

\*\*\*\*\*

Present :

**Case No.159/2010**

Vrs.

**In the matter of:**

For the petitioner:

For the respondent

**Date of hearing : 22.06.2011**

**Date of Order : 11.07.2011**

## ORDER

Mr. R. P. Mahapatra submitted that the present Case No.159 of 2010 is a petition to review/recall the order passed in Case No.34 of 2010 since the same was passed without hearing the submissions of the JSPL even though the company was impleaded as a party. The Commission enquired about the main objections with respect to the order passed on the merit of the Case No.34 of 2010 to which Mr. Mahapatra submitted that the order passed in clause no. 31(1) provided that the price of power to be purchased by WESCO should be within Bulk Supply Price fixed by the Commission from time to time. Mr. Mahapatra stated that the price of surplus power from CGP Unit should not be limited within BSP of a particular DISCOM and rather be fixed as per the cost of generation. Mr. B. K. Tulsyan of JSPL submitted to the Bench that the order passed in Clause No. 31 (1) of Case No.34 of 2010 was being unfairly interpreted by WESCO to justify their arbitrary fixation of rate of power within BSP. Mr. Tulsyan further brought to the notice of the Commission

Clause 7 of the PPA dated 21<sup>st</sup> July, 2010 signed by the petitioner with WESCO provided that “JSPL will sell round the clock surplus power to WESCO at delivery point either at the rate of Rs 1.50/ kwh (approved by the Hon’ble Commission vis a vis the BST rate of Rs 1.54 / kwh for WESCO prevalent for the year 2009-10 Tariff Order) or any suitable rate that may be approved by the Hon’ble Commission” and the said PPA was also submitted to the Hon’ble Commission for their kind approval. Mr. Tulsyan further informed the bench that his Company had approached WESCO for suitable revision of the price of power in terms of PPA dated 21.07.2010 executed with them and the order of this Commission in Case No. 34 of 2010 and the request was rejected by WESCO vide their letter dated 23.03.2011 without assigning any reason.

2. Mr. Manas Das appearing for WESCO clarified that they have been paying Rs 1.50 /kwh to all CGPs and could not discriminate by paying higher price to one CGP.
3. The Commission in its last order dtd.20.05.2011 had observed that JSPL had applied for connectivity with OPTCL in addition to the present connectivity with DISCOM. The Commission had desired to have clarity on critical issues of metering, billing, scheduling and energy accounting in the case of dual connectivity. OPTCL in its written reply dtd.04.07.2011 submitted that JSPL has not applied for connectivity at 132 KV level with OPTCL network and also has no plan of doing so. Therefore, OPTCL currently has no views to offer on the critical issues raised by the Commission in its earlier order.
4. We have heard all the parties at length and also taken into consideration their written submissions into record.
5. It is to be noted that the Commission vide para 31(i) of their order dated 02.11.2010 in Case No.34 of 2010 have observed and directed as under:-

*“31. After going through the submission made by petitioner-WESCO, the respondent namely State Govt., GRIDCO, OPTCL, SLDC and JSPL and after examining the broad issues analysed in preceding paragraphs we accord in-principle approval of power purchase up to 15 MW from CGPs willing to sell surplus power*

*to WESCO. The arrangement will be carried out with following terms and conditions:-*

- (i) Price of power purchased by WESCO should be within the Bulk Supply Price fixed by the Commission from time to time for WESCO.*
- (ii) .....”*

The above direction of the Commission was based on the logic that the DISCOMs cannot purchase power from CGP or for that matter from any other sources at a rate higher than the BSP rate of purchase of power from GRIDCO approved by the Commission for the respective years. The rate is to be negotiated by WESCO and the supplier CGP etc., keeping in view the approved BSP for the relevant year as the upper limit. It depends purely on the terms and conditions entered into by the CGP/Supplier and the WESCO. If WESCO finds that power supply by a particular CGP is beneficial to it compared to the purchase through GRIDCO where it has to pay approved BSP to GRIDCO as well as transmission charges to OPTCL, it can enter into agreement or revise or modify the earlier agreement as may be mutually agreed to. For the purpose of this comparison, it is neither rational nor desirable to take the approved BSP of 154 paise/unit for WESCO for 2009-10 as the reference point while negotiating purchase of power during 2010-11 and 2011-12 where the approved BSP for WESCO is 194 paise/unit and 262 paise/unit respectively. Subject to this clarification, the relevant power purchase agreement between WESCO and the CGP may be governed at the rate at which WESCO would like to purchase the surplus power from the petitioner and any other CGPs upto 25 MW connected at 33/11 KV distribution network. For 2009-10 when the approved BSP for WESCO was 154 paise/unit, WESCO entered into an agreement to purchase power at 150 paise/unit. Going by the same logic, the purchase of surplus power from the petitioner CGP or any other CGP should be proportionately increased keeping the upper limit of the ceiling price of 194 paise/unit and 262 paise/unit i.e. say 189 paise/unit and 255 paise/unit for the FY 2010-11 and 2011-12 respectively.

6. If the present petitioner CGP or any other CGP finds that sale of their surplus power to WESCO or any other distribution company is not remunerative, they

can approach GRIDCO for purchase of such power by them with the terms and conditions stipulated by the Commission in their order dated 23.11.2010 in Case No.117 and 118 of 2010 which has also been adopted for the year 2011-12. In this connection it may be clarified that the ceiling price fixed by the Commission for the purchase of surplus power of GGP by GRIDCO from time to time is not based on the apportioned cost of generation but on the opportune cost at which GRIDCO otherwise would have purchased such power through UI or Power Exchange.

7. With the above observations the case is disposed of accordingly.

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

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

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