

**ORISSA ELECTRICITY REGULATORY COMMISSION  
BIDYUT NIYAMAK BHAWAN  
UNIT-VIII, BHUBANESWAR – 751012**

\*\*\*\*\*

Present : Shri D.C.Sahoo, Chairperson  
Shri B.C.Jena, Member  
Shri S.K. Jena, Member

**Dated the      day of      , 2005**

**Case No.31 of 2005**

Principal Secretary to Government,  
Department of Energy,  
State of Orissa  
Bhubaneswar

.... **Petitioner**

- Vrs –

1. CESCO, 2<sup>nd</sup> Floor, IDCO Towers,  
Bhubaneswar
2. SOUTHCO, At/P.O.Courtpetta,  
Berhampur, Dist-Ganjam
3. WESCO, At/P.O.Burla,  
Dist-Sambalpur
4. NESCO, At/P.O.Januganj,  
Balasore

..... **Respondents**

For the petitioner	-	Mr. Biswajit Mishra, Jt. Secretary to the Govt., Department of Energy
For the respondent	-	Mr. U.K. Panda, Vice President, CSO, Bhubaneswar

**ORDER**

**CASE NO.31 OF 2005**

The State of Orissa represented through the Principal Secretary to the Government, Department of Energy have filed the petition under the Regulation 70 of OERC (Conduct of Business) Regulation, 2004 for review of the orders of the Commission dt.28.02.05 passed on Business Plan of WESCO, NESCO and SOUTHCO in Case No.115/04 on the grounds that the following issues in respect of the Business Plan had not been properly addressed:

1. Securitisation and payment of the outstanding dues by the Distribution Companies in a specific time frame;
2. Reduction of T&D loss by 5% every year as per the recommendations of the Kanungo Committee which has already been accepted and approved by the Government;
3. Development of an effective mechanism to ensure that the Distribution Companies make good the shortfall in case they do not achieve the targeted reduction.

Further during the course of the public hearing a written note of argument was submitted by the petitioner reiterating the aforesaid points and amplifying that the central adjustment of the dues of all Govt. Departments and PSUs against BST dues as spelt out in para DB(i)(b)vii is not implementable as the number of DDOs are too many and spread across the state. Central adjustment of dues will make the govt. officer complacent about the use of energy. Public sector undertakings have been created to run on commercial lines and the

question of central adjustment of their dues does not arise. No time frame has been specified for realisation of securitised amount from DISTCOs for preparation of a credible action plan for payment to generators and creditors by GRIDCO.

He further submitted that there is no meaning of fixing a target for revision of distribution loss when DISTCOs are allowed distribution loss on the basis of actual during successive years. There is no fall back arrangement in case the DISTCOs do not achieve the target at loss reduction. The DISTCOs/investors should provide enforceable bankable performance guarantee in case the DISTCOs fail to achieve the loss reduction target. The investors have failed to renew the shareholders agreement and DISTCOs should have an action plan repayment of PFC/REC/World Bank loans, which they have defaulted in making payments.

“While reviewing a judgement there are definitive limits to the exercise of power of review. The power of review may be exercised on the discovery and new and important matter of evidence which after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made, it may be exercised where some mistake or error apparent on the face of record is found: it may also be exercised on any analogous ground. But it may not be exercised on the

ground that the decision was erroneous on merits – That would be a province of a court of appeal (AIR 1947 SC 1047) quoted in AIR 1995 SC 455.

The Commission observes that the stand taken by the Government is contrary to its declared position that before the Commission in the hearing that in the matter of adjustment of govt. and PSU dues for securitisation of GRIDCO arrears was arrived at a tripartite meeting between the Govt. of Orissa, Distribution Companies and GRIDCO, the copy of which was submitted to the Commission stipulating that the record note of discussion may be accepted as comments and objections of the state government for the purpose of the case.

The Commission also had taken into consideration the views of the Govt. of Orissa from the tripartite meeting dt.15.01.04 accepting the concept of carry over of past losses on account of the fixation of unrealistic loss level by the Commission in its previous tariff orders and remark that DISTCO should immediately file before OERC for recovery of past losses for FY-00 and FY-01 on the basis of unrealistic loss level to address substantial amount past liabilities.

On the issue of fall back arrangement, the Commission would like to observe that it has been stipulated in the tariff order if they collect below 90%, the extent of shortfall will have to be financed by the investors and in the process they will be losing their return on equity.

The petition for securitization of outstanding GRIDCO dues is pending before the Commission for finalization which could be disposed off only after arrival of a concrete figure regarding the govt. and PSU dues that could be adjusted against the BST dues. In the absence of determination of the outstanding dues after adjustment fixation of tenure will carry no meaning. Any interest payment is to be covered as per the existing agreement between GRIDCO and the Distribution Companies.

Applying the yardsticks of review we find no merit in the petition as no facts have been brought to our notice & no mistake in the order has been pointed out.

As such, there is no merit in the application of review the application stands rejected.

**(S.K. Jena)**  
Member

**(B.C. Jena)**  
Member

**(D.C. Sahoo)**  
Chairperson