

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.102/2009

M/s Western Electricity Supply Company of Orissa Limited (WESCO)

.... **Petitioner**

Vrs.

M/s GRIDCO Limited

.... **Respondents**

**In the matter of: An application for Review of Order dtd. 20.03.2009 passed
 in Case No. 62/2008.**

Date of Hearing: 08.10.2009

Date of Order: 12.10.2009

ORDER

Mr. Khirod Ch. Nanda, AGM (Fin.), WESCO, Mr. G B Swain, DGM (Fin.), WESCO and Mr. L N Mohapatra, Advocate for GRIDCO are present. The reply filed by GRIDCO to the review petition of WESCO is taken into record.

2. Mr. Nanda, AGM (Fin.), WESCO stated that this review petition has been filed by WESCO as the existing facts as submitted by the Petitioner during the tariff proceeding in Case No. 62/2008 while determining the ARR of GRIDCO's for FY 2009-10, had not been taken on record and there are errors apparent on the face of the record in computation of differential BSP which are as follows:
- (i) The incentive allowed to the OPGC to the tune of Rs.124 crore from the FY 2004 to FY 2009 (calculated for generation over the normative PLF of 68.5%) has not been accounted for in determining generation cost of OPGC in light of Energy Dept. notification dtd. 21.06.2008.
 - (ii) The BSP approved to be applicable from 01.04.2009 to the Petitioner is much higher and will make the Petitioner financially unviable, cross-

subsidy determination should be considered on company specific basis resulting in reduction in BSP.

- (iii) The methodology adopted in determining differential Bulk Supply Price for Petitioner is contrary to provisions of law. The Bulk Supply Price for each DISCOMs has to be specific.
 - (iv) No penalty is to be levied in excess of the approved quantum of power, which would in any case be accounted for as a truing exercise.
 - (v) In the absence of allocation of PPAs, linking of excess energy drawal to UI frequency is inoperable.
3. As regard to three days delay in filling this review petition on 20.06.2009, he prayed the Commission to condone the delay on account of the fact that the Senior Officers were deployed for revenue collection during the year end and they were to ensure un-interrupted supply of power for smooth conduct of General Election.
4. Mr. Mohapatra, the learned counsel for GRIDCO stated that the petition for review of the Commission's Order passed in Case No. 62/2008 is not maintainable as the grounds stated by the Petitioner for condonation of delay are not to be accepted as the reasons are not sufficient to condone the delay. The power to review its own order as vested on the Commission under Section 94(f) of the Electricity Act, 2003 is liable to be regulated in accordance with Section 114 read with Order 47 Rule 1 & 2 of Civil Procedure Code, 1908. None of the grounds stated by the Petitioner for review of the aforesaid Order dtd. 20.03.2009 of the Commission is not falling under the provision of law. He also stated that it is a settled position of law that a review can not take the shape of an appeal and no Court should review its own Order when the error alleged is not apparent on the face of the Order impugned on a mere looking at it and requires a process of reasoning or re-appreciation of evidence.
5. Mr. Mohapatra further stated that the grounds enumerated by the Petitioner are the matters of appeal and it is open to the aggrieved Petitioner to prefer an appeal before the Hon'ble ATE under Section 111 of the Electricity Act, 2003. He also stated that GRIDCO has preferred an appeal before the Hon'ble ATE bearing Appeal No. 88/2009 against Order dtd. 20.03.2009 of

the Commission passed in Case No. 62/2009 seeking enhancement of its ARR and BSP for FY 2009-10, impleading the present Petitioner as Respondent. The issues raised in this review petition filed by NESCO and the appeal filed by GRIDCO before the Hon'ble ATE are common and inter-linked. The present review petition of WESCO is an attempt/pre-empt to the decision of the Hon'ble ATE in the aforesaid appeal, which is now sub-judice. Hence, the review petition of WESCO has no merit and liable to be dismissed.

6. After hearing both the parties and perusal of the case records we do not find any substantial ground to admit the Petition for review as there is no apparent error on the face of the Order. Further, the Petitioner has liberty to agitate the issues before the Hon'ble ATE in the aforesaid appeal preferred by GRIDCO.
7. With the above observations the review petition is not admitted and accordingly stands disposed of.

Sd/-
(B.K. Misra)
Member

Sd/-
(K.C. Badu)
Member

Sd/-
(B K Das)
Chairperson