

**ODISHA ELECTRICITY REGULATORY COMMISSION
BIDYUT NIYAMAK BHAWAN
PLOT NO.-4, CHUNOKOLI, SHAILASHREE VIHAR
BHUBANESWAR - 751 021**

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

Case No. 55/2020

M/s. OHPC	Petitioner
- Vrs. -		
GRIDCO & others	Respondents

In the matter of: **An application for Truing up exercise for FY 2019-20 in compliance with Regulation 7 of the OERC (Terms and Conditions for Determination of Transmission Tariff) Regulations, 2014.**

For Petitioner: Shri Ankit Jain, Consultant OHPC, Shri P. Mohanty Director (F) OHPC.

For Respondent: Shri P. K. Das, CGM, GRIDCO, Ms. Murchhana Dhar, AM (P), GRIDCO, Shi R. P. Mahapatra, Shri V. Wagle, TPCODL, Shri K. C. Nanda, DGM (F) TPWODL, Shri B. Sarkar, CEO TPNODL Ms. Sonali Patnaik, ALO, DoE and representative of TPSODL.

ORDER

Date of hearing: 29.06.2021

Date of order: 03.11.2021

1. This petition has been filed by the Odisha Hydro Power Corporation Limited (OHPC) towards truing up of expenses since FY 1996-97 to FY 2015-16 in terms section 62 & 86 of the Electricity Act, 2003 read with Clause 2.13 of the OERC Regulations, 2014.
2. The Petitioner has stated that Odisha Hydro Power Corporation Ltd. currently owns and operates 6 Hydro Power Projects across the state of Odisha supplying power to the Power Utilities of Odisha and Chhattisgarh.
3. The Petitioner has stated that consequent to the reforms in power sector in Odisha, Odisha Hydro Power Corporation Ltd. (OHPC) was incorporated on 21st April 1995 under the Companies Act 1956 with 5 Hydro Power Plants. After the enactment of the Orissa Electricity Reforms Act 1995, the Odisha State Electricity Regulatory was formed in 1995 in order to regulate and reform the state of affairs of the electricity

function in the state of Odisha. However, till the enactment of the Electricity Act 2003, the OERC did not notify any regulations on terms and conditions for determination of tariff.

4. The Petitioner has sought to true-up the cost of production for all the Hydro Projects based on the audited accounts of respective years.
5. The Petitioner has stated that the Capital cost of power stations is considered as per the Notification No. 1068 dtd. 29.01.2003 of Dept. Of Energy, Govt. of Odisha (DoE, GoO) which is termed as “Historic cost” as on 01-04-1996. The Petitioner has considered the capital cost of all Hydro Electric Projects (HEPs) as per this notification, thereafter, capitalization of each year as per Audited Accounts has been added to arrive at the GFA for the respective year.
6. The historical cost considered for various projects as on 1st April 1996 is given in following table.

Historical Cost of OHPC Projects as on 1.4.1996

Particulars	Historic Cost (in Rs. crore)
RHEP	91.09
UKHEP	108.31
BHEP	115.42
UIHEP*	1194.79
HHEP Burla	72.75
CHEP	92.23

*Approved project cost

7. The Petitioner has stated that the Commission has considered additional capitalisation/new investment made only after 01.04.1996 while computing the return on equity based on the contents of the above order and subsequent Govt. Notifications. In view of this, the Petitioner has considered additional capitalisation based on the addition in GFA as per audited accounts for the respective year for True up.
8. The Petitioner has stated that claim of Return on equity is submitted on normative principle considering only additional capitalisation after 01.04.1996 as per audited accounts.
9. The Petitioner has stated that the Interest on loan is claimed for True up based on normative principle considering only additional capitalisation after 01.04.1996 as per audited accounts.

Operation & Maintenance Expenses

10. The Petitioner has considered the operation & maintenance expenses (O&M) as per the audited accounts for the respective year. The operation & maintenance expenses include Operational expenses, Employee benefits expense, Administrative & General expenses and Repair & Maintenance expenses.
11. The Petitioner has stated that the Commission has been allowing the depreciation @2.57% of the project cost for the respective year. However, in case the loan repayment is more than the computed depreciation @2.57%, the actual loan repayment has been considered as depreciation by the Commission. The same principle is followed by OHPC for claiming the depreciation.
12. The Petitioner has stated that the Interest on loan based on normative principle has been claimed under the head of “Depreciation on Additional Capitalisation” in instant True up Petition. Whereas from FY 2005-06 onwards, depreciation is claimed equivalent to approved amount as per respective Tariff Orders. Further Depreciation on Additional Capitalisation is claimed as a difference of total normative Depreciation minus Depreciation approved by the Commission in respective Tariff Orders.
13. The Petitioner has computed the normative interest and finance charges based on the debt: equity ratio. The interest rate considered for normative loan is 9.80% which is the interest rate for Govt. Loans.
14. The Petitioner has stated that the Commission has decided the equity base in the tariff order dtd.19th April 2002 in Case No. 65 of 2001 & Case No. 04 of 2002. The Commission has been allowing the RoE on new capital addition/ new investments made only after 01.04.1996 based on the contents of the above order and subsequent Govt. Notifications. The rate for return on equity is considered as approved by the Commission from time to time. The following table shows the rate of return on equity approved by the Commission for each year.

Table
Rate of return on equity for OHPC Projects

Year	Rate of RoE	Year	Rate of RoE
FY 96-97	12%	FY 06-07	12%
FY 97-98	12%	FY 07-08	12%
FY 98-99	12%	FY 08-09	12%

Year	Rate of RoE	Year	Rate of RoE
FY 99-00	12%	FY 09-10	17.48%
FY 00-01	12%	FY 10-11	18.67%
FY 01-02	12%	FY 11-12	19.36%
FY 02-03	12%	FY 12-13	19.38%
FY 03-04	12%	FY 13-14	20.63%
FY 04-05	12%	FY 14-15	16.00%
FY 05-06	12%	FY 15-16	16.00%

15. The Petitioner has stated that the Commission has been allowing Interest on Working Capital on normative basis as per the provisions of the prevailing CERC Tariff Regulations. The Petitioner has claimed normative interest on working capital after the enactment of Electricity Act 2003. For the period prior to FY 2003-04, in absence of any specific regulation, the Petitioner has not claimed the Interest on working capital.
16. The Petitioner has stated that the Commission has ruled that the taxes and duties including Electricity Duty (ED) on auxiliary consumption etc. payable by OHPC to the State Government and other statutory bodies shall be passed on to GRIDCO in the form of supplementary bill raised by OHPC. The Commission, from time to time, has been allowing Electricity Duty on auxiliary consumption of all Hydro Electric Projects. Accordingly, the Petitioner has considered the Electricity Duty paid as per the audited accounts for the respective year. However, as per the Audited Accounts, the ED is a part of operational expense. Hence, the Petitioner has shown it as a part of O&M expenses. However, approved amount of ED is also shown separately.
17. The Petitioner has stated that the corporate office expense has been considered as per the audited accounts for the respective year. This includes the Employee Expenses, Operational Expenses, A&G Expenses, R&M Expenses etc. incurred at Head Office. The corporate office expenses are further allocated to each project in the ratio of design energy for sale.
18. The Petitioner has submitted the design energy for sale considered for each project is summarized on following table.

Design Energy for sale considered for OHPC Stations
(In MUs)

Particulars	Design Energy	% Share
RHEP	519.75	9.2%
UKHEP	823.68	14.7%
BHEP	1171.17	20.8%
UIHEP	1942.38	34.6%

HHEP Burla	677.16	12.1%
CHEP	485.1	8.6%

19. The Petitioner has considered Income Tax/taxes paid as per the audited accounts for the respective year. Income tax pertains to Head office, has been further allocated to each project in the ratio of design energy for sale.
20. The Petitioner has considered the revenue from sale of power as per the audited accounts for the respective year. The revenue includes income from sale of electricity, other operating revenue and Compensation for loss of Energy (if any) for the respective year.
21. The Petitioner has stated that considering the fact that there were no separate Tariff Orders for OHPC till FY 2004-05, OHPC has considered the normative claims whereas after FY 05-06, the tariff Orders are available, hence OHPC has claimed the normative expenses with respect to the actual capitalisation over the capitalisation approved by the Commission.

Submissions of TPCODL

22. TPCODL has stated that the petition is devoid of any merits. The petition has only computed the gaps for 19 years i.e. FY 1996-97 to FY 2015-16 on the basis of certain assumptions made for financial parameters but it does not discuss the manner of recovery of such gap and the impact it would have on the power purchaser viz GRIDCO. There is also no discussion on the time frame for recovery of this gap in the future. Since there is no prayer that is sought, the petition cannot be entertained.
23. TPCODL has stated that there is no direction of the Commission to carry out the True up exercise. It appears from the submissions of OHPC that truing up exercise has been carried out on the basis of the objections during the tariff petitions and such objections are addressed in the Tariff Order itself. Hence in absence of any specific directions from the Commission the True up petition submitted by OHPC may not be acted upon.
24. TPCODL has stated that OHPC over the period of time has not made any petition with regards to Truing up to the Commission. The present petition is very belated and has lost relevance as far as the period FY 1996-97 to FY 2015-16 is concerned and therefore now the petition cannot be allowed as the cumulative impact would be very severe on GRIDCO and eventually on DISCOMs like TPCODL.

25. TPCODL has stated that the true up for the period prior to the Regulations (i.e. prior to 2004) has to be done and compared with the normative parameters prevailing then. The comparison of actual performance must be done with that norms/law applicable at that point of time. OHPC in the petition has not presented the manner in which the Annual Fixed Charges have been determined in that regime. The report has attempted to compare the true up with that should be available as per the present regulations.
26. TPCODL has stated that the Tariff Order has been issued from FY 2005-06, hence, prior to FY 2005-06 Depreciation based on normative principle has been claimed under the head of “Depreciation on Additional Capitalisation”. Whereas from FY 2005-06, Depreciation is claimed equivalent to approved amount as per respective Tariff Orders. Further separate element of “Depreciation on Additional Capitalisation” is claimed as a difference of total normative Depreciation minus Depreciation claimed which is equal to the Depreciation approved by the Commission in respective Tariff Orders. Similar claim has been made for Interest on Loan. TPCODL has stated that the normative interest is calculated @ 9.8% both for the historical cost as on 01.04.1996 & additional capitalisation based on the debt: equity ratio.
27. TPCODL has stated that the Tariff Regulations with norms were applicable only after the regulations in 2014. Prior to the same, as per the Tariff Regulations of 2004, there were no norms as such, and the tariff was determined by the Commission on the basis of the principles laid down in Section 61 of the Electricity Act 2003. The extracts from the regulations of 2004 is as under
- 3. (a) The Commission shall be guided by nine principles as laid down in section 61(a) to 61 (i) of the Act, while determining the tariff for (a) supply of electricity by generating company to the distribution licensee; (b) transmission of electricity.*
28. TPCODL has stated that the Commission determined and approved the Annual Revenue Requirement (ARR) for the year on the basis of such norms. Hence the comparison of any under recovery if any has to be compared with the ARR that would be recoverable for that year and such ARR is approved by the Commission. OHPC has attempted to compare the actual performance with revenue earned and not the ARR. Illustration of the performance of the FY 2015-16 is given below.

True Up for OHPC for FY 15-16

Design Energy in – 5619 MU	Approved (A)	Audited (B)	Claim of OHPC (C)	Difference (D=C-A)
GFA	1,675.22	2,311.28	2,311.28	636.06
Additional Capitalisation	541.26	18.58	18.58	-522.68
Project Cost	2,216.48	2,329.86	2,329.86	113.38
Return on Equity	71.95	-	71.95	-
Interest on Loan	12.58	84.25	12.58	-
Depreciation	63.81	131.34	63.81	-
O&M Expenses	313.13	274.73	274.73	-38.39
Interest on working capital	19.17	-	19.17	-
Selling & Distribution expenses	-	0.86	0.86	0.86
ROE on Additional Capitalisation	-	-	17.40	17.40
Interest on Loan on Additional Capitalisation	-	-	-0.41	-0.41
Depreciation on Additional Capitalisation	-	-	8.75	8.75
Interest on working capital due to additional claims	-	-	-2.65	-2.65
Income Tax Paid	2.33	50.67	50.67	48.34
Total ARR	482.97	541.85	516.87	33.90
Revenue from Sale of Power	482.97	419.98	419.98	-62.98
Gap/(Surplus)	-	121.87	96.88	96.88
Rate Rs./Unit	0.86	0.96	0.92	0.06

29. OHPC has computed the Gap of Rs 96.88 Crores after comparing the Amount claimed under column (c) with the Revenue earned. The reason for recovering Rs 419.98 Crores against an allowed ARR of Rs 482.97 needs to be examined especially when the Tariff order was passed on 22" March 2015 and the entire FY 2015-16 was available for recovery. Secondly for this year, the Income Tax Claimed is Rs 50.67 Crores when there is book loss of Rs 71.2 Crores {419.98 - (541.85 - 50.67)} and no tax as such would be payable if there is loss in year. These anomalies need to be examined in greater details.

GRIDCO Submission

30. GRIDCO has stated that there is inconsistency in the petitions of OHPC with regard to asset base as per audited accounts and for the past periods. For instance, for FY 2015-16 opening and closing GFA is 242.06 crores and 222.04 crores respectively as per audited books of accounts of BHEP as provided by the Petitioner. However, the same comes to 215.58 crores and 216.69 crores as per the rejoinder dated 21.05.2021 submitted by the Petitioner.
31. GRIDCO has stated that the Commission has examined the facts and figures submitted by OHPC and come to the conclusion that since the value of assets has been duly accounted for, audited and reviewed by C & AG, now it is not justifiable to re-examine

the figures already adopted in the books of accounts. Hence, the total value of Rs. 1196.80 crore is accepted and approved in the manner proposed by OHPC as presented below.

HPS	RHEP	UKHEP	BHEP	TOTAL
295.17	259.01	307.96	334.66	1196.80

32. For the purpose of determination of tariff for 2005-06 and 2006-07, the capital cost or old OHPC stations has been determined on the basis of their historical cost as on 01.04.1996 of Rs.472.00 crore with subsequent addition on account of R&M of unit 1 & 2, Burla Rs. 81.84 crore, both totaling to Rs. 553.84 crore as on 31.03.2003 as stated in order dtd.10.06.2005.
33. GRIDCO has stated that for truing up OHPC has taken the capital cost of power stations at its historical value whereas in preparing the account, the capital cost of power stations have been taken at up valued figure i.e. 1196.80 Cr. Hence the asset base as approved for the past periods and asset base as per the audited account is different.
34. GRIDCO has stated that the Petitioner has mentioned in its reply that “No cost benefit analysis is done for small items involving capital expenditure which are essentially required for the operation of the power house”. However, the cumulative claim for additional expenditure for UIHEP is Rs. 211.94 crores which may not be construed as a small capex amount. Important information like details of cost benefit analysis, date of expenditure incurred post cut-off date of Commercial Operation Date (COD), comparison of cost as per Detailed Project Report (DPR) & actual cost incurred reflecting any cost overrun are not provided. The submissions made by the Petitioner regarding the additional capitalization may be checked prudently. Any capital expenditure incurred by OHPC without prior approval of the Commission and cost overrun may not to be passed to GRIDCO and in turn to the end consumers of the state.
35. GRIDCO has stated that the Petitioner in its rejoinder has given a broad categorization of O&M expenses but not submitted the line item wise break-up of O & M expenses.
36. GRIDCO has stated that the Petitioner has not submitted the details of interest payments and principal repayments made on Govt. loans and interest on loan for additional capitalization. The Commission may verify the submissions regarding

depreciation and ROE claimed in the truing up petition. The Commission may consider non-tariff income and reduce/adjust the same from cumulative true-up gap as claimed. The Commission may consider reduction of expenses during construction from cumulative true-gap. OHPC may provide detailed breakup of prior period adjustment for the past periods. OHPC needs to justify the interest on working capital on additional capitalization, and anything not specifically admitted or dealt with shall be deemed to have been denied.

37. GRIDCO has stated that as per Clause no.6 (2) of CERC Tariff regulation for the control period 2009-14 regarding Truing up of Capital Expenditure and tariff stipulates that:

“The generating company or the transmission licensee, as the case may be, shall make an application, as per Appendix I to these regulations, for carrying out truing up exercise in respect of the generating station a unit or block thereof or the transmission system or the transmission lines or sub-stations thereof by 31.10.2014.”

That the Clause No. 2.12 & 2.13 of the OERC Generation Tariff Regulations, 2014 stipulates as below:

“2.12: The Commission shall carry out truing up exercise along with the tariff petition filed for the next tariff period, with respect to the capital expenditures including additional capital expenditure incurred up to 31.03.2019, as admitted by the Commission after prudence check at the time of truing up. “

2.13: The existing generation plants of OHPC & OPGC may file an application each year for truing up of its generating stations of the previous year(s), with respect to the capital expenditure including additional capital expenditure incurred up to last day of the previous year(s) and determination of revenue gap/surplus for the ensuing year, within the time limit as specified by the Commission.”

That the Clause No. 8.1 of the OERC Generation Tariff Regulations, 2020 stipulates as below:

“8.1(c) The Commission shall carry out truing up exercise at the end of the Tariff Period along with the tariff petition filed for the next tariff period, with respect to the following:

The existing generation plants of OHPC and OPGC (Unit - I & II) may file an application each year for truing up of its generating stations of the previous year(s), with respect to the capital expenditure including additional capital expenditure incurred up to last day of the previous year(s) and determination of

revenue gap/surplus for the ensuing year, within the time limit as specified by the Commission.

Provided that the applicant shall submit to the Commission, information in such form as may be prescribed by the Commission, together with the Audited Accounts, extracts of books of account and such other details as the Commission may require to assess the reasons for and extent of any variation in financial performance from the approved forecast of Aggregate Revenue Requirement and expected revenue from tariff and charges.”

38. GRIDCO has stated that OHPC has not adhered to the timeline set by the CERC as well as the OERC for filing the true up petition for the past period & have come up with the truing up proposal for last 20 years i.e. from 1996-97 to 2015-16 at a time in the year of 2020. In view of this, the true up petition of OHPC may out rightly be rejected. The period such as FY 1996-97 onwards while the OERC and/or the Regulations were not made, this true up for such period may not be considered.
39. GRIDCO has stated that tables showing Profit After Tax (PAT) of various OHPC plants from FY 1996-97 to FY 2015-16, Return on Equity (RoE) of various OHPC plants from FY 1996-97 to FY 2015-16 & the difference between PAT & RoE of various OHPC plants from FY 1996-97 to FY 2015-16 is submitted below.

For the period FY 1996-97 to FY2005-06

(Rs. Crore)

Particulars	1996-97	1997-98	1998-99	1999-2000	2000-2001	2001-02	2002-03	2003-04	2004-05	2005-06	Total
ROE	2.19	2.22	4.77	24.32	42.76	46.15	48.33	48.69	49.01	50.99	319.43
PAT	69.85	78.66	64.26	49.35	-27.82	-3.58	-41.66	7.88	65.53	-22.75	239.72
Difference	-67.66	-76.44	-59.49	-25.03	70.58	49.73	89.99	40.81	-16.52	73.74	79.71

For FY 2006-07 to 2015-16

(Rs. Crore)

Particulars	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	Total
ROE	52.84	52.99	57.12	89.33	98.51	103.23	104.69	113.49	88.84	89.35	850.39
PAT	59.82	147.11	20.77	32.54	49.18	95.61	58.92	11.12	46.68	143.09	664.84
Difference	-6.98	-94.12	36.35	56.79	49.33	7.62	45.77	102.37	42.16	-53.74	185.55

For FY 1996-97 to FY 2015-16

Particulars	Grand Total for 20 years (Rs. Crore)
ROE	1169.82
PAT	904.56

Difference	265.26
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40. GRIDCO has stated that from the above table, it can be observed that Return on Equity (RoE) of OHPC stations for last 20 years i.e. from 1996-97 to 2015-16 is more than Profit After Tax (PAT). GRIDCO submits that there exists surplus in revenue with OHPC and also due to shortfall in costs as approved in the ARR by the Commission over the entire true up period. Hence claiming of around Rs.1580 Crs. in the truing up petition dating back to 25 years will unnecessarily burden the end consumers of the State.
41. GRIDCO has stated that, the recovery of any unabsorbed costs at a belated stage, as claimed by the Petitioner shall lead to additional procurement costs for GRIDCO, which needs to be recovered through hike in BSP of GRIDCO.
42. GRIDCO has stated that OHPC has not given any justification for claiming additional capital expenditure including approved capital investment plan for additional capital expenditure undertaken by OHPC with details of Cost benefit analysis, date of expenditure incurred, prior period charge, details of expenditure incurred post cut-off date of Commercial Operation Date (COD), comparison of cost as per Detailed Project Report (DPR) & actual cost incurred reflecting any cost overrun. The Commission may disapprove any capital expenditure incurred by OHPC without prior approval and nay cost overrun is not to be passed to GRIDCO.
43. GRIDCO has submitted that “Other income” and “Expenses during construction” as per audited accounts may be reduced from ARR of respective years as claimed by OHPC in its True-Up petition to arrive at Net ARR chargeable to GRIDCO and final consumers.
44. GRIDCO submits that the OHPC has claimed higher Interest on Loan on Additional Capitalization. The Petitioner has not submitted the details of interest payments and principal repayments made on Govt. loans. OHPC has not given any justification for higher Gross Fixed Assets (GFA) than approved by the Commission in its orders. OHPC has not given any justification for claiming additional capital expenditure including approved capital investment plan for additional capital expenditure undertaken by OHPC with details of Cost benefit analysis, date of expenditure incurred post cut-off date of Commercial Operation Date (COD), comparison of cost as per Detailed Project Report (DPR)& actual cost incurred reflecting any cost overrun. Any

capital expenditure incurred by OHPC without prior approval of The Commission & cost overrun not be passed to GRIDCO & in turn to end consumers in the state.

45. GRIDCO submitted that there exists discrepancy in various ARR components approved by the Commission in its ARR orders for the respective years and “OERC Approved” ARR components as submitted by OHPC in its True up petition. Major deviations are observed in O&M cost and interest on Loan from FY 2005-06 to FY 2015-16. It can be observed that there is a significant difference between ARR as approved by the Commission in its Tariff Order and ARR as per OHPC’s True-up. The difference is the maximum during FY 2013-14 amounting to Rs. 340 Cr. OHPC need to justify such differences arising in respective financial years. There is also discrepancy in audited amount submitted in the petition against audited amount in the accounts. The amount of interest on loan on additional capex also does not match with figures of audited accounts. Such high interest on loan on additional capitalization as such exorbitant claims may be disapproved.
46. GRIDCO has stated that OHPC need to justify high depreciation on additional capitalization. The amount of depreciation also doesn’t match with figures of audited accounts. The Commission may disapprove such high depreciation on additional capitalization as such exorbitant claims will result in high tariffs to end consumers. OHPC need to justify high ROE on additional capitalization. Non-tariff income may be considered and reduce it from cumulative true-up gap as claimed by OHPC from 1996-97 to FY 2015-16. OHPC may submit detailed breakup of prior period adjustment and reduction of expenses during construction from cumulative true-up gap as claimed by OHPC from 1996-97 to FY 2015-16.

Submission of TPWODL

47. TPWODL has stated that the present true up petition of OHPC is for the period from 1996-97 to 2015-16. The Commission has issued tariff orders for OHPC from FY-2005-06 onwards. There is no such approved ARR for the period from FY1996-97 to FY 2004-05 which is available for OHPC. Hence in absence of any approved parameter the truing up petition of the petitioner for the above period from FY1996-97 to FY2004-05 may be rejected.
48. TPWODL stated that the commission approves depreciation on the basis of normative principle, OHPC prefers to claim the approved quantum of depreciation as allowed by

the Commission towards truing up instead of an applicable norms on audited opening GFA. Therefore, the surplus of Rs 65.61 Cr. (Rs 671.43 – Rs. 605.82) Cr. as approved earlier by the commission needs to be factored in truing up.

49. TPWODL has stated that as regards to O&M expenses, it consists mainly towards heads R&M Expenses, Operation Expenses, Employee Benefit Expenses and A&G Expenses as per audited accounts. The audited figure of FY 2008-09 & FY 2009-10 is much higher than the approved figure & no such justification has been given.
50. TPWODL has stated that to avoid tariff shock the commission has observed in tariff order for FY 2013-14 that the depreciation allowed from 2010-2011 onwards @ 30.23 Cr. p.a. needs to be paid towards principal repayment till 2027-28 & the Commission will consider the same from FY 2028-2029 onwards. Hence, interest on loan booked on accrual basis in books of account to the tune of Rs. 292.50 Cr. cannot be considered for truing up purposes and Rs. 13.70 Cr. to be considered.
51. TPWODL has stated that the Interest on Government loan-UIHEP to the tune of Rs. 50.45 Cr. needs to be excluded for truing up in line with the commission directions in tariff order & balance amount of Rs. 8.02 Cr. needs to be considered.
52. TPWODL has stated that the Interest on Government Loan (UIHEP) Rs. 26 Cr. & Interest on Government loan (old Power House) Rs. 53.63 Cr. not to be considered as per direction of the Commission in tariff orders.
53. TPWODL has stated that, the commission has approved ROE on equity Rs. 738.77 Cr. However, OHPC has claimed ROE on additional capitalization to the tune of Rs. 163.11 Cr. The excess ROE approved i.e. Rs. 121.30 Cr. (Rs. 738.27 – Rs.616.99 Cr.) to be trued up. Further, ROE of Rs 163.11 Cr. claimed by OHPC towards additional capitalization needs to be rejected as addition through capitalization in any year is finding a place in equity base as per audited accounts in subsequent year on which ROE is to be given.
54. TPWODL has stated that the OHPC has claimed Rs. 131.55 Cr. towards interest on working capital on the basis of approval of the Commission. However, not a single rupee has been spent towards interest on working capital as found from audited accounts. Hence the same may be disallowed.

55. TPWODL has stated that as per audited accounts the revenue from sale of power is Rs. 4005.42 Cr. The Commission has approved Rs. 3954.09 Cr. Therefore, the excess of Rs. 51.33 Cr. needs to be trued up against OHPC of Rs. 27.50 Cr.
56. TPWODL has stated that OHPC has not considered the other income of Rs. 983.95 Cr. in any year for truing up purpose, the same needs to be considered.
57. TPWODL has stated that, the present true up petition of OHPC is for the period FY 1996-97 to FY 2015-16. The Commission have issued tariff orders for OHPC from FY 2005-06 onwards. There is no such approved ARR for the period from FY 1996-97 to 2004-05 is available for OHPC. Hence in absence of any approved parameter the true up petition of the petitioner for the above period from FY 1,996-97 to FY 2004-05 may be rejected.
58. TPWODL has stated that, OHPC has claimed Rs 1579.71 Cr. to be trued up for FY 1996-97 to FY 2015-16. OHPC prefers to claim the approved quantum of depreciation as allowed by the Commission towards truing up instead of any applicable norms on audited opening GFA. Therefore, the surplus of Rs 65.61 Cr. (Rs 671,.43 - Rs 605.82) Cr. as approved earlier by the Commission needs to be factored in truing up.
59. TPWODL has stated that the audited figure under the head Interest on loan of FY 2008-09 & FY 2009-10 is much higher than the approved figure & no such justification has been given. Hence, the Commission may approve the figure after prudence check. To avoid tariff shock the Commission has observed in tariff order for FY 2013-14 that the depreciation allowed from 2010-11 onwards @ 30.23 Cr. p.a. needs to be paid towards principal repayment till 2027-28 & the Commission will consider the same from FY 2028-29 onwards. Hence, interest on loan booked on accrual basis in books of account to the tune of Rs 292.50 Cr. cannot be considered for truing up purposes and Rs 13.70 Cr. to be considered. Interest on Government loan- UIHEP to the tune of Rs 50.45 Cr. needs to be excluded for truing up in line with the Commission directions in tariff order & balance amount of Rs 8.02 Cr. needs to be considered. Interest on Government Loan (UIHEP) Rs 26.00 Cr. & interest on Government loan (old Power House) Rs 53.63 Cr. not to be considered as per direction of the Commission in tariff orders.
60. TPWODL has stated that the Commission has approved ROE on equity Rs 738.27 Cr.

However OHPC has claimed ROE on additional capitalization to the tune of Rs 163.11Cr. From the audited accounts the equity capital has been obtained year wise. Therefore, the excess ROE approved i.e. Rs 121.30 Cr. (Rs 738.27- Rs 616.97) Cr. to be trued up. Further, ROE of Rs 163.11 Cr. claimed by OHPC towards additional capitalization needs to be rejected as addition through capitalization in any year is finding a place in equity base per audited accounts in subsequent year on which ROE is to be given.

61. TPWODL has stated that as regards the Interest on Working Capital OHPC has claimed Rs 131.55 Cr. towards interest on working capital on the basis of approval of the Commission. However, not a single rupee has been spent towards interest on working capital as found from audited accounts. Hence the same may be disallowed.
62. TPWODL has stated that the Revenue from sale of power: That, as per audited accounts the revenue from sale of power is Rs 4005.42 Cr. The Commission has approved Rs 3954.09 Cr. Therefore the excess of Rs 51.33 Cr. needs to be trued up against OHPC claim of Rs 27.50 Cr.
63. TPWODL has stated that OHPC has not considered the other income of Rs 983.95 Cr. the same needs to be considered.

Submission of Shri R.P. Mohapatra

64. Sri Mohapatra has stated that, Regulation 3.4 of the OERC Generation Tariff Regulations, 2014, provides that" The capital expenditure incurred or projected to be incurred, on the following accounts after the cut-off date may, in its discretion, be admitted by the Commission, subject to prudence check. Identical provisions exist in Regulation 8(1)(c) and Regulation 12 (2) of the OERC (Terms and Condition for-Determination of Generation Tariff) Regulations, 2020.The present petition for truing up is based on the "additional capital expenditure and other costs" based purely on the audited accounts, without giving any details of such expenditure for the approval of the Commission. Therefore, these expenses cannot be considered for truing up and determining the Cumulative Revenue Gap of OHPC. Further, the submissions regarding the revenue gap should have been made along with the Tariff Application of subsequent year(s).
65. The submission regarding the revenue gap should have been made along with the tariff application of subsequent years and this petition may be rejected.

OHPC Replies to Objectors

66. OHPC submitted that the truing up exercise is carried out based on the audited accounts and any gap or surplus is reflected in the truing up figures upto FY2015-16. As per clause no. 4.36 to 4.44 of the OERC (Terms & Conditions for determination of Generation Tariff) Regulation, 2014, the annual fixed cost of a power station shall be recovered on monthly basis under Capacity Charge and Energy Charge to be shared on 50:50 basis. Non recovery of the whole ARR as approved by OERC by OHPC is the combined effect of under recovery of energy charge and capacity charge. Under recovery of Energy charge is due to hydrology failure and under recovery of Capacity charge is mainly due to breakdown of some of the machines. During the FY-2015-16 due to hydrology failure total power sold by OHPC was 4120.64MU against the approved the total saleable design energy of 5619.24 MU by the Commission. Because of this OHPC was able to recover only Rs.419.98 Cr as against approved ARR of Rs. 484.97 Cr.
67. OHPC stated that for the purpose of computation of liability for income Tax, some of the expenditures are disallowed either partially or fully and similarly some of the incomes are exempt from tax either fully or partially as per the provisions of the Income tax Act,1961. In FY2015-16, depreciation as reflected in audited account upto Rs.60 Cr and provision for payment of post retirement benefits upto Rs. 12 Cr. was disallowed. Further in the FY-2015-16, the income tax was paid considering other income of Rs.196 Cr. which is not reflected in the table resulting in the negative income.
68. OHPC stated that due to absence of any guideline for filing up of truing up petition, OHPC has not filed the petition earlier. In 2014 “OERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2014 came into force and para 2.13 of this regulation stipulates as follows:-

“The existing generation plants of OHPC and OPGC may file an application each year for truing up of its generating stations of the previous year(s), with respect to the capital expenditure including additional capital expenditure incurred up to last day of the previous year(s) and determination of revenue gap/surplus for the ensuing year, within the time limit as specified by the Commission.”

69. OHPC stated that in absence of approved amounts, Return on Equity based on normative principle has been claimed under the head of “ROE on Additional Capitalisation“. In this petition “ROE on additional capitalisation” is claimed as a difference of total normative Return on equity minus Return on equity claimed which is equal to the return on equity approved by the Commission in respective Tariff Orders. Depreciation and Interest have also been claimed on Additional Capitalisation. Since there were no regulations and hence no norms for claiming such heads of expenditure. In absence of the norms, additional capitalisation would need to be approved by the Commission for tariff purpose.
70. OHPC stated that in case of BHEP, OHPC has considered the historic cost i.e. Rs. 115.42 Cr as its capital cost for the purpose of tariff calculation. However for preparation of account, OHPC has considered the upvalued figure i.e. Rs.334.66 Cr as its capital cost. The opening GFA and closing GFA for FY-2015-16 is Rs.550.24 Crs and Rs. 551.35 Crs respectively as per audited account by taking the capital cost of BHEP at its upvalued figure. This indicates that there is a capital addition of Rs. 216.69 Crs (i.e. Rs. 551.35 Crs-Rs. 334.66 Cr) during FY-1996-97 to FY-2015-16. Thus, OHPC claims for approval of additional capitalization as per audited account only.
71. OHPC stated that it took over the UIHEP from Govt of Odisha in 1996 when the project was in construction stage and proceeded to complete the project therefore there was no scope for OHPC to do the cost benefit analysis at that stage. In case of UIHEP, additional capitalization of Rs. 211.93 Crore has been claimed in this petition as OHPC never claimed the additional capitalization upto FY-2014-15 based on audited account.
72. OHPC stated that the ROE allowed by the Commission for FY-1996-97 to FY-2015-16 is Rs. 738.27 Crore against the claim of Rs. 1169.82 Cr. A comparison between PAT for the period is Rs. 904.56 Crore and the approved ROE is Rs.738.27 Crore. This indicates that PAT is mostly comprising of approved ROE and interest accrued thereon.
73. OHPC stated that it has considered the reduction of “Expenses during construction” and submitted the revised Revenue Gap/(Surplus) .
74. OHPC stated that in the proceedings of a meeting taken by the Chief Secretary of Government of Odisha on 18.03.2014, it was decided that out of total consideration

amount for transfer of UIHEP Rs.521.47 Cr shall be treated as loan outstanding as on 01.04.2006 with interest@7% w.e.f. 2006-07 onwards. Therefore, the cumulative interest from the FY-2006-07 to 2013-14 on loan of Rs. 521.47 Cr. @ 7% was charged to profit and loss account for the FY ended on 31.03.2014.

75. OHPC stated that as per subsequent notification No. 5843 dtd. 03.7.2015 issued by Dept. of Energy, Govt. of Odisha the consideration for transfer of UIHEP to OHPC was fixed at 821.47 Cr as on 01.04.2006. Out of Rs.821.47 Cr, Rs. 298.85 Cr would be converted to equity and balance 522.62 Cr as 7% interest bearing Govt. loan to be repaid in 15 equal installments with 4 years moratorium starting from 2010-11.
76. OHPC stated that the operation & maintenance expenses (O&M) are calculated including corporate office expenses as per the audited accounts for the respective year. The corporate office expenses are allocated to units based on the plant wise design energy.
77. OHPC has claimed Rs.6.73 Cr i.e. the difference between the normative ROE and ROE approved by the OERC against HHEP for FY-2005-06. Similarly ROE on Additional Capitalisation has been claimed for all the years for all the units.
78. OHPC stated that in FY-2005-06 for HHEP the depreciation of Rs.14.68 Crore under head “Depreciation on Additional Capitalisation” has been claimed. Similarly Depreciation on Additional Capitalisation is calculated on the above basis for all the years for all the units. The amount claimed for depreciation is calculated considering the historical cost.
79. OHPC stated that during the FY 2008-09 & FY 2009-10 the high audited O&M expense is due to the impact of 6th pay commission.
80. OHPC stated that depreciation claimed by OHPC is equivalent to approved amount as per respective Tariff Orders passed by the Commission which is calculated at higher of 2.57% of the project cost or actual loan repayment.
81. OHPC stated that the Commission has examined the proposal of OHPC towards payment of interest on Govt. loan of RS.497.86 Crs. and the interest on normative loan of Rs.78.23 Crs. The Commission has observed that the repayment of Govt. loan be made phase-wise i.e. firstly the principal repayment will be made and then the interest component will be paid as is the usual practice in the case of Govt. loans. The Commission has analysed the proposal of OHPC and observed that the principal

repayment has already been passed on in the tariff of 2010-11, 2011-12 and 2013-14 @ Rs.30.23 Cr. per year. The same amount is allowed in the tariff of 2014-15 towards principal repayment. The total principal repayment will take 17 years i.e. beginning with 2010-11 and will terminate by 2027-28. Thereafter, the interest payment will be taken into consideration.

82. OHPC submitted the audited amount for revenue from sale of power from 2005-06 to FY 2015-16 is less than the commission approved amount.
83. The Commission heard the petitioner and objectors in detail. The petitioner has filed this petition for approval of True up of Annual Revenue Requirement and Tariff of individual power stations of OHPC from the financial year 1996-97 to 2015-16 in terms of section 62 read with section 86 of the Electricity Act, 2003 and para 2.13 of the OERC (Terms & Conditions for determination of Generation Tariff) Regulations, 2014.
84. In this context it is relevant to note that the as per provisions of OERC (Terms and Conditions for Determination of Tariff) Regulations, 2004 and Regulation 61(2) of the OERC (Conduct of Business) Regulations, 2004, on 30.11.2005 OHPC filed its first Annual Revenue Requirement (ARR) and fixation of tariff application before the Commission for the years FY 2005-06 & 2006-07. The Commission approved the ARR of these two years vide case no. 48 of 2005 order dated 23.03.2006.
85. The Commission observes that the Tariff determination of OHPC prior to OERC generation Regulations 2014 was determined on the basis of the principles laid down in Section 61 of the Electricity Act 2003. The submissions made by OHPC for Truing up have been carried out on the basis of the objections during each tariff petitions and such objections are addressed in the respective Tariff Order itself.
86. As we find from the petition, the petitioner has requested for True-up of the cost of production for the Hydro Projects based on the audited accounts of respective years. It is relevant to note that before the notification of the OERC (Terms & Conditions for Determination of Generation Tariff) Regulations 2014, there was no Regulations for True-up of accounts by the generation company.
87. Regulation 2.12 of the said Regulation stipulates that *"The Commission shall carry out truing up exercise along with the tariff petition filed for the next tariff petition with respect to the capital expenditure including additional capital expenditure incurred up*

to 31.03.2019 as admitted by the Commission after prudence check at the time of truing up".

88. The Regulation 2.13 of the above OERC Generation Tariff Regulations, 2014 reads as follows:

"The existing generation plants of OHPC and OPGC may file an application each year for truing up of its generating stations of the previous year(s), with respect to the capital expenditure including additional capital expenditure incurred up to last day of the previous year(s) and determination of revenue gap/surplus for the ensuing year, within the time limit as specified by the Commission.

Provided that the applicant shall submit to the Commission, information in such form as may be prescribed by the Commission, together with the Audited Accounts, extracts of books of account and such other details as the Commission may require to assess the reasons for and extent of any variation in financial performance from the approved forecast of Aggregate Revenue Requirement and expected revenue from tariff and charges."

89. As per regulation 2.12, the OHPC was required to file its tariff petition along with the true up petition with respect to the capital expenditure including additional capital expenditure incurred up to 31.03.2019 as admitted by the Commission. The OHPC further as per regulation 2.13 may file an application each year for truing up of its generating station of the previous year(s), with respect to the capital expenditure including additional capital expenditure incurred up to the last day of the previous year(s) and determination of revenue gap/surplus for the ensuing year. The OHPC has not complied with the provisions of these regulations. Nevertheless these regulations only provide for the truing up of the item of capital expenditure including additional capital expenditure.
90. In view of this the Commission observes that the OHPC is not entitled to any truing up for the period before the notification of the OERC (Terms & Conditions for Determination of Generation Tariff) Regulations 2014 as there was no provision in the CERC Tariff Regulation for truing up under which the Generation Tariff was regulated for the period before 2014. After the notification of OERC Generation Tariff Regulation 2014, truing up is guided as per the provisions of Regulation 2014. Since the truing up is only allowed for the Capitalisation and additional capitalisation it is further observed that the Commission in the ARR allows the capitalisation including additional capitalisation as reflected in the available audited accounts. Therefore there is no further scope for any truing up of these elements. Since the Regulations 2014 do

not have any provision for truing up of other elements of expenses and revenue we are not inclined to carry out any truing up on these elements.

91. Therefore, the present review petition is devoid of any merit and accordingly is dismissed.

Sd/-
(G. Mohapatra)
Member

Sd/-
(S.K. Parhi)
Member

Sd/-
(U.N. Behera)
Chairperson