

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

**Present : Shri S. P.Nanda, Chairperson
 Shri S. P. Swain, Member
 Shri A. K. Das, Member**

Case No. 10/2015

DoE, Govt. of Odisha	Petitioner
Vrs.		
WESCO Utility & Others.	Respondents

In the matter of: An application of Department of Energy, Govt. of Odisha filed under S.94 (1) (f) of the Electricity Act, 2003 read with Regulation 70(1) of the OERC (Conduct of Business) Regulations, 2004 and under the provisions of Order 47 Rule 1(c) of the Code of Civil Procedure, 1908 for review of Retail Supply Tariff order dated 23.03.2015 passed in Case Nos. 69.70.71 & 72 of 2014 by the Commission pertaining to Irrigation Pumping and Agriculture tariff for FY 2015-16.

For Petitioner: Shri. Sangramjit Nayak, Additional Secretary, DoE, GoO, Niharika Pattnaik, ALO, DoE, GoO,

For Respondents: Shri P.K.Pradhan, Dir. (Com.), GRIDCO Limited, Shri. B.D.Ojha, GM (Economist), GRIDCO Limited, Shri P.K.Dash, CGM (Com.), CESU, Shri T.K.Mohanty, GM (Com.), CESU, Shri Biswaranjan Das, DM (Com.) CESU, Shri S.K.Harichandan, AGM (Law), CESU, Shri R.P.Mohapatra, Shri A.K.Sahani, Shri Ramesh Chandra Satpathy, Shri. Brahmananda Mishra, UCCI, Shri U.N.Mishra, CGM (PP), GRIDCO Limited, Shri S.K.Puri, GM (RT&C), OPTCL, Shri. A.C.Mallik, Shri. Umakanta Sahoo, GM, SLDC, Shri Prafulla Chandra Biswal, Advocate, Shri. Niladri Khadanga, WESCO, NESCO & SOUTHCO Utilities are present. Nobody is present on behalf of Odisha Consumers Association, PRAYAS, Energy Group, Grahak Panchayat, Sri Ananta Bihari Routray and Confederation of Citizen Association.

ORDER

Date of Hearing: 03.07.2015

Date of Order: 21.03.2016

A petition has been filed by Government of Odisha to review Retail Supply Tariff order for 2015-16 of this Commission on the increase of Irrigation Pumping and Agricultural Tariff. The review petition has been filed well within mandated 90 days from the date of order i.e. 23.03.2015.

2. Seeking review of our order State Government has submitted as follows:

The increase of tariff for Irrigation Pumping and Agriculture from 110 paise per unit to 150 paise per unit in LT category has come as a 'tariff shock' to the poor agricultural consumers of the State. They form very small portion of the consumer base of the DISCOMs. As per the calculation of the Government, the difference in the billing amount due to tariff hike is around Rs.10.06 crores. Infusion of capital or capital investment by the State through budgetary mechanism is more a sustainable mode to develop the power infrastructure which has got a long term impact on the economy of the State than providing direct subsidy to the consumers which don't augur well for system improvement. Government is infusing funds through different schemes. The State Government has further submitted that considering the total business of electricity sector of Odisha this fraction of revenue relating to agricultural category is of negligible significance and can be adjusted through cross-subsidy from other category of consumers.

3. The following objectors have filed objections and took part in hearing.

- (i) Shri R P Mohapatra
- (ii) Utkal Chambers of Commerce and Industries (UCCI)
- (iii) Shri A K Sahani
- (iv) Shri Ananda Mohapatra
- (v) Shri Ramesh Chandra Sathpathy
- (vi) GRIDCO Ltd.
- (vii) Shri Alekh Chandra Mallick

Mr. R P Mohapatra, contesting the proposed move stated that the statements of the Government are not based on facts as the use of lift irrigation using electrical pumps in Odisha is negligible. The number of agricultural consumers is less than 1% of the total number of electricity consumers in the State. A farmer using electricity for irrigation pumping has distinct advantage of having assured Kharif crop and raising at least one Rabi crop thus enhancing his income. The Commission has increased tariff for BPL consumers to 50% of average cost of supply as per National Electricity Policy. However, tariff for 'Irrigation Pumping and Agriculture' continues to be much lower than 50% of the 'Average cost of supply' in contravention of the provision of National Electricity Policy and Tariff Policy. The submission of the Petitioner does not constitute 'sufficient reasons'

for review of RST order of the Commission for FY 2015-16 and increasing tariff for other category of consumers as proposed by Government.

4. UCCI submitted and raised apprehension that the increase of cross subsidy will lead to rise of the industrial tariff leading to higher cost of products in recession hit market and hurt investor. The agricultural tariff is already at lower level and constitute major source of AT&C loss. The review application does not fall in any category under which a statutory order can be reviewed as per codal procedure. This application also violates Section 65 of the Act, 2003 and intention of the said Act.
5. Shri A.K.Sahani submitted that further reduction of agricultural tariff will enhance the cross subsidy percentage beyond (-) 20% for LT category of the consumers envisaged by the Commission and against Tariff Policy. The Government of Odisha need to pay subsidy under Section 65 of the Act directly if it desires to subsidize the agricultural category of consumers.
6. The representative of Shri Ananda Mohapatra submitted that average retail supply tariff of electricity in Odisha stands highest over other states of the country because of huge tariff subsidy granted by them by respective State Governments. The National average gap of RST and BSP is 53 paise per unit but in case of Odisha it is 193 paise per unit. OERC has ignored the causes of unsustainable electricity including rising losses and retail tariff. The matter of cross subsidy is well defined in Electricity Act and Policies made thereunder. The State Government is empowered under Section 65 of the Electricity Act to enforce electricity duty mechanism to mobilise more revenue for compensating the needy and economically backward consumers by sanctioning necessary grants / subsidies from State Annual Budget. The review petition submitted by Government of Odisha has violated concerned Acts and Policies, and therefore, is not maintainable. The Government of Odisha is collecting huge amount on account of electricity duty which they can utilise to pay subsidy mandated under the Act to reduce agricultural tariff.
7. Shri Ramesh Chandra Sathpathy submitted that the Government has no justification in requesting the Commission to review the tariff determination for irrigation pumping by way of adjusting cross subsidy to other category of

consumers. The Government should pay subsidy to reduce the tariff directly to the DISCOMs of Odisha.

8. GRIDCO Limited submitted for rolling back of the tariff increase through cross subsidy or through subsidy as per law as the Commission deems proper.
9. Shri Alekh Chandra Mallick stated that if GRIDCO Limited act prudently and efficiently while purchasing power from generating sources/markets there will be sufficient surplus to offset the reduction of tariff of agriculture.
10. In its rejoinder to the objection filed by the objectors Govt. of Odisha submitted that the Government has always given adequate importance to the agriculture sector. To cater to the demand of electricity in this sector, the State Government has started implementing various schemes for direct funding. Under the Odisha Dedicated Agriculture and Fishery Feeder (ODAFF) Scheme separate dedicated feeder will be available for Agriculture Sector so that uninterrupted and quality power supply can be provided to such sector. State Government is providing an outlay of Rs.1000 Cr. in FY 2013-14 to FY 2015-16 in this regard, without any contribution from the DISCOMs.
11. The State Government further submitted in its rejoinder that the primary objective of Deendayal Upadhyaya Gram Jyoti Yojana is separation of agricultural and non-agricultural feeders facilitating judicious restoration of supply to agricultural and non-agricultural consumers in rural areas. Such investment will allow the DISCOMs to regulate power supply to agricultural consumers according to needs for Demand Side Management (DSM). Also the Government has planned for construction of 550 nos. of 33/11 KV substations to improve the voltage profile and quality of supply as a contribution to the sector. This can be taken as funds to the sector in lieu of direct subsidy.
12. The Government is infusing huge funds in the capital investment in the distribution sectors through schemes like ODSSP, ODAFF, CAPEX and programmes like DESI. Therefore, further subsidy to distribution sector is not possible on the part of the Government. Infusion of capital or capital investment by the State through its budgetary mechanism is more a sustainable mode to develop energy infrastructure which has got a long term impact on the economy of the State particularly to agrogarian consumers than providing direct subsidy to the

consumer which do not augur well for the system improvement. The revenue to the DISCOMs relating to agriculture sector is of negligible significance, the same can be adjusted through the cross subsidy from other category of consumers.

13. In view of rival contentions between parties mentioned above, the Commission has to determine if a review of our stated order is maintainable under stated parameters of Code of Civil Procedure and then proceed to further analyse the issue raised by the Government with relevant provisions of law. We proceed accordingly.
14. As per Order 47 Rule 1 of the Code of Civil Procedure, 1908 review of an order can be made on any of the following grounds:
 - (a) Error apparent on the face of the record;
 - (b) New and important matter or evidence which is relevant for the purpose was discovered which could not be produced after exercise of due diligence or if there appears to be some mistake;
 - (c) Any other sufficient reason.

So far as (a) and (b) mentioned above, the petitioner has placed no reason on record.

15. The present petition of the Government has been filed under the heading '**Any other sufficient reason**'. Hon'ble Supreme Court in Ajit Kumar Rath vrs. State of Orissa (1999) 9 SCC 596 has held that the expression "any other sufficient reason" used in order 47 Rule 1 means a 'reason' sufficiently analogous to "those specified in the rule". In the present case the stated reasons shown by the Government are neither related to the first two nor analogous to them. No error apparent on record has been found or any new and important facts relating to tariff has been placed before us. In any other sufficient reason no material evidence and arguments is also placed before the Commission for consideration.
16. The affected parties, the Irrigation Pumping and Agricultural consumers have also not raised any issue before the Commission seeking reduction of agricultural tariff implying their consent to the decision already taken. All the objectors present have objected the move of the Government seeking review of our order which does not fall within the ambit of the Code of Civil Procedure. The Government has also

failed to show any apparent error in our order or any new evidence which is relevant for reviewing our order.

17. Due to the above reasons the petition filed by the Government on behalf of the agricultural consumers is not maintainable in law & is therefore rejected.
18. With the above observation the case is disposed of.

Sd/-
(A.K. Das)
Member

Sd/-
(S.P. Swain)
Member

Sd/-
(S.P. Nanda)
Chairperson