

# ORISSA ELECTRICITY REGULATORY COMMISSION

BIDYUT NIYAMAK BHAWAN,  
UNIT – VIII, BHUBANESWAR – 751 012

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**Present :** Shri B. K. Das, Chairperson  
Shri K. C. Badu, Member  
Shri B. K. Mishra, Member

In the matter of Review of Order dated 20.03.2009 passed in Case Nos. 67, 68 & 69 of 2008 of the Commission

## **CASE No. 94/2009**

In the matter of

M/s. SOUTHCO, Courtpetta, Berhampur	....	<b>Petitioner</b>
Vrs.		
GRIDCO Limited & OPTCL	....	<b>Respondents</b>
AND		

## **Case No.95/2009**

M/s. WESCO, Burla, Sambalpur	....	<b>Petitioner</b>
Vrs.		
GRIDCO Limited & OPTCL	....	<b>Respondents</b>
AND		

## **Case No.100/2009**

M/s. NESCO, Januganj, Balasore	....	<b>Petitioner</b>
Vrs.		
GRIDCO Limited & OPTCL	....	<b>Respondents</b>

On behalf of the petitioners : Shri N.K. Khuntia, Manager (Comm.), NESCO  
Shri P.K. Pradhan, CEO, WESCO  
Shri K.C. Nanda, AGM (Finance), WESCO  
Shri A.K. Bohra, CEO, SOUTHCO  
Shri S.K Choudhury, GM (Comm.), SOUTHCO

On behalf of the Respondents : Shri L.N. Mohapatra, Advocate, GRIDCO  
N.R. Mandhata, GM (R&T), OPTCL

**Date of hearing: 29.08.2009**

**Date of Interim Order: 15.09.2009**

## **ORDER**

This order arises out of the petitions filed under Regulation 70 of OERC (Conduct of Business) Regulations, 2004 by SOUTHCO, WESCO & NESCO for review of the Commission's Order dtd.20.03.2009 passed in case Nos.67, 68 & 69 of 2008. The petitioners

have submitted the following arguments for review of the impugned Order dtd.20.03.2009 of the Commission.

- 1) That there are instances of error apparent in the order passed by the Commission and the licenses are under financial duress and their business viability will suffer unless these issues are addressed at the earliest.
- 2) That the Commission has carried out truing up based on audited accounts in successive tariff orders of FY 2007-08, FY 2008-09 and FY 2009-10. The figures so calculated in these tariff orders are different since separate principles have been adopted for each element of cost and revenue for truing up purposes and that there needs to have consistency in adoption of such principles.
- 3) That Commission have not considered receivable audit figures in the truing up exercise.
- 4) That the method of computing load factor during off peak hours as prescribed in the impugned order is contrary to the OERC Distribution (Conditions of Supply) Code, 2004 and needs to be rectified.
- 5) That overdrawal penalty for a consumer is to be computed as an aggregate of overdrawal for both peak and off peak hours in light of the objective to flatten the load curve and possible future shortages that classification of peak and off peak hours is essential.
- 6) That GRIDCO may be directed for escrow relaxation so as to enable DISCOMs to continue with the efforts towards loss reduction and to allow escrow relaxation for FY 2009-10.
- 7) That the target loss levels need to be determined on the basis of actuals and existing ground realities.
- 8) Respondent GRIDCO in response to the above review petitions filed the following objections to the petitions: -
  - a) That the petitioners have averred that there have been instances of error apparent on the face of the Commission's Order for which review is sought for on the following issues: -
    - i. truing up
    - ii. impact of receivable audit
    - iii. computation of load factor
    - iv. computation of overdrawal penalty

- v. escrow relaxation for R & M works and
  - vi. determination of loss levels
- b) That in regard to truing up, the petitioners' stated that the surplus shown for the year 2006-07 and 2007-08 were erroneous but had not specifically pointed out as to the specific error in the impugned order, which was apparent on the face of record. Since the truing up details are on provisional basis the petitioners' can't draw any line of error in the Order and as such the prayer for review of this issue is not tenable.
  - c) That in regard to receivable audit, petitioner have pointed out that the Commission has not considered findings of the receivable audits. As no error is apparent on the face of the order for not considering the finding of the receivable audits, the petition for review cannot be entertained.
  - d) That in regard to load factor and overdrawal penalty, no specific error clearly appear on the face of the order and in absence of such specific expression/averment, the review petitions are to be rejected.
  - e) That in regard to relaxation of escrow on R & M works and loss levels, the petitioners have not prayed anything about these two issues in the present petitions for review. The Petitioners have not specifically pointed out where and in which respect the error in the Order, remains in respect of Escrow relaxation which requires review by the Commission.
  - f) That on the whole, the petitioners have not specifically brought into record the errors in the Commission's order dtd.20.03.2009 clearly apparent on an instant look into the said order without being aided by any interpretation or discussion. In a review it is not liable to get into details and re-examine the same unlike an appeal. Petitions on these grounds are liable to be dismissed.
- 9) After hearing the parties, perusal of the case records and having carefully gone through the submissions made by them, the Commission is of the view that the present petitions of the SOUTHCO, WESCO & NESCO for review of the Commission's order dtd.20.03.2009 is not maintainable on the following grounds: -
- a) The Commission's order dtd.20.03.2009 passed in Case Nos.67, 68 & 69 of 2008 has no drawback, mistake or an error apparent on the face of the record, which

would attract review of the aforesaid order. In order to have sufficient basis for review of an order, following grounds needs to be satisfied.

- i. There has to be discovery of new or important facts or evidence
  - ii. The error has to be apparent and not to be detected by a process of reasoning
  - iii. The review petition has a limited purpose and cannot be allowed to be an appeal in disguise.
- b) The grounds of prayer in the review petition have been extensively dealt in the Commission's order in question and review petitions do not satisfy any of the above conditions.
- c) The review petitions are not in conformity with the Hon'ble Supreme Court's order in case of Parison Devi and others Vrs. Sumitri Devi and others. The relevant extract of such judgement is quoted below: -
- i. Under Order 47 Rule 1 CPC a Judgement may be open to review inter-alia if there is a mistake or an error apparent on the face of the record. An error which is not self evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the Court to exercise its power of review under Order 47 Rule-1 of CPC, 1908. In exercise of the jurisdiction under Order 47 Rule-1 of CPC, it is not permissible for an erroneous decision to be "reheard and corrected". A review petition, it must be remembered has a limited purpose and cannot be allowed to be "an appeal in disguise"
- 10) In view of the above, the present petitions for review stand dismissed.
- 11) The submissions made by the petitioners, however, will be taken into account while taking up truing up exercise for the year 2009-10 on its merit.
- 12) Accordingly, the cases are disposed of.

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

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

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