

**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. 64/2021**

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

**In the matter of:** **An application under section 94 (i) (f) of the Electricity Act, 2003 read with Regulation 70 (1) of the OERC (Conduct of Business) Regulations, 2004 for review of the order dated 18.05.2021 passed in Case No. 17/2020.**

**For Petitioner:** Shri R. C. Mishra, GM (Fin.), OPTCL

**For Respondent:** Shri B. K. Das, CGM (PP), GRIDCO Ltd., Shri K. C. Nanda, DGM (Fin.), TPWODL, Shri V. Wagle, TPCODL, Ms. Malancha Ghose, AGM (RA), TPNODL, Shri Binod Nayak, Asst. GM, (Com.), TPSODL, Shri Ananda Kumar Mohapatra.

Nobody is present on behalf of M/s. FACOR, Shri P. K Das, M/s. Grasim Industries Limited, Shri B K Pradhan, Shri Devasis Mohanty, M/s. Aditya Birla Chemicals (India) Ltd, M/s. Utkal Chamber of Commerce & Industry Ltd., M/s. Visa Steel Ltd., M/s. Swain & Sons Power Tech Pvt. Ltd., M/s. Vedanta Limited, M/s. Adhunik Metaliks Ltd., Shri Ramesh Ch. Satpathy.

**ORDER**

**Date of hearing: 28.09.2021**

**Date of order: 03.11.2021**

1. The Petitioner OPTCL in the present application has sought review of the order dated 18.05.2021 relating to truing up order for FY 2018-19 against the ARR of that year, under section 94 (1)(f) of the Electricity Act, 2003 read with Regulation 70 (1) of the OERC (Conduct of Business) Regulations, 2004.

2. The petitioner has stated that there is a difference in truing up gap of Rs.136.80 Cr for FY 2018-19 between what was proposed by OPTCL and what has approved by the Commission in the truing up order dated 18.05.2021.
3. The petitioner has stated that there is a differential gap of Rs.66.23 Cr in gross revenue requirement between what was claimed by OPTCL and that approved by the Commission. The petitioner has stated that the revenue requirement deficit of Rs.66.23 Cr is on account of Rs.10.93 Cr towards A & G Cost (including SLDC & GCC), Rs.31.80 Cr towards Depreciation and Rs.23.50 Cr towards Interest on Loan Capital.
4. The petitioner has stated that the Commission had approved Rs.26.44 Cr. towards A & G Cost (including SLDC & GCC) for FY 2019-20, but in the audited account it has been shown as Rs.37.37 Cr. Therefore, the additional amount spent in this regard may be allowed.
5. The petitioner has stated that Commission allowed an amount of Rs.145.43 Cr. towards depreciation in the Transmission Tariff Order for FY 2018-19. As per the audited accounts for FY 2018-19, the depreciation and amortization expenses is Rs.229.14 Cr. which is calculated on straight line method as per the rates as well as methodology notified under the Electricity Act, 2003. OPTCL has stated that as per the audited accounts during the FY 2018-19 assets value of Rs.661.09 Cr has been added to the GFA. OERC Regulation 8.36 states that depreciation shall be chargeable from the first year of commercial operation. Depreciation shall be charged on pro rata basis. It means, the licensee should claim the depreciation on the assets added during the year on a prorated basis. But the commission has allowed depreciation on the opening balance as mentioned in the Tariff Order, Therefore OPTCL submitted that additional depreciation of Rs.19.70 Cr on the assets addition of Rs.661.09 Cr during the FY 2018-19 may be allowed in truing up.
6. The petitioner has submitted to consider depreciation amounting to Rs.1.15 Cr on lease hold land in the truing up which has not been considered in the truing up order.
7. The petitioner therefore submitted for consideration of the additional depreciation Rs. 20.85 Cr (Rs.19.70 Cr (towards additional capitalization) + Rs.1.15 Cr (towards amortization of land)).

8. The petitioner has submitted that revenue from interstate transmission charges, trading in power exchange and interstate wheeling/ Short term open access charges totaling to Rs.58.71 Cr may be considered either in Miscellaneous receipts or on Revenue from operations.
9. The petitioner has stated that since inception OPTCL has been preparing the consolidated accounts of SLDC and OPTCL, even though ARR of SLDC is separately determined by the Commission. However in the true-up application OPTCL is not considering the Revenue and Expenditure components of SLDC and if any surplus arises from SLDC transactions, the same is being transferred to a separate head of account. Therefore, OPTCL has submitted that consideration of SLDC revenue in the truing up order is an error apparent on the face of the record.
10. The petitioner therefore requested the Commission to review the truing up order dated 18.5.2021 and consider the total deficit of Rs.90.06 crore.
11. The objector Sri Ananda Mohapatra has stated that the submissions of the petitioner in the instant review petition is confusing because the petitioner sometimes submit that the SLDC charges order has been taken up in the truing up petition in case no.17/2021 but in the review petition it states that the SLDC charges order has been taken up wrongly in the order dated 18.05.2021. He has further stated that during the time of hearing the objectors had stated to include the SLDC charges in the ARR. In the present review petition the statement of OPTCL that the SLDC charges has been wrongly included in the true up order is not correct.
12. The objector has stated that the Non-Tariff Income as per 8.40 of OERC Regulations, 2014 is wrongly termed as Miscellaneous receipts in order dated 18.05.2021. The petitioner has stated that the various components of Non-Tariff Income (Misc Receipts) are described in the OERC (Terms and conditions for Determination of Transmission Tariff) Regulations 2014. In the instant petition it is observed that the heads of Non-Tariff Income are neither disclosed/submitted by the petitioner nor considered by the Commission.

13. The objectors TPWODL and TPSODL have stated that the Commission has already dealt with these issues in the truing up order wherein it is stated that the Commission has analyzed such expense and declined to allow any additional expenses.
14. The OPTCL has replied that it has been filing two separate applications for approval of ARR related to Transmission charges and SLDC charges. For the FY 2018-19 the Transmission charges was determined as per the provisions of OERC (Terms & Conditions for Determination of Transmission Tariff) Regulations, 2014 and SLDC charges were determined as per the provisions of OERC (Fees & Charges of SLDC & other related matters) Regulations, 2014. The petitioner has stated that the surplus derived from SLDC transaction has been transferred to SLDC Development Funds. Therefore it is not prudent to combine SLDC transaction with Transmission charges in truing up exercise.
15. The petitioner further has replied that as per 8.1 of the Regulation Non-Tariff Income and Income from Other Business has been deducted while determining ARR of OPTCL. The petitioner stated that the objector has failed to understand the purpose of the Regulation because in the true up applications OPTCL has to consider all items under the head Other Income except deferred Income.
16. The Commission heard the petitioner and the respondent in detail. This review petition of the OPTCL is merely an extension of the original petition wherein the petitioner has sought the differential amounts which have not been allowed in the order dated 18.05.2021 in case no 17/2020. The petitioner has stated that higher amounts may be allowed in the expenditure heads of A&G and depreciation costs and lower amount in the Revenue from Operations. After analyzing the petition we find there is no error apparent or mistake in the order hence we are not inclined to revisit our order dated 18.05.2021 in case no 17/2020.
17. The Commission has the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908. Review under the Civil Procedure Code is permissible as per order 47, Rule 1 on the following grounds.

- a. Discovery of new and important matter or evidence which after exercise of due diligence was not in the knowledge of the applicant and could not be produced by him at the time when the decree or order was passed; or
  - b. Some mistake or error apparent on the face of the record and; or
  - c. For any other sufficient reason.
18. 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.
19. We are citing two important decisions here. “Error apparent on the face of the record” must be such an error which must strike one on mere looking at the record and would not require any long drawn process of reasoning on points where there may conceivably be two opinions. (AIR 1995 SC 455). That no error could be said to be apparent on the face of the record if it was not self-evident and if it required an examination or argument to establish it. (‘Batak K. Vyas vrs. Surat Borough Municipality,’ AIR 1953 Bombay 133 (R)). But no such error has been pointed out by the Petitioner seeking the review of our judgment. It has become almost an everyday experience that review applications are filed mechanically as a matter of routine and there is no indication as to which grounds strictly it falls within the narrow limits of Order 47 Rule 1 of the Code of Civil Procedure, 1908. The present petition appears more to be an appeal than prayer to review our Order.
20. The review petition is devoid of any merit and accordingly is disposed of.

Sd-  
**(G. Mohapatra)**  
Member

Sd/-  
**(S. K. Parhi)**  
Member

Sd/-  
**(U. N. Behera)**  
Chairperson