

**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. 25/2011

Department of Energy, Govt. of Orissa Petitioner

Vrs.

WESCO & Ors. Respondents

In the matter of: Application u/s 94(f) of the Electricity Act, 2003 for review of order dated 18.03.2011 passed in Case No. 146,147,148 & 149/2010.

ORDER

Date of Hearing: 16.6.2011

Date of Order : 18.6.2011

The review petition has been filed on dated 08.4.2011 by the Department of Energy, Government of Odisha under section 94(f) of the Electricity Act, 2003 for review of the common RST order dated. 18.3.2011 of the Commission passed in Case Nos. 146, 147, 148, & 149 of 2010 applicable for domestic consumers in the State of Orissa for the FY2011-12. As the Retail Supply Tariff order has been passed through public hearing, the Commission on 31.5.2011 has given the public notice inviting suggestions/objections from all the objectors / stake holders/ institutions/organizations/ consumer counsels those who had participated during the public hearings before the Commission for determination of the Annual Revenue Requirement and Retail supply Tariff for FY 2011-12 of the four distribution licensees namely CESU, NESCO, WESCO and SOUTHCO, to file their reply on or before 7.6.2011 on the above review petition filed by the State Govt. Besides the public notice, individual notices have also been issued to all the objectors, Consumer Counsels those who had participated during the public hearing before the Commission for determination of the Retail supply Tariff. Besides the above, notices have also been duly served on all the DISCOMs and the respondents who have been allowed by the Commission to be arrayed as

respondents pursuance to their petition to be impleaded as parties in the present review case.

2. The Commission has issued individual notices to the following persons/organizations/ Institutions/Utilities/ Consumer Counsels.

Commissioner cum Secretary Dept of Energy, Govt. of Odisha the petitioner; Shri R. Ramachandra Mahapatra; Shri Pawan Kumar Gupta on behalf of M/s. New Laxmi Steel & Power Pvt. Ltd.; Shri Rajeshwar Pandey, Dy. Executive Director, M/s OCL India Limited; Shri Anil Choudhary, Director, Auro Ispat (India) Pvt. Ltd.; Shri G.C. Das, Chief Electrical Distribution Engineer, East Coast Railway; Shri Prasanna Kumar Sahoo, Secretary, M/s. Utkal Furnace Association; & also for M/s. IPISTEEL Ltd., Shri Bibhu Charan Swain, M/s Power Tech Consultants; Shri Prasanta Mallick, Chief Executive Officer, T.S. Alloys Ltd.; Shri Antaryami Routray, President, All Orissa Cold Storage Association; Dr. D.V. Ramana, Professor, Xavier Institute of Management; Shri Sunil Kumar Agrawal, Director, Sourav Alloy & Steel Pvt. Ltd.; Shri Satyadeep Pati; Shri Karunakara Dash, AVP, Tata Tele Services Ltd.; Shri Babaji Charan Sahoo, M.D., IDCOL Ferro Chrome & Alloys Ltd.; Shri M.V. Rao, Chairman, Power Committee, UCCI; Shri Deepak Kumar Agrawal, Director, Shree Maruti Steel and Casting Pvt. Ltd.; Shri Jayadev Mishra; Chief Executive Officer (Comm.), NESCO, WESCO & SOUTHCO; CESU, OPTCL, SLDC, GRIDCO, Shri Pradeep Kumar Nath, Chief Manager (Elect), NALCO; Shri A.K. Sahani; Shri Manmatha Bahera, Balasore Ice Factory Owner Forum; Shri Dharma Veer Choudhury, GM, Maithan Ispat Ltd.; Shri Girish Chandra Lenka, Balasore Alloys Ltd.; Shri Devashish Mahanti, President, North Orissa Chamber of Commerce & Industry; Shri Rajesh Chintak, Chief Resident Executive, Tata Steel Ltd.; Shri Pawan Nahata, Asst. Commercial Manager, Krishna Chlorate Pvt. Ltd.; Shri R.S. Varma, Chief Electrical Distribution, Engineer, S. E. Railway, Garden Reach, Kolkata; Shri Karunakara Dash, AVP, Tata Tele Services Ltd.; Shri Basudeo Prasad Modi, Director, VISA Steel Ltd; Shri B. R. D. Agarwal, Sr. G.M., (P&U), EMAMI Paper Mills Ltd.; Shri Pradeep Kumar Dash; Shri Jayanta Das, President, NESCO Bidyut Grahak Sangha; Shri Darshan Sethi, Secretary, Inchedi-IV, Rahania; Shri Bhagaban Panda, Keonjhar District Secretary; Shri Sashinath Behera, Treasurer, Inchedi-V;

Shri Bhagabat Prasad Pratihari, Secretary, Communist Party of India; Shri Jatin Kumar Patra, Secretary, Communist Party of India; Shri Debendra Jena, Balasore District Secretary Utkala Rajya Krusak Sabha; Shri Pitamber Das, President, Inchudi KFW-3, Panipanchayat; Shri Srinibas Jena, Asst. Secretary, Orissa Gana Ekata Parisad; Shri Santosh Kumar Upadhyay, Registrar, NIT, Rourkela; Shri Shyam Sundar Pansary, President, Western Orissa Cold Storage; Shri Ramesh Chandra Senapati, Sr. Manager (Co-Ordination), Rexon Strips Ltd; Shri Suryakanta Pati, Sr. Manager (Elect), OCL India Ltd.; Shri G. S. Jaiswal, Director, D.D. Iron & Steel Pvt. Ltd.; Shri Promod Agrawal, M.D, Sradha Saburi Steel Pvt. Ltd.; Shri Surendra Kumr Gupta, V.P, L&T Ltd.; Shri Gobardhan Das, AGM (Admn), Adhunik Metaliks Ltd.; Shri Sanjay Somani, Secretary, Balasore District Rice Millers Association; Shri Lalit Kumar Agarwal, Secy, Khurda District Rice Millers Association; Shri Subhrajeet Sahoo, Secy, Jajapur Rice Millers Association; Shri Santosh Kumar Agarwal, Joint. Secretary, All Orissa Rice Millers Association; Shri Muralidhar Parija, Saktinagar; Shri Sadananda Sahoo; Shri Surendar Das, Koel Nagar, Rourkela; Shri Nrusingh Charan Panda, M/s Grihasthi Udyog, Chhend Basti; Shri Rajesh Saralia, Secretary, Anugul District Rice Millers Association; Shri Navin Agarwal, Secretary, Cuttack District Rice Millers Association; Shri Vikram Kumar Jaiswal, Director, Shree Austabinayak Steel Pvt. Ltd.; Shri Sunil Kumar Nath, General .Manager., Scan Steel Ltd.; Shri Ashok Agarwal, General Manager (Admn), Ashoka Ispat Udyog; Shri Umesh Sharma, Director, Shreeram Sponge & Steels Pvt. Ltd.; Shri Santosh Kumar Pareek, M.D., Sarada Rerollers Pvt. Ltd.; Shri Ramesh Jalan, Director, Refulgent Ispat Pvt. Ltd.; Shri Dilip Pramanik, Commercial Manager, Kalinga Sponge Iron Ltd.; Shri Parshan Kumar Agarwal, Director, Pepson Steels Pvt. Ltd.; Shri Arvind Kumr Gupta, Director, Bisra Steels Pvt. Ltd.; Shri Praksh Agarwal, Director, Maa Laxmi Steels Pvt. Ltd.; Shri Binod Kumar Agarwal, Director, Shri Radha Krishna Ispat Pvt. Ltd.; Shri Birendra Kumar Sinha, Director, Maa Girija Ispat Pvt. Ltd.; Shri Amit Garg, Director, Shri Radha Raman Alloys Ltd.; Shri Anil Somani, Director, Arun Steel Industry Pvt. Ltd.; Shri Sunil Kumar Agarwal, Director, Jagannath Alloys Pvt. Ltd.; Shri Ramesh Kumar Agarwal, Director, Vishal Ferros Alloys Ltd.; Shri Pradeep Jain, Director, Maa Tarini Industry Ltd.; Dillip Kumar Mangaraj, Asst. General Manager, SAIL; Shri S.S. Kalya, Vice

President, Jayhree Chemicals Ltd.; Shri Biswanath Padhi, Secretary, SOUTHCO, Finance Cadre –Welfare Association; Shri Satyadeep Pati, The General Manager, George Distributors Pvt. Ltd.;

Consumer Counsels

Orissa Consumers Association, Balasore-Chapter (OCA); Secretary, PRAYAS, Energy Group; Sambalpur District Consumers Federation, Balaji Mandir Bhavan, Sambalpur; Sundargarh District Employee Association, Rourkela; Grahak Panchayat, Friends Colony, Paralakhemundi ; Shri Prabhakar Dora, Rayagada; Federation of Consumer Organization (FOCO), Biswanath Lane, Cuttack; Orissa Consumers' Association (OCA), Biswanath Lane, Cuttack; Orissa Electrical Consumer Association (OECA), Cuttack; Secretary, Confederation of Citizen Association, Bhubaneswar

3. In accordance with the public notice dated 31.5.2011, the following organizations/institutions/consumer counsels have filed their objections/suggestions and are present during the hearing.

Shri Sukanta Pradhan, Dy. Secretary, DoE, GoO, Shri A.K. Bohra, CEO(Com), Shri Debashish Das, CSO, NESCO, WESCO & SOUTHCO, Shri S. K. Choudhury, Sr. GM, SOUTHCO, Shri L.R. Padhi, D.G.M. (Comm.), CESU, Shri B. P. Mahapatra, Director (Fin), GRIDCO, Shri A. K. Mohanty, GM(R&T), OPTCL, Shri B.R. Misra, Sr. GM(PS), SLDC, Shri R.P. Mahapatra authorized representative on behalf of M/s Tata Tele Service Ltd., M/s IDCOL Ferro Chrome & Alloys Ltd., Shri M.V. Rao, UCCI, M/s JCL, M/s IPPSTEEL, M/s Auro Ispat (India) Pvt. Ltd and for himself, Shri A. K. Sahani, authorized representative of OECA, M/s Shree Maruti Steel & Casting Pvt. Ltd., M/s Balasore Ice Factory Owners Forum, M/s Mithan Ispat Ltd., and for himself, Shri P. P. Mahanty, Advocate on behalf of M/s Sourav Alloy & Steel Pvt. Ltd., M/s Balasore Alloys, M/s FACOR, M/s Tata Steel Ltd., M/s OCL India Ltd., M/s Adhunik Metaliks Ltd., M/s Shree Salasar Casting Pvt. Ltd., Shri Jayadev Mishra, Shri Pawan Nahata, M/s Krishana Chlorate Pvt. Ltd., Shri S.K. Singh, Sr. GM, M/s VISA Steel, Shri Prabhanjan Panigrahi, Registrar, NIT, Rourkela, Shri S. K. Patel, L&T Ltd., Shri S. K. Satapathy, M/s George Distributors Pvt. Ltd., Shri G. C. Das, Consultant, Shri S. K. Pati, Sr. Manager, OCL India Ltd., Shri P. K. Panda,

General Secretary, FOCO and also OCA, Cuttack, Shri A. Mahapatra, Shri G. N. Agrawal, Secretary, Sambalpur District Consumers Federation are present.

4. This case is taken up on 16.6.2011 on question of admission and hearing of the review petition dated 08.4.2011 filed by the Department of Energy, Government of Odisha under section 94(f) of the Electricity Act, 2003 for review of the common RST order dated 18.3.2011 of the Commission passed in Case Nos. 146, 147, 148, & 149 of 2010 applicable for domestic consumers in the State of Orissa for the FY2011-12. After filing of the review petition by the petitioner, it is registered as Case No.25 of 2011 and the Commission on 05.5.2011 took up the matter on question of admission and hearing. After hearing the petitioner, the Commission on 05.5.2011 had passed the following interim order and the relevant portion of the said interim order are quoted below.

“ x x x x x x x x x x

5. *The review can be taken up mainly on the following three grounds:-*

- (i) *When there is clerical mistake or error apparent on the face of the record which can be easily detected by a plain reading of the order;*
- (ii) *When there is any fresh material available which could not be placed at the time of passing of the order and if that fresh material would have been produced at the time hearing the present order would not have been passed;*
- (iii) *When there is any other sufficient reason.*

Govt. in their petition have not clearly stated the ground on which the present review petition can be taken up on either of the above three grounds. Govt. must clearly spell out the ground on which the review can be taken up.

6. *Secondly, the Govt. in their petition has stated that if the distribution companies reduce the loss there would not be any occasion for tariff rise. In other words government have stated that the increase in tariff for domestic consumers in respect of energy consumption from 50-100 units can be readjusted or revisited if the distribution loss are reduced by the distribution companies. In this context it may be noted that against distribution loss of 37.24% for the year 2009-10 and 37.54% shown by the distribution companies during the year 2010-11 upto September, 2010 and 32.95% projected by the distribution companies for 2011-12, Commission have calculated the Annual Revenue Requirement (ARR) and consequently approved the tariff based on the normative level of distribution loss target of 21.71% for 2011-12 as approved in the Business Plan for the year 2011-12. Since tariff has been fixed on the normative distribution loss of 21.71% for all the distribution companies taken together against 37.24% for 2009-10, and 37.54% upto September, 2010, tariff cannot be reduced on the ground of reduction of distribution loss because the tariff has been*

calculated on the distribution loss of 21.71% against 37.54% for 2010-11, upto September, 2010. This is evident from the table given below:-

Table – 1

	FY 2009-10		FY 2010-11				FY 2011-12		
	Appro. by OERC	Actual	Prop. by DISCOMs	Appro. by OERC	Actual shown by DISCOMs (upto 9/2010)	Latest esti. for 10-11	Prop. by DISCOMs for 2011-12	Approved for 2011-12 by OERC in the Business Plan order dt.20.3.10	Appro. in ARR
Dist. Loss (%)	24.45	37.24	35.60	22.22	37.54	35.50	32.95	21.70	21.71
Collection Efficiency (%)	98.00	97.00	96.60	98.00	88.28	96.6	98.34	99.00	99.00
AT&C Loss (%)	25.96	39.15	37.80	23.80	44.86	37.8	34.06	22.48	22.49

7. Section 61(g) read with para 8.3.2 of Tariff Policy, 2006 stipulates “Tariff progressively reflects the cost of supply of electricity, so that latest by the end of 2010-11 the tariffs are within \pm 20% of the average cost of supply. The road map would also have intermediate milestones, based on the approach of a gradual reduction in cross subsidy.

On the other hand para 5.5.2 of National Electricity Policy, 2005 states that “a minimum level of support may be required to make the electricity affordable for consumers of very poor category. Consumers below poverty line who consume below a specified level, say 30 units per month, may receive special support in terms of tariff which are cross-subsidized. Tariffs for such designated group of consumers will be at least 50% of the average (overall) cost of supply. This provision will be further re-examined after five years”.

If any class of consumers are to be subsidized, the State Govt. have to pay the subsidy in advance as per Section 65 of the Electricity Act, 2003 which is extracted below:-

“65. Provision of subsidy by State Government –If the State Government requires the grant of any subsidy to any consumer or class of consumers in the tariff determined by the State Commission under section 62, the state Government shall, notwithstanding any direction which may be given under Section 108, pay, in advance and in such manner as may be specified, the amount to compensate the person affected by the grant of subsidy in the manner the State Commission may direct, as a condition for the licence or any other person concerned to implement the subsidy provided for by the State Government.”

Even though the State Government have not agreed to provide subsidy to agriculture or BPL families domestic consumers, tariffs in those cases have been fixed much below -20% of the average cost of supply of 408.87 paise unit determined for the year 2011-12.

When the average cost of supply for 2011-12 has been determined at 408.87 paise per unit, the tariff for the relatively poor consumers cannot be less than 327.07 paise (i.e. -20% of 408.87) and more than 490.67 paise per unit (+20% of 408.87). However, while the attempt has been made to reduce this cross subsidy by gradually increasing tariff for LT consumers, because of special treatment for Agriculture, allied agricultural activities allied agro industries, BPL families (fixed charged of Rs.30.00 paise per month upto 30 Units) and domestic consumers in the first slab (upto 50 unit per month 140 paise per unit) the target of reduction of cross-subsidy has not yet been achieved). For LT category of consumers the cross subsidy is by (-) 26.54% while for EHT it is +16.77% and for HT it is +17.90% which is evident from the table given below:-

Table - 2

Cross Subsidy in 2011-12

Year	Level of Voltage	Average cost of supply for the State as a whole (P/U)	Tariff P/U	Cross-Subsidy P/U	Percentage of Cross subsidy above/below or cost of supply
1	2	3	4	5 (4) – (3)	6
2009-10	EHT	263.00	295.05	32.05	12.19%
	HT		308.68	45.68	17.37%
	LT		179.99	-83.01	-31.56%
	Kutir Jyoti		100.00	-163.00	-61.97%
	Irrigation		110.00	-153.00	-58.17%
2010-11	EHT	327.37	379.93	52.56	16.06%
	HT		383.68	56.31	17.20%
	LT		219.21	-108.16	-33.04%
	Kutir Jyoti		100.00	-227.37	-69.45%
	Irrigation		110.00	-217.37	-66.39%
2011-12	EHT	408.87	477.43	68.56	16.77%
	HT		482.43	73.56	17.99%
	LT		300.34	-108.53	-26.54%
	Kutir Jyoti		100.00	-308.87	-75.54%
	Irrigation		110.00	-298.87	-73.09%

In case of BPL family the cross subsidy paid is 308.87 paise (408.87-100 tariff per unit for 30 units in a month) which is 75.54% less than the average cost of supply.

In case of Agriculture/irrigation the cross subsidy per unit is 298.87 paise (408.87 – 100 paise per unit) which is 73.09% less than the average cost of supply.

In case of domestic consumers the consumers consuming upto 50units per month are paying 140 paise per unit from 2001-02 which has remained unchanged for 2010-11 and 2011-12. In their case per unit subsidy is 268.87 paise (408.87-140 paise per unit) which is (-) 66% less than the average cost of supply.

In case of consumers consuming 100 units per month per unit subsidy is 163.87 paise which (408.87-245.00) which is less than 40% the average cost of supply.

Domestic consumers consuming 200 units per month are being subsidized by - 28% of the average cost of supply as for them the average per unit works out to 297 paise.

Domestic consumers consuming 400 units per month are being subsidized by (-)11% as for them the average rate per unit works out to 363 paise.

Domestic consumers consuming 600 units per month are being subsidized by (-) 1.5% as for them the average rate per unit works out to 400 paise.

Only those high end domestic consumers consuming 700 units per month would be paying (+) 1.22% higher than the average cost of supply of 408.87 paise as for them the average per unit works out to 413 paise against average cost of supply of 408.87 paise per unit. This is evident from the calculation given in the following table:-

Table – 3

<i>Consumption /Month</i>	<i>Tariff</i>	<i>Total Payment for Energy Charges (Rs.)</i>	<i>Average Per Unit Energy Charges(P/U)</i>	<i>Cross-Subsidy in %</i>
<i>50 Units</i>	<i>Consumption <= 50units per month 140 paise per unit</i>	<i>140 paise X 50 units = Rs.70</i>	<i>140</i>	<i>(-) 66%</i>
<i>100 Units</i>	<i>>=50 units <=100</i>	<i>140 paiseX50 + 350 paiseX50 = Rs.245</i>	<i>245</i>	<i>(-)40%</i>
<i>200 Units</i>	<i>Consumption <=50units <=200 units per month 350 paise per unit</i>	<i>140 paise X 50 + 350 paise X 150 = Rs.595/-</i>	<i>297</i>	<i>(-) 28%</i>
<i>400 Units</i>	<i>Consumption >200<=200 units p/m 430 paise per unit</i>	<i>140 paise X 50 + 350 paise X 150 + 430 paise X 200 = Rs.1455</i>	<i>363</i>	<i>(-)11%</i>
<i>600 Units</i>	<i>Consumption >400 <=600 units p/m 480 paise per unit</i>	<i>140 paise X 50 + 350 paise X 150 + 430 paise X 200 + 480 paise X 200 = Rs.2415</i>	<i>400</i>	<i>(-)1.5%</i>
<i>700 Units</i>	<i>Consumption >600 <=700 units p/m 480 paise per unit</i>	<i>140 paise X 50 + 350 paise X 150 + 430 paise X 200 + 480 paise X 200 + 480 paise X 100 = Rs.2895</i>	<i>413</i>	<i>(+)1.22 %</i>

8.In view of the mandatory provision of Section 61(g) regarding the need for reduction of cross subsidy and provision under Section 65 of the Electricity Act, 2003 regarding payment of subsidy in advance in case Govt. wants particular category of consumers to be charged at subsidized rate govt. must come out with a clear cut proposal as to whether they would like to give subsidy in order to comply the provision of Section 61(g) and 65 of Electricity, Act, 2003.

9.The contention of Shri Mahapatra that the Hon'ble Court of Orissa has stayed the tariff order is not correct. The Hon'ble High Court has only ordered that the tariff so fixed by

the order of the OERC for FY 2011-12 and effective from 01.04.2011 shall not be collected from the consumers .

10. In view of the above, Govt. is directed to submit their detailed proposal in the light of observations in the preceding paragraphs for consideration by the Commission for examining the admissibility of review petition and hearing thereon on merit”.

5. In pursuance of the aforesaid direction dated 5.5.2011 of the Commission, the petitioner has submitted it's revised petition through affidavit before the Commission during hearing on dated 16.6.2011. The petitioner has submitted that the Commission in its interim order dated 5.5.2011 while justifying the fixation of RST for various categories of consumers including the domestic ones, *inter alia*, has directed the State Govt. to submit the ground on which the review petition can be taken up and detailed proposal clearly putting forth its views with regard to the various points as per the order of the Commission dated 5.5.2011 including provision for subsidy/financial assistance to the sector which can only lead to any reduction in the RST for domestic consumers as prayed for. In compliance to the above directions of the Commission, the petitioner submitted the present review petition afresh. It has submitted that, the review can be made under the following heads:

- a) Mistakes/errors apparent on the face of the record,
- b) Discovery of new important matter or evidence and
- c) Any other sufficient reasons.

He submitted that the Commission in its RST order dated 18.3.2011 passed in Case Nos. 146, 147, 148, & 149 of 2010 have revised the slab for various categories of the consumers of the State. In fact, there has been introduction of an altogether new slab for consumption of electricity from 51 units to 100 units per month by the domestic consumers and the tariff applicable for this category has been fixed at 350 p/u. The tariff increase in this category was approved to be as high as 150% as compared to the existing tariff of Rs.140 p/u, which could be reduced to some extent as increase 150% is a “tariff shock” to the low-end domestic consumers.

6. The petitioner further submitted that, it do not differ with the views of the Commission passed in its order dated 05.05.2011 with regard the various calculations arrived at to contain the cross-subsidies with a view to make the electricity tariff to reflect the cost of the supply in course of time as per National Tariff Policy. However, in setting out such tariff, the petitioner is seriously

concerned for the low-end domestic consumers who form the bulk of the consumer base of the retail supply utilities (DISCOMs) having low purchasing power. The petitioner do not intend to part with the responsibilities of ensuring the equitable distribution of incidence of the power tariff on the relevant consumers based upon the notion of the ability to pay. In order to keep the RST affordable for the consumers at the consumption slab of 51 to 100 units per month, a more rationale method has been envisioned/chalked out by the petitioner to lessen the burden on this category of consumers which are given below:

- i) The RST for the consumers belonging to the slab of 51 to 100 units/month may be considered to be revised to 200 p/u instead of 350 p/u.
- ii) This would otherwise mean a reduction of tariff to the extent of 150 p/u (350 p/u – 200p/u) in this slab.
- iii) It is estimated that the total number of consumers under this slab would be around 12 lakhs.
- iv) Calculated in this way, the monthly electricity consumption of this slab would be around 600 lakh units (12 lakhs x 50 units).
- v) Due to reduction of 150 p/u, the monthly financial loss to the utilities is calculated to be around of Rs.9.00 crore (600 lakh units x 150 p/u).
- vi) Estimated in this manner, the annual estimated financial loss would be around Rs. 108 crore (12 months x Rs.9.00 crore). This may be allowed to GRIDCO as Regulatory Asset.
- vii) In order to compensate this sum of Rs.108 crore to the DISCOMs on yearly basis, the average Bulk Supply Price of GRIDCO may be reduced by 5 p/u. (Rs.108 cr. /22477 MU i.e., annual approved sales quantum by GRIDCO to the DISCOMs).
- viii) The reduction of BSP may be allowed as gap / Regulatory Asset to be passed on in future years.
- ix) The petitioner has decided to provide Rs.108 crore to GRIDCO during FY 2011-12 as share capital support in order to compensate the reduction of BSP,

It has also been submitted by the petitioner that the Commission may kindly consider the above proposal of the petitioner by virtue of the power conferred on it u/s 62(4) to revise the RST of 350 P/U to 200 p/u for consumption by the consumers at the slab rate from 51 to 100 units per month and also effectual reduction of 5 p/u in the average BSP of GRIDCO to compensate the financial burden on the DISCOMs. The petitioner will also compensate the consequential revenue loss of Rs.108 crore to GRIDCO by way of infusion of share capital of Rs.108 crore. He prayed the Commission to admit the review case and approve the proposed revised tariff of 200 p/u instead of 350 p/u for the domestic consumers of the slab consuming electricity from 51 to 100 units per month.

7. Shri P.P. Mohanty, Advocate on behalf of M/s. Balasore Alloys Ltd., M/s. Tata Steel Ltd., M/s. Ferro Alloys Corporation Ltd., M/s. Shree Salasar Casting Pvt. Ltd. and M/s. Auro Ispat (India) Pvt. Ltd. have filed their objections wherein they have stated that being aggrieved by the RST order dated 18.3.2011 passed in Case Nos. 146, 147, 148, & 149 of 2010, the above HT & EHT industrial consumers have preferred appeals before the Appellate Tribunal for Electricity, New Delhi which have been registered as Appeal Nos. 57, 67, 68, 69, 70, 71, 72 & 73 of 2011 and the same are posted on 07.07.2011 for hearing. In the above circumstances, in so far as EHT/HT consumers like them are concerned and as the matters are subjudice before the Hon'ble ATE, the Commission may kindly keep them out from the purview of the present adjudication.
8. Shri A.K.Sahani, the authorized representative of M/s. Shree Maruti Steel & Casting Pvt.Ltd., M/s. Balasore Ice Factory Owners Forum, M/s. Maithan Ispat Ltd., M/s. Orissa Electrical Consumer Association and for himself submitted that as per tariff fixed by the Commission, the average cost of supply (P/U) for the State as a whole for FY 2011-12 is 408.87 paise. There would be 26.46 lakhs of BPL consumers and consumption would be 545.129MU out of such units, the DISCOMs will collect only Rs.545.129 million rupees at the rate Re.1 per unit. The said consumer organization completely agree with the views of the State Govt.- Petitioner that newly introduced slabs of 50 Units and 100 units per month for domestic- LT consumers have been worst hit as such tariff hike is 150% in comparison with the RST for FY 2010-11 against such slab. For such slab there should not be any tariff hike. The total subsidy towards, BPL consumers and

domestic consumers is Rs.1007.17 crore for the FY 2011-12, which would be burden on the EHT & HT consumers to the amount of Rs.888.8 crore. He also submitted that as per S.65 of the Electricity Act, 2003 herein after referred to as “the Act” , if the State Govt. requires to grant of any subsidy to the category of consumer or class of consumers in the tariff so determined by the Commission under S.62 of the Act, the State Govt. shall notwithstanding any direction which may be given under S.108 of the Act, pay in advance and in such manner as may be specified the amount to compensate the category of consumers affected by the grant of subsidy. So he prayed the Commission to direct the State Govt. to provide subsidy of Rs.1007.17 crore for subsidization of such category of consumers like BPL and Domestic.

9. Shri R.P. Mohapatra, the authorized representative of M/s. Tata Tele Services Ltd., M/s. IDCOL Ferro Chrome & Alloys Ltd., M/s. UCCI, M/s. Balasore Alloys Ltd., M/s. Jayshree Chemicals Ltd. M/s. Auro Ispat Ltd., M/s. IPISTEEL Ltd. and for himself submitted that Govt. of Orissa, the petitioner is conscious of the marginal revenue loss, in case the suggestion for down-ward revision of RST applicable to domestic category is effected and that in the worst scenario of unwillingness/refusal of DISCOMs to accept the challenge of absorbing such marginal revenue loss, by way of affecting reduction in their high AT & C, other alternatives of compensating such losses can be explored. He has further submitted that the said review petition, the petitioner has not mentioned the provisions contained in the Act, and the regulations made there under, which empowers the Commission to determine a lower tariff for domestic consumers. The said review petition has been filed without due diligence, frivolous and does not have any statutory support and should therefore be rejected at the stage of admission. There is no scope for reduction of tariff applicable to a category of domestic consumers, unless the State Govt. provides subsidy in accordance with S.65 of the Act. The affordability or lack of purchase power can not be a consideration in the determination of tariff as has been already been accepted in past years by the Commission. The Commission in its RST order dated 18.03.2011 for FY 2011-12 has determined the overall “average cost of supply” for the State as a whole as Rs.4.08/Kwh. Therefore in accordance with para 5.5.2 of the National Electricity Policy and para 8.3.1 of the Tariff Policy , the

minimum tariff even for BPL category, consuming up to 30 Units per month should have been Rs.2.04/Kwh. The domestic consumers consuming more than 30 Units per month are not eligible to be cross-subsidized as BPL consumers. It is upto the State Govt. to decide on the extent of subsidy for the different categories of consumers and accordingly the subsidized rates should be provided in advance as per S.65 of the Act, to the concerned Distribution Licensee for determination of tariff by the Commission. The Commission while determined the tariff for FY 2010-11 and 2011-12 relating to various categories of consumers has raised the tariff of HT & EHT group of industrial consumers to unsustainable levels on account of deviations from the provisions of para 5.5.3 of National Electricity Policy which provides that the existing cross-subsidies for other categories of consumers would need to be reduced progressively. The cost of supply at various voltages at HT & EHT was not determined in the RST order for FY 2011-12. The Commission did not indicate the extent of cross-subsidy existing and plan of action to reduce it over a period of time.

10. Shri Mahapatra further have submitted that the Hon'ble High Court vide its order dated 16.03.2010 in W.P.(C) Nos.6624-26 of 2008 had directed the OERC to determine the extent of cross-subsidy as per S.61(g) of the Act read with Reg.7(C) (iii) of OERC (Terms and Conditions for Determination of Tariff) Regulations, 2004. But the Commission in its RST order dated 18.03.2011 vide at para 391 have indicated the cross-subsidy in P/U calculated as the difference between average tariff of HT & EHT industries at 80% Load Factor and the average cost of supply for the State as a whole without complying the above direction of the Hon'ble High Court. The cross-subsidies paid by the subsisting categories are increasing from year to year. The cross-subsidy at LT as a percentage below the average cost of supply in the State as a whole was 33.04% for FY 2010-11, whereas it should have been within 20% in accordance with the Tariff Policy notified by the Central Govt. The general purpose consumers, who avail power supply at HT but with a Contract Demand less than 70 KVA shall pay the tariff applicable for LT consumers. The cross-subsidy paid by this class of consumers is 263P/U during 2010-11 and 252P/U respectively. The Commission vide its RST order dated 18.03.2011 has conceded that availing power at HT at their own cost by the industries results in reduction of loss to the DISCOMs, but

has justified the imposition of tariff applicable to LT class of consumers on the ground that power supply is reliable, which in any case is the responsibility of the licensee. The determination of Retail Supply tariff for FY 2011-12 contravenes S.62(3) of the Act as there is discrimination between the general purpose consumers and others availing power supply at HT up to 110KvA. There is no scope for reducing the RST for LT domestic consumers, as the cross-subsidy burden on the subsisting category of consumers is very high and needs reduction. The only procedure by which the RST for the LT Domestic consumers can be reduced if the State Govt. shall provide subsidy in accordance with S.65 of the Act by filing a separate application under S. 65 of the Act before the Commission and not in this review petition. He also prayed the Commission to reject the application for review of the order dated 18.3.2011 passed in Case Nos.146,147,148 & 149 of 2010 filed by the DoE, GoO in limin.

11. Shri Jaydev Mishra has filed his suggestions on 13.6.2011 wherein he has proposed that increase in retail tariff by 5% more in each category over and above 2010 tariff will reduce the gap to some extent. The slabs fixed by the Commission should not be changed. All the slabs that are existing from 1996 to 2010 should remain intact. DISCOMs should try to reduce their T&D loss in their distribution sector as to the agreed value. After all this work out gap to be assumed it is Rs.1000 crore and GRIDCO should take this as market borrowing with the State Govt. guarantee. The State Govt. should meet the interest cost of this loan through subsidy as Rs.100 crore per year, so that its loan does not grow. The retail tariff in all sectors be increased by 5% each year till the sector stands on its own with new hydro generation, T&D reduction and energy conservation. More and more franchise operations be organized by DISCOMs in all rural areas to cover the whole distribution business. If any DISCOM does not agree to bear the financial burden with specific targets their license may be revoked and the Commission takes over the business and re-tender for fresh privatization.
12. Shri A.K. Bohra, CEO (Comm.), CSO, WESCO, NESCO & SOUTHCO has objected the petition for review of order dated 18.3.2011 of the Commission passed in Case Nos.146,147,148 & 149 of 2010 filed by the State Govt. on 16.6.2011. He submitted that , the present petition for review can not be entertained as the State Govt. has not filed the petition afresh as per direction of

the Commission vide its order dated 05.05.2011 without justifying the reasons as to why this review petition is filed. He further submitted that review can not be treated as an appeal in disguise. If this review petition is admitted, it would be treated as if it is a fresh tariff determination. He also further submitted that, as assessed by the State Govt. the domestic consumer of the State between the slab of 51 to 100 units is about 12 lakh is not correct. It is much more than that. He has submitted that, in NESCO, WESCO and SOUTHCO the domestic consumers within the slab of 51 to 100 is 11,57,830. This figure may also undergo change on a month to month basis depending on their consumption pattern and also bound to increase due to growth in consumer strength during 2011-12. Therefore, the assumption made by Govt. of Orissa/GRIDCO that there are 12 lakh consumers of the state having consumption more than 50 units/month and financial liability of Rs.9 crore/month on account of reduction tariff from Rs.3.50/KWH to Rs.2.00/KWH is grossly underestimated.

He has further submitted that, the petition filed by petitioner is not for review of Retail Tariff Order but a proposal to revise the Tariff altogether from 350 Paise per unit to 200 Paise per unit for the Domestic category consumers consuming between 50 units to 100 units per month and to create a Regulatory Gap/Asset of Rs.108 crore in GRIDCO's ARR and to be allowed for amortization in future years. The proposal of the petitioner is to provide the additional share capital of Rs.108 crore to GRIDCO is a method of funding to GRIDCO to tide over the liquidity crunch due to expected/proposed less recovery of BSP by 5 paise per unit. The resultant gap is to be recovered from the consumers in the shape of regulatory assets in future years; in other words it is a deferment of the expenditure but no way reducing the burden to the domestic consumers. Such deferment is contrary to the provisions of the Tariff Policy. It has further submitted that, the petitioner is concerned about low purchasing power of low end domestic consumers and as such have put up the proposal to Hon'ble Commission to revise the Tariff of 50 to 100 unit consumption category of Domestic consumers which cannot become the base for review or revision of the Tariff. Further, it may be submitted that BPL consumer under Kutir Jyoti Category are paying @ Re.1/- per Unit, which is only 25% of the cost of Supply in contrary to the mandate of the National Electricity Policy which mandates that the minimum

Tariff Payable should be at least 50% of the average cost of Supply. Further the proposal of providing Share Capital Support to GRIDCO to compensate the reduction in BSP is against the Tariff Determination procedure stipulated by the Hon'ble Commission. The investment on Share capital will attract return on equity and as submitted during the course of hearing by GRIDCO that it will help them in borrowing loans from financial institutions which is also associated with the carrying cost to be recovered in future Tariff and thus in turn will be passed on to the consumers. Share Capital support is Capital in nature and in no way concerned with the Revenue i.e. Tariff Determination Procedure. If GoO desires, then they can provide the revenue subsidy in advance as per Section 65 of the Electricity Act, 2003. Further the proposal of Govt. of Orissa to provide Share Capital Support to GRIDCO is against the spirit of the Electricity Act, 2003 as nowhere in the Electricity Act, 2003 provision for providing support in the shape of Share Capital to a licensee to absorb the Tariff Shock to consumers, is provided. The only support that the GoO can extend to avoid the Tariff Shock to the proposed 2nd slab Consumers in Domestic category is by way of Revenue Subsidy only as per the Electricity Act'2003 and in the manner to be determined by the Hon'ble Commission. Further, if GoO desires to provide Share Capital of Rs.108 crore to GRIDCO, they can provide the same to GRIDCO otherwise also at any time. For the proposal for reduction of Tariff to a particular class or category of consumers the petitioner may provide the requisite subsidy under the Electricity Act. If the petitioner wants to limit the Tariff of proposed category of consumers at 200 Paise per unit, then as stipulated in the Section 65 of Electricity Act, 2003, the petitioner may approach the Commission through a separate petition to provide Revenue Subsidy. Since the present review is pertaining to RST order for FY 2011-12 it is not be linked to Bulk Supply Price.

Shri Bohra, further submitted that the power of review is not to be confused with the appellate power which may enable the Appellate Court to correct all manner of errors committed by the subordinate courts. Under Order 47 R-1 of CPC a judgment may be open to review, if there is a mistake or an error apparent on the face of the record or discovery of new facts or evidence which was not available at the time hearing of the case for which review is sought for. A review petition, has a limited purpose and cannot be allowed to be an appeal in disguise”.

Therefore, the review petition should be disallowed and rejected. Shri Bohra, submitting as above, referred to the judgment of the Hon'ble Supreme Court of India reported in (1997) 8 SCC, 715 (Parsion Devi and others Vrs Sumitri Devi and others) .

13. Shri L. R. Padhi, DGM (Comm.), CESU submitted that there may not be any review of the existing retail supply tariff. There is no sufficient ground for review of the RST order of the Commission for FY 2011-12 as prayed by the State Govt. and thus the review petition filed by State Govt. may be rejected in limin. If the Commission accept proposal of the Govt. the petitioner in that case as against the proposed BSP reduction price of 5 paise per unit the same may 11 paise per unit.
14. Shri Pawan Nahata appearing on behalf of M/s. Krishna Chlorate Pvt. Ltd. submitted that the existing RST for FY 2011-12 is unbearable for the domestic consumers and it has got full support to the causes of the State Govt. claiming for reduction of tariff.
15. Shri P. K. Panda, General Secretary of Federation of Consumer Organization (FOCO) and also for OCA filed their written submission on 16.6.2011 and submitted that the licensees have failed to discharge their statutory duties, obligations. They are not complying with the order and direction of the Commission. Actions are not being taken by the DISCOMs to curb theft of power. The State Govt. is also not taking effective steps for prevention of theft of power. If the direction of the Commission would have been carried out by the licensee, then there would have substantial reduction both in technical and distribution loss, and in the result, there would not have been hike in tariff.
16. Shri S. K. Satapathy, authorized representative of M/s. George Distributors Pvt. Ltd. ahs submitted that it supports the review petition of the State Govt. for reduction of tariff increased in the RST order dated 18.3.2011 of the Commission as the abnormal hike of 150% over the existing RST would be unbearable for the domestic consumers. The aggregate technical and commercial loss (AT&C) of the DISCOMs is very high at around 40% and there are ample opportunities and scope on the part of DISCOMs to reduce such losses to a sustainable level of around 15% as stated by the State Govt. It also asserted that 1% reduction in AT&C loss would result in increase in estimated revenue of about Rs.60 crore per year. So the DISCOMs should resort to such possible measures to minimize the

- AT&C loss at least by 50% which they would find more viable than insisting for increase their revenue.
17. Shri S.K. Patel appearing for L&T Limited submitted that there should not be any difference between domestic consumer and consumers residing in colony of industry. So like general domestic consumer, concessional tariff also should be applicable for the residential colony of the industry.
 18. Shri R.C. Satapathy, submitted that the Commission in its order dated 05.5.2011 had specifically directed that in order of the mandatory provision of Sec. 61(g) regarding need for reduction of cross subsidy and provision under Sec. 65 of the Electricity Act, 2003, if Govt. wants particular category of consumers to be charged at subsidized rate, Govt. must come with a clear cut proposal as to whether they would like to give subsidy in order to comply the provision of Sec. 61(g) and 65 of the Electricity Act, 2003. From the submission made by the petitioner, no such proposal has been given by the State Govt. as per the direction of the Commission. Further, the petitioner has *inter alia*, attempted for change in the BSP, which is never intended by the Commission in its order dated 05.5.2011 and the proposal of the petitioner is not covered u/s 65 of the Electricity Act, 2003.
 19. M/s. OCL submitted that, whatever order of the Commission passed in this case should not affect the industrial tariff.
 20. Shri G.C. Dash, submitted that the tariff for the domestic consumers within the slab of 1 to 100 may be rationalized, when the ground reality is that the consumer who are said to be BPL consumers and have been allowed fixed tariff , are in fact consuming more energy like other general consumer.
 21. The petitioner submitted that the review is not only restricted to clerical mistake, error apparent on fact of the record; discovery of new important facts or evidence. It can also be made when there is any other sufficient reason. The Review Petition of the petitioner Govt. comes under “any other sufficient reasons”.
 22. In order to determine the scope and power of review, the Commission has gone through the different reported judgments of the Hon’ble Supreme Court.
 23. Interpreting Order 47, Rule 1 of CPC, in a case reported in AIR 2005 SC 592 their Lordship of Hon’ble Supreme Court in the case of Board of Control for Cricket, India vrs. Netaji Cricket Club in paragraphs 88,89 and 90 have held as under:

“89. Order 47, Rule 1 of the code provides for filing an application for review. Such an application for review would be maintainable not only upon discovery of a new and important piece of evidence or when there exists an error apparent on the face of the record but also if the same is necessitated on account of some mistake or for any other sufficient reasons.

90. Thus, a mistake on the part of the court which would include a mistake in the nature of the undertaking may also call for a review of the order. An application for review would also be maintainable if there exists sufficient reason therefore. What would constitute sufficient reason would depend on the facts and circumstances of the case. The words ‘sufficient reason’ in O.47, R.1 of the Code is wide enough to include a misconception of fact or law by a court or even an Advocate. An application for review may be necessitated by way of invoking the doctrine “actus curiae neminem gravabit”.

24. Therefore, the power of review is not restricted only if there is any clerical mistake or error apparent on the face the record and discovery of new facts. The power of review also can be exercised by the court if it satisfied that there are other analogous sufficient reasons.
25. After hearing the parties and perusal of the case records, we find that the reasons given by the petitioner for review of order dated 18.3.2011 passed in Case Nos. 146, 147, 148, & 149 of 2010 of the Commission are not sufficient to re-look the order passed in the above cases. The Commission in its order dated 18.3.2011 has taken a conscious decision after hearing the stake holders, consumer counsels, objectors/public institutions/organization in fixing the tariff for different category of consumers and also given the reason thereof. There is no sufficient reason assigned by the petitioner to occasion a revisit to the Retail Supply Tariff Order dated 18.3.2011 particularly with respect to the category of consumer coming under slab of consuming electricity 51 to 100 units per month.
26. The Commission in its interim order dated 05.5.2011 at para 8 had directed that in view of the mandatory provision of Section 61(g) regarding the need for reduction of cross subsidy and provision under Section 65 of the Electricity Act, 2003 regarding payment of subsidy in advance, in case Govt. wants particular category of consumers to be charged at subsidized rate Govt. must come out with a clear cut proposal as to whether they would like to give subsidy in accordance with the provision of Sec. 65 of the Electricity, Act, 2003 and thereby comply with Sec. 61(g) of the Act. But the Govt. without complying the above direction, has come up with a different proposal which *inter alia* intends for revision of not only retail tariff for domestic consumers

consuming electricity more than 50 units per month and upto 100 units per month but also revision of the Bulk Supply Price payable by DISCOMs to GRIDCO, which is not the subject matter of the present review application.

27. The Commission's Tariff order for 2011-12 gives in clear terms the rationale for the said order. The continuous rise in the WPI, cost of coal, furnace oil, fuel and cost of maintenance, materials wages, etc, does not enable any kind of relief in the pricing of electricity and consequently on the tariff of any category of consumers. After taking into account the cost of supply and keeping in view of the interest of different category of consumers, the bulk supply tariff for distribution companies, transmission tariff for OPTCL and the retail tariff for different category of consumers have been arrived at. We find no reasons to reconsider those conclusions. We however take note of the State Govt.'s written submission filed on 16.6.2011 during the hearing and their commitment to provide financial assistance through GRIDCO to relieve the burden of those domestic consumers consuming electricity between 51 to 100 units per month. We also note that this submission can only be dealt with under Sec. 65 of the Electricity Act, 2003.
28. In view of the reasons given in the preceding paragraph, the Commission does not consider this to be a fit case for review and, therefore, the review petition deserves to be dismissed as not-maintainable as the same is also devoid of any merit.
29. However, the Commission, as stated earlier takes due cognizance of the written submission of the State Govt. proposing to provide financial assistance to GRIDCO with intention of ultimately passing on to the domestic consumers through DISCOMs in order to compensate the loss of the distribution companies on account of suggested reduction of retail tariff from 350 paise per unit to 200 paise per unit for domestic consumers in the slab between 50 units and upto 100 units per month.
30. After a careful consideration of the submission of the petitioner, Govt. of Orissa and views of all objectors, the Commission hereby orders as under :
 - (a) The Commission does not find any justification to revisit the ARR of DISCOMs and/or the tariff for any particular category of consumer; and consequently to revisit the BSP of each DISCOMs. The review petition is, therefore, dismissed. The retail tariff schedule and the tariff for each category of consumers shall stand as in the Retail Tariff Order. The BSP of DISCOMs payable by DISCOMs to GRIDCO are not a part of this review petition

and, therefore, shall not be interfered with. The review petition is not allowed.

- (b) Govt. of Orissa's proposals for financial assistance to be passed on to domestic consumers in the slab, in the range of 50 to 100 units per month, on social grounds will be considered separately and an appropriate order is being issued.

31. Accordingly, the case is disposed of.

Sd/-

(B.K. Misra)
Member

Sd/-

(K. C. Badu)
Member

Sd/-

(B.K. Das)
Chairperson