

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

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

Case No. 69/2020

GRIDCO Ltd., Vrs. M/s. TPCODL & Others	Petitioner
	Respondents

In the matter of: **An application under Section 94(1) (f) of the Electricity Act, 2003 read with Regulation 70 of the OERC (Conduct of Business) Regulations, 2004 and the provisions of Order 47 Rule-1 of Civil Procedure Code, 1908 for review and amendment of Aggregate Revenue Requirement (ARR) and Bulk Supply Price (BSP) order dated 22.04.2020 for FY 2020-21.**

For Petitioner: Shri Lalit Mishra, DGM, GRIDCO Ltd.,

For Respondent: Shri K. C. Nanda, DGM (Fin.), TPWODL, Shri Vidyadhar Wagle of M/s. TPCODL, Ms. Malancha Ghose, AGM (RA), Shri Pratap Mohanty, TPWODL, the representative of TPSODL, Shri R. P. Mahapatra and Shri Bibhu Charan Swain, the authorized representative of M/s. UCCI and M/s. Grinity Power Tech Pvt. Ltd., are present. Nobody is present on behalf of DoE, GoO, M/s. FACOR, Shri Ramesh Chandra Satpathy, Shri A. K. Sahani, M/s. OPGC Ltd., M/s. CCPPO, M/s. Visa Steel Limited, M/s. Vedanta Limited, NOCCI and Shri Alekha Chandra Mallick.

ORDER

Date of hearing: 27.04.2021

Date of order: 12.08.2021

1. The Commission in its order dated 22.04.2020 in case No. 71 of 2019 had approved the ARR and BSP of GRIDCO for the FY 2020-21. In the said order the Commission had left a revenue gap of Rs. 660.15 cr. in the ARR of GRIDCO to provide tariff relief to the consumers of the state considering the then prevailing Covid-19 situation. In the said order the Commission had mentioned that if the situation improves during the FY 2020-21, the Commission may revisit the gap on an application of GRIDCO. In light of the above GRIDCO had filed an application as the Covid-19 situation started improving and the gap allowed by the Commission was not manageable by GRIDCO. Considering the application of GRIDCO, the Commission in its order dated 23.09.2020 enhanced the BSP and the revised BSP was made applicable with effect

from 01.10.2020. However, even after revision of BSP, there still existed a negative gap of Rs.250.60 cr. in the ARR of GRIDCO for the FY 2020-21. Now, GRIDCO has filed the present petition seeking review/revision of the Commission's order dated 22.04.2020 passed in case No.71 of 2019 for allowing the balance costs not being considered by the Commission in the ARR of GRIDCO for the FY 2020-21. The Petitioner GRIDCO has submitted that owing to spread of corona virus (Covid-19) in Odisha and detection of large number of Covid positive cases in the offices of GRIDCO/OPTCL, there has been some delay in filing the present application. Therefore, GRIDCO has prayed for condonation of the delay in filing the present application and admit the petition for review of the Commission's order dated 22.04.2020.

2. The Petitioner GRIDCO has submitted that in view of the following omissions in the ARR and BSP Order dated 22.04.2020 for FY 2020-21, the Commission may review/and/or amend its Order under Section 94(f) of the Electricity Act 2003 read with Regulation 70(1) of the OERC (Conduct of Business) Regulations, 2004 and the provisions of Order XLVII (47) Rule-1(c) of the Code of Civil Procedure, OERC (Terms and Conditions for Determination of Tariff) Regulations, 2004 and OERC (Conduct of Business Regulations, 2004 and other related Rules and Regulations. The omissions are as follows:

- i. Non-consideration of 75 % installed capacity of Units- III & IV of OPGC
- ii. Omission to allow pass through cost of OPGC Ltd. (#1 and #2)
- iii. Non-consideration of state share of power of Darlipali STPS (2x800 MW) of NTPC during FY 2020-21
- iv. Disallowance of fixed cost of power purchase from FSTPS- I & II, FSTPS- III, KHTPS-I & KHTPS-II
- v. Omission to allow pass through towards purchase of power through power exchange and UI overdrawal during the period April'19 to Sept'19
- vi. Omission to consider claim towards finance costs

Non-consideration of 75 % installed capacity of Units-III & IV of OPGC.

3. GRIDCO has submitted that in its filing they had mentioned regarding execution of Supplementary PPA dated 24.01.2019 based on the Government notification dated

20.12.2018 for procurement of 75% of installed capacity till April 2023 and 100% of installed capacity for 25 years thereafter. Accordingly, GRIDCO had proposed to procure 6947 MU of power from OPGC Stage II during FY 2020-21. But the Commission has approved procurement of 4631.78 MU of power from OPGC Stage II i.e. Unit #3 and #4 (2X660 MW) i.e. at 50% of the installed capacity as per the approved PPA dated 04.01.2011. Since GRIDCO has already filed an application for approval of Supplementary PPA dated 24.01.2020 before the Commission in Case No. 67 of 2019, the Commission may consider allowing procurement of balance 2315.22 MU of power from OPGC Stage II during FY: 2020-21.

Omission to allow pass through cost of OPGC Ltd. (#1 and #2)

4. The petitioner has submitted that in its ARR application it had prayed for pass through of an amount of Rs.118.16 Crore towards differential power purchase cost of OPGC arising out of redetermination of tariff for FY: 2016-17, FY:2017-18 and FY:2018-19 in compliance with Hon'ble Supreme Court's order dtd. 19.04.2018 in Civil Appeal No.9485 of 2017. But in the impugned order, the Commission has not considered the above submission of GRIDCO for pass through of the dues already paid by GRIDCO to OPGC

Omission to allow pass through in respect of M/s. GKEL

5. The petitioner has further submitted that they have proposed a net amount of Rs.19.10 cr. as pass through towards payment of power purchase dues of M/s. GKEL after adjustment of reduced fixed charges based on the CERC Order dated 29.06.2018 in Petition No. 61/GT/2016, (in the matter of truing up of FY 2013-14 and determination of tariff for the control period FY 2014-15 to 2018-19). However, in the impugned order, the Commission ignored the above submission of GRIDCO which may kindly be considered.

Non-consideration of state share of power from Darlipalli STPS (800MW) of NTPC during FY 2020-21

6. The petitioner has submitted that it had filed additional submission on dt.16.03.2020 towards the availability of additional energy of 4188.38 MU from Darlipali STPS (2X800 MW) of NTPC during FY 2020-21 towards state share along with the associated costs on account of operationalization of Darlipalli STPS for consideration of the Commission. But the Commission in the impugned order has not considered the

above submission of GRIDCO. The petitioner therefore has prayed the Commission to consider and allow the same towards contractual obligation of Fixed Cost.

Disallowance of fixed cost of power purchase from FSTPS-I & II, FSTPS-III, KHTPS-I, KHTPS-II.

7. The petitioner has submitted that the Commission in the impugned order has disallowed the fixed power purchase cost of the above backed down thermal power stations to avoid passing of additional cost to the consumers. The Petitioner stated that fixed cost is sunk cost for GRIDCO and as per the terms of PPA, GRIDCO has to pay the same even if it does not source power from these stations. The Commission in their previous tariff orders had explicitly approved fixed cost from these stations in spite of nil or low power procurement from these stations. Further various gas based power plants in the country are idle due to high cost of gas but the Regulatory Commissions in various states are allowing fixed cost of these plants. Therefore, the petitioner has prayed the Commission to approve the fixed cost of the above power stations in line with the previous orders.

Omission to allow pass through towards purchase of power through power exchange and UI overdrawal during the period April'19 to Sept.19.

8. The petitioner has submitted that in its ARR application it was proposed for allowing of pass through of power purchase cost to the tune of Rs.180.25 Crore, incurred during the period from April'19 to Sept'19, due to non-supply of the requisite quantum of power by M/s Vedanta Ltd. and M/s JITPL, as approved by the Commission. Therefore, GRIDCO was constrained to make procurement through Energy Exchange, UI overdrawal and incurred additional cost of Rs.180.25 Crore, which was submitted for considering the pass through for the FY 2020-21. The petitioner stated that the above submission has been omitted by the Commission in the impugned order which needs to be rectified as the costs incurred was unavoidable and uncontrollable to meet the State demand. Therefore, the petitioner prayed the Commission to reconsider of the pass through of additional costs of Rs.180.25 Crore along with carrying cost in the revised ARR order for the FY 2020-21.

Omission to consider claim towards finance costs

9. The petitioner has submitted that in the ARR & BSP Application for FY 2020-21, it has indicated an amount of Rs.583.68 Crore towards Interest Outgo and Rs.30.00

Crore towards additional interest through supplementary filing on 16.03.2020 before the Commission. However, in line with the approval of the Commission, GRIDCO factored Rs.507.63 in the ARR for recovery through BSP by omitting Rs.106.05 Crore towards Interest on State Government Loans currently deferred and not being paid to the State Government because of poor financials of GRIDCO and to meet the working capital requirements for paying the Generators' dues from time to time. GRIDCO has submitted that it has paid a sum of Rs.388.33 cr. towards interest on loans from Banks/FIs and Rs.12.26 cr. towards interest on bonds during FY 2019-20 and further it has incurred Rs.19.55 cr. towards interest on SOD during FY 2019-20. But the Commission in its impugned order has allowed only Rs.84.07 cr. towards interest on loan for the FY 2020-21.

10. In the present review petition the petitioner GRIDCO has submitted that the Commission may consider to allow the sum of Rs.423.56 Crore towards Interest for FY 2020-21 as worked out in the following table:

Sl. No.	Particulars	Amount (Rs. Crore)
1	Interest Claimed by GRIDCO in the ARR & BSP Appln. for FY 2020-21	583.68
	Interest Claimed by GRIDCO in the Supplementary Application	30.00
	Total Financial Costs for FY 2020-21	613.68
2	Less Interest on State Government Loan not Claimed	106.05
3	Less Interest on SOD not claimed by GRIDCO in the ARR & BSP Application for FY 2019-20	
4	Balance Interest (4=1-2-3)	507.63
5	Interest Allowed by the OERC	84.07
6	Balance Interest on Loans from Banks / FIs to be considered & allowed by the Hon'ble OERC (As claimed in this Petition) (4-5)	423.56

11. The petitioner has further submitted that the claim of Rs.1111.74 Crore towards Repayment of Principal was not allowed by the Commission in the impugned order. At Para, 329 to 331, of the impugned order, the Commission has mentioned that the proposed Repayment of loan Principal during FY 2020-21 may be met from "Power Sector Development Fund" to be created out of the revenue earned from Trading of surplus Power, funds earned through sale of low cost hydro power over and above design energy of OHPC by way of better management of hydrology at various OHPC Hydro Stations, Earnings from UI/ DSM Charges and Budgetary Support from Government of Odisha. In case the earmarked fund receipts as mentioned above is not sufficient to meet the repayment obligation of principal amount of loan, the State

Govt. may make budget provision for the differential amount and pay the same to Banks/Financial Institutions through GRIDCO.

12. The petitioner submitted that no revenue from trading of surplus power above design energy of OHPC, UI Charges and other miscellaneous receipts, are available for repayment of loan. Further, the State Govt. has not made any budget provision for the differential amount to pay to Banks/Financial Institutions through GRIDCO. The petitioner therefore has prayed the Commission to consider and allow repayment of loan principal due i.e. Rs.1111.74 Crore as stated above, in the ARR of GRIDCO for FY 2020-21.
13. The respondent TPWODL has submitted that the Commission had determined the BSP for FY 2020-21 in its order dated 22.04.2020 in case No.71 of 2019 and subsequently the BSP as well as RST for FY 2020-21 was revised vide Commission's order dated 23.09.2020. Any second revision of tariff in a year is an exception which depends upon prevalence of extra ordinary situation. The instant application filed by GRIDCO is not maintainable in the eyes of law due to the provisions of Section 62(4) of the EA, 2003 which permits review/amendment/revision of tariff only once in a year. Further, an order cannot be left open for review on innumerable occasions. Hence the present review petition filed by GRIDCO is liable to be dismissed at the threshold. The Section 62(4) of EA, 2003 is quoted hereunder:

“Section 62. Determination of Tariff:

(4) No tariff or part of any tariff may ordinarily be amended, more frequently than once in any financial year, except in respect of any changes expressly permitted under the terms of any fuel surcharge formula as may be specified.”

14. M/s. TPWODL has further submitted that the revised BSP order dated 23.09.2020 in case No.71 of 2019 as well as the RST order for FY 2020-21 is the subject matter of challenge before Hon'ble High Court of Odisha in W.P.(C) No.26149 of 2020, W.P.(C) No.27098 of 2020 and W.P.(C) No.31070 of 2020. Hence, further proceeding in the present matter would lead to multiplicity of proceedings. TPWODL has stated that it has not delved into the merit of the matter as raised by GRIDCO in its application as because TPWODL has challenged the very maintainability of the present application. In view of the above TPWODL has prayed the Commission to dismiss the instant review petition on the ground of maintainability.

15. The respondent Sri R P Mahapatra has submitted that the Commission in its order dated 23.09.2020 in case No.71 of 2019 increased the BSP of GRIDCO with effect from 01.10.2020. In this order the revenue gap of GRIDCO has been reduced to Rs.250.64 cr. after upward revision of BSP and taking into account the receipt from central PSUs under MoP, GoI guideline and revenue earning from trading. The Commission at para 60 of the aforesaid order dated 23.09.2020 has observed as follows:

“It is observed from above table that after revision of BSP for the balance six months of the FY 2020-21, there still exist a negative gap of Rs.250.60 Crore in the ARR of GRIDCO for the FY 2020-21. The Commission directs GRIDCO for trading of the available surplus power on prudent commercial principles in the market after meeting the state requirement and adjust the revenue earnings from trading and UI sources towards meeting the above gap and past losses. In case the above gap is not met from the trading and the UI accounts, the balance amount shall be considered in the truing up exercise of GRIDCO.”

16. Sri Mahapatra has submitted that in view of the above order of the Commission there is no reason for GRIDCO to file the present review petition. Since the FY 2020-21 is already over GRIDCO should file application before this Commission for truing up its ARR for the FY 2020-21 along with the audited accounts. Therefore he has prayed the Commission to dismiss the present review petition filed by GRIDCO.
17. M/s. TPSODL and M/s. TPNODL has filed their submissions similar to the above submission of M/s. TPWODL. No written submission has been filed by any other respondents. However, during the hearing the representative of M/s. TPCODL and Sri Bibhu Charan Swain argued for dismissal of the present petition on the ground of maintainability.
18. The Commission heard the parties and observed that the issues raised by GRIDCO in the present review petition has already been addressed by the Commission in the impugned order with reasons except the issue of pass through of the amount of Rs.19.10 cr. towards payment of power purchase dues of M/s. GKEL. This issue was not considered by the Commission in the impugned order because in the original petition (at page 82) GRIDCO has mentioned that this issue is to be proposed under truing up exercise which is yet to be filed by GRIDCO. The present petition appears more to be an appeal than a review petition. 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. 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 which is 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.

But no such error has been pointed out by the Petitioner seeking the review of the impugned order. The Commission has already considered the matter under prayer and passed orders considering all legitimate factors. The present petition appears more to be an appeal than prayer for review of the order. The review petition is therefore rejected.

19. Accordingly, the case is disposed of.

Sd/-

(G. Mohapatra)
Member

Sd/-

(S. K. Parhi)
Member

Sd/-

(U. N. Behera)
Chairperson