement of CGP beyond State requirement of 19719.38 MU for trading purpose. In case WESCO buys from the said CGP, which is not covered as a source from which power is to be procured, the requirement of WESCO to be drawn from GRIDCO should be reduced to that extent.
 - (ii) Other CGPs like M/s. Mahavir Ferro Alloys Ltd. & M/s. SMC Power Ltd. are also selling their surplus power to GRIDCO by injecting the same at 33 KV voltage level i.e. at the door step of WESCO for which GRIDCO the deemed buyer is paying the CGPs at the rate of Rs.3.00/kWh as per the interim order of OERC dt.28.02.2009 w.e.f. 01.03.2009 whereas selling the same to WESCO at a lower rate of Rs.1.50/kWh by VSEL does not appear to be rational.
 - (iii) The connectivity of the CGP of VSEL with OPTCL system is under consideration of OPTCL. WESCO, while describing the arrangement to be

advantageous, has only considered the saving in its power purchase cost, without looking at the whole system. It has stated that Commission has passed interim order in the matter of CGP pricing on 28.02.2009 and fixed the price at Rs.3.00/kWh. So, VSEL's entering into an agreement with WESCO for supplying power at the rate of Rs.1.50/kWh seems to be a contradiction to the said interim order of OERC.

- (iv) Similar case in the matter of M/s. SMC Vs. OPTCL is pending at OERC.
- (v) The proposed modification in the payment security mechanism is subject to detail discussion on the matter between WESCO and GRIDCO.
- (vi) The agreement dt.09.6.2009 between WESCO & VSEL appears to disturb the present set up of arrangement to harness surplus power from CGPs by GRIDCO by giving a very wrong signal to the industries.

7. Accordingly, GRIDCO has prayed as under:

- (a) As GRIDCO is the sole procurer of power under the Single Buyer Model prevalent in the state of Orissa, WESCO may not be allowed to procure power directly from the CGP.
- (b) The CGP of VSEL is not giving right information about the price of its surplus power to the procurers, the respondent apprehends some hidden agenda behind such arrangement which may not be healthy under the prevailing procedures followed to harness surplus power from CGPs as per the OERC Interim order. Thus, the PPA dt.09.6.2009 executed by CGP of VSEL with WESCO may be rejected.
- (c) M/s. VSEL has agreed to sale its surplus power @ Rs.1.50/kWh for the State consumption as per the PPA with WESCO, thus they may be directed to sale its surplus power to GRIDCO at the same rate of Rs.1.50/kWh for State consumption.

8. OPTCL in its rejoinder, among other things, has submitted as under:

- (a) The Agreement between WESCO & VSEL for energy transaction should have been executed with prior intimation to OPTCL. VSEL proposes to inject 5 MW power to the 33 KV network of WESCO from its 28 MW

existing CGP. However, in the system study report of the firm, no CGP has been considered.

- (b) Permission has been accorded to VSEL for construction of a common 132 KV Switching Station in joint venture mode with M/s. Aryan Ispat & Power Ltd. at Rengali, Sambalpur by LILO arrangement of 132 KV Sambalpur-Rajgangpur line. The maximum power drawal by VSEL at 132 KV shall be 5 MVA at 132 KV.
- (c) WESCO has submitted that generator of VSEL is connected with its 33 KV system. Such synchronization has been done without the knowledge of OPTCL (the STU). The petitioner WESCO has not mentioned the name of the grid sub-station of OPTCL and the emanating 33 KV feeder connecting to WESCO's 33/11 KV substation through which the injection has been proposed. Hence, WESCO may be directed to provide the single line diagram of its power distribution network in the district of Sambalpur vis-à-vis the connecting arrangements with VSEL and the system study report for such connectivity. After studying the drawings, OPTCL can have further views on it.
- (d) The system study report is mandatory in view of the CEA (Technical Standards for connectivity to Grid) Regulation, 2007.
- (e) WESCO has submitted that it would save 20.5 p/u by purchasing power from VSEL as they are not liable to pay transmission charge to OPTCL for the quantum of power supplied by VSEL. In reply thereto, OPTCL has submitted that in an integrated system, the surplus power injected by VSEL through WESCO's 33 KV network cannot be viewed in isolation of OPTCL's network and technically also not possible. In case the CGP of VSEL fails to deliver power (whatever may be the reason), an equal quantum of power has to be drawn through OPTCL's network to meet the demand of WESCO for which OPTCL needs to keep adequate capacity in reserve to transmit the additional power. As long as CGP of VSEL continues delivering power, OPTCL's reserve capacity remains stranded. Further, the transmission tariff is not being fixed on the basis of distance and direction of power flow but on postage stamp method. In an integrated

complex network, the direction of power flow cannot be ascertained. Hence, WESCO is liable to pay the transmission charge of 20.5 p/u for the quantum of surplus energy purchased from VSEL.

- (f) In case, WESCO draws power from the VSEL, it may be an advantage to WESCO but if by such purchase from VSEL and other similar sources, WESCO's total drawal from state power pool falls below the approved 6430 MU for FY 2009-10. OPTCL revenue receipt would be affected due to less recovery from WESCO in case WESCO's contention of not paying any transmission charge to OPTCL is allowed.
 - (g) Accordingly, OPTCL has prayed that the prayer of the petitioner should not be granted by the Commission.
9. The respondent SLDC in its reply has stated that the CGP of VSEL is connected to 33 KV network of WESCO. The location and the name of the Grid sub-station from where the 33 KV feeder has emanated is not mentioned. It has been further stated that the connectivity with the State grid and Distribution network shall be allowed by OPTCL and the concerned Distribution Licensee after examining various aspects mentioned in the "Connectivity Conditions". As such, as an independent operator, SLDC has no comments to offer in this regard. However, in case the connectivity is established by the VSEL with the distribution network of WESCO after due approval of OPTCL considering the provisions of connectivity conditions, the transaction of power between the CGP and WESCO will be made as per the provisions of the Act and Regulations.
10. WESCO, the petitioner has submitted its reply on the points raised by the State Govt., GRIDCO, OPTCL and SLDC. The Commission has carefully gone through the submissions made by the respondents as well as the reply filed by WESCO on the submissions of the respondents. Based on the submissions made by the petitioner - WESCO and all the respondents, the following issues need to be addressed.

ISSUES:

11. Whether the sale of its surplus power by VSEL to WESCO at Rs.1.50/unit for consumption in the state is against the directions of the State Govt. issued under Sec.11 of the Electricity Act, 2003 and against public interest :-
 - (i) The State Govt. in Energy Dept. Vide their letter No.4648-4668 dated 22.4.2009 and 7098 dt.04.7.2009 has directed that keeping in view the exigency and extraordinary circumstances, the Govt. do hereby direct all the Captive Generating Plants u/s 11 of the Electricity Act, 2003 to generate power at full exportable capacity by optimizing their power generation and inject power so generated to the State Grid after their captive consumption to enable the State Government to tide over the situation.
 - (ii) In the instant case, VSEL after utilizing the power from the captive generating plant for its own use has now offered to sell the surplus of 5 MW power to WESCO, which would be utilized for the consumption by the consumers in the State only. The power supplied to WESCO for consumption in the State by VSEL is no way going outside the State and would be utilized within the State only. Hence, when the power is being utilized in the State to meet the State's requirement, a mere change of the commercial arrangement of supplying power to WESCO directly for consumption of consumers in the State, instead of supplying to GRIDCO, which would again supply to WESCO for consumption in the State, is in no way against the direction of the State Govt. issued u/s 11 of the Act, 2003. The power is not going outside the state consequently the consumers of the state are not deprived of such power. When WESCO would purchase power at a rate of Rs.1.50/unit instead of Rs.1.54/unit (excluding transmission charges of 20.50 p/u) from GRIDCO and there is no change in the rate of tariff payable by the consumers in WESCO area or in the state, the arrangement in no way is against the public interest. Rather WESCO, instead of purchasing power through GRIDCO at Rs.1.54/kWh and again paying transmission charges of 20.50 paise/unit to OPTCL will

now purchase 5 MW power at Rs.1.50/unit and, as such, there would be less burden on its financial requirement. As a result it would be in a better position to allocate fund for operation and maintenance of lines and substations, in order to improve the quality of supply. The arrangement will also be beneficial to GRIDCO that it is relived from the burden of power procurement. This will be rather in the better interest of the consumers and not against any public interest.

- (iii) Hence, the arrangement suggested by WESCO is not against the directions issued by the State Govt. under Section 11 of the Electricity Act, 2003 and not against public interest.

12. Whether purchase of power by WESCO at Rs.1.50/unit instead of purchasing power at a rate of Rs.1.54/unit from GRIDCO is violating the directives and policies of the State Govt. notifying GRIDCO as “State Designated Entity” vide Resolution No.7997 dt.17.08.2006 read with Resolution No.6603 dt.03.06.2005 of Energy Department :-

- (i) The State Govt. in Resolution No.7997 dt.17.08.06 read with Resolution No.6603 dt.03.06.05 stipulates that in order to facilitate sale of power to the State Grid, developers (hydel/bio-mass sources) generating renewable energy in the State should submit their proposal for sale of power to the EIC, Electricity-cum-PCEI, Orissa, who will examine the same and recommend the State Govt. for purchase of power. The proposal will be endorsed to a State designated entity for execution of power purchase agreement with the Developer of the project. GRIDCO will be the State designated entity for execution of Power Purchase Agreement with developers generating energy like hydro power, wind power, power from agricultural waste etc. along with thermal power. Thus, this resolution stipulates that in respect of power developers proposing to develop renewable energy from different sources and also the thermal power developers will have to sign an agreement with GRIDCO for supply of such power. These stipulations refer to generation of renewable energy as well as generation of thermal power by developers. The industries which have installed CGPs for their own consumption and in a position to sell

the surplus power after meeting their own consumption do not categorically come under the purview of the resolution dt.17.8.2006 of the State Govt. The agreement of VSEL with WESCO to supply surplus power of 5 MW from its captive generating plant, in no way affects the status of GRIDCO as State designated entity to purchase power from the developers of renewable energy and thermal power by the developers.

- (ii) Section 62(1)(a) of the Electricity Act, 2003 stipulates supply of electricity by generating company to a distribution licensee and, as such, the agreement of VSEL with WESCO for supply of 5 MW power for consumption by the consumers in the State is in accordance with the provisions of the Electricity Act, 2003. Merely because GRIDCO has been declared as a State designated entity for execution of PPAs with developers generating energy like hydro power, wind power, power from agricultural waste etc. along with thermal power, the provision of the Electricity Act cannot be overlooked or suspended. The supply of power directly by VSEL to WESCO for consumption by the consumers within the State without being routed through GRIDCO does not affect GRIDCO as a State designated entity for execution of PPAs with developers nor does it affect the existing agreements with generating companies or with the future generating companies. The commercial arrangement by VSEL for sell of surplus power of 5 MW to WESCO for the consumers within the State does not materially affect the policy resolution of the State Govt. declaring GRIDCO as a State designated entity to sign PPA with the developers of the renewable energy as well as thermal power.
 - (iii) Hence, the proposed sale of 5 MW by VSEL to WESCO without being routed through GRIDCO does not in anyway violate the policies of the State Govt.
13. Whether direct purchase of power by the DISCOMs is highly objectionable and not intended to serve the public interest?
- (i) In this connection, it would be noted that sale of surplus power by VSEL to WESCO is an integral part of the policy provisions and guidelines which are covered under National Electricity Policy vide clause 5.2.26,

National Tariff Policy vide clause 5.1 & 6.3. The relevant portion is extracted below for ready reference:-

(a) National Electricity Policy

*Clause 5.2.26 stipulates that, “A large number of captive and standby generating stations in India have surplus capacity that could be supplied to grid continuously or during certain time period. These plants offer a sizeable and potentially competitive capacity that could be harnessed for meeting demand for power. Under the Act captive generators have access to licensees and would get access to consumers who are allowed Open Access. Grid interconnection for captive generators shall be facilitated as per Section 30 of the Act. This should be done on priority basis to enable captive generation to become available as distributed generation along the grid. Towards this end non-conventional energy sources including co-generation could also play a role. **Appropriate commercial arrangements would need to be instituted between licensees and the captive generators for harnessing of spare capacity energy from captive power plants. The appropriate Regulatory Commission shall exercise regulatory oversight on such commercial arrangement between captive generators and licensees and determine tariff when a licensee is the off-taker of power from captive plant.**”*

(b) National Tariff Policy

(i) Clause 5.1 stipulates that, “All future requirements of power should be procured competitively by distribution licensees except in case of expansion of existing projects or where there is a State controlled /owned company as an identified developer and where regulators will need to resort to tariff determination based on norms provided that expansion of generating capacity by private developers for this purpose would be restricted to one time addition of not more than 50% of the existing capacity.”

(ii) Clause 6.3 stipulates that “Harnessing captive generation: Captive generation is an important means to making competitive power available. Appropriate commission should create an enabling environment that encourages captive power plants to be connected to the grid. Such captive plants could inject surplus power into the grid subject to the same regulation as applicable to generating companies. Firm supplies may be bought from captive plants by distribution licensees using the guidelines issued by the Central Government under section 63 of the Act. The price should be differentiated for peak and off-peak supply and the tariff should include variable cost of generation at actual levels and reasonable compensation for capacity charges. Alternatively a frequency based real time mechanism can be used and the captive generators can be allowed to inject into the grid under the ABT mechanism. Wheeling charges and other terms and condition for implementation should be determined in advance by the respective State Commission, duly ensuring that the charges are reasonable and fair. Grid connected captive plants should

also supply power to non-captive users connected to the grid through available transmission facilities based on negotiated tariff. Such sales would be subject to relevant regulations for Open Access.”

- (ii) Thus, the National Electricity Policy as well as National Tariff Policy clearly stipulates that commercial arrangement need to be made between the licensee and Captive generators. Further, the provision of Sec.62(1)(a) of the Electricity Act, 2003 stipulates supply of electricity by generating company to a distribution licensee. Thus, the supply of power by VSEL to WESCO for consumption by consumers is very much in accordance with policy and public interest. WESCO is making considerable savings by way of the purchase price and also savings on transmission charges and no additional infrastructure is required by WESCO to procure this power as this could be obtained through their existing 33 KV lines. Rather the arrangement contemplated by WESCO is in accordance with the provisions of the Act, the National Electricity Policy and National Tariff Policy. The arrangement proposed with VSEL will not, in any way affect the performance of WESCO rather there is likelihood of financial benefit to WESCO which is expected to enable WESCO to serve the consumer better.
 - (iii) Hence, no additional work is involved to be undertaken by WESCO which is objectionable and rather it is intended to serve the consumers better.
14. Whether supply of power by VSEL to WESCO at Rs.1.50/unit in stead of supply to GRIDCO at Rs.3.00/unit is going to affect the financial position of GRIDCO :-
- (i) GRIDCO has submitted that it has procured costly power from various sources to tide over the power crises prevailing from mid June 2009 till the on set of monsoon and in that process has incurred huge losses because the said costly power has been supplied to the DISCOMs at much lower rate fixed by the Commission in the tariff order. The cheaper power going to be purchased by WESCO should be made available to GRIDCO in accordance with the policy of the Government. It has been stated by

GRIDCO that the underlying intention of the Government in the Resolution dt.18.8.2006, is that GRIDCO will purchase both costly and cheap power, so that loss accrued on purchase of costly power can be compensated by purchase of cheap power.

- (ii) As per the ARR approved for 2009-10, the average rate of power purchase by GRIDCO from different sources has been estimated at Rs. 148.27 paise/unit, whereas the average Bulk Supply Price (including transmission charges) for supply to DISCOMs by GRIDCO has been approved at Rs.143.20 paise/unit. Thus, on the average, a gap of 5.07 paise/unit has been left in the account of GRIDCO which has been supposed to be met by the earning from trading/through U.I. arrangement of the surplus power beyond the power procured for consumption by the DISCOMs in the State. Coming to the instant case for purchase of power by WESCO directly from VSEL, the Bulk Supply Price by GRIDCO to WESCO is Rs.1.54/unit. If GRIDCO purchase 5 MW surplus power from VSEL at Rs.3.00/KW, it will supply to WESCO at Rs.1.54. In that case the gap per unit is 1.46. If WESCO purchases 5 MW power from VSEL, that quantum of power would not be required to be supplied by GRIDCO to WESCO. In terms of energy, the 5 MW power per month would 3.65 MU. While WESCO would have the advantage of saving of 24.50 paise/unit (4 paise towards energy charges, 20.50 paise for transmission charges), GRIDCO would not be required to incur a loss of Rs.1.46 paise/unit (Rs.3.00 – Rs.1.54). Thus, this arrangement gives advantages to both WESCO and GRIDCO. The power supplied by VSEL to WESCO would be accounted as a part of the 6430 MU approved for WESCO in the year 2009-10. Accordingly, GRIDCO's supply of power to WESCO would be reduced by equivalent amount from its Bulk supply quantum of 6430 MU to WESCO approved by the Commission for 2009-10. Since the supply by VSEL to WESCO is to be accounted for within the approved quantum for WESCO, there is no need for GRIDCO for purchasing additional power at a higher cost for domestic consumption. Merely on the ground of direct supply by VSEL to WESCO for consumption of the consumers in the

State, the total purchase of power by GRIDCO meant for supply to the DISCOMs is not going to be increased, any increase may be on account of other reasons. GRIDCO would not be affected financially by this arrangement, rather by not purchasing equivalent amount of energy at Rs.3.00/unit and supplying to WESCO at Rs.1.54/unit. GRIDCO's loss would be reduced to that extent and since the overall approved quantum of power for WESCO is not going to increase merely on this arrangement only, the possibility of GRIDCO trading surplus power is not affected at all. If at all to be affected, it is to be affected by the overall availability of power to GRIDCO in the State as a whole including in the central generating stations but not merely by the commercial arrangement stipulated by WESCO for direct supply by VSEL to WESCO within its approved quantum instead of being routed through GRIDCO.

- (iii) Hence, GRIDCO is not required to purchase costly power to meet the requirement of WESCO or all the DISCOMs to meet the demands of the consumers in the state merely on the ground that cheaper power is being directly sourced by WESCO instead of the same being routed through GRIDCO, that too at a higher rate because on this ground only the requirement of DISCOMs is not going to increase beyond the quantum approved by the Commission for 2009-10. It may increase on any other ground but not due to this commercial arrangement proposed by WESCO with VSEL.

15. Whether supply of power by VSEL to WESCO at Rs.1.50/unit instead of supplying power at Rs.3.00 to GRIDCO is contradictory to the decision of the Hon'ble Commission in their interim order dt.28.02.2009 and whether it is an unholy deal between WESCO and VSEL?

- (i) In case Nos. 6 to 20 of 2009, the Commission in their order dt.28.02.2009 vide para 16 (i), (ii) & (iii) have observed and directed as under:

“ i) *Keeping in view the number of CGPs in the State and their large variations in size/capacity and usage of fuel it is difficult for both CGPs and GRIDCO to adopt the competitive bidding route. The verification of costs and determination of prices, given the manner*

in which costs are allocated as between the main product and captive power generated, is going to be a cumbersome and long drawn affair. Considering the incongruent nature of different CGPs and Co-generating plants, the Commission examined and decided to adopt a simple approach and mechanism by which GRIDCO can procure power from CGPs in and around a reference point of the highest generation cost, currently being procured by GRIDCO.

ii) *Because of the nature of generation by a CGP and captive generators with surplus power are at liberty of selling power, even for a short duration in the Power Exchange, it is not necessary in the interim to have a dividing line between short-term and long-term power. Power that can be scheduled on a day ahead basis can be absorbed in the system and can be programmed for full procurement by GRIDCO. CGPs/Co-generating plants who are capable of giving day ahead schedule should be, for the time being, treated as suppliers of firm power. Power injected by the CGPs/Co-generating plants without giving day ahead schedule would be treated as injectors of inadvertent power.*

iii) *For supply of power by the CGPs/Co-generating plants to GRIDCO for sale to DISTCOs meant for consumption by the consumers in the State, the procurement price of firm power from the CGPs as indicated at (ii) above will be Rs.3.00/KWh with effect from 01.3.2009. However, to encourage co-generation as is mandated under the Electricity Act, 2003 the power generated by co-gen. plants e.g. sponge-iron plants such as NINL, Arati Steel, Tata Sponge, etc. may be given an incentive and shall be paid @ Rs.3.10 per/KWh with effect from 01.3.2009. The procurement price of Rs.3.00/KWh for all power meant for sale to Discoms is considered just and reasonable keeping in view the current cost of Rs.2.76/KWh of the highest cost of generation from a TPS in the Eastern Region. A premium of about 10% (ten percent) on this price is considered appropriate as a stimulous to the harnessing of bottled up capacity with the CGPs.”*

(ii) Thus, it may be seen that the price fixed by the Commission in their interim order 28.02.2009 which has been further extended upto 31.3.2010 in their review Order dated 27.6.2009 in Case No.59 of 2009 is the upper limit upto which the GRIDCO can pay to the CGPs. There is no bar if a CGP is willing to supply at a rate lower than the upper limit of provisional price fixed by the Commission for the year 2009-10. Keeping in view the circumstances and the cost, if CGP offers a price lower than Rs.3.00, there is no difficulty for the GRIDCO or the DISCOMs to purchase at such

offered price. The CGP of VSEL is willing to supply at Rs.1.50/unit at 33 KV line directly to WESCO without undertaking any additional infrastructure work with regard to connectivity etc. whereas in case of supply to GRIDCO, it has been required to incur additional expenditure by way of construction of common 132 KV Switching Station in joint-venture mode with Aryan Ispat & Power Ltd. at Rengali, Sambalpur by LILO arrangement of 132 KV Sambalpur-Rajgangpur line. The maximum power drawal by VSEL at 132 KV shall be 5 MVA at 132 KV. Since for injecting power at 33 KV network of WESCO, VSEL is not required to incur any additional expenditure and whereas as per the condition of OPTCL, VSEL is to incur additional expenditure for construction of 132 KV Switching Station in joint venture mode. VSEL is agreeable and accordingly has signed PPA with WESCO to supply power at Rs.1.50/unit. If VSEL can supply power to GRIDCO at Rs.1.50/unit as deemed purchaser with the existing connectivity at 33 KV, there is no difficulty for accepting such arrangement, but there is no such proposal submitted to the Commission for approval. Obviously, this is not possible on the part of VSEL because of conditionality of 132 KV connectivity involving additional expenditure required to be incurred and time consuming.

- (iii) Sec.66 provides for development of a market in power. Markets mean competitive prices between Sellers and Buyers. Accordingly, there is no contradiction in the decision of the Commission nor is there anything on record to show an unholy deal between VSEL & WESCO. VSEL is willing to supply surplus power to WESCO directly at the rate of Rs.1.50/unit without incurring any additional expenditure and is not willing to supply to GRIDCO at the same rate by incurring additional expenditure by way of construction of 132 KV Switching Station in a joint venture mode with M/s. Aryan Steel & Power Ltd. This does not on the very face of it, make it an unholy deal. GRIDCO's assumption is not only farfetched but also absolutely baseless.

- (iv) Hence, supply of power by VSEL to WESCO at Rs.1.50/unit at its 33 kV line does not violate the decision of the Commission in their interim order dated 28.02.09 on CGP pricing.
16. When other CGPs like M/s. Mahavir Ferro Alloys Ltd. & M/s. SMC Power Ltd. are selling their surplus power to GRIDCO by injecting the same at 33 KV voltage level i.e. at the door step of WESCO for which GRIDCO is paying the CGPs at the rate of Rs.3.00/kWh, the selling of surplus power by VSEL to WESCO at a lower rate of Rs.1.50/unit does not appear to be rational.
- As explained, in the foregoing paras Commission has no difficulty in accepting any commercial arrangement of GRIDCO with the petitioner at a rate within the ceiling rate for purchase power at 33 KV. There is no such proposal at present. During the hearing, it was informed that OPTCL, the TRANSCO (sister organization) has made a condition of connectivity for injection and/or drawl of power at 132 KV, for which the petitioner has to draw 33 KV line and establish a 132/33 KV S/S in a JV mode with another company with LILO arrangement of existing 132 KV lines of OPTCL. Apart from the heavy capital expenditure involved for such connectivity, the proposal is time consuming; whereas CGP is incapable of injecting power as on date. Thus such a proposal becomes a non-starter and not in the commercial interest of the petitioner.
17. The agreement dt.09.6.2009 between WESCO and VSEL appears to disturb the present set up of arrangement to harness surplus power from CGPs by GRIDCO by giving a very wrong signal to the industries.
- (i) This need not be answered nor necessarily dealt with in view of the detailed discussions made in para 15 & 16. When a seller wants to sell power at lower price to a DISCOM, it is rather strange that this arrangement should be questioned as objectionable and unholy. VSEL is selling at a lower price to WESCO since additional expenditure is to be incurred by VSEL for supplying power through GRIDCO. It is obvious that VSEL is willing to sell power to WESCO because it does not have to incur any additional expenditure. The connectivity of the CGP of VSEL

with OPTCL is still under consideration with OPTCL. Since it has not yet been finalized by OPTCL and there is a bottled up power with VSEL from its CGP and since it will take time and additional expenditure before GRIDCO can purchase power, it is but prudent and proper that power is injected and sold at a lower rate of Rs.1.50/unit at the 33 KV S/S of WESCO without further waste of time and without incurring any additional expenditure. This is beneficial from the business point of view of the industry. Instead of burdening industry with additional costs for sale of surplus power from their CGPs, GRIDCO should encourage harnessing of surplus power of CGP even though DISCOMs and not look at its own narrow interests at the cost of all other stakeholders of the sector.

- (ii) Hence, the arrangement between VSEL and WESCO is not giving any wrong signal to the industries.

18. Whether OPTCL's revenue would be affected by supply of power by VSEL to WESCO in its 33 KV network?

Since the supply of surplus power by VSEL to WESCO is at its 33 KV network, WESCO is not required to pay transmission charges of 20.50 p/u to OPTCL. Therefore, the contention that to that extent, OPTCL's revenue may be affected if power is not purchased by GRIDCO and not supplied to DISCOM. This cannot be a reason for neither injecting the available surplus power at the 33 KV level nor should it be considered in isolation of all the revenues derived by OPTCL. For example, in 2007-08, the Commission had approved transmission charges for transmitting 16963 MU whereas OPTCL got revenue on transmission of 17945 MU. Similarly, for 2008-09, Commission had approved transmission charges of 17930 MU by OPTCL network, actually OPTCL got revenue on transmitting 19324 MU. For 2009-10, the Commission has approved transmission of 19231 MU through OPTCL network. If there is short-fall from a particular supplier, there may be excess in other cases. This would be considered in its entirety in the trueing up exercise at the end of 2009-10. Further, as stated by WESCO, the said licensee is paying full fixed charges for under utilized lines and substations. Full

fixed charges of all the lines and substations has already been taken in the tariff of OPTCL for 2009-10. Hence the issue of keeping adequate capacity reserved by OPTCL for additional power requirement by DISCOM (WESCO) does not arise in such a type of tariff mechanism. The power injection arrangement entered into between M/s AIPPL and WESCO which was approved by the Commission in their order dt.29.5.2009 in case No.63/09 has worked smoothly and has not caused any prejudice to OPTCL technically, financially or otherwise.

19. The other submission of OPTCL includes the agreement between WESCO & VSEL for energy transaction executed without prior intimation to OPTCL. The system study report has not been made. VSEL is connected with 33 KV S/S of WESCO without the knowledge of OPTCL and WESCO has not mentioned the name of Grid S/S and emanating 33 KV feeder connecting to WESCO's 33/11 KV S/S through which the injection has been proposed etc. :-

In this connection, WESCO has submitted that only after approval of the Commission for procurement of power from VSEL, action will be taken for synchronization of CGP with the existing 33 KV network observing all formalities. Earlier M/s. SMC, M/s. Mahavir Ferro Alloys and M/s. Rathi Steels have synchronized their CGP with the 33 KV network of WESCO without any problem or any difficulties.

20. **Payment Security Mechanism**

GRIDCO has stated that the proposed modification of payment of security mechanism is subject to the detail discussion between WESCO & GRIDCO.

In this connection, Commission in their order dt.29.5.2009 in Case No.63/09 while approving similar arrangement for AIPPL by WESCO has dealt in detail in para 11 and 13 thereof.

In this connection, it may be noted that the judgment of the Hon'ble High Court of Bombay in Writ petition No.1205 of 2001 in Dabhol Power Company Vrs. Maharashtra State Electricity Board and others where in the Hon'ble High Court

has held in its judgment dated 5th March, 2002 that the terms of a contract such as Escrow and LC etc. are matters directly arising out of tariff issues and therefore, this can also be regulated by the Commission established under the Electricity Regulatory Commission Act, 1998. OERC is also exercising power akin to the power exercised by the Regulatory Commissions established under the Electricity Regulatory Commission Act, 1998 read with Orissa Electricity Reform Act, 1995 and Electricity Act, 2003. Accordingly, the payment mechanism is to be guided as per the order dt.19.5.09 in case No.63/09 of the Commission vide para 13.

21. Thus, after going through the submissions made by the petitioner WESCO, the respondents namely, State Govt., GRIDCO, OPTCL, SLDC and VSEL and after examining the broad issues analysed in the preceding paragraphs from 11 to 20, the Commission approves the prayer of the petitioner WESCO for temporary procurement of power of 5 MW from CGP of VSEL at Rs.1.50 per unit, since such procurement is technically feasible as there is an existing 33 kV connectivity of the said CGP with WESCO's network. Further, it will take quite sometime to take up the logistic steps to connect to 132 kV network of OPTCL and till that time the surplus power of CGP to VSEL will remain unutilized when the State is in need of additional power from all available sources.
22. The supply of power by VSEL to WESCO @ Rs.1.50/kWh for consumption inside the state will be guided by the following terms and conditions.
 - (i) This arrangement of purchase of surplus power by WESCO from VSEL at 33 kV will continue till the connectivity with OPTCL system at 132 kV is established.
 - (ii) M/s. VSEL will raise the bill against WESCO for the amount of energy sold at Rs.1.50 paise/KWh. A copy of the bill raised on WESCO shall be simultaneously submitted to GRIDCO which on receipt of the same will authorize WESCO to make payment of the amount to VSEL by relaxing the escrow account to that extent.

- (iii) The authorization by GRIDCO for payment by WESCO to VSEL from Escrow account will be made after full adjustment of the transmission charges of OPTCL, and current Bulk supply cost of power (current BSP) of GRIDCO to WESCO. Thereafter other payment will follow as per the priority indicated in para 9 of the letter No.Dir(T)-342/08/995 dated 06.5.2009 of OERC, the relevant extract of the said para is reproduced below:-

“GRIDCO would appropriate and release fund to the above companies each month out of the monthly collection deposited in the Escrow account in order of priority as indicated below:-

(A) Out of current collection in each month

(Rs. in Crore)

	WESCO	NESCO	SOUTHCO
(i) <i>Current BST dues in full</i>	<i>Full</i>	<i>Full</i>	<i>Full</i>
(ii) <i>50% of the average monthly obligation of arrear BST approved for payment in 2009-10.</i>	<i>NIL</i>	<i>NIL</i>	<i>0.79 (19.00/12)/2</i>
(iii) <i>Current monthly employee cost including terminal benefits</i>	<i>11.57</i>	<i>9.52</i>	<i>8.21</i>
(iv) <i>Monthly R & M expenditure</i>	<i>2.25</i>	<i>2.32</i>	<i>1.72</i>
(v) <i>Balance amount towards meeting A&G expenditure including licensee fees</i>			
(vi) <i>The balance amount towards arrear BST dues approved for payment during 2009-10</i>			

(B) Out of the monthly arrear collected and deposited in the Escrow account

- (i) *50% of the arrear collected be adjusted towards balance arrear BST dues of GRIDCO approved for 2009-10 and other arrear BST dues not included in the ARR for the FY 2009-10.*
- (ii) *Balance 50% towards arrear salary/wages of the employees.*
- (iii) *While raising bill towards the monthly bulk supply of power by GRIDCO to WESCO, the power supplied by M/s AIPPL directly to WESCO at 33 KV connectivity of the said CGP with WESCO, of course shall not be included in such bill.”*

23. The present arrangement is done only to utilize the ideal capacity of CGP of VSEL and would be reviewed as and when required, even before 31.3.2010.

24. Accordingly, the matter is disposed of.

Sd/-
(B.K. Misra)
Member

Sd/-
(K. C. Badu)
Member

Sd/-
(B.K. Das)
Chairperson