

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

**Present: Shri Suresh Chandra Mahapatra Chairperson
Shri G. Mohapatra, Member
Shri S. K. Ray Mohapatra, Member**

Case No. 53/2022 & 19/2023

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

In the matter of: Application for approval of True Up of Annual Revenue Requirement and Tariff of Individual Power Stations of OHPC from FY 2016-17 to FY 2020-21 and FY 2021-22 in terms of Section 62 read with Section 86 of the Electricity Act, 2003 & para no. 2.13 of the OERC (Terms & Conditions for Determination of Generation Tariff) Regulations, 2014 and para no. 8(1)(c) of the OERC (Terms & Conditions for Determination of Generation Tariff) Regulations, 2020 (Case No. 53/2022) & (Case No.19/2023)

For Petitioner: Shri D. Mohanty, CGM (F), Shri D.N.Patra, GM(Elect.), and Shri Chiranjeebi Jena, C.A

For Respondents: Shri L. K. Mishra, DGM(Fin.) R&T & Ms. Murchhana Dhar, DGM(Elect.) on behalf of GRIDCO

ORDER

Date of hearing: 16.05.2023

Date of order: 08.06.2023

1. The present petitions have been filed by the Odisha Hydro Power Corporation Limited (OHPC) for approval of truing up of the capital expenditure including additional capital expenditure incurred from FY 2016-17 to FY 2020-21 and FY 2021-22 in terms of Section 62 read with Section 86 of the Electricity Act, 2003 & Para No. 2.13 of the OERC (Terms & Conditions for Determination of Generation Tariff) Regulations, 2014 and Para No. 8(1)(C) of the OERC (Terms & Conditions for Determination of Generation Tariff) Regulations, 2020 and consequential determination of revenue gap/surplus for the ensuing year for all Hydro Projects of OHPC based on the audited accounts of respective years.
2. The Commission heard these two petitions analogously as the matters in the two petitions are similar in nature.

3. The Petitioner-OHPC currently owns and operates six (6) Hydro Power Projects (RHEP, BHEP, UKHEP, UIHEP, Burla-HHEP, CHEP) across the State of Odisha. 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. Petitioner has considered the capital cost of all Hydro Electric Projects (HEPs) as per the notification mentioned above, thereafter, capitalization of each year as per Audited Accounts has been added to arrive at the GFA for the respective year.
4. The Petitioner has following submission:
 - (a) The historic cost considered for various projects as on 1st April 1996 as per Government notification is as follows:

Table 1
Historic Cost of OHPC Projects as on 01.04.1996
(Rs. Crs)

Particulars	Historic Cost
RHEP	91.09
UKHEP	108.31
BHEP	115.42
UIHEP*	1194.79
HHEP Burla	72.75
CHEP	92.23

*Approved project cost

- (b) The Commission has approved additional capitalization /new investment made only after 01.04.1996. In view of this, the Petitioner has considered additional capitalization based on the addition in GFA as per audited accounts for the respective year for True up.
- (c) The differential additional capitalization has it's impact on ARR in the following heads-.
 - **Depreciation** –The Commission has been allowing the depreciation @2.57% of the project cost or loan repayment whichever is higher for the respective year.
 - **Interest and Finance Charges** -The Petitioner has computed the normative interest and finance charges based on the debt: equity ratio on differential additional capitalization. The interest rate considered for normative loans is 9.80% in the case of CHEP, UKHEP & RHEP, 9.60% in the case of BHEP, and 7% in case of UIHEP. The following table

provides the details of the percentage debt and equity considered for each power project.

Table 2
Debt Percentage for OHPC Projects

Particulars	Debt %
RHEP	70%
UKHEP	70%
BHEP	70%
UIHEP	75%
HHEP Burla	70%
CHEP	70%

- **Return on Equity-** The Commission has been allowing the return on equity on new capital addition/ new investments made only after 01.04.1996 based on the contents of the Government Notifications. The rate for return on equity is considered basing on the approval of the Commission from time to time. The Commission has approved ROE @ 15.5% in respect of old power stations and @ 16% in respect of new power stations for FY 2016 to FY 2022. The following table provides the details of equity considered for each power project.

Table 3
Equity Percentage for OHPC Projects

Particulars	Equity %
RHEP	30%
UKHEP	30%
BHEP	30%
HHEP	30%
CHEP	30%
UIHEP	25% on original cost & 30% on additional capitalization

Further, the petitioner has stated that “ROE” is claimed on equity applying the above normative equity percentage on differential additional capitalization.

- (d) The corporate office capital costs are allocated to each project in the ratio of design energy and the design energy for sale considered for each project is summarized on the following table.

Table 4
Design Energy for sale considered for OHPC Stations

Particulars	Design Energy (MU)	% Share
RHEP	525	9.25%
UKHEP	832	14.66%
BHEP	1183	20.84%

Particulars	Design Energy (MU)	% Share
UIHEP	1962	34.57%
HHEP Burla	684	12.05%
CHEP	490	8.63%

- (e) The absorption of the capital cost of the corporate office from FY 2016-17 to 2020-21 and for FY 2021-22. The year-wise absorption of the capital cost of the corporate office are mentioned below:

The total capital cost of the corporate office for the FY 2016-17 is. Rs 17.62 crore and its apportioned values for different power stations are as follows:

Table 5

Particulars	Design Energy (MU)	% Share	Apportioned value (Rs. Crores)
RHEP	525	9.25%	1.63
UKHEP	832	14.66%	2.58
BHEP	1183	20.84%	3.67
UIHEP	1962	34.57%	6.09
HHEP Burla	684	12.05%	2.12
CHEP	490	8.63%	1.52
Total	5676	100.00%	17.62

The total capital cost of the corporate office for the FY 2017-18 is Rs.17.89crore and its apportioned values for different power stations are as follows:

Table 6

Particulars	Design Energy (MU)	% Share	Apportioned value (Rs. Crores)
RHEP	525	9.25%	1.65
UKHEP	832	14.66%	2.62
BHEP	1183	20.84%	3.73
UIHEP	1962	34.57%	6.18
HHEP Burla	684	12.05%	2.16
CHEP	490	8.63%	1.54
Total	5676	100.00%	17.89

The total capital cost of the corporate office for the FY 2018-19 is Rs.18.33crore and its apportioned values for different power stations are as follows:

Table 7

Particulars	Design Energy (MU)	% Share	Apportioned value (Rs. Crores)
RHEP	525	9.25%	1.70
UKHEP	832	14.66%	2.69
BHEP	1183	20.84%	3.82

Particulars	Design Energy (MU)	% Share	Apportioned value (Rs. Crores)
UIHEP	1962	34.57%	6.34
HHEP Burla	684	12.05%	2.21
CHEP	490	8.63%	1.58
Total	5676	100.00%	18.33

The total capital cost of the corporate office for the FY 2019-20 is Rs.18.93 crore and its apportioned values for different power stations are as follows:

Table 8

Particulars	Design Energy (MU)	% Share	Apportioned value (Rs. Crores)
RHEP	525	9.25%	1.75
UKHEP	832	14.66%	2.78
BHEP	1183	20.84%	3.95
UIHEP	1962	34.57%	6.54
HHEP Burla	684	12.05%	2.28
CHEP	490	8.63%	1.63
Total	5676	100.00%	18.93

The total capital cost of the corporate office for the FY 2020-21 is Rs.19.46 crore and its apportioned values for different power stations are as follows:

Table 9

Particulars	Design Energy(MU)	% Share	Apportioned value (Rs. Crore)
RHEP	525	9.25%	1.80
UKHEP	832	14.66%	2.85
BHEP	1183	20.84%	4.06
UIHEP	1962	34.57%	6.73
HHEP Burla	684	12.05%	2.34
CHEP	490	8.63%	1.68
Total	5676	100.00%	19.46

The total capital cost of the corporate office for the FY 2021-22 is Rs.19.84 crore and its apportioned values for different power stations are as follows:

Table 10

Particulars	Design Energy(MU)	% Share	Apportioned value (Rs. Crore)
RHEP	525	9.25%	1.84
UKHEP	832	14.66%	2.91
BHEP	1183	20.84%	4.13
UIHEP	1962	34.57%	6.86
HHEP	684	12.05%	2.39
CHEP	490	8.63%	1.71
Total	5676	100.00%	19.84

(f) The station wise True up from FY 2016-17 to FY 2020-21 and FY 2021-22. The Petitioner has submitted the basis of calculation of True-up as follows:

- Opening capital cost (GFA) of the financial year is taken from the audited accounts of the concerned unit.
- The company has adopted IND AS and accordingly capital costs in audited accounts are adjusted to a value to arrive at the carrying cost of asset in the year of adoption of IND AS. The adjustment has resulted a change in value of closing balance and next year opening balance of GFA, and reflected in audited accounts of the concerned financial year.
- Necessary adjustments made to arrive at the historic cost of the GFA for the concerned financial year.
- Corporate office capital cost/GFA has been apportioned on the basis of design energy provided in earlier paragraph.
- Up valuation effect of individual unit has been deducted from the GFA.

(g) The True up from FY 2016-17 to FY 2020-21 station-wise and year-wise is submitted by the petitioner as stated below.

(i) Total claim for Balimela Hydro Electric Project

Table 11

(Rs in Cr)

FY	Opening GFA Considered for True Up	Capital Cost Allowed by OERC	Differential cost	Additional claim for True up					Total Claim
				Depreciated on @2.57% on differential cost	Additional Capital cost (Differential cost) Equity @30% on differential cost	ROE @ 16 % on differential cost	Debt @70% on differential cost	Interest @9.60 % on debt	
1	2	3	4 =(2-3)	5	6	7	8	9	10=(5 +7+9)
2016-17	332.99	329.58	3.41	0.09	1.02	0.16	2.39	0.23	0.48
2017-18	337.16	330.63	6.53	0.17	1.96	0.31	4.57	0.44	0.92
2018-19	341.11	330.95	10.16	0.26	3.05	0.49	7.11	0.68	1.43
2019-20	342.27	336.07	6.20	0.16	1.86	0.30	4.34	0.42	0.87
2020-21	344.42	337.23	7.19	0.18	2.16	0.34	5.03	0.48	1.01
Total									4.72

(ii) Total claim for Chipilima Hydro Electric Project

Table 12**(Rs in Cr)**

FY	opening GFA Considered for True Up	Capital Cost Allowed by OERC	Differential cost	Additional claim for True up					Total Claim
				Depreciation @2.57% on differential cost	Additional Capital cost (Differential cost)			Interest @9.80 % on debt	
					Equity @30% on differential cost	ROE @ 16 % on differential cost	Debt @70% on differential cost		
1	2	3	4 =(2-3)	5	6	7	8	9	10 = (5+7+9)
2016-17	104.25	138.89	(34.64)	(0.89)	(10.39)	(1.66)	(24.25)	(2.38)	(4.93)
2017-18	105.89	139.35	(33.46)	(0.86)	(10.04)	(1.61)	(23.42)	(2.30)	(4.76)
2018-19	107.43	139.45	(32.02)	(0.82)	(9.60)	(1.54)	(22.41)	(2.20)	(4.56)
2019-20	107.71	141.15	(33.44)	(0.86)	(10.03)	(1.61)	(23.41)	(2.29)	(4.76)
2020-21	108.97	141.43	(32.46)	(0.83)	(9.74)	(1.56)	(22.72)	(2.23)	(4.62)
Total									(23.62)

(iii) Total claim for Hirakud Hydro Electric Project

Table 13**(Rs in Cr)**

FY	opening GFA Considered for True Up	Capital Cost Allowed by OERC	Differential cost	Additional claim for True up					Total Claim
				Depreciation @2.57% on differential cost	Additional Capital cost (Differential cost)			Interest @8.75 % on debt	
					Equity @30% on differential cost	ROE @ 16 % on differential cost	Debt @70% on differential cost		
1	2	3	4 = (2-3)	5	6	7	8	9	10= (5+7+9)
2016-17	303.15	273.59	29.56	0.76	8.87	1.42	20.69	1.81	3.99
2017-18	324.04	283.33	40.71	1.05	12.21	1.95	28.50	2.49	5.49
2018-19	344.51	286.08	58.43	1.50	17.53	2.80	40.90	3.58	7.88
2019-20	345.70	323.55	22.15	0.57	6.64	1.06	15.50	1.36	2.99
2020-21	348.09	324.75	23.34	0.60	7.00	1.12	16.34	1.43	3.15
Total									23.51

(iv) Total claim for Rengali Hydro Electric Project

Table 14**(Rs in Cr)**

FY	opening GFA Considered for True Up	Capital Cost Allowed by OERC	Differential cost	Additional claim for True up					Total Claim
				Depreciation @2.57% on differential cost	Additional Capital cost (Differential cost)				
					Equity @30% on differential cost	ROE @ 16 % on differential cost	Debt @70% on differential cost	Interest @9.80 % on debt	
1	2	3	4 =(2-3)	5	6	7	8	9	10= (5+7+9)
2016-17	149.30	148.35	0.95	0.02	0.28	0.05	0.66	0.06	0.13
2017-18	150.21	148.50	1.71	0.04	0.51	0.08	1.20	0.12	0.24

FY	opening GFA Considered for True Up	Capital Cost Allowed by OERC	Differential cost	Additional claim for True up					Total Claim
				Depreciation @2.57% on differential cost	Additional Capital cost (Differential cost)				
					Equity @30% on differential cost	ROE @ 16 % on differential cost	Debt @70% on differential cost		
2018-19	151.40	148.82	2.58	0.07	0.78	0.12	1.81	0.18	0.37
2019-20	151.66	150.08	1.58	0.04	0.47	0.08	1.10	0.11	0.22
2020-21	153.72	150.34	3.38	0.09	1.01	0.16	2.37	0.23	0.48
Total									1.45

(v) Total claim for Upper Indravati Hydro Electric Project

Table 15

(Rs in Cr)

(Rs in Cr)

FY	opening GFA Considered for True Up	Capital Cost Allowed by OERC	Differential cost	Additional claim for True up					Total Claim
				Depreciation @2.57% on differential cost	Additional Capital cost (Differential cost)			Interest @7.00 % on debt	
					Equity @25% on differential cost	ROE @ 16 % on differential cost	Debt @75% on differential cost		
1	2	3	4 =(2-3)	5	6	7	8	9	10= (5+7+9)
2016-17	1,409.25	1,197.69	211.56	5.44	52.89	8.46	158.67	11.11	25.01
2017-18	1,447.42	1,198.19	249.23	6.41	62.31	9.97	186.92	13.08	29.46
2018-19	1,450.37	1,196.93	253.44	6.51	63.36	10.14	190.08	13.31	29.96
2019-20	1,451.61	1,231.50	220.11	5.66	55.03	8.80	165.09	11.56	26.02
2020-21	1,464.73	1,232.75	231.98	5.96	58.00	9.28	173.99	12.18	27.42
Total									137.86

(vi) Total claim for Upper Kolab Hydro Electric Project

Table 16

(Rs in Cr)

FY	opening GFA Considered for True Up	Capital Cost Allowed by OERC	Differential cost	Additional claim for True up					Total Claim
				Depreciation @2.57% on differential cost	Additional Capital cost (Differential cost)			Interest @9.80 % on debt	
					Equity @30% on differential cost	ROE @ 16 % on differential cost	Debt @70% on differential cost		
1	2	3	4 =(2-3)	5	6	7	8	9	10= (5+7+9)
2016-17	127.33	127.03	0.30	0.01	0.09	0.01	0.21	0.02	0.04
2017-18	129.86	127.13	2.73	0.07	0.82	0.13	1.91	0.19	0.39
2018-19	130.99	127.13	3.86	0.10	1.16	0.19	2.70	0.26	0.55
2019-20	132.12	128.26	3.86	0.10	1.16	0.19	2.70	0.26	0.55
2020-21	137.58	129.37	8.21	0.21	2.46	0.39	5.74	0.56	1.17
Total									2.70

The petitioner has therefore submitted the True-up summary for all stations as shown in the following table.

Table 17

(Rs in Cr)

FY	BHEP	CHEP	HHEP	RHEP	UIHEP	UKHEP	Total
2016-17	0.48	(4.93)	3.99	0.13	25.01	0.04	24.73
2017-18	0.92	(4.76)	5.49	0.24	29.46	0.39	31.74
2018-19	1.43	(4.56)	7.88	0.37	29.96	0.55	35.63
2019-20	0.87	(4.76)	2.99	0.22	26.02	0.55	25.89
2020-21	1.01	(4.62)	3.15	0.48	27.42	1.17	28.61
Total	4.72	(23.62)	23.51	1.45	137.86	2.70	146.61

(h) The True up for FY 2021-22 station-wise is submitted below by the petitioner.

Table 18

FY	opening GFA Considered for True Up	Capital Cost Allowed by OERC	Differential cost	Additional claim for True up							Total Claim
				2.57% on differential cost	Loan repayment	Depreciation @ 2.57% on differential cost or loan repayment whichever is higher.	Equity @30% on differential cost	ROE @ 15.5%/ 16 % on differential cost	Debt @70% on differential cost	Interest @9.80 % on debt	
1	2	3	4=(2-3)	5	6	7	8	9	10	11	12=7+9+11
BHEP	404.34	339.38	64.96	1.67	4.55	4.55	19.49	3.02	45.47	4.1472	11.72
CHEP	171.47	142.69	28.78	0.74	2.01	2.01	8.63	1.34	20.15	1.8757	5.23
HHEP	496.37	327.15	169.22	4.35	11.85	11.85	50.77	7.87	118.45	9.8463	29.56
RHEP	159.52	152.40	7.12	0.18	0.50	0.50	2.14	0.33	4.98	0.4639	1.29
UKHEP	138.18	134.97	3.21	0.08	0.22	0.22	0.96	0.15	2.25	0.2094	0.58
UIHEP	1,342.39	1,245.87	96.52	2.48	6.76	6.76	28.96	4.63	67.57	4.4932	15.88
Total											64.26

Net addition during the year for power stations of OHPC for FY-2021-22

Table 19

(Rs in Cr.)

Power station	Addition as per audited account	IDC proposed in the corresponding tariff	Deletion proposed in corresponding tariff	PSDF grant	Net addition
1	2	3	4	5	6=2+3-4-5
BHEP	55.59	5.55	3.34	1.17	56.63
CHEP	0.28			0.01	0.27
HHEP	107.38	25.50	2.75	0.43	129.71
RHEP	0.72				0.72
UKHEP	0.35			0.61	(0.26)
UIHEP	32.42			1.16	31.26

5. The Submission of Respondent-GRIDCO are as follows:

(a) The Petitioner in both of its petition has submitted that the True-Up Petition has been filed as per Regulation 2.13 and 8 (1) (c) of the OERC Generation Tariff

Regulations, 2014 and 2020 respectively. The Regulation 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.”*

The Regulation 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.”

- (b) The petitioner has not adhered to the timeline set by the Commission for filing the True-Up Petition for the past period & have come up with the truing up proposal for last 5 years i.e. from FY 2015-16 to FY 2020-21 at the end of 2022 and for FY 2021-22 in the mid of March 2023. In view of this, the True-up Petitions of OHPC may out rightly be rejected.
- (c) The Petitioner had filed True-Up Petition for FY 1996-97 to FY 2015-16 for its different Hydro Electric Projects, vide Petition listed as Case No. 55 of 2020. Subsequently, the Commission, vide its Order dated 03.11.2021, disposed of the said Petition. In the said Order, the Commission opined that the Truing up is only allowed for the Capitalization and additional capitalization and not for different components of Tariff as claimed by OHPC in its Petition i.e. Case No. 55 of 2020. Further, in the above Order, the Commission stated that the

capitalization and additional capitalization claim of OHPC has already been approved considering the available audited accounts while calculating the ARR for subsequent years and the same practices have been consistently followed by the Commission while approving the ARR for the Petitioner. Therefore, there is no further scope for conducting the truing up of these cost elements to avoid repetition. The relevant extract of the said Order is reproduced below:

“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 Capitalization and additional capitalization it is further observed that the Commission in the ARR allows the capitalization including additional capitalization 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.*”

- (d) OHPC not being satisfied with the Order dated 03.11.2021 filed a review application which was listed as Case No. 11 of 2022. The Commission disposed the said Review Petition, vide Order dated 08.08.2022, without any change in views / opinions. Therefore, it has already been established that there is no scope for truing-up of the capitalization and additional capitalization of the past period since the same has already been considered while determining the ARR for the respective Tariff year. In view of the above, the Commission may reject the instant petition filed by the Petitioner.
- (e) The True-Up of additional capitalization (Audited) has already been considered while determining ARR in subsequent year. Hence, there is no need for further review of additional capitalization for the FY 2016-17 to FY 2020-21.
- (f) The Commission has already considered the additional capital cost in the ARR of subsequent years. Further, OHPC has not substantiated any justification for claiming additional capital expenditure including approved capital investment plan for additional capital expenditure 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.

- (g) The consumer of the State cannot be burdened and no additional cost be allowed in the greater interest of the consumers of the State.
- (h) The Petitioner has claimed head office / corporate office capital cost under the total Gross Fixed Asset (GFA) of various stations apportioned on the basis of their respective design energy. The Commission in the ARR and Tariff Orders for the Tariff period from FY 2016-17 to FY 2021-22 has allowed and approved the apportionment of Corporate Office expenses to different units of OHPC based on design energy under the head “O&M expenses”. The Petitioner in both the petitions has claimed additional capital cost incurred for corporate office and has apportioned the same under various stations of OHPC. Further, the objector has stated that the Petitioner has claimed the capital cost of the corporate office again in the True-Up Petition.
- (i) The Commission has been allowing corporate office expenses under O&M head in the ARR Orders of respective years. Therefore, no other expense under the capital cost of the corporate office which is recurring in nature may be allowed in the absence of any prior approval from the Commission in order to avoid dual approval.
- (j) The Petitioner has claimed depreciation on the calculated differential capital cost by applying 2.57% uniformly across all the OHPC stations. It may be noted that the Commission has been adopting the methodology of calculating depreciation at pre-1992 norms notified by Government of India on the book value of the assets at the rate of 2.57% or the required principal repayment whichever is higher up to FY 2020-21 & from FY 2021-22 onwards the Commission is allowing depreciation calculated @ 2.57% equivalent to loan repayment approach. Therefore, change in approach as suggested by the Petitioner may end up in recalculating the entire depreciation amount for each of the OHPC stations for each year. Since, the Commission has already determined the AFC considering actual capitalization during the corresponding year, such recalculation of depreciation is not required and hence may be rejected.

- (k) The Petitioner has not considered the non-tariff income for deduction from the ARR determined by the Commission. The details of the non-tariff income by various stations of OHPC as mentioned in their respective annual audited accounts have been summarized and amounts to Rs.652.75 Crs. from FY 2016-17 to FY 2020-21. The objector submitted that the Commission may consider that the power generation in India is a regulated business. The Petitioner cannot be allowed to earn additional profit outside the purview of the Regulations. Regulation 19 of the OERC Generation Tariff Regulations, 2020 mentions that Non-Tariff Income shall be deducted from the Annual Fixed Cost for the determination of Cost reflective tariff and moreover to ensure tariff becomes competitive. The Petitioner has earned excessive profits apart from the Return on Equity as allowed by the Commission due to non-consideration of non-tariff / other income in the ARR, without being factored by the Commission.
- (l) The Commission to consider the non-tariff income of Rs.652.75 Crs earned during FY 2016-17 to FY 2020-21 as available with the Petitioner for adjustment in the ARR for future period.
- (m) The instant Petition may be rejected as the same violates the Tariff Regulation and the issues already have been covered in the ARR for the respective year in the greater interest of justice and interest of the Consumers of the State as well.

6. The Petitioner- OHPC, in its rejoinder has submitted the following:

- (a) Prior to issue of the Odisha Electricity Regulatory Commission (Terms and Conditions for determination of Generation Tariff) regulations, 2014, no guidelines or direction for filing up of truing up petition was issued by the Commission in its tariff order. Hence OHPC had not filed the petition earlier. However, some of the objectors had raised the issue for truing up.

The Regulation 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.”

Based on provision for truing up in Odisha Electricity Regulatory Commission (Terms and Conditions for determination of Generation Tariff) regulations, 2014

OHPC filed truing up petition from FY 1996-97 to FY 2015-16 before OERC on 15.09.2020. It took longer period for finalization of the petition due to difficulty in capturing data regarding project cost from FY1996-97 to FY 2003-04 as approved by OERC since for the said period the tariff applications were being filed by GRIDCO jointly for OHPC & GRIDCO.

The petition for truing up for subsequent years was dependent on closing gross fixed asset of individual power stations as on 31.03.2016 and outcome of the final order on truing up petition from FY 1996-97 to FY 2015-16. Therefore, preparation of the application for truing up from FY 2016-17 onwards took some more time.

- (b) As per Regulation 2.13 of the OERC Generation tariff Regulation, 2014 & Regulation 8.1 of the OERC Generation Tariff Regulation, 2020, the truing up of project cost of different power stations of OHPC shall be done comparing the approved project cost of a particular year with respect to the capital cost as per audited account of that year only but not of two years back. So, the capital cost as per the audited account of a particular year will be always higher than the approved capital cost of that year since the additional capitalization during the two subsequent years are further added.
- (c) As per provisions of Regulation 3.4(d) OERC Generation Tariff Regulation, 2014 & Regulation 12(3) of the OERC Generation Tariff Regulation, 2020 OHPC has submitted the details of additional capitalization required along with all relevant documents in its ARR application in every financial year on the basis of prior approval of the Commission for RM&U & capital maintenance work with justification. The Commission after due scrutiny approves the additional capitalization of that year.
- (d) OHPC has claimed additional capitalization of different power stations as per Regulation 3.4(d) of OERC Generation Tariff Regulations, 2014 which is reproduced as follows:

“The capital expenditure incurred or projected to be incurred, on the following counts after the cut-off date may, in its discretion, be admitted by the Commission, subject to prudence check:

(d) Any additional works/services, which have become necessary for efficient and successful operation of a generating station but not included in the original capital cost”

OHPC has claimed additional capitalization of different power stations as per Regulation 12(3) of OERC Generation Tariff Regulations, 2020 which is reproduced as follows:

“In case of replacement of assets deployed under the original scope of the existing project after cut-off date, the additional capitalization may be admitted by the Commission, after making necessary adjustments in the gross fixed assets and the cumulative depreciation, subject to prudence check on the following grounds:

- (a) The useful life of the assets is not commensurate with the useful life of the project and such assets have been fully depreciated in accordance with the provisions of these regulations;*
- (b) The replacement of the asset or equipment is necessary on account of change in law or Force Majeure conditions;*
- (c) The replacement of such asset or equipment is necessary on account of obsolescence of technology; and*
- (d) The replacement of such asset or equipment has otherwise been allowed by the Commission.”*
- (e) OHPC has not considered any disallowance made by the Commission in the ARR order.
- (f) The review of capital cost is the basic theme behind truing up of ARR. The project cost for a particular year is approved by the Commission based on the audited account of two years back only & without considering the estimated additional capitalization for the said year & previous year. Hence, the approved project cost for that particular year needs to be revised considering the capital cost of the audited account for that particular year.
- (g) If Commission had approved the estimated capital addition (CWIP) along with the additional capitalization as per the audited account then the impact of truing up would have been less.
- (h) The truing up as claimed is as per the actuals and in line with true spirit of the provision at Regulation 2.13 of the OERC Generation Tariff Regulations, 2014 and Regulation 8.1 of the OERC Generation Tariff Regulations, 2020.
- (i) The Commission in the ARR and tariff orders for the tariff period from FY 2016-17 to FY 2021-22 has allowed and approved apportionment of corporate office expenses to different units of OHPC based on design energy under the head ‘O&M expenses’. The petitioner in both the petitions has claimed additional capital cost incurred for corporate office and apportioned the same under various stations of OHPC.

- (j) OHPC in the ARR proposal of each financial year claimed the tariff for all power stations. But there is no tariff proposal for corporate office. However, in each financial year capital expenditures are incurred for corporate office and account for different heads like building, vehicles, office equipment, training center equipment, electrical installations etc. Since there is no separate tariff for corporate office of OHPC, the capital expenditures are apportioned on the basis of design energy of all power stations and accordingly the total additional capitalization of individual power stations are finalized by OERC for each Financial year on the basis of audited account of two years back. OHPC submitted documentary evidence of the additional capitalization of corporate office in the ARR application each year. Based on this OHPC submission, OERC approves the additional capitalization of a Financial Year. Besides this the revenue expenditures like salary, pension, consumables, housekeeping, repair & maintenance etc. are booked under O&M expense. Since there is no tariff of corporate office, all revenue expenditures are apportioned among different power stations in proportion to their design energy and added with the O&M expense of individual power stations and the Commission approves the same. Hence GRIDCO's confusion of comparing O&M expense with capital cost for corporate office is baseless which may not be considered by the Commission.
- (k) The contention of GRIDCO i.e. "the petitioner cannot be allowed to earn additional profit outside the purview of the Regulation" is not correct. Nowhere in the OERC Generation Tariff Regulation, OHPC as a power generating corporation is debarred from earning other income. OHPC is making profit due to efficiency in management of different activities including fund management. Other income constitutes mostly interest on bank deposits against different funds like depreciation fund, ROE fund etc. Further the petitioner has stated that Regulation 4.3 of OERC Generation Tariff Regulations, 2014 does not provide any deduction of non-tariff income from the approved tariff. The Commission for this reason has not deducted non-tariff income for the block period FY 2015-16 to FY 2020-21. However, OERC Generation Tariff Regulation, 2020 at Regulation 19(1) provides for deduction of non-tariff income from approved ARR only on three items. As per Regulation 41 & 26(1) of OERC Generation Tariff Regulation, 2020 Truing up is carried out only on capitalization &

additional capitalization. Hence the non-tariff income is not a part of truing up exercise.

7. The Commission heard the petitioner and respondents in detail in hybrid mode (physical & virtual mode). The petitioner has filed this petition for approval of True up of its Annual Revenue Requirement and Tariff of individual power stations from the financial year 2016-17 to 2021-22 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 and Para No. 8(1)(c) of the OERC (Terms & Conditions for Determination of Generation Tariff) Regulations, 2020.
8. The Commission in a similar petition earlier has also dealt with this issue 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 Case No. 55/2020 dated 03.11.2021. The observation of the Commission pertaining to filing of true up application under OERC (Terms & Conditions for determination of Generation Tariff) Regulations, 2014 in that order is reproduced below:

*“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.”*

9. The same principle of timing of filing of true up application is also followed in OERC (Terms & Conditions for Determination of Generation Tariff) Regulations, 2020. As per Regulation 8 (1) (c) of the OERC (Terms & Conditions for Determination of Generation Tariff) Regulations, 2020, OHPC may file an application each year for truing up expenses of its hydro generating stations of the previous year(s) with respect to capital expenditure including additional capital expenditure incurred upto last day of the previous year(s) and revenue gap /surplus for the ensuing year within the time limit as specified by the Commission. The present petition has been filed for truing up expenses for the period from FY 2016-17 to 2021-22 after filing of the tariff application for the respective year and issue of order in that respect which is contrary to the

provision of the Generation Tariff Regulations, 2014 and also the Generation Tariff Regulation, 2020. No specific reasons have been cited by the Petitioner to condone the delay except stating that the details of closing gross fixed assets for respective years for different power stations were not available with them in time. This is not a valid ground as the closing fixed assets can be very well-known basing on their own audited accounts. The audited account is the basis of truing up exercise. The Commission has been approving capital addition including additional capitalization in each year's tariff order. In the subsequent year's tariff order, the Commission has been accepting capital addition which has been actually made out of previous year's approval and as reflected in the audited accounts. Therefore, there is no question of variation between the audited accounts and that of capital assets accepted by the Commission for determination of tariff. Moreover depreciation, return on equity and interest on loan component are also allowed on the additional capitalization so accepted by the Commission.

10. Basing on the above discussion we are not inclined to accept the truing up application in its present form. However, we draw the attention to a general provision in OERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2020 with regard to truing up which is reproduced below:

“8.(1) 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:

- (a) the capital expenditure including additional capital expenditure incurred up to 31.03.2024, as admitted by the Commission after prudence check at the time of truing up.*
- (b) the capital expenditure including additional capital expenditure incurred up to 31.3.2024, on account of Force Majeure and Change in Law.”*

The above Regulation relates to approval of any additional capital expenditure which has not been specifically allowed in each year's tariff order. Accordingly, the Petitioner has the liberty to approach the Commission under the above Regulation once the control period of the present Tariff Regulations expires on 31.03.2024.

11. Both the applications are disposed of accordingly.

Sd/-
(S. K. Ray Mohapatra)
MEMBER

Sd/-
(G. Mohapatra)
MEMBER

Sd/-
(S. C. Mahapatra)
CHAIRPERSON