

Memorandum of Appeal Preferred under sub-section 1 and 2 of Section 111 of  
The Electricity Act 2003

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY  
AT NEW DELHI

APPELLATE JURISDICTION

APPEAL NO. 29 OF 2009

**In the Matter of :**

Western Electricity Supply Company of Orissa Ltd (WESCO)  
represented through the Chief Executive Officer,  
Corporate Office at Burla  
Dist Sambalpur

... Appellant

Versus

- I. Orissa Electricity Regulatory Commission  
Bidyut Niyamak Bhawan, Unit-VIII  
Bhubaneswar – 751012  
Orissa
- II. Grid Corporation of Orissa Ltd  
Janpath, Bhubaneswar  
Orissa
- III. Shri Jayadeva Mishra  
N-4/98, Nayapalli  
Bhubaneswar, Orissa
- IV. Orissa Consumers Association & FOCO  
Biswanath Lane, Cuttack
- V. Confederation of Indian Industry(CII)  
8, Forest Park, Bhubaneswar
- VI. Shri K.C.Mahapatra,  
Chairman, PDC,  
F/6,BJB Nagar,  
Bhubaneswar
- VII. Ferro Alloys Corporation Ltd  
GD-2/10, Chandrasekharapur  
Bhubaneswar-751023
- VIII. Mr Mangu Srinivas, AGM(Tech)  
Rawmet Ferros Industries Pvt Ltd  
2B, Fortune Towers, CSPur  
Bhubaneswar
- IX. Utkal Chamber of Commerce & Industry  
N/6, IRC Village, Nayapalli  
Bhubaneswar

- X. Nesco,  
Januganj, Balasore
- XI. Balasore Alloys,  
Balgopalpur , Balasore
- XII. Mr R.P.Mahapatra,  
775 Jayadeva Vihar,  
Bhubaneswar-11
- XIII. Southco,  
Courtpetta, Berhampur
- XIV. Mr.G.N.Agarwal, General Secy  
Samablpur District Consumers federation  
Balaji Mandir Bhawan  
Khetrajpur, Sambalpur ... Respondents

**1. Details of the Appeal**

Appeal under Section 111 (1) and (2) of the Electricity Act 2003 (hereinafter referred to as "the Act") against the Order dated 12-08-2008 passed in Case No. 42 of 2008 and Order dated 20-03-2008 passed in Case No. 61 of 2007 passed by the Orissa Electricity Regulatory Commission seeking Approval of Annual Revenue Requirement (ARR) and Bulk Supply Price (BSP) for the FY 2008-09. ("Impugned Order"). Copy of the Impugned Order dated 12-08-2008 and Order dated 20-03-2008 are annexed hereto as **EXHIBIT - 1 & 2.**

**2. Date on which the Order appealed against is communicated and proof thereof, if any**

Date of the Impugned Order : 12-08-2008  
Date of communication of the Order : 26-08-2008

**3. Address of the Appellant for service is as set out hereunder**

- (i) CHIEF EXECUTIUVE OFFICER  
WESTERN ELECTRICITY SUPPLY COMPANY OF ORISSA ( WESCO) LTD  
Regd Office – PLOT NO 123, SECTOR-A, ZONE-A,  
MANCHESWAR INDUSTRIAL ESTATE  
BHUBANESWAR - 751019
- (ii) Phone – (0674) 583641, Mobile – 9437055180
- (iii) E-mail : [Wesco@wescoorissa.com](mailto:Wesco@wescoorissa.com)
- (iv) Fax No – ( 0674) 583643
- (v) Address of Counsel  
MULLA & MULLA & CRAIGIE BLUNT & CAROE,  
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**4. Address of the respondents for service of all notices in the appeal as set out hereunder**

(i) Orissa Electricity Regulatory Commission,  
Bidyut Niyamak Bhawan, Unit-VIII,  
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Mobile No. : 09937085217  
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(ii) Grid Corporation of Orissa Ltd  
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Orissa  
Phone, email, Fax - not available  
Address of Counsel : not available

(iii) Shri Jayadeva Mishra  
N-4/98, Nayapalli  
Bhubaneswar, Orissa  
Phone, email, Fax - not available  
Address of Counsel : not available

(iv) Orissa Consumers Association & FOCO  
Biswanath Lane, Cuttack  
Phone, email, Fax - not available  
Address of Counsel : not available

(v) Confederation of Indian Industry(CII)  
8, Forest Park, Bhubaneswar  
Phone, email, Fax - not available  
Address of Counsel : not available

(vi) Shri K.C.Mahapatra, Chairman, PDC,  
F/6,BJB Nagar, Bhubaneswar  
Phone, email, Fax - not available  
Address of Counsel : not available

(vii) Ferro Alloys Corporation Ltd  
GD-2/10, Chandrasekharapur  
Bhubaneswar-751023  
Phone, email, Fax - not available  
Address of Counsel : not available

(viii) Mr Mangu Srinivas, AGM(Tech)  
Rawmet Ferros Industries Pvt Ltd  
2B, Fortune Towers, CSPur  
Bhubaneswar  
Phone, email, Fax - not available  
Address of Counsel : not available

(ix) Utkal Chamber of Commerce & Industry  
N/6, IRC Village, Nayapalli  
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Phone, email, Fax - not available  
Address of Counsel : not available

- (x) Nesco,  
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Fax. - 06782 - 263259  
Email : nesco@nescoorissa.com, nescoltd@rediffmail.com
- (xi) Balasore Alloys,  
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Phone, email, Fax - not available  
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- (xii) Mr R.P.Mahapatra,  
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- (xiii). Southco,  
Courtmeta, Berhampur,  
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- (xiv) Mr.G.N.Agarwal,  
General Secy  
Samablpur District Consumers federation  
Balaji Mandir Bhawan  
Khetrajpur, Sambalpur  
Phone, email, Fax - not available  
Address of Counsel : not available

All the Parties arrayed hereinabove were parties before the Commission

## **5. Jurisdiction of the Appellate Tribunal**

The appellant declares that the subject matter of the appeal is within the jurisdiction of this Tribunal.

## **6. Limitation**

Wesco ( Appellants) declare that the appeal is within the period specified in sub-section (2) of section 111 of the Act ( The impugned order passed by Respondent No 1 is 12th of August 2008 and this appeal is proffered with the 45 days period)

## **7. Facts of the case**

- 7.1. The Chronology of dates in context of determination of the Bulk Supply Price for FY09 is as mentioned below.

**30<sup>th</sup> November 2007** – Gridco files application in OERC for Approval of Bulk Supply Price ( BSP) for FY 2008-09

**7<sup>th</sup> February 2008** – Public hearing on the Bulk Supply Price ( BSP) filed by Gridco at the OERC

**20<sup>th</sup> March 2008** – Date of announcement of Order on Bulk Supply Price ( BSP) for FY 09 by the OERC

**20<sup>th</sup> May 2008** – Petition filed by Wesco at the ( OERC ) Orissa Electricity Regulatory Commission seeking review of the Order on Bulk Supply Price ( BSP) for FY 09.

**12<sup>th</sup> August 2008** – Order passed by the OERC on the Review Petition filed by Wesco for Redetermination of the Bulk Supply Price for FY 09.

**26<sup>th</sup> August, 2008** - Order in Review Petition dated 12-08-2008 communicated to the Appellant..

- 7.2. The Appellant is a Distribution Company in the State of Orissa registered under the provisions of the Companies Act, 1956 and is inter alia a Distribution and Retail Supply Licensee in the Western part in the State of Orissa.
- 7.3. Respondent No.1 is the Orissa Electricity Regulatory Commission (herein after referred as "OERC") constituted under the provisions of the said Act and is a Commission under the provisions of Section 82 of the Electricity Act, 2003 (hereinafter referred to as "the Electricity Act").
- 7.4. Respondent No.2 Grid Corporation of Orissa Ltd. (GRIDCO) is a bulk supplier in the state of Orissa and as per the aforesaid order a deemed licensee under 5th proviso, section 14 of the Electricity Act 2003, read with Government of Orissa's Transfer Notification No 6892 dated 9.6.2005. As per the Transfer Notification, Respondent No 2 will undertake bulk purchase and bulk supply activity and shall not undertake any transmission and related activity. Prior to 1st April 2005, GRIDCO was also discharging the role of a state transmission utility and State Load Dispatch Center.
- 7.5. Respondents Nos. 3 to 14 are parties who objected to the proposal submitted by GRIDCO for their ARR and Bulk Supply Tariff.
- 7.6. That, the petitioner sources its power requirement from Gridco, the Annual Revenue Requirement (ARR) and Bulk Supply Price ( BSP) of which has been approved by the Hon'ble Commission , being the bulk supply price order passed in Case No 61 of 2007 dated 20.3.2008 and effective from 1<sup>st</sup> April 2008.
- 7.7. That, the Hon'ble Commission has simultaneously also approved the Annual Revenue Requirement ( ARR) and Retail Supply Tariff ( RST) being the retail supply tariff order

passed in Case No 67 of 2007 dated 20.3.2008 and effective from 1<sup>st</sup> April 2008 and that there exists an interrelationship between the two orders .

- 7.8. That, the differential Bulk Supply Price (BSP), as approved by the Hon`ble Commission and applicable from 1<sup>st</sup> April-08 to Wesco is unfairly on the higher side, devoid of merit, and against the settled positions on the Terms and conditions for determination of tariff of the Electricity Act 2003 as also the OERC Regulations and thereunder . Consequently, such BSP has made Wesco financially unviable.The petitioner believes that there is a scope for reduction of BSP by another 20 paise per unit as otherwise Wesco will not be able to meet even its O&M and other financial commitment.
- 7.9. That, the petitioner had preferred a petition seeking review of the Bulk Supply Price so fixed on the grounds that the then existing facts and records at the time of passing the impugned order have not been taken on record leading to an apparent error in the computation of the cash flow statement for FY2008-09. Further, the cash flow statement for the year 2008-09 with a cash surplus of Rs.37.79 as approved by the OERC is incorrect inasmuch as the cash flow position so approved is on a standalone basis, based merely on the estimates of current year's transaction only without considering the deficit in opening balance.
- 7.10. That, on account of such oversight, the petitioner is under severe liquidity crunch - As of 31<sup>st</sup> March-08, the BST of Feb-08 (Rs.81 crs) which ought to have been cleared by 6<sup>th</sup> March-08 either through revenue collections or L.C. mechanism to avail 2% rebate remains unpaid. This could not materialize as the Bank Overdraft could not be cleared on 6<sup>th</sup> March-08.The Bankers are not satisfied with creditworthiness of Wesco considering the unimaginable financial burden from April '07 onwards and also considering the new Bulk Supply tariff made effective from 1.4.2008. This situation of cash deficit is because of adjustment of BST payments already made is not allowed by the Commission and instead directed Wesco-GRIDCO to adjust against past arrears. This means effectively no cash flow comforts to Wesco. As evident from the table below, since the quarter, Wesco has been unable to make full payment of BST bills and avail rebate. The BST bill of January 2008 could not be paid in the stipulated time to avail full rebate of 2%. There after till date WESCO is not able to clear the full BST bill within 48 hours of its presentation and going on losing partial rebate of 1%. The month wise details are as follows:-

Month	BST in Rs Cr	Bill Date of Presentation	Date of Clearance	Full Rebate in Rs Cr	Rebate Availed in Rs cR	Rebate Lost in Rs Cr
Jan-08	83.38	04-02-08	03-03-08	1.67	0.83	<b>0.83</b>
Feb-08	80.27	04-03-08	04-04-08	1.61	0.80	<b>0.81</b>
Mar-08	79.15	04-04-08	03-05-08	1.58	0.79	<b>0.79</b>
Apr-08	78.09	05-05-08	04-06-08	1.56	0.78	<b>0.78</b>
May-08	80.16	06-06-08	05-07-08	1.60	0.80	<b>0.80</b>
Jun-08	77.50	05-07-08	04-08-08	1.55	0.78	<b>0.77</b>
July-08	83.71	04-08-08	02-09-08	1.67	0.84	<b>0.83</b>
<b>Aug-08</b>	<b>80.40</b>	<b>05-09-08</b>	<b>Not paid till date</b>	<b>1.61</b>		

Further on account of higher BST for the year 2007-08 by which the cash flow has eroded, resulting into negative cash flow of around Rs.70 crs as on 31<sup>st</sup> March-08.

In view of the negative opening balance of Rs.70 crores the surplus cash flow so approved will undergo change & there will be a negative cash balance of Rs.32.21 crores, copy of the Cashflow Statement for FY 2008-09 (as approved by OERC with OB) is annexed herewith and marked as **EXHIBIT - 3**, on the basis of estimates of the current year transaction assuming that everything else goes all right. For the year 2008-09, from Apr-08 onwards the petitioner can not make payment of the BST within 2 working days to avail 2% rebate even after the letter of credit facilities from the Bank. The loss of rebate would be substantial amount which will be around Rs.10 crores for 2008-09, from April 08 to Sep-08 the rebate already lost is Rs.4.78 crs . As such to compensate for the negative cash balance, BST rate requires reduction

**Wesco craves request to Hon`ble Tribunal to direct the OERC to amend the apparent error and rework the BST for 2007-08 so that no cash flow deficits**

7.11. That , the total revenue requirement of GRIDCO of Rs.2247.16 crores has been approved as against revenue recovery of Rs.2152.23 crores from the Discoms with a gap of Rs.94.93 crores to be met through sales proceeds of exports and UIs. Accordingly, the differential bulk supply price has been fixed at 157.25 paise per unit for the petitioner company and correspondingly the revenue approved is Rs.893.18 Cr for sale of 5680 MU

by Gridco to Wesco during the year 2008-09. The petitioner relies on policy precedence vide para 5.35.17.12 of BSP Tariff Order FY08 wherein Hon`ble OERC states that " In view of this, for the year 2007-08, following merit order dispatch, the lowest cost of power is to be earmarked for the low voltage consumers. Balance cost of power is to be utilized by the EHT and HT Consumers, which is reflected in the bulk supply price proportionate to the level of EHT and HT consumption. This would be an indicator to the utilities with predominantly EHT/HT consumer that negligence in reduction of LT loss comes at a price". Further, Hon`ble OERC vide clause 280 of the aforementioned BSP Order for FY09 has stated that " *The Commission , for the determination and approval of the ARR of Gridco for FY2008-09 continues to follow the same principles as in the previous year.....* ". Consequently, extending the application of such principles of allocation of power on merit order basis, with cheapest power allocated for LT Users and remaining being allocated to HT and EHT users, the bulk supply price as applicable to Wesco's works out to be 137.32 paise per unit. The detail calculation sheet is annexed herewith and marked as **EXHIBIT - 4**.

- 7.12. That, OERC while approving the Bulk Supply Price for FY 09 has indicated vide para 430 that " *The Bulk Supply Price now being determined is essentially being designed with the expected earning of revenue by the DISTCOs to meet the power purchase liabilities of GRIDCO and Transmission charges of OPTCL. Hence the impact on overall revenue from HT & EHT category of consumers will continue to be monitored by the commission and if required, the BSP now determined may be amended without resorting to any further public hearing.*" Hence from the above it is clear that while approving the BST, sale to HT & EHT category of consumers has been considered accordingly the calculation submitted by the petitioner may please be considered with the approved sale in HT & EHT of all the utilities.
- 7.13. That, Wesco is a distribution Company and carrying out distribution business in the western region of Orissa and has entered with a Bulk Supply Agreement with GRIDCO. The Company also prepares its financial statements and annual accounts separately as per Companies Act, 1956 and gets it Audited by statutory Auditors. The Distribution Loss, Collection Efficiency and AT &C loss targets are separate for each of the distribution licensees and cross subsidy is company specific can not be used to compensate across the distribution licensees. Therefore the margin on account of HT & EHT sale can not be utilized towards cross subsidy amongst the distribution companies. With the above it is submitted that the principle adopted by the OERC vide para 431 of BST order is bad in law and not equitable.



7.14. That, existing facts have not been taken on record while approving the Simultaneous Maximum Demand (SMD) of Wesco for the year 2008-09. For FY2008-09, a SMD of 874.42 MVA has been approved against the petitioner's proposal of 920 MVA, based on actual drawl of Jan-08 which is 845.12 MVA. The licensee in its ARR Filings for FY09 had estimated a sale of 1422 MU in the EHT Category. Subsequently the petitioner had filed an affidavit with the Hon`ble Commission on 10<sup>th</sup> March 2008 mentioning therein the permission received from OPTCL vide Letter No TR/WKL/IV/132/Vol II. dated 18.2.2008 regarding supply for an additional load of 70 MW and a consumption requirement of 120 MU for Ms Bhushan Ltd which has not been accounted for. Accordingly the revised requirement in the EHT Category for FY09 would be 1542 MU, which was accepted and approved by the Hon`ble Commission, but for the additional 70 MVA maximum demand arising out of consumption of 120 MU has not been considered. Apart from the above increase of SMD, the likely demand on account of LT growth which is 26.3% as compared to the year 2007-08 has also been not considered. Further the petitioner has projected 920 MVA for the year 2008-09 without considering the 70 MVA load of M/S Bhusan Ltd and that taking into account the current year the SMD for the year 2008-09 should be 950 MVA. It is not out of place to mention that during March-08 the SMD recorded is 907.463 MVA with major industries like SPS, MSP & OCL are still to avail their full load. Unless the same is considered the petitioner will have to pay more amount on account of overdrawal penalty

7.15. That, while determining the Demand charge for the year 2008-09, vide para 440 of the BST order, the relevant portion is enunciated below “ *A case was made out that fixation of higher SMD by the Commission could reduce the energy charge per unit, the total revenue requirement remaining fixed. But if there is under drawl by the DISTCOs due to reduced energy charges, GRIDCO will not be receive the full revenue requirement due to it. On the other hand, if the permitted SMD is not attained GRIDCO also stands to lose the revenue.*” However, the conservative approach taken by the OERC while fixing the SMD needs review. Therefore the average SMD of the petitioner will not be less than 950 MVA and on account of this the average BST should have come down.

7.15.1 That, the SMD recorded for Jan-08 was 845.12; however the SMD of March-08 is 907 MVA. So considering the base of 907.463 MVA along with additional load for the year 2008-09, the SMD figure will be around 970 MVA. Therefore the petitioner humbly submits to consider the SMD of 950 MVA for the year 2008-09.

## 8. Issues

- 8.1. Computation of Differential Bulk Supply Price - The dispute pertains to the principles adopted for computation of the differential bulk supply tariff amongst the various distribution companies for keeping uniform retail supply tariff across the state. This also pertains to the merit of utilization of the cross subsidy on an inter discom basis.
- 8.2. Liquidity- Cash Flow Statement – The method of computation of cash flow on a standalone basis in a “going concern” basis of business is incongruous and is an issue that needs to be addressed.
- 8.3. Computation of Demand and Demand Charge - Energy and Demand are directly related and approval of energy off take has to accommodate demand increases.
- 8.4. Treatment of Revenue from Export Power & UI Charges –Revenue from export of power and UI charges have not been considered as income in the ARR of Gridco which is a departure from the tariff principles previously adopted by the OERC in determination of ARR of Gridco till FY05.

## 9. Grounds raised with legal provisions

- 9.1. The process of computation of differential bulk supply tariff is not consistent and is contrary to Clause 61(b) of the Electricity Act 2003 which states that “the generation, transmission, distribution and supply of are conducted on commercial principles”. The Appellant in the current case is under severe financial crisis and unable to pay its bulk supply bills in time.
- 9.2. The process of providing for inter company cross subsidy with each discom being a separate legal corporate entity is against the provisions of the Electricity Act 2003
- 9.3. Contrary to Tariff Policy & National Electricity Policy of Gol - The Appellants submit that its entire revenue and expenditure are under the supervision and control of OERC. Accordingly one of the major objectives of the National tariff policy is to “**ensure the financial viability of the sector**”. Similarly the National Electricity Policy also highlights that there is an “**urgent need for ensuring recovery of cost of service from the consumers to make the power sector sustainable**”. However in the given circumstances the sustainability of Wesco has been brought to question.
- 9.4. **Treatment of Income from Exports –**  
OERC has departed from their earlier principle for considering by sudden decision to ring fence exports, which too within the control period, is contrary to the (Long Term Tariff Strategy) principles and has caused regulatory uncertainty.  
In all its previous Orders the OERC (except for the year 2006-07 which has been remanded back by this Hon`ble ATE), OERC has interalia held as follows;

9.4.1. **BST Tariff Order for FY 04** vide clause no 5.9.1 has stated that “ GRIDCO`s overall financial burden of power purchase cost would be reduced if export potential under a normal monsoon year is exploited properly”. Again in clause 5.9.3, it has been stated that “... Hence, the Commission approves 90% of the total surplus power i.e 2313.95 MU to be exported and the revenue earned on account of this to be adjusted in the ARR. In case GRIDCO is able to sell the balance 10% ( i.e 257.01 MU) of its export potentials the revenue generated out of such transaction shall be utilized towards excess power purchase cost due to hydrology failure during FY 2002-03..”

**Actual during the year: Export of 3299MU for Rs.753crore**

9.4.2. **In BST Order for FY 05**, OERC vide Clause 6.26.2 ruled that “The Commission scrutinised the proposal of GRIDCO and approves 4301.65 MU for export after meeting the state demand. The total revenue from export @220 p/u (reported by GRIDCO) works out to Rs.946.36 crore which is rounded up to Rs.946 crore.”

**Actual during FY 05 : Export of 4526MU for Rs.1177crore**

9.4.3. **In BST Order for FY 06**, it was stated vide Clause 6.24.2 that “Revenue from Export of Power: GRIDCO had proposed revenue earning of Rs.726.00 crore by way of export of 3300 MU to outside state at an average rate of 220 paise per unit. The Commission scrutinized the proposal of GRIDCO and approves 2808.28 MU for export after meeting the state demand. The total revenue from export @234.575 p/u (average of actual export rate for the period from 4/04 to 2/05) works out to Rs.658.75 crore.”. Again in **BST Order for FY06** vide Clause 6.24.3, the OERC has ruled that “*In calculating the expected aggregate revenue for 2005-06, the revenue earning by GRIDCO from export of power has also been taken into account. The rate at which this power has been sold being higher than the procurement cost of GRIDCO, this will benefit the consumers of the State in the form of reduction of Bulk Supply Tariff. It is needless to emphasize that the extra revenue earned due to export of power will reduce the burden of the consumers of the State by way of liquidating the past liabilities of GRIDCO*”.

**Actual during the year: Export of 2399MU for Rs.834crore with a higher rate of realization.**

9.4.4. Since BST order of FY 07, there has been a sudden shift in treatment of revenue from exports in the ARR. **In BST Order for FY07 - OERC has ordered as under;** “**Revenue from Export of Power** - *While finalising the expected aggregate revenue for 2006-07, 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 2006-07 and also reduce the burden of the consumers of the State by way of liquidating past liabilities.”*

**Actual during the year 07: Export of 3057 MU for Rs 916 crore**

9.4.5. Again in **BSP order for FY08**-OERC has stated as under

**“ 5.35.13.2 Revenue from Export of Power**

5.35.13.3 GRIDCO in its filing has stated that no surplus energy is expected to be available in the FY 2007-08. It has got no scope to make good the past losses out of sale up surplus power and UI. Further GRIDCO in its filing dt 07.03.2007 stated that GRIDCO's availability will be 18050.52 MU after inclusion of 200MW power available to GRIDCO from TSTPS Stage –II subject to approval by MOP. So GRIDCO may be surplus in power after meeting the state demand for 2007-08.

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.

5.35.13.5 **Revenue from UI:** UI charges are dependent on several unknown risk factors like the behaviour of grid, demand (peak and off peak) of the state, hydrology condition, line availability, etc. for which GRIDCO has not considered the revenue from UI charges for 2007-08. GRIDCO has projected 'nil' figure towards UI charges. The Commission directs that any revenue earning by GRIDCO on account of UI charges during 2007-08 should be accounted for and adjusted against the revenue gap in 2007-08 and also past liabilities of GRIDCO. “

**Actual during the year 08: Export of 2729 MU for Rs 1272 crore**

The quantum of exports and earnings by GRIDCO since the last couple of years is as shown below.

Audited Accts	Power Trading/ UI		
	Year	MU	Rs Cr
FY 2003-04	3299	753	228
FY 2004-05	4526	1177	260
FY 2005-06	2399	834	348
FY 2006-07	3057	916	300
FY2007-08	2729	1272	466

vi The Hon`ble ATE in their Order dated 13<sup>th</sup> December 2006 in Appeals 74,75&76 of 2006 had vide “ *Clause 41 observed that -We direct Regulatory Commission to include the estimated earnings by export as total cost of purchase of power is included in the exported units of power, stands included. We direct the Regulatory Commission to include the total amount received including the profits by export of power by GRIDCO outside the State and the same shall be taken as revenue earnings of the GRIDCO in the year in question (in the order of Rs. 943 Crore) and as such exports bring substantial amount to the coffers of GRIDCO.*” However the same has not been considered by OERC in determination of the BSP for FY09 while Gridco has preferred an appeal before the Hon`ble Supreme Court of India and prayed for stay of the said order. The Hon`ble Supreme Court only passed the following limited order on 20<sup>th</sup> April 2007 stating that “ It is directed that until further Orders, the Regulatory Commission shall not take any further steps pursuant to the impugned Order’ . Copy of the Order dated 13-12-2006 passed by this Hon`ble Tribunal is annexed and marked as **EXHIBIT - 5**.

The Hon`ble Supreme Court of India in Civil Appeal No 5722 of 2006 in matters concerning Grid Corporation of Orissa Vs Gajendra Haldea have also upheld the intra state nature of transactions of the power exports made by Gridco.

Copy of the judgement dated 13-08-2008 passed by the Hon`ble Supreme Court in Civil Appeal No. 5722 of 2006 is annexed and marked as **EXHIBIT - 6**.

**10. Matters not previously filed or pending with any other court**

The appellant further declares that the appellant had not previously filed any writ petition or suit regarding the matter in respect of which this appeal is preferred before any court or any other authority nor any such writ petition or suit is pending before any of them.

**11. Specify below explaining the grounds for such relief (s) and legal provisions, if any, relied upon**

Kindly refer to para 9 above. The Appellant further craves leave, reserves its right to add to, alter or amend the Appeal and/or grounds in support of the Appeal.

**12. Details of Interim Application, if any, preferred along with appeal.**

The Appellant do not prefer any separate Interim Application but are praying for Interim relief as stated here below.

- a) Reduction of BST from 157.25 paise to 137.25 paisa per unit
- b) Average SMD of 950 MVA for the year 2008-09 and may kindly pass appropriate order to mitigate the hardship of the petitioner.
- c) To consider the income from Export of Power and UI as "Income from Other Sources" in the ARR of Gridco.
- d) The petitioner craves leave for submission of additional information at a later stage if considered necessary or if so directed.

**13. Details of appeal/s, if any preferred before this Appellate Tribunal against the same impugned order/direction, by Respondents with numbers, dates... and interim order, if any passed in that appeal (if known).**

No such Appeal has been preferred either by the Appellant or the Respondents against the above mentioned impugned Order/direction.

**14. Details of Index**

1. List of Dates
2. Memo of Appeal with Exhibits (An Index containing the details of the documents in chronological order relied upon is enclosed)

**15. Particulars of fee payable and details of bank draft in favour of Pay and Accounts Officer, Ministry of Power, New Delhi. In respect of the fee for appeal.**

Name of the Bank \_\_\_\_\_ Branch \_\_\_\_\_ payable at Delhi  
DD No. \_\_\_\_\_ Date.

**16. List of enclosures :**

1. Vakalatnama
2. Demand Draft for Rs.
3. Index containing details of documents to be relied upon.

**17. Whether the order appealed as communicated in original is filed ? If not, explain the reason for not filing the same.**

Yes. Original filed.

**18. Whether the appellant/s is ready to file written submissions/arguments before the first hearing after serving the copy of the same on Respondents.**

Yes

**19. Whether the copy of memorandum of appeal with all enclosures has been forwarded to all respondents and all interested parties, if so, enclose postal receipt/courier receipt in addition to payment of Prescribed process fee.**

Not forwarded, pending issue of Notice.

**20. Any other relevant or material particulars / details which the appellant(s) deems necessary to set out :**

At the time of hearing, if need be so.





### **DECLARATION BY APPELLANT**

The appellant(s) above named hereby solemnly declare(s) that nothing material has been concealed or suppressed and further declare(s) that the enclosures and typed set of material papers relied upon and filed herewith are true copies of the original(s)/fair reproduction of the originals / true translation thereof.

Verified at \_\_\_\_\_ on this at \_\_\_\_\_ day of October, 2008.

Counsel for Appellant (s)

**APPELLANT(S)**

### **Verification**

I Prasanta Kumar Pradhan, son of Shri Kasta Charan Pradhan, aged 53 years, working as Chief Executive Officer in the Office of WESCO, Burla, presently at New Delhi do hereby verify that the contents of the paras \_\_\_\_\_ to \_\_\_\_\_ are true to my personal knowledge/derived from official record) and para \_\_\_\_\_ to \_\_\_\_\_ are believed to be true on legal advice and that I have not suppressed any material facts.

Date :

Place :

**Signature of the appellant or authorized officer**

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY

NEW DELHI

APPELLATE JURISDICTION

APPEAL No. OF 2008

IN THE MATTER OF :

Western Electricity Supply Company  
of Orissa Limited

... APPELLANT

Versus

Orissa Electricity Regulatory Commission  
and others

... RESPONDENTS

AFFIDAVIT

I, Prasanta Kumar Pradhan, CEO of the Appellant above named, having my Registered Office at 123-A, Mancheswar Industrial Estate, Bhubaneswar, do hereby solemnly affirm and state as follows :

1. I say that I am the Chief Executive Officer of the Appellant above named and as such I am familiar with the facts of the case.
2. I have read and understood the contents of the accompanying Appeal and Annexure thereto.
3. I say that the facts stated in the Appeal are based on information derived from the records of the Appellant and believed by me to be true.
4. I say that the Annexure to the Appeal are true copies of their respective originals.
5. I say that nothing herein is false and no material has been concealed there from.

DEPONENT

VERIFICATION

Verified on this the        day of October, 2008 that the contents of the  
above Affidavit are true and correct to the best of my knowledge.  
Nothing material has been concealed nor withheld there from.

DEPONENT

**EXHIBIT - 3**

<b>WESCO LTD.</b>	
<b>CASHFLOW STATEMENT FOR FY 2008-09 (As approved by OERC with OB)</b>	
<b>SOURCES</b>	<b>(Rs in crs)</b>
Total revenue from sale of power	1,251.08
Collection efficiency(%)	96.56
Revenue -collectible(current year)	1,208.04
Collection from arrear	
Miscellaneous receipts	25.65
<b>Total cash inflow</b>	<b>1,233.69</b>
	<b>MU</b>
	<b>5,680.00</b>
<b>APPLICATION BSP rate(Paise/kwh)</b>	157.25
Cost of power purchase	893.18
Transmission cost (21 Paise/Kwh)	119.28
Employees cost	109.97
Repair & maintenance	25.66
A & G expenses	20.91
Interest payment	25.72
Principal payment Gridco	-
Carrying cost	1.18
<b>Total cash outflow</b>	<b>1,195.90</b>
<b>Opening Balance</b>	-70.00
<b>Gap</b>	<b>(32.21)</b>

**EXHIBIT - 4**

<b>FY 2008-09</b>		<b>Wesco</b>	<b>Other Discoms</b>	<b>Total</b>
E.S.O from Generators	Mu	5948	12503	18450
Approved Energy Sales to Discoms	Mu	5680	11940	17620
Input in EHT	Mu	1615	2840	4454
	Sale at EHT	Mu	1542	2712
Input at HT	Mu	1603	1795	3399
	Sale at HT	Mu	1475	1652
<b>Balance at LT</b>	<b>Mu</b>	<b>2730</b>	<b>7868</b>	<b>10597</b>
				0
<b>Approved Merit Order Dispatch</b>			<b>Paise/Unit</b>	<b>Cost in Crs</b>
Orissa Hydro	Mu	3677	46	169
Indravati	Mu	1942	67	131
Machakund	Mu	265	25	7
	<b>State Hydro</b>	<b>5884</b>	<b>52</b>	<b>306</b>
CGPs	Mu	352	108	38
TTPS	Mu	3162	143	452
OPGC	Mu	2947	154	452
	<b>State Thermal</b>	<b>6461</b>	<b>1.45</b>	<b>943</b>
Renewable	Mu	375	218	82
CHUKHA	Mu	270	178	48
TALA HPS	Mu	195	208	41
TSTPS-I	Mu	1987	158	314
TSTPS-II	Mu	1250	168	210
KHTPS-II	Mu	544	170	92
FSTPS	Mu	1362	210	286
KHTPS-I	Mu	132	223	29
	<b>Total EREB</b>	<b>5740</b>		<b>1021</b>
<b>GRAND TOTAL</b>	<b>Mu</b>	<b>18460</b>	<b>127.4</b>	<b>2352</b>

<b>ALLOCATION OF LEAST COST POWER TO LT</b>				
<b>Total Requirement of LT Cons</b>	<b>MU</b>	<b>2730</b>	<b>7868</b>	<b>10597</b>
<i>Less</i>				
Orissa Hydro	MU	947	2730	3677
Indravati	MU	500	1442	1942
Machakund	MU	68	197	265
State Hydro	MU	1516	4369	5884
CGPs	MU	91	261	352
TTPS	MU	815	2348	3162
OPGC-Part 1	MU	309	890	1199
<b>Sub Total</b>		<b>2730</b>	<b>7868</b>	<b>10597</b>
<b>Power Purchase Cost for LT Allocn</b>	<b>Rs Cr</b>	<b>253</b>	<b>728</b>	<b>981</b>
<b>Total Requirement for HT &amp; EHT Cons</b>	<b>MU</b>	<b>3218</b>	<b>4635</b>	<b>7853</b>
<i>Less</i>				
OPGC-Part		716	1031	1748
Renewables		154	221	375
EREB		2348	3382	5730
<b>Sub Total</b>		<b>3218</b>	<b>4635</b>	<b>7853</b>
<b>Power Purchase Cost for HT &amp; EHT Allocation</b>	<b>Rs Cr</b>	<b>561</b>	<b>808</b>	<b>1369</b>
<b>TOTAL POWER PURCHASE COSTS</b>	<b>Rs Cr</b>	<b>814</b>	<b>1536</b>	<b>2350</b>
Approved Expenses net of Miscellaneous Receipts	<b>Rs Cr</b>	(33.72)	(70.88)	(105)
<b>Approved Revenue Requirement of GRIDCO</b>	<b>Rs Cr</b>	<b>779.99</b>	<b>1,465.39</b>	<b>2,245</b>
<b>Actual BSP as per approved ARR</b>	<b>Paisa/unit</b>	<b>137.32</b>	<b>122.73</b>	
Expected Revenue from Discoms	<b>Rs Cr</b>	893.18	1259.05	2152.23
<b>Approved BSP as per approved ARR</b>	<b>paisa/un</b>	<b>157.25</b>	<b>105.45</b>	
<b>Excess/(Deficit ) BSP per Unit</b>		<b>19.93</b>	<b>(17.28)</b>	

### LIST OF DATES AND EVENTS

<b>Sl. No.</b>	<b>Dates</b>	<b>Events</b>
<b>1</b>	<b>30-11-2007</b>	Gridco files application in OERC for Approval of Bulk Supply Price ( BSP) for FY 2008-09
<b>2</b>	<b>07-02-2008</b>	Public hearing on the Bulk Supply Price ( BSP) filed by Gridco at the OERC
<b>3</b>	<b>20-03-2008</b>	Date of announcement of Order on Bulk Supply Price ( BSP) for FY 09 by the OERC
<b>4</b>	<b>20-05-2008</b>	Petition filed by Wesco at the ( OERC ) Orissa Electricity Regulatory Commission seeking review of the Order on Bulk Supply Price ( BSP) for FY 09
<b>5</b>	<b>12-08-2008</b>	Order passed by the OERC on the Review Petition filed by Wesco for Redetermination of the Bulk Supply Price for FY 09.
<b>6</b>	<b>26-08-2008</b>	Order in Review Petition dated 20-03-2008 communicated to the Appellant.

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY  
NEW DELHI  
APPELLATE JURISDICTION

APPEAL No. 29 OF 2009

IN THE MATTER OF :

WESTERN ELECTRICITY SUPPLY  
COMPANY OF ORISSA LIMITED ... APPELLANT

VERSUS

ORISSA ELCTRICITY REGULATROY  
COMMISSION AND OTHERS ... RESPONDENTS

PAPER BOOK

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ADVOCATE FOR THE APPELLANT  
MULLA & MULLA & CRAIGIE BLUNT & CAROE  
ADVOCATE & SOLICITORS  
502, NILGIRI APARTMENTS  
9, BARAKHAMBA ROAD, NEW DELHI 110 001



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