

ODISHA ELECTRICITY REGULATORY COMMISSION

BIDYUT NIYAMAK BHAWAN

PLOT NO.-4, CHUNUKOLI, SHAILASHREE VIHAR

BHUBANESWAR - 751 021

**Present: Shri U. N. Behera, Chairperson
Shri S. K. Parhi, Member
Shri G. Mohapatra, Member**

Case No. 58/2019

OHPC Ltd.,

..... Petitioner

Vrs.

Shri Ananda Kumar Mahapatra & Others

..... Respondents

In the matter of: **Application under S. 94(1)(f) of the Electricity Act, 2003 read with Reg.70 of the OERC(Conduct of Business) Regulations, 2004 & OERC (Terms and Conditions for Determination of Generation Tariff) Regulations,2014 for review of order dated 28.03.2019 of the Commission passed in Case No.69 of 2018.**

For Petitioner: Shri M. R Biswal, SGM, Shri D. N Patra, DGM and Shri A. K. Das, Manager of OHPC Ltd.

For Respondents: Representative of GRIDCO Ltd., Shri R. P. Mahapatra and Ms. Sonali Pattnaik from DoE, GoO are present during hearing on virtual court. Nobody is present on behalf of Shri Ananda Kumar Mahapatra, Shri Ramesh Chandra Satpathy and Shri Alekh Chandra Mallick.

ORDER

Date of hearing: 30.06.2020

Date of order: 10.09.2020

The petitioner M/s OHPC Ltd. has filed the present petition under section 94(1)(f) of Electricity Act, 2003 read with Order 47 Rule 1 of Civil Procedure Code, 1908 and read with Regulation 70 of OERC (Conduct of Business), Regulations 2004, for review of the order dated 28.03.2019 passed by the Commission in Case No.69/2018.

2. The petitioner has raised the following two issues on the basis of error apparent on the face of the record as well as sufficient reason for revision of the impugned order.

- (i) Non-consideration of deduction of 16.644 MU of allocated energy to CSEB from the saleable design energy of HHEP, Burla for calculation of Energy Charge Rate (ECR) of HHEP, Burla for the FY 2019-20.
- (ii) Correction of the inadvertent error of the figure Rs.3.091 crore in Table-36 of the impugned order for reimbursement of on account of ED on auxiliary consumption by the figure Rs.6.24 crore as mentioned in the Table-37 of the impugned order and included in GRIDCO's ARR for reimbursement to OHPC towards ED on auxiliary consumption for the FY 2019-20.

Issue No.1

3. The petitioner, OHPC has submitted that as per the Inter-State Memorandum of Agreement between Odisha and Madhya Pradesh on 28.04.1983, signed by the then Chief Ministers of the two States, *"it is agreed that supply of 5MW power which was committed by the Government of Orissa previously will be resumed. As the M.P. Electricity Board are to have power from Hirakud, this will be supplied at Hirakud Bus Bar. The cost of power will be the cost of generation at Hirakud Power House. The cost would be reviewed annually by the representatives of the two Boards."* Subsequent upon the bifurcation of erstwhile State of Madhya Pradesh, the successor State of Chhatisgarh was entitled to the share of 5MW power from HHEP, Burla as per the order dtd 17.08.2006 of Ministry of Power, Govt. of India. The petitioner has submitted that there is a dispute on computation of the quantum of power, whether to supply 5 MW power RTC (Round the Clock) without consideration of PLF (Plant Load Factor) of HHEP, Burla as was claimed by the then Madhya Pradesh Authority or 5 MW RTC with consideration of PLF as proposed by Odisha. However, pending the decision to be taken by competent authorities of both the States, 16.644 MU of energy is now being supplied to Chhatisgarh State Power Distribution Company Limited (CSPDCL) considering 5 MW power computed on plant load factor basis.
4. The petitioner has submitted that as per the PPA between GRIDCO and OHPC in respect of HHEP, Burla, it is agreed that OHPC shall sell the entire capacity, availability and dispatched output of the power station excluding 16.644 MU of power to Chhatisgarh State Electricity Board (CSEB). Accordingly, now the power is being supplied to Chhatisgarh State Power Distribution Company Limited (CSPDCL) at the tariff fixed by OERC.
5. The petitioner has submitted that the Commission has recognized the same in its previous tariff orders. The relevant portion at para-72 of the tariff order of OHPC for the FY 2018-19 is depicted below:
"72. xxxxxx. Therefore, GRIDCO has considered 5598.68 MU of availability from OHPC hydro stations excluding Machhkund and after deduction of 16.60 MU towards allocation to CSEB from Hirakud Power Station, 0.5% auxiliary consumption and 0.5% transformation loss. The Commission accepts the same as they are in line with the Regulatory provisions. Also the Commission accepts the allocation of 16.60 MU to CSEB from Hirakud Power Station by OHPC."
6. Accordingly, OHPC had filed its ARR and tariff application for the FY 2019-20 which was registered in Case No.69 of 2018 and the Commission at para-75 and 79 of the impugned order dated 28.03.2019 passed in Case No.69 of 2018 has observed as follows:
"75. The design energy of OHPC approved by the Commission is 5676.00 MU. Auxiliary energy consumption for surface hydro electric power generating stations with static excitation system is considered at 0.5% of energy generated. Transformation loss from generation to transmission voltage is also to be calculated at 0.5% of energy generated. Accordingly, energy sent out from the generating stations of OHPC to GRIDCO has been determined by deducting

1% on gross generation after deduction of auxiliary consumption which comes to 5619.240 MU.

xxxxxxxx

77. Accordingly, the Commission's approval of power purchase by GRIDCO from OHPC for FY 2019-20 is given in the table below:

Table - 26
Design Energy approved for OHPC for FY 2019-20

(In MU)

Sl. No.	Name of the Power Station	Anticipated generation for FY 2018-19 as per OHPC taking actual from 01.04.2018 to 31.10.2018 (MU)	Design Energy proposed for FY 2019-20	Energy for Sale proposed by OHPC	Energy for sale approved for FY 2019-20
1	RHEP	788.260	525.000	514.500	519.750
2	UKHEP	959.020	832.000	815.360	823.680
3	BHEP	1882.460	1183.000	1159.340	1171.170
4	HHEP	392.510	684.000	653.676	677.160
5	CHEP	164.410	490.000	480.200	485.100
Sub Total of Old Power Stations		4186.660	3714.000	3623.076	3676.860
6	UIHEP	2131.470	1962.000	1922.760	1942.380
Total		6318.130	5676.000	5545.836	5619.240
Machkund				262.500	262.500
OHPC Total				5808.336	5881.740

Thus, the Commission, for tariff purpose, approves the total saleable energy of OHPC power stations (including Machhkund share) at 5881.740 MU.”

7. OHPC has submitted that although the Commission in its previous orders has accepted the allocation of 16.644 MU towards 5 MW share of CSEB, the same has not been considered for deduction from saleable design energy of HHEP, Burla for determination of ECR for the FY 2019-20 as shown in the Table below:

Design Energy (MU)	1% Aux. Consumption (MU)	Design Energy for Sale (MU)	Allocation to CSEB towards 5 MW share from HHEP (MU)	Design Energy for Sale to GRIDCO (MU)	Annual Energy Charge (Rs. Cr.)	ECR for billing to GRIDCO (P/U)
1	2	3 (1-2)	4	5	6	7(6/5)
684.00	6.84	677.16	16.644	677.16	42.82	63.23

8. In view of the above, OHPC has prayed the Commission that the allocated energy of 16.644 MU may be deducted from the total saleable energy of 677.16 MU to calculate the energy sale to GRIDCO from HHEP, Burla. Accordingly, ECR for the FY 2019-20 in respect of HHEP, Burla may be revised as given in the Table below:

Design Energy (MU)	1% Aux. Consumption (MU)	Design Energy for Sale (MU)	Allocation to CSEB towards 5 MW share from HHEP (MU)	Design Energy for Sale to GRIDCO (MU)	Annual Energy Charge (Rs. Cr.)	ECR for billing to GRIDCO (P/U)
1	2	3 (1-2)	4	5	6	7(6/5)
684.00	6.84	677.16	16.64	660.52	42.82	64.83

Issue No.2

9. OHPC has submitted that as indicated in Table-15 of the impugned order, OHPC in its application had claimed reimbursement of ED on auxiliary consumption as given in the table below considering auxiliary consumption and transformation loss of 2% of the design energy.

Table-15
ED claim for OHPC power station for FY 2019-20

(Rs. Cr.)							
<i>Description</i>	<i>RHEP</i>	<i>UKHEP</i>	<i>BHEP</i>	<i>HHEP</i>	<i>CHEP</i>	<i>UIHEP</i>	<i>Total</i>
<i>ED on Auxiliary Energy Consumption for FY 2019-20</i>	<i>0.578</i>	<i>0.915</i>	<i>1.301</i>	<i>0.752</i>	<i>0.539</i>	<i>2.158</i>	<i>6.244</i>

10. However, the Commission at Para-111 and 112 (Table-36) of the impugned order has considered as given below:

“111. The Commission examined the proposal of OHPC and does not accept the proposal to allow the higher transformer loss. The Commission in OERC Generation Regulation 2014 at 1.7(c) has defined the auxiliary consumption (AUX) as under:

“(c) “Auxiliary Energy Consumption” or “AUX” in relation to a period in case of a generating station means the quantum of energy consumed by auxiliary equipment of the generating station, and transformer losses within the generating station, expressed as a percentage of the sum of gross energy generated at the generator terminals of all the units of the generating station”

112. Regulation 5.4(b)(i) of OERC (Generation) Regulation, 2004 provides 1% towards Auxiliary consumption for surface hydro generating stations with static excitation system. Further, the Commission approves the ED charges reimbursable to OHPC as follows:

Table – 36
ED for OHPC Power station for FY 2019-20

(Rs. in Crs.)					
<i>Power Stations</i>	<i>Design Energy (in MU)</i>	<i>Percentage of Generation approved towards Auxiliary Consumption is one %</i>	<i>Auxiliary Consumption approved (in MU)</i>	<i>ED Rate Applicable (in Rs/Unit)</i>	<i>ED claim to be approved by Commission (Rs in Cr)</i>
<i>1</i>	<i>2</i>		<i>4</i>	<i>5</i>	<i>6</i>
<i>RHEP</i>	<i>519.750</i>		<i>5.198</i>	<i>0.55</i>	<i>0.29</i>
<i>UKHEP</i>	<i>823.680</i>		<i>8.237</i>	<i>0.55</i>	<i>0.45</i>
<i>BHEP</i>	<i>1171.170</i>		<i>11.712</i>	<i>0.55</i>	<i>0.64</i>
<i>HHEP</i>	<i>677.160</i>		<i>6.772</i>	<i>0.55</i>	<i>0.37</i>

CHEP	485.100		4.851	0.55	0.27
UIHEP	1942.380		19.424	0.55	1.07
Total	5619.240		56.192	0.55	3.09

Accordingly an amount of Rs.3.091 Cr. shall be reimbursed by GRIDCO to OHPC on account of ED on auxiliary consumption and transformation loss for the year 2019-20.”

11. However, the Commission at Para-118 (Table-37) of the impugned order has allowed Rs.6.24 crore towards reimbursement of ED on auxiliary consumption as given below:

“The details of expenses on account of application fee, and publication expenses, ED on auxiliary consumption, license fee for use of water for generation of electricity, SLDC charges, Income tax and Reimbursement of contribution made to ERPC for FY 2019-20 of OHPC are summarized in the table below:

Table – 37
Details of Reimbursement for FY 2019-20

(Rs. Cr.)							
Component of Costs	RHEP	UKHEP	BHEP	HHEP	CHEP	UIHEP	Total
(a) License fee for use of water for generation of electricity for FY 2018-19.	0.68	1.08	1.54	0.89	0.64	2.55	7.38
(b) ED on Auxiliary Consumption for FY2018-19.	0.58	0.92	1.30	0.75	0.54	2.16	6.24
(c) SLDC charges							1.64
(e) Application fees and publication expenses							0.26
(f) ERPC charges							0.16
(g) Income Tax as per Audit Account of FY 2017-18							10.93
Total							26.62

Thus, the Commission approves the miscellaneous reimbursement of Rs.26.62 cr. The above expenditure has been included in GRIDCO’s ARR and hence shown as revenue requirement in OHPC filing.”

12. In view of the above apparent errors OHPC has prayed the Commission to revise Table-36 of the impugned order in line with Table-37, so that the reimbursement towards ED on auxiliary consumption by OHPC from GRIDCO shall be Rs.6.24 cr. instead of Rs.3.09 cr. as the Commission has already included Rs.6.24 cr. in the ARR of GRIDCO for making reimbursement towards ED on auxiliary consumption to OHPC.
13. On the 1st issue, the respondent GRIDCO has submitted that in the earlier tariff orders including the impugned order, the Commission has been determining generation tariff of HHEP, Burla considering saleable design energy of 677.16 MU (Design Energy less 1% towards auxiliary consumption). The Commission determines the tariff for export of power from HHEP to CSEB separately which is more than the ECR of HHEP and OHPC realizes the revenue towards sale of power to CSEB at a remunerative rate, which is not deducted from the ARR of HHEP. So the petition of OHPC to deduct the energy export to CSEB from the

saleable design energy of HHEP to determine the ECR is not at all justified and not acceptable to GRIDCO.

14. On the second issue of reimbursement towards ED paid to Government, GRIDCO has submitted that the reimbursement of ED amount comes out to Rs.3.09 cr. as mentioned in Table-36 of the impugned order. However, Rs.6.24 cr. as mentioned in Table-37 seems to be an inadvertent error for which corrigendum can be issued by the Commission. There is no need for review of the Commission's order dtd.28.03.2019. In view of the above GRIDCO has prayed the Commission not to admit the present petition of OHPC.
15. On the issue 1st issue, the respondent Sri R P Mohapatra has submitted that the tariff for supply of power by OHPC to GRIDCO from HHEP, Burla is to be determined based on the total design energy less normative auxiliary consumption after considering various direct and indirect supports and concessions by the State Government for a sustainable tariff. For supply of 16.64 MU to CSPDCL, the Commission has determined the tariff of 226.99 p/u for billing by OHPC without taking into account the supports and concessions extended by the State Government. OHPC has been allowed higher tariff for sale to CSPDCL @226.99 p/u against the concessional average tariff of 126.46 p/u for sale of energy to GRIDCO. The additional revenue earned by OHPC towards sale of power to CSPDCL has to be deducted from ARR of HHEP. Hence the claim of OHPC in this issue has no merit and deserves to be rejected.
16. On the 2nd issue, Sri Mohapatra has submitted that at Para-111 and 112 (Table-36) of the impugned order, the Commission has stated the reasons as to why the higher electricity duty proposed by OHPC is not acceptable and that the reimbursable ED is only Rs.3.09 cr. for the FY 2019-20. Table-37 of Para-118 is a summarization of the reimbursement for FY 2019-20 and the figure of Rs.6.24 cr. towards reimbursement of ED on auxiliary consumption is an inadvertent error which cannot supersede the detailed order in Para-111 and 112 of the impugned order. In view of the above, Sri Mohapatra has stated that the present review petition filed by OHPC has no merit and deserves to be rejected and the Commission may caution the petitioner not to submit such petitions resulting in waste of time of the Commission as well as the respondents.
17. Heard the parties at length. Before going to the merit of the case we are to settle the issue of jurisdiction of the present commission consisting of the Chairman and two Members. The present new Member was not in the office when the order under review was passed. Mr.A.K Das, a Member then, has demitted office in the mean time and the new Member has joined the Commission in his place. Several arguments and counter arguments have been made in this regard during the hearing pertaining to the propriety of the new Member to hear the review case when he has not heard and disposed of the original case resulting in the order under review. In the matter relating to review of an order passed by the commission two Acts namely the Electricity Act, 2003 and the Orissa Electricity Reform Act, 1995 govern the field. As per Section 185(3) of the Electricity Act, 2003, the provision of the Orissa Electricity Reform Act, 1995 which are not inconsistent with the provisions of the Electricity Act, 2003 shall apply to the State of Odisha. The relevant provisions of the said two Acts are reproduced below.

Section 94 of the Electricity Act, 2003 lays down as follows:

- (1) The appropriate Commission shall for the purposes of any inquiry or proceeding under this Act, have the same power as are vested in a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908) in respect of the following matter namely:

(a) to (e) XXXX

(f) *reviewing its decision, directions and orders*

Section 9(4) of the OER Act 1995 says

(4) The quorum for the meeting of the Commission shall be two, but in the case of a meeting of the Commission to review any previous decision taken by the Commission or for consideration of any issue which could not be decided on account of equality of votes in favour of or against the resolution proposed or where the issue considered at a meeting in which only two members of the Commission were present, the quorum for the meeting shall be all the three XXXXX

On a conjoint reading of the provisions of aforesaid two Acts, we find that there is no inconsistency between the two provisions relating to review of an order. When the Electricity Act, 2003 is silent about the quorum of the Commission to hear a review application, the Electricity Reform Act, 1995 is clear and explicit about the same. It clearly says, quorum of the meeting of the commission shall be ordinarily two, but in case of review of an order of the Commission, it should be heard by three members including the Chairperson. In our considered opinion, the decision of the Hon'ble Supreme Court in case of Gullapalli Nageswara Rao and others Vrs. Andra Pradesh State Road Transport Corporation and another reported in AIR 1959 (SC) 308:[1959]Supp(1)SCR 319 quoted by Hon'ble APTEL and the Hon'ble APTEL in the case of Torrent Power Ltd vrs. Gujarat Electricity Board disposed of on 30th march 2017 in Appeal No.178 of 2016 and IA No.389 of 2016 cited by the respondent are conceptually different if the same are to be read and understood with reference to the Section 9(4) of the Orissa Electricity Reform Act, 1995.

Therefore, we are of the view that there is no legal bar for the new member to sit with Chairman and other member to hear the review petition at hand constituting the quorum of three members.

18. As per Section 94(1) (f) of the Electricity Act, 2003, this Commission has the same power as are vested with the Civil Court under the Code of Civil Procedure, 1908 in respect of reviewing its decisions, directions and orders among others. As per Order 47 Rule 1 of the Civil Procedure Code, review of an order can be made on 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.

Error contemplated under the rule must be such that is its apparent on the face of the record and not an error which is to be fished out and searched. It must be an error of inadvertence.

19. We observe that in the present review petition, OHPC has raised two issues in the impugned order for review. Now, we discuss these issues hereunder:

Issue No.1

20. OHPC has submitted that as per the approved PPA between OHPC and GRIDCO in respect of HHEP, Burla, 16.644 MU of energy shall be sold to CSEB. The Commission has accepted the same at Para-72 of the Tariff order of OHPC for FY 2018-19 and had deducted the same from the saleable design energy of the HHEP in order to determine the energy availability to GRIDCO. But the same has not been indicated in the impugned order.
21. We observe that at Para-123 of the impugned order, the Commission has determined the tariff for supply of 5 MW power to CSEB (presently CSPDCL) from HHEP, Burla and recognized the supply of power to CSEB. But the concern of OHPC is that the quantum of 16.644 MU energy towards 5 MW share of CSEB from HHEP, Burla is to be deducted from saleable design energy in order to determine ECR of HHEP in respect of sale of power to GRIDCO. We observe that in the Tariff Orders of past years as well as of the FY 2019-20, the ECR of HHEP, Burla is being determined based on the saleable design energy of HHEP without deducting the allocation to CSEB, because the revenue earned by OHPC from sale of power to CSEB is not being deducted from the ARR of HHEP, Burla. This revenue is being retained by OHPC. Therefore, same principle has been adopted in the impugned order while determining the ECR of HHEP, Burla for the FY 2019-20. In view of the above, the Issue No.1 raised by OHPC in the present petition does not come under review of the impugned order as there is no apparent error in the order.

Issue No.2

22. We observe that at Para-111 of the impugned order, the Commission has not accepted the proposal of OHPC to allow higher transformation loss. Further, at Para-112 of the impugned order, the Commission has approved normative auxiliary consumption (1% of the design energy of OHPC Power Stations) for computation of ED and allowed an amount of Rs. 3.09 crore to be reimbursed to OHPC by GRIDCO. However, in the summary Table-37 at Para-118 of the impugned order, the same has been inadvertently mentioned as Rs. 6.24 crore as proposed by OHPC considering the auxiliary consumption @ 2% of the design energy. Therefore, the figure Rs.6.24 mentioned in summary Table-37 towards reimbursement of ED on auxiliary consumption, shall be replaced with the figure Rs. 3.09 crore as approved in Table-36 of Para-112 of the impugned order. Accordingly, the total amount in the Table-37 at Para-118 of the impugned order for reimbursement to OHPC from GRIDCO shall be Rs. 23.46 crore for the FY 2019-20 in place of Rs.26.46 crore. Table-37 at Para-118 of the impugned order and the note below this table stand modified as follows:

**“Table – 37
Details of Reimbursement for FY 2019-20**

Component of Costs	(Rs. Cr.)						Total
	RHEP	UKHEP	BHEP	HHEP	CHEP	UIHEP	
(a) License fee for use of water for generation of electricity	0.68	1.08	1.54	0.89	0.64	2.55	7.38
(b) ED on Auxiliary Consumption	0.29	0.45	0.64	0.37	0.27	1.07	3.09
(c) SLDC charges							1.64
(d) Application fees and publication expenses							0.26
(e) ERPC charges							0.16
(f) Income Tax as per Audit Account of FY 2017-18							10.93

Total							23.46
--------------	--	--	--	--	--	--	--------------

Thus, the Commission approves the miscellaneous reimbursement of **Rs.23.46** crore. The above expenditure has been included in GRIDCO's ARR and hence shown as revenue requirement in OHPC for FY 2019-20."

23. We observe that the above correction in the Table-37 at Para-118 of the impugned order does not affect the generation tariff of OHPC determined by the Commission for the FY 2019-20. Hence, there is no need for review of the impugned order as claimed by OHPC in its present petition. However, the above changes made in Table-37 at Para-118 of the impugned order shall be effected in the reimbursable amount indicated in the ARR and BSP order of GRIDCO for the FY 2019-20. Since GRIDCO is a party to the present case, it shall take note of the above changes in reimbursable amount to OHPC on account of ED on auxiliary consumption for the FY 2019-20.
24. With the above observations, the case is disposed of.

Sd/-
(G. Mohapatra)
Member

Sd/-
(S.K. Parhi)
Member

Sd/-
(U.N. Behera)
Chairperson