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2020 and OERC (Conduct of Business) Regulations, 2004 and provisions of approved PPAs between OHPC & GRIDCO.

2. The petitioner has prayed for review of the following –

- a) To allow Estimated Capital Addition of Rs.186.372 Cr for the FY 2022-23 & FY 2023-24 as proposed in the Original Tariff Application of OHPC for the FY 2023-24.
- b) To allow interest During Construction amounting to Rs.37.427 Cr for the proposed RM&U projects of Unit-5 & 6 of HHEP, Burla and Unit-1&2 of BHEP, Balimela.
- c) To allow depreciation as proposed in the Original Tariff Application of OHPC for the FY 2023-24 in order to repay the principal amount of all normative loans, which would enable OHPC to recover 90% of the additional capitalization within useful life of the Project.
- d) To allow Rs.3.33 Cr as income tax reimbursement from GRIDCO as proposed in the Original Tariff Application of OHPC for the FY 2023-24 and considering the deduction of excess reimbursement of Rs.18.56 Cr as pointed out by OHPC in its additional submission.
- e) To approve ARR amounting to Rs.568.127 Crs of OHPC Power Stations at an average tariff @101.40 Paise/Unit as claimed in the original tariff application for FY 2023-24 considering the above grounds of review including error in computation of RoE.
- f) To approve ACC, AEC & ECR of different Power Stations of OHPC as shown in the Table-23 of the original tariff application for FY 2023-24.

3. The present review application is file on the ground of error apparent on the face of record on following matters.

- a) Non- approval of Estimated Capital Addition for the FY2022-23 & FY2023-24.
- b) Non-approval of Interest During Construction (IDC) for proposed capitalization of R&M works.

- c) Less approval of depreciation ignoring the principal repayment of loan in respect of those power stations where the repayment of principal amount of loan is higher than 2.57% of the project cost deviating from the earlier principles adopted for allowing depreciation (*Loan repayment or 2.57% of project cost, whichever is higher*) till FY 2020-21.
  - d) Less approval of Income tax reimbursement for the FY-2023-24.
  - e) Error in computation of ROE.
4. The detail submission of petitioner-OHPC for Review of above matter is given below:
- A. Non-approval Addition capitalization:**
- a) OHPC had applied for Estimated Capital Addition for FY 2022-23 & FY 2023-24 as per clause -6(2) “.....*estimated additional capital expenditure for the respective years of the tariff period 2020-21 to 2023-24*” and clause-7(6) “.....*projected to be incurred during the period for which application for determination of tariff is filed of the generating station*”. Accordingly, OHPC had proposed Rs 147.562 Crs & Rs 38.810 Crs as Estimated Capital addition for FY 2022-23 & FY 2023-24 respectively following provisions of OERC (Terms & Condition for Determination of Generation Tariff) Regulation 2020. However The Commission had disallowed the Estimated Capital Addition of Rs 186.372 Crs while approving the additional capitalization.
  - b) Though there is provision for Additional Capitalisation in the form of Estimated Capital Addition as per Clause No. 6(2) & 7(6) of OERC (Terms & Conditions for determination of Generation Tariff) Regulation, 2020, the Commission has not considered the claim of OHPC for estimated Additional capitalization for FY2022-23 & FY2023-24. For such non-consideration of the proposal, OHPC is deprived of being compensated at times towards the capital expenditure incurred. The estimated additional capitalization for FY-2022-23 & FY2023-24 should be allowed to be included in the project cost otherwise the very purpose of ‘truing up’ if any, in the future based on actual capital expenditures as per Audited Account would be defeated.

- c) In the present Tariff order for FY 2023-24, the proposed additional capitalization in respect of HHEP, Burla (i.e. including estimated additional capitalization for FY-2022-23 & IDC in respect of RM&U of unit 5 &6) has been considered while approving the tariff for sale of power to CSPDCL for the FY 2023-24. Hence the Commission may also allow the proposed additional capitalisation including estimated additional capitalization & IDC for determination of project cost of all units of OHPC for FY 2023-24 for sale of power to GRIDCO in similar uniform manner as considered in case of determination of project cost for sale of power to CSPDCL.
- d) In view of above, there is an error apparent on the face of the record in the order which may be reviewed for inclusion of the estimated additional capitalisation of Rs. 186.372 Crore in the project cost as per original application filed by OHPC for determination of ARR for FY 2023-24.

**B. Non-approval of IDC:**

- a) OHPC had proposed for Interest during Construction (IDC) amounting to Rs. 37.427 Crore for RM&U works of Unit-5&6 of HHEP, Burla and R&M works of Unit-1&2 of BHEP, Balimela as per clause no. 9(1)(a), 10(1) & 10(5) of the OERC (Terms & Conditions for determination of Generation Tariff) Regulation, 2020. Accordingly, OHPC had proposed Rs 25.504 Crs as IDC for RM&U works of Unit-5&6 of HHEP, Burla & Rs 11.923 Crs for R&M works of Unit-1 & 2 of BHEP, Balimela to be included as additional capitalization of HHEP & BHEP respectively. The total amount proposed as IDC for RM&U project was Rs 37.427 Crs. However the Commission has considered additional capitalization in the ARR for FY 2023-24 on the basis of Audited accounts for the FY 2021-22.
- b) OHPC has utilised its own resource for Renovation, Modernisation & Uprating work of HHEP & BHEP without taking loan at higher rate of interest from outside source. The Interest During Construction (IDC) has been claimed on normative basis based on the phase wise capital expenditure made and accumulated interest thereof in form of IDC in the original Tariff application of OHPC for the FY 2023-24. The normative loan or IDC on normative loan is not accounted for in the

books of Account of the Company which is prepared in line with the Companies Act, 1956 and amendments thereof.

- c) If OHPC would have availed loan from outside sources, then the cost of capital might have been higher due to prevailing higher rate of interest compared to the claim of OHPC at SBI MCLR rate against IDC in the ARR. The decision taken by OHPC for utilising its own resource instead of going for outside loan has reduced the burden on the consumers of the State. Moreover, IDC is a part of project cost as per clause no 9(1)(a) of the OERC Generation Tariff Regulation, 2020.
- d) Further the petitioner has stated that in the present Tariff order for FY 2023-24, the proposed IDC in respect of HHEP, Burla has been considered while approving the tariff for sale of power to CSPDCL for the FY 2023-24. Hence the Commission may also allow the same proposed IDC for determination of project cost of all units of OHPC for FY 2023-24 for sale of power to GRIDCO in similar manner as considered for determination of project cost for sale of power to CSPDCL.
- e) In view of above error apparent on the face of the record (as per the order), this may be reviewed for allowing IDC of Rs 37.427 Crs. as per the original application filed by OHPC for determination of ARR for FY 2023-24.

**C. Less Approval of depreciation:**

- (a) OHPC in the review petition of the Tariff application for the FY2022-23 has submitted the proposal to approve depreciation @2.57% of the Project Cost or Loan repayment whichever is higher to facilitate the loan repayment in full in case of those power stations where, the loan repayment was higher than depreciation @2.57% of the Project Cost. The observation of the Commission in the Order dated 30.09.2022 in Case No. 31/2022 regarding review of the Tariff Order of OHPC for the FY2022-23 is reproduced in Para -9 of the order as follows:

*“Para-9: “However, we cannot wink at the fact that the principal loan repayment is an essential aspect of consideration which is to be recovered through the depreciation in generation tariff. Therefore, the Commission in their past tariff orders of the OHPC had allowed Advance against depreciation to facilitate the loan repayment by the OHPC in respect of its power stations. It is the fact that the depreciation cannot be allowed beyond 90% of the capital cost. The OHPC has*

*stated that the project cost of its power stations has been increased due to additional capitalisation on account of R&M and capital maintenance works and it has not recovered 90% of the project cost of its power stations till date. Therefore, in order to have a clear picture of project cost, depreciation & loan repayment for the past years and to address the difficulties of the OHPC as stated, we direct the OHPC to submit the station-wise and year-wise details of the project cost approved by the Commission and depreciation (including Advance Against Depreciation) allowed in tariff from the FY 1997-98 onwards along with the station-wise and year-wise loan repayment for the said period. For the earlier years, when the generation tariff of the OHPC power stations was not determined for individual station, the above data/information may be apportioned station-wise based on the project cost of individual power station as approved by the Commission. The OHPC shall furnish these information/data along with its ARR and Tariff application for the FY 2023-24 so that the Commission can take a pragmatic view on the claim of the OHPC in its present application, while determining the tariff of its power stations for the FY 2023-24.”*

Accordingly OHPC had submitted the Financial year wise & Power Station wise Approved Project Cost, Approved Depreciation & Depreciation recovered through sale of power to GRIDCO in the Original Tariff Application of OHPC for the FY 2023-24. Similarly, station-wise and year-wise loan repayments for the different power stations of OHPC had also been submitted in the Original Tariff Application of OHPC for the FY 2023-24. After scrutiny of the documents submitted by OHPC, the Commission had made following query on Depreciation as per Sl No.3 vide their letter no-74/2022/1498 dated 26.12.2022. “OHPC to calculate and may submit depreciation as per clause no. 23 of the OERC (Terms & Condition for Determination of Generation Tariff) Regulations 2020.”

- (b) OHPC has stated that Depreciation @2.57% of project cost does not exist in the Appendix-A of Depreciation Schedule in the OERC (Terms & Conditions for determination of Generation Tariff) Regulations 2020. The rate of depreciation applicable for majority of Hydro Assets is 5.28% as per Appendix-A. OHPC has stated that they have submitted the depreciation as per Appendix-A of OERC Generation Tariff Regulation 2020 & Depreciation computed @2.57% of Project Cost or loan repayment whichever is higher submitted to OERC for FY-2023-24 as against the depreciation @2.57%, accordingly the depreciation allowable as per appendix-A comes to Rs. 142.18 Crore. However OHPC had submitted to approve Rs. 90.45 Crore on the basis of depreciation @ 2.57 % of project cost or loan repayment whichever is higher. But OERC has approved depreciation of Rs.

67.14 Crore on the basis of 2.57% of approved project cost (i.e. without considering estimated additional capitalization & IDC). The Commission in the Tariff order of OHPC for FY 2023-24 has provided as follows:

*“The Commission analysed the submission of the OHPC in respect of claim of depreciation in the ARR. As per clause 23 of the OERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2020 the depreciation shall be computed from the date of commercial operation of a generation station or unit thereof. The capital cost of the assets admitted by the Commission shall be the base for calculation of depreciation. The Regulation further provides that for existing plants of OHPC as per the direction of the High Court of Orissa, depreciation will be calculated at pre-1992 norms notified by Government of India on the book value of assets. The Commission observed that OHPC has not submitted the details of assets station wise, year wise, pre-1992 asset, additional assets capitalised, asset class and IDC not allowed as per IND AS in the instant petition. The Commission after detailed analysis and scrutiny of the audited accounts now allows the depreciation of Rs.67.14 Crs for the ARR of 2023-24 as per clause 23 of the OERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2020.”*

- (c) The approval of depreciation at pre-1992 rate (i.e. @2.57% of GFA) may not be justified for OHPC due to following reasons:
- (i) In those power stations where depreciation is allowed at pre-1992 norm (@2.57%), depreciation is less than the loan repayment as the loan repayment may not be possible in due time. OHPC had been allowed less depreciation against loan repayment in case of UIHEP, RHEP & HHEP for FY-2021-22 and FY-2022-23.
  - (ii) In the approved PPA of UIHEP between OHPC & GRIDCO, it was mutually agreed at para no. 3(i) of Schedule-5 that:  
  
“The payment of depreciation and advance against depreciation, if any, in a year is to be limited to actual loan repayment of the year. After repayment of the full loan amount, depreciation may be recovered at the rate of 3.6% per year till 90% of the Capital Cost.”
- (d) In view of such provision in the PPA, restricting depreciation to pre-1992 rate on approved project cost may not be in line with agreed terms & condition of PPA executed for UIHEP also.

In case of UIHEP, OERC at para no 131 of the OHPC Tariff Order for FY-2013-14 had given a detailed direction for repayment of loan liability of UIHEP, which is reproduced as below:-

*“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 observes that the principal repayment has already been passed in the tariff of 2010-11, 2011-12 and 2012-13 @ Rs.30.23 Cr. per year. The same amount is allowed in the tariff of 2013-14 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. In this circumstance for the year 2013-14 an amount of Rs.30.23 Cr. is allowed as principal repayment under the head depreciation. No interest component for UIHEP is allowed in the tariff for 2013-14.*

*As far as repayment of normative loan of Rs.78.23 Crs. is concerned, the Commission feels that after the total repayment of Govt. loan as approved above, this loan repayment may start at the same rate of Rs.30.23 Crs. each year i.e. beginning with 2028-29. The interest component will be considered after the total repayment of the principal in line with the Govt. loans. Moreover, OHPC had not mentioned about this loan in any of the filings made in the previous years. “*

- (e) Keeping in view of the above order passed by OERC in its tariff order for FY-2013-14, a schedule showing loan liability, loan repayment against UIHEP was submitted before OERC in Table no-16 of original application for determination of ARR for FY-2023-24. From that table, it is evident that Rs 373.79 Crs will remain unrecovered after the end of useful life of UIHEP, even without considering the interest on outstanding interest in respect of Government Loans & Normative loans, which may be additionally charged as per applicable normal practices for availing of loan. Loan repayment is calculated by OHPC on the basis of period of repayment as approved by OERC earlier and as provided in the regulation. Therefore, non-approval of applicable Loan repayment at this stage may lead to substantial rise in loan repayment burden as well as interest thereon from a particular year in future & non-recovery of 90% of project cost by the end of useful life for UIHEP.



- (f) In this connection, it may be appreciated that, OERC is allowing the depreciation of Rs. 30.23 Cr from FY 2010-11 onwards which is merely @2.53% of the project cost of Rs. 1194.79 Crs of UIHEP(Project Cost was approved for tariff determination from FY 2008-09) instead of as claimed in the original application. Hence the Commission may re-consider for allowing depreciation of UIHEP at least up to loan repayment and interest on Govt. loan as well as Normative Loan, in order to avoid substantial hike in tariff required at a particular time in future.
- (g) The petitioner further stated that in case of Old power stations, the principle followed by OERC while allowing the depreciation in first Tariff Order of OHPC for the FY 2004-05 is stipulated at para6.5( c )(II) which is as stated below.

*“Majority of the hydro assets have a life span of 35years which translates into a rate of 2.57% for recovery of 90% of the asset value over the life of the assets. On a Gross Fixed Asset base of Rs 561.64 Crore applying a depreciation of 2.57%, it works out to be Rs 14.43 Crore per annum. The difference between the loan repayment requirement of Rs 15.59 Crore and the permitted depreciation i.e. Rs.14.43 Cr which equals to Rs 1.16 Crs shall be treated as advance against depreciation.”*

- (h) Thus, the concept of computation of depreciation @2.57% of the Project cost (Gross Fixed Asset) of old assets or actual repayment, whichever is higher was started in the first tariff order of OHPC considering life span of majority of asset as 35years. Accordingly advance against Depreciation (AAD) was allowed to facilitate loan repayment. This practice of allowing depreciation was made applicable by OERC up to the FY 2020-21.

The pre-1992 rate of depreciation was allowed by CERC in the Tariff Regulation for the block period 2004-2009, but Commission had also allowed AAD to facilitate the loan repayment in full. Subsequently in the CERC (Terms & Conditions for Determination of Generation Tariff) Regulations 2009 and onwards, asset wise higher depreciation rates were provided under depreciation schedule of Appendix where, the depreciation of majority of assets of a hydro-electric plant was escalated to 5.28% & concept of advance against depreciation was abolished.

- (i) OERC in its (Terms & Conditions for Determinations of Generation Tariff) Regulations 2014 & 2020 has accepted the depreciation schedule of CERC and

loan repayment period as 12years & 15years respectively. However, OERC has been applying pre-1992 rate of depreciation i.e. 2.57% of project cost since ARR for FY 2021-22 in respect of OHPC without allowing either AAD as prevailed earlier or applying the escalated rate of depreciation @ 5.28% as per Appendix to Regulations 2014/2020 of OERC.

- (j) The approval of depreciation by the Commission limiting to 2.57% of the project cost does not enable OHPC to meet the loan servicing thereby sacrificing its RoE and recover the 90% of the project cost. This being the error apparent on the face of record, may be reviewed and appropriate depreciation up to loan repayment or depreciation @2.57% of project cost whichever is higher may be approved for the FY 2023-24.
- (k) Alternatively, OERC may consider relaxation as per clause no. 49 of the Regulation for allowing Depreciation @5.28% to facilitate the loan repayment in full if the depreciation @ 2.57% or loan repayment, whichever is higher is not allowed as per Clause no. 23 of the OERC (Terms & Condition for Determination of Generation Tariff) Regulations 2020 which provides for pre-1992 rate.

**D. Less Approval of Income Tax reimbursement:**

OHPC had proposed to approve Rs 21.89 Cr towards reimbursement of income tax in its application for determination of ARR for FY 2023-24 following the same procedure as adopted by Commission in its order dated 05.09.2022 in case no-65/2021 regarding review of ARR for FY-2021-22. The Commission has examined the Audited Accounts of OHPC for the FY 2021-22. From the audited balance sheet the Commission on the basis of the documents furnished by OHPC, deducted Rs18.56 Cr i.e. the excess income tax reimbursement allowed by OERC to be reimbursed from GRIDCO and approved Rs.2.02 Crs. (=Rs 20.62 Crs – Rs 18.56 Crs) towards income tax reimbursement claim from GRIDCO for FY 2023-24 based on the audited accounts of FY 2021-22. The petitioner has stated that OHPC had claimed the income tax reimbursement in its original tariff application for FY-2023-24 following the same procedure as adopted by OERC in its Case No. 65/2021. However, the commission in its tariff order for FY-2023-24 has deducted income tax on 100% of non-tariff income while approving income tax

reimbursement. If the non-tariff net income in case of generating station from rent of land or buildings, sale of scrap and advertisements shall be shared between the beneficiaries and the generating company, in the ratio 50:50, then the income tax burden on such non-tariff income should also be shared in the same 50:50 ratio. Hence this may be treated as error apparent on the face of record and the commission may review its approval of income tax reimbursement for allowing Rs 3.33 Cr (=Rs 21.89 Cr. – Rs 18.56 Cr.).

**E. Error in computation of RoE**

In the Tariff Order of OHPC for the FY2023-24, it is observed that decapitalization has been deducted from new addition instead of deducting from Historic Cost of Old Power Stations of OHPC. Similarly, decapitalization has also been deducted from new addition of UIHEP instead of deducting from the Original Project Cost. Due to this error, OHPC will lose around Rs 1.3 Crs in RoE based on the project cost approved by the Commission. The asset decapitalized are the old asset and are part of historic cost for Old Power Stations of OHPC & are part of Original Project Cost of UIHEP. For this reason, the Commission in the earlier Tariff Orders had deducted similar decapitalizations from the historic cost in case of Old Power Stations & from Original Project Cost in case of UIHEP. However, considering the claim of OHPC as stated above the total RoE would be Rs 103.086 Cr based on project cost of Rs. 2829.75 Cr as claimed in the original Tariff application for FY 2023-24.

**5. Submission of Respondent**

Shri Ramesh Chandra Satpathy, has raised the following objections:

- a) The review petition filed by the petitioner to review the order dated 23/03/2023 is not correct as there are no errors and all the points were discussed during the public hearing of the case.
- b) Before hearing of the cases, the petitioner has to submit the detail particular of amount received from water resource dept. Govt of Odisha for use of water by 23 numbers of industries which is now consuming water from the reservoirs now managed by OHPC, i.e Burla, Chiplima, Upper Kolab etc.

- c) As regards of non-approval of the estimated capital addition of the FY 2022-23 & 2023-24, this is not acceptable as because OHPC is incurring profit & paying the dividend to State Govt. OHPC is also paying income tax to the Central Govt. that should be stopped and all capital addition should be borne by the petitioner from the dividend amount.
  - d) The calculation of water used by 23 numbers of industries as per the order of the Hon'ble High Court, Odisha should not be changed for the benefit of the industries.
  - e) The petitioner needs to produce the following information in detail;
    - The list of companies/joint venture companies, where OHPC has invested total amount of funds and the benefit received by OHPC till date.
    - The total expenditure till today in Poteru mini hydro power project.
    - The status report of pump storage hydro generation projects as on today.
  - f) The OHPC is incurring profit & paying dividend to the State Govt., therefore why repayment of loans have not yet been cleared for the interest of the consumers.
  - g) The manpower position of OHPC is not clear and the worker are deprived of getting their dues in the name of contract labour/outsourced labour. They should be regularized against the sanctioned vacant post on dated 01.04.1996, which we has been submitted to the Commission during public hearing.
6. The Respondent-GRIDCO has submitted the following objections:
- A. Additional capitalization:**
- a) This Review Petition has been filed mostly on the approach adopted by the Commission for determination of ARR of OHPC Stations for FY-2023-24 which appears to be a prudent decision by the Commission within the applicable regulatory purview. Therefore, the grounds advanced by the Petitioner for filing of the Review Petition on the basis of the error apparent on the face of the records specified under Order 47 Rule 1 of the Civil Procedure Code as mentioned above is not at all admissible. In view of this, GRIDCO submits not to consider the instant Review Petition in absence of any sufficient grounds.

- b) The Petitioner has submitted to consider the estimated additional capitalization of Rs. 186.372 Cr. for FY 22-23 and FY 23-24 in the ARR for FY 23-24. The Commission in its Order dated 23.03.2023 has approved the project cost of individual power plants of OHPC along with additional capitalization as follows:

<b>(Rs. Cr.)</b>			
<b>Name of the power stations</b>	<b>Additional Capitalization from 01.04.1996 to 31.03.2021 (Approved)</b>	<b>Additional Capitalization during FY 2021-22 (Audited)</b>	<b>Additional expenditure proposed for calculation of Tariff for FY 2023-24</b>
(1)	(2)	(3)	(4) = (2) + (3)
RHEP	63.30	0.76	64.06
UKHEP	27.83	0.40	28.23
BHEP	226.46	55.67	282.13
HHEP	283.88	107.42	391.30
CHEP	119.79	0.31	120.10
<b>Sub-Total</b>	<b>721.26</b>	<b>164.57</b>	<b>885.83</b>
UIHEP	56.63	32.55	89.18
<b>Total</b>	<b>777.89</b>	<b>197.12</b>	<b>975.01</b>

- c) In this regard, GRIDCO submitted that the Commission in the Orders for previous years has been following a stand of allowing the additional capitalization as per the Audited Annual Accounts after prudence check. It helps in ascertaining the cost of the project in a transparent and conscious manner. It is submitted that a similar approach is adopted by the Commission in the Order dated 23.03.2023 which may be continued and no deviation from the current approach may be entertained for the greater interest of the consumers.
- d) The petitioner has not referred the Regulations under which it has claimed such huge amount of estimated additional capitalization amounting to Rs.186.372 Cr. This raises questions about the reasonableness of the additional capital expenditure incurred by the Petitioner and hence any further view cannot be provided in absence of such crucial information.
- e) There may be cases of Cost Over-run and Time Over-run and the petitioner shall get the benefit in terms of Interest on Loan and Return on Equity in absence of disallowance of such factors in calculation of Capital cost. The estimated additional capitalization proposed by OHPC for FY 2023-24 amounting to Rs. 186.372 Cr. shall have an incremental impact on the approved tariff for FY 2023-

24. Such exponential rise in tariff shall have bearing on the financial condition of GRIDCO and consumers of the State. In view of the above GRIDCO submitted not to consider the estimated additional capitalization of Rs.186.372 Crs. for FY 2022-23 & for FY 2023- 24 for the greater interest of the consumers and reject the plea of the Petitioner for reviewing the same.

**B. IDC :**

- a) The Petitioner has requested to consider the IDC amounting to Rs. 37.427 Cr. for RM&U works of HHEP & BHEP in the ARR for FY 23-24. In the justification the Petitioner has further submitted that it has used its own resources for carrying out RM&U works without taking loan from outside source and has claimed the phase wise capital expenditure made. The Commission has allowed capitalization considering the audited accounts of the Petitioner for FY 21-22. IDC being a part of capital cost of the project as per Regulation 9 (1) (a) of the OERC Generation Tariff Regulation, 2020 should have been capitalized and therefore there is no scope for any additional capitalization against the expense under Interest during Construction. Consequently, there is no merit in the justification provided by the Petitioner and may be rejected.
- b) The Commission vide its Order dtd. 31.03.2014 approved the period for completion of R&M works of Balimela & Hirakud Power Stations. The petitioner has claimed IDC of Rs.37.427 Crs. against R&M works for #5 & #6 of Hirakud, #1 & #2 of Balimela as follows.

Unit Name	IDC Amount Claimed) (in Rs. Crs)	Approved Period of R&M	Zero Date	Commercial Operation Date	Actual Period of R&M
#5 Hirakud	13.08	21 months	25.10.2016	09.01.2022	63 months
#6 Hirakud	12.43	18 months	16.10.2015	02.11.2021	74 months
#1 Balimela	6.37	30 months	05.08.2016	15.04.2022	69 months
#2 Balimela	5.55	18 months	21.11.2017	19.12.2021	50 months
<b>Total</b>	<b>37.43</b>				

- c) It may be observed from the above table that the Petitioner has not complied to the approved timeline for undertaking R&M works for the above stations and there has been substantial delay in the execution of the project. The Petitioner may provide necessary justification and provisions of the Regulations under such time

& cost overrun is allowed. GRIDCO submitted before the Commission so as not to consider the IDC Claim of the Petitioner for the period beyond the approved period of completion by the Commission for the greater interest of the consumers.

**C. Depreciation:**

- (a) The Commission in the Order dated 23.03.2023 has observed that as per the direction of the Hon'ble High Court of Orissa, depreciation will be calculated at pre-1992 norms notified by Government of India on the book value of assets and OHPC has not submitted the details of assets station wise, year wise, pre 1992 asset, additional assets capitalized, asset class and IDC. Accordingly, the Commission after detailed analysis and scrutiny of the audited accounts allowed depreciation of Rs.67.14 Cr. for the ARR of 2023-24 as per clause 23 of the OERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2020. The relevant extract of the said Order is reproduced below for ready reference.

*“Accordingly, the Commission analysed the submission of the OHPC in respect of claim of depreciation in the ARR. As per clause 23 of the OERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2020 the depreciation shall be computed from the date of commercial operation of a generation station or unit thereof. The capital cost of the assets admitted by the Commission shall be the base for calculation of depreciation. The Regulation further provides that for existing plants of OHPC as per the direction of the High Court of Orissa, depreciation will be calculated at pre-1992 norms notified by Government of India on the book value of assets. The Commission observed that **OHPC has not submitted the details of assets station wise, year wise, pre 1992 asset, additional assets capitalized, asset class and IDC** not allowed as per IND AS in the instant petition. The Commission after detailed analysis and scrutiny of the audited accounts now allows the depreciation of Rs.67.14 Crs for the ARR of 2023-24 as per clause 23 of the OERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2020.”*

- (b) In view of the above GRIDCO submits before the Commission to reject the request of the Petitioner in view of the observations and reasons provided in the said Order.

**D. Income Tax:**

The Petitioner has submitted for reimbursing Income Tax of Rs. 3.33 Cr. pertaining to shared Non-Tariff Income from rent of land or buildings, sale of

scrap and advertisements. The Regulation 21 of the OERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2020 stipulates that *“Income tax of the Generating Company shall be recovered from the beneficiaries. This will exclude income tax on other income streams (income from non-generation and non-transmission business).”* Accordingly, the Income Tax on core business has been calculated by the Commission in the Tariff Order for FY-23-24. Hence, there is no scope for further review of allowable Income Tax on Non-Tariff Income.

**E. Return on Equity:**

GRIDCO has stated that the Petitioner has claimed that the decapitalization of assets has been deducted from new addition of UIHEP in place of Original Project Cost which has an impact of Rs. 1.3 Cr. The Petitioner has further submitted that the RoE shall be subject to increase to Rs. 103.086 Cr. due to its claim made regarding additional capitalization and IDC. It may be observed that the Petitioner has not submitted any calculation for arriving at the claimed figures against RoE. In the absence of such detailed calculation, the petitioner may submit detailed supporting calculation.

**7. Rejoinder submitted by OHPC**

- (a) The Respondent-OHPC, in its rejoinder has stated that GRIDCO has not gone through the details of the present review petition properly. OHPC had applied the Estimated Capital Addition for the FY2022-23 & FY2023-24 amounting to Rs186.372Cr based on the 6(2) & 7(6) of OERC (Terms and Conditions for Determination of Generation Tariff) regulations 2020. Moreover, OHPC has only considered capitalization of Capital Maintenance Work and Renovation & Modernization work approved by the OERC earlier and these works are expected to completed before 31.03.2024. For details, para no. 7(A)(VI) & 7(B) of Original tariff application of OHPC for FY2023-24 & Para 5(A) of Review petition of ARR of OHPC for FY2023-24 may be referred. Further OHPC has stated that there would be substantial rise in tariff in a particular year in future provided that the estimated additional capitalization as proposed is not considered in the relevant years. Disallowance of the estimated Capital Addition of FY2022-23 &



FY2023-24 amounting to Rs.186.372Cr as proposed by GRIDCO with a plea to reduce burden on consumer is a clear violation of Provisions at clause no. 6(2) & 7(6) of the OERC (Terms & Condition for Determination of Generation Tariff) Regulation, 2020 in which there is no regulatory provision for disallowing capitalization to avoid hike in the generation tariff. OERC may appreciate the fact that by approving the estimated capital addition in the tariff of OHPC for FY 2023-24, the differential amount, if any compared to the capital addition as per the audited account for the relevant year can be settled through true up provision.

- (b) OHPC has used its own resource in the RM&U of HHEP & BHEP for the benefit of the consumer of the State as interest rate is low for such investment in the form of normative loan. If OHPC had taken loan from outside source then interest rate would have been higher resulting in higher amount of Interest During Construction. Hence OERC after due scrutiny of payment to contractor/ liability incurred thereof may approve **IDC on normative basis even if it is not reflected in the Audited Accounts, which is prepared as per the Companies Act without considering normative expenditures.**
8. OHPC has stated that there is no provision of allowing depreciation limiting to 2.57% of the Project Cost, as per clause no 23(4) as well as in the depreciation schedule at Appendix-A (Depreciation schedule) of *OERC(Terms & Conditions for Determination of Generation Tariff) Regulations, 2020*. Rather, most of the assets of OHPC are eligible to recover depreciation @ 5.28% of the project cost as per Appendix-A (Depreciation schedule) as mentioned above. Further by limiting the depreciation to 2.57% of the Project Cost, OHPC is deprived to repay the loan amount in full where the loan repayment is higher than 2.57% of the Project cost. Hence the contention of GRIDCO has no merit and may be rejected.
9. OHPC has stated that the objection raised in para 1, 2 and 3 by the respondent Sri Ramesh Chandra Satapathy have been addressed in the queries to GRIDCO.
10. OHPC has stated that the objection raised in para 4,5,6,7,8 and 9 by the respondent Sri Ramesh Chandra Satapathy is not relevant to the case / not as per the Regulation and devoid of merit and hence may not be considered.

11. The Commission heard the Petitioner and Respondents in extenso. During the hearing, the Commission had raised the following points:
- a) That the additional capitalization as reflected in the last available audited account shall only be considered for tariff purpose. Therefore, additional capitalization proposed for FY 2022-23 and FY 2023-24 can only be considered when they are reflected in the books of the account.
  - b) That the completion of R&M works of Unit-5&6 of HHEP, Burla, and Unit-1&2 of BHEP, Balimela had been delayed. The audited accounts for FY 2021-22 does not reflect anything regarding IDC. So the burden of Interest during Construction (IDC) should not be passed on to the consumer of Odisha.
  - c) OHPC is required to submit the details of assets of each station (pre-1992 asset), additional assets capitalized each year, asset class etc., which will be verified jointly by concerned officer(s) of OHPC & OERC for finalization of the Gross Fixed Asset of OHPC as per Audited Accounts vis-à-vis the approval of OERC already given.
12. The response of OHPC in respect of points raised by the Commission during hearing are as follows:
- a) OHPC has stated that non-consideration of the estimated capital addition (unaudited) in the Tariff Order of OHPC for FY 2023-24 is not as per the provisions envisaged in clause no. 6(2) & clause no. 7(6) of OERC (Terms & Conditions for Determination of Generation Tariff) Regulation 2020. If, audited account is to be accepted by the Commission then the expenditure already incurred by OHPC in the FY2022-23 which had been proposed under estimated capital addition, will have Tariff implication only from 2024-25 onwards. As a result, OHPC will be deprived of the cost of capital invested for two years i.e. FY 2022-23 & 2023-24.
  - b) OHPC has stated that IDC is a part of the project cost for the determination of Tariff as per Regulation 9(1) of the OERC (Terms & Condition for Determination of Generation Tariff) Regulations, 2020. In the event of delay in completion of the R&M works, the Commission may allow IDC beyond the SCOD and up to actual COD after due scrutiny of the claims raised by OHPC in terms of provisions of

the Regulation 10(5) of OERC (Terms & Conditions for Determination of Generation Tariff) Regulations, 2020. In the ARR & Tariff application for FY2023-24, OHPC had claimed IDC in two parts, i.e. from zero date to Scheduled date of Commercial operation (SCOD) & from Scheduled date of Commercial operation to Commercial Operation Date (COD). OERC could have at least approved IDC from zero date to SCOD. Further OHPC has stated that even if, IDC on normative basis is not reflected in the Audited account of OHPC, which is prepared as per the commercial accounting system in line with the Company's Act, the Commission may allow IDC after prudence check of the computation sheets separately attached in the original Tariff application for the FY2023-24.

- c) OHPC has stated that till the finalization of gross fixed assets, OERC may consider to approve depreciation @ 2.57% of the project cost or loan repayment, whichever is higher as per the original submission of OHPC for ARR of FY 2023-24.
  - d) The petitioner has filed the present petition for review of order on Annual Revenue Requirement and Generation Tariff of OHPC Power Stations for the FY 2023-24 under Sections 62 & 86 of the Electricity Act, 2003 read with related provisions of OERC (Terms and Conditions for Determination of Generation Tariff) Regulations 2020, OERC (Conduct of Business) Regulations, 2004, and Provisions of approved PPAs between OHPC & GRIDCO.
13. The order 47 Rule 1 of the Code of Civil Procedure, 1908 allows review of an order on following grounds:
- a) Error apparent on the face of the record;
  - b) New and important matter or evidence which is relevant for the purpose though discovered could not be produced after exercise of due diligence or if there appears some mistake;
  - c) Any other sufficient reason.
14. The Hon'ble Supreme Court in Parsion Devi & Others Vrs. Sumitri Devi & Other [(1997) 8 SCC 715] observed as under:

*“9. Under Order 47 Rule 1 of CPC, a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the Court to exercise its power of review under Order 47 Rule 1 CPC. In exercise of the jurisdiction under Order 47 Rule 1 of CPC, it is not permissible for an erroneous decision to be “reheard and corrected”. A review petition, it must be remembered, has limited purpose and cannot be allowed to be “an appeal in disguise.”*

15. Keeping in view the limited scope of interference in Review jurisdiction as per the authoritative pronouncements indicated above, the Commission has examined/analyzed the issues raised by the Petitioner point wise and observations are presented as under:

- a) **Non-approval of estimated capital addition for the FY 2022-23 & FY 2023-24 proposal of OHPC:** OHPC in this petition has proposed for inclusion of the estimated additional capitalization of Rs 186.72 Crs in the project cost in FY 2022-23 and FY 2023-24 taken together. In this matter, we refer to Regulation 9 (3) of the OERC (Determination of Generation Tariff) Regulations, 2020 which mandates as follows:

*“9 (3) The capital cost admitted by the Commission after prudence check shall form the basis for determination of tariff. Provided further that prudence check may include scrutiny of the reasonableness of the capital expenditure in the light of capital cost of similar projects based on past historical data, wherever available, reasonableness of financing plan, interest during construction, incidental expenditure during construction, use of efficient technology, cost over-run and time over-run, procurement of equipment and 21 materials through competitive bidding and such other matters as may be considered appropriate by the Commission for determination of tariff;”*

One of the major ingredients of prudence check is verification of audited account of the generating company. It is a common regulatory practice to rely upon audited accounts for verification of authenticity of claim of expenditure. The Commission has been following the above practice for all the utilities of the State without exception let alone OHPC. When the tariff application for respective year

was filed with the Commission, the audited accounts accompanying the application did not have any indication of the expenditure now claimed by the Petitioner. Therefore, the above claim could not be considered by the Commission. The claim raised now cannot also be considered within the limited scope of review petition as stated in the forgoing paragraph. When the audited accounts referring to the above expenditure on additional capitalization for FY 2022-23 & FY 2023-24 will be filed with the Commission it will be considered appropriately.

- b) **Non-approval of Interest during Construction (IDC) for proposed capitalization of RM&U works:** OHPC in this petition has claimed Interest During Construction (IDC) of Rs 37.427 Crs. which was not allowed to them earlier. As stated in the earlier paragraph any expenditure can be allowed after its prudence check and IDC is one among them. The audited accounts submitted with us during the tariff proceeding for FY 2023-24 had not dealt with this matter. Therefore, the Commission could not take into consideration the above expenditure for tariff determination. Raising the matter without even submitting Auditors Report now in this regard is a fruitless exercise for the reasons we have discussed earlier. The Petitioner has also not proved to our satisfaction how the matter can be considered within a limited scope of review petition. It is not out of place to mention here that the capitalization has taken place from the own fund of the Petitioner. The IDC on own fund which is to be treated as normative loan has also not been dealt in our Regulation. Therefore, the claim of the Petitioner to consider the IDC component in a review petition has no force and cannot be accepted by us.
- c) **Less approval of Depreciation:** OHPC in this petition has proposed to allow depreciation @ 2.57% or loan repayment whichever is higher amounting to Rs.90.45 Crs instead of Rs.67.14 Crs allowed in the ARR for FY 2023-24. The Commission had calculated depreciation @ 2.57% on asset reflected in the audited accounts or loan repayment whichever is higher in absence of information on station-wise and year-wise asset addition. While doing so the Commission had kept in mind the under mentioned Regulatory provisions. Regulation 23 of the

OERC (Terms & Condition for Determination of Generation Tariff) Regulations, 2020 dealing with depreciation provides that

*“Provided that for existing plants of OHPC as per the directions of the High Court of Orissa, depreciation will be calculated at pre-1992 norms notified by Government of India on the book value of the assets.”*

The said Regulation further provides that *“Depreciation shall be calculated annually based on Straight Line Method and at rates specified in Appendix-A to these regulations for the assets of the generating station.”*

Therefore, unless the station-wise and year-wise asset addition information is available with the Commission through audited accounts it is not possible to consider the claim of OHPC in this regard. This has been reasonably discussed in the tariff order. As a result, this issue does not fall under review provision discussed earlier.

- d) **Less approval of Tax reimbursement:** OHPC in this petition has proposed for income tax reimbursement of Rs.3.33 Crs. instead of Rs.2.02 Crs. allowed in the ARR for FY 2023-24. Since the detailed claim of reimbursement of income tax was not available with the Commission during the tariff proceeding this could not be reflected in the tariff order in its entirety. OHPC may submit details of reimbursement in the next tariff proceeding which can be considered then. Hence, the prayer for review of this matter is not acceptable.
- e) **Error in the computation of ROE in the approved ARR for FY 2023-24:** OHPC in this petition has proposed for calculation of RoE by deducting decapitalization from historic cost rather than on new additional capitalization of assets. The Commission analyzed and observes that the ROE is to be allowed on the equity infused by the company. Further, while calculating ROE, asset reduction/decapitalized historical assets and assets created through Govt. grant are to be excluded from the total capitalized amount. The ROE calculation for FY 2023-24 has been made basing on above principle considering data/information provided by OHPC. For any additional claim with respect to ROE, OHPC is required to submit a detailed calculation of ROE for FY 2023-24 excluding decapitalized historical assets and grant assets (created through Govt. grant) from

the total GFA (Gross Fixed Asset). Accordingly, review on this matter is not attracted.

16. From the above observations it is found that the Petitioner has raised five issues in the tariff order for FY 2023-24 in Case No.74 of 2022 for review. They are as follows:

- a) Non-approval of additional capitalization for the FY 2022-23 & FY 2023-24.
- b) Non-approval of IDC for proposed R&M works.
- c) Less approval of depreciation.
- d) less approval of income tax reimbursement.
- e) Incorrect approval of RoE.

Our order on ARR and Generation Tariff on application of OHPC is a speaking order. The above issues were discussed in that order on thread bare basis. The Commission had also given its findings on those issues. No new fact or development has been brought before us during this review proceeding. It is just reiteration of their earlier claims which were heard by the Commission and appropriate order was issued. Therefore, none of them qualifies to be reviewed within the ambit of review jurisdiction of the Commission.

However, the review petitioner is at liberty to submit relevant information lack of which resulted in filing the present review petition along with its forthcoming ARR and Generation Tariff application for the FY 2024-25 for consideration of the Commission.

17. The review petition is accordingly disposed of.

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

**Sd/-**  
**(G. Mohapatra)**  
**MEMBER**

**Sd/-**  
**(S. C. Mahapatra)**  
**CHAIRPERSON**