

ODISHA ELECTRICITY REGULATORY COMMISSION
BIDYUT NIYAMAK BHAWAN
UNIT-VIII, BHUBANESWAR - 751 012

Present: Shri S. P.Nanda Chairperson
Shri B. K. Misra, Member
Shri S. P.Swain, Member

Case No. 50/2012

M/s OPTCL	...	Petitioner
-Vrs. -		
M/s.GRIDCO & Others	...	Respondents

IN THE MATTER OF : **Application Under Section 94 (1) (f) of the Electricity Act, 2003 read with Regulation 70(1) of the OERC (Conduct of Business) Regulations, 2004 for review of the Order dated 19.03.2012 passed by the Commission in Case Nos. 29.30 & 31 of 2007 and 06,07 & 08 of 2012.**

For the Petitioner: **Shri B.P.Mohapatra, Dir(Fin.), M/s. OPTCL**

For the Respondents: **Shri Ranjit das, Sr.GM(PP),GRIDCO**
 Shri Lingaraj Padhi, DGM (Com.), CESU &
 Shri S.K.Sahu, DGM(Fin.),CESU

 Shri Debasish Das,GM (RA),CSO,WESCO,NESCO &
 SOUTHCO and Shri K.C.Nanda, DGM(Fin.),WESCO.

Date of Hearing: 31.08.2012

Date of Order: 18.09.2012

ORDER

The matter is taken up today for hearing on condonation of delay in filing of the review petition and on question of admission as well as on merit.

2. Heard the parties at length.
3. The petitioner-M/s. OPTCL has filed this present case for review of order dated 19.03.2012 of the Commission passed in Case Nos.29.30 & 31 of 2007 and in Case Nos. 06, 07 and 08 of 2012. Delay of ten days of delay in filing the review petition was condoned and the matter was heard on merit.

4. The present review petition relates to the truing up order of the Commission for M/s. OPTCL passed in case Nos.29,30 & 31 of 2007 and in case Nos.06,07 & 08 of 2012. In the review petition the petitioner has challenged the validity of the principles of truing up exercise followed by the Commission to determine the ARR of M/s. OPTCL. The principles of truing up exercise can only be challenged by way of an appeal under S.111 of the Electricity Act, 2003 and not coming within the purview of review jurisdiction to be exercised under Order 47 rule 1 of the Civil Procedure Code, 1908. The Commission has allowed Truing Up exercise as per audited Accounts, approved Business plan and the cost passed in the Annual Revenue Requirement from time to time. The guidelines and principles followed by the Commission for Truing Up exercise were also accepted by the DISCOMs as well as the Petitioner herein. Moreover, the present review petition does not satisfy any one of the grounds on which a review is permitted under Order 47 Rule 1 of the Civil Procedure Code, 1908. Order 47 Rule 1 says as follows:-
- (a) Discovery of new and important matter of evidence which was not within the knowledge of the applicant and could not be produced by him at the time when the decree or order was passed,
 - (b) Mistakes or error apparent from record, and
 - (c) For any other sufficient reason.
5. The petitioner-M/s. OPTCL has not satisfied any of the conditions for review as mentioned above. It is well settled principle of law that a review can not be allowed which is an appeal in disguise. In this present review petition, the petitioner has challenged the guidelines and principles followed by the Commission for Truing Up exercise.
6. After hearing the parties and after perusal of case records, the Commission is of the view that there is neither any error apparent on the face of the record, nor there is any irregularity in the proceedings. Therefore, the application for review of order dated 19.03.2012 passed in Case Nos.29.30 & 31 of 2007 and in Case Nos. 06, 07 and 08 of 2012 is rejected.
7. Accordingly, the case is disposed of.

Sd/-
(S.P. Swain)
Member

Sd/-
(B.K. Misra)
Member

Sd/-
(S. P. Nanda)
Chairperson