

**ORISSA ELECTRICITY REGULATORY COMMISSION
BIDYUT NIYAMAK BHAVAN
UNIT-VIII, BHUBANESWAR – 751 012**

PRESENT : Shri D.C. Sahoo, Chairman
Shri B.C. Jena, Member

**Case Nos.65/2001, 4/2002, 56/2001, 7/2002,
54/2001, 6/2002, 55/2001, 5/2002, 62/2001 & 10/2002**

(Pursuant to the direction of the Hon'ble High Court of Orissa vide its order
dt.02.09.2003 passed in Misc. Case No.1380 and 1805 of 2003 arising out of
OJC No.6751 of 2001)

Order dated the 10th November, 2003

Brief Recital of the Case

1. The Orissa Electricity Regulatory Commission (in short, "Commission"), by order dated 19.04.2002, approved the Annual Revenue Requirement for FY 2002-03 of the five licensee namely, M/s GRIDCO, CESCO, WESCO, NESCO & SOUTHCO in terms of section 26(4) of the Orissa Electricity Reform Act, 1995 read with condition 21(1) of the Orissa Transmission and Bulk Supply Licence and The Orissa Distribution and Retail Supply Licence, after observing requisite formalities.

Salient points of the tariff order for FY 2002-03 (Both BST & RST) are as follows:-

While determining the revenue requirement and tariff for FY 2001-02 and FY 2002-03, the following correctives and assumptions have been applied.

- 1. Although upvaluation of assets of GRIDCO and OHPC per se has not been disturbed but its effects like assigning the additional amount as Loan, Debenture, Zero Coupon Bonds have been kept in abeyance.*
- 2. Depreciation after 01.04.2001 has been charged based on plant life at pre-92 norms after adjusting for the accelerated depreciation already charged for the period from 01.4.96 to 31.3.01.*
- 3. Securitisation of all liabilities of payables to generators by GRIDCO backed by State Govt. guarantee at a coupon rate of 8.5% as per Ahluwalia Committee recommendations.*
- 4. To keep in abeyance payment of principal or interest of State Govt. loan from 01.04.2001 except World Bank loan till sectoral turn around.*

5. *IBRD loan to be passed on to GRIDCO/DISTCOs at the same terms and conditions at which State Govt. has received the loan from Govt. of India i.e. 30% grant and 70% loan at an interest rate of 13% p.a.*
6. *Swapping of payables and receivables of dues between State Govt. and GRIDCO.*
7. *Writing off of arrears of OHPC shown as payable by GRIDCO.*
8. a) *DISTCOs to reduce distribution loss @ 5% from an overall level distribution loss of 42.2% in the base year 2001-02.*

b) *GRIDCO to reduce transmission loss @ 0.3% from an overall level transmission loss of 4.18% at base year 2001-02.*
9. *The collection efficiency of DISTCOs to be achieved to the extent of 87.5% in 2002-03.*
10. *Export of 1400 MU of power by GRIDCO to power deficit neighbouring states.*
11. *State Govt. to release its arrear energy dues payable to DISTCOs amounting to Rs.230 Crore to meet the revenue gap of Rs.268.7 Crore for FY 2002-03.*
12. a) *The above correctives and assumptions by and large are in line with Kanungo Committee recommendations with minor modifications and additional correctives as the State Govt. may not be in a position to mobilise the interim financing other than debt a sum of Rs.3240 Crore in 4 years i.e. from 2001-02 to 2004-05.*

b) *With the above mentioned correctives and assumptions, the BST & RST for 2002-03 will be as follows :*

(1) BST

LICENSEE	EXISTING (P/U)	Tariff [A] (With Correctives) up to 31.7.02(P/U)	Tariff [B] (Without Correctives) w.e.f. 1.8.02 to 31.3.03 (P/U)
CESCO	99.00	92.00	142.13
NESCO	100.00	86.00	135.25
WESCO	101.74	96.50	146.70
SOUTHCO	90.00	84.00	135.75

- (ii) *Demand Charge of Rs.200/KVA/month remains unchanged.*
- (iii) *Transmission charge changed from 31 paise/unit to 32 paise/unit.*
- (iv) *Transmission loss approved at 3.88%.*

(2) RST

No change in retail supply tariff. The existing rates of tariff for all classes of consumers will continue upto 31.7.2002. Revised tariff without correctives will be as given in the Annex.

However, the revised tariff Orders will be implemented subject to orders of the Hon'ble High Court, Orissa.

13. *Majority of correctives as mentioned above have to be approved by the State Govt. Although Commission had earlier recommended the correctives particularly in the workshop of 9th January, 2002 organised by Energy Dept. to explore ways and means for strengthening the power sector in Orissa, the Commission has advised the State Govt. under Sec.11 of OER Act to approve the correctives by 15.7.2002. The Commission will enforce revised tariff from 01.8.2002 subject to such reductions/adjustments as shall be notified in consequence of the extent of acceptance by the State Government of the correctives recommended by the Commission.*
 14. *Total rejection of correctives will leave a revenue gap of Rs.416 Crore in FY 2002-03 which is to be recovered in a period of 8 months i.e. from 01.8 2002 to 31.3.2003. This will push up the BST by 38.7% and RST by around 40%. Partial acceptance will accordingly reduce the tariff to some extent, but calling for a rise in tariff. If, of course, all correctives are accepted, BST and RST will continue at the same rates as mentioned in para 12(b)(1) & 12(b)(2) above for the period from 01.8.2002 to 31.3.2003.*
 15. *The Commission will adopt a multi-year tariff strategy from 01.4.2003 after circulating a conceptual paper, inviting comments and through a process of public hearing.*
2. The Hon'ble High Court of Orissa has passed the following order in Misc. Case No.4471/2002 arising out of the O.J.C. No.6751/2001 on 26.04.2002 on the tariff order for 2002-03.

"We have heard the counsel for parties.

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The Orissa Electricity Regulatory Commission is free to notify the Bulk Supply Tariff and Retail Supply Tariff in respect of the five licensees as envisaged under Clause (4) of the Section 26 of the Orissa Electricity Reform Act, 1995, but the same will not be given effect to until further orders".

Accordingly, the tariff orders of the Commission were published on 1.5.2002.

3. By the order dated 13.05.2002, the Hon'ble High Court clarified that the Distribution Companies are at liberty to pay to GRIDCO with regard to bulk supply at the rate indicated in the notification issued by OERC with effect from 1.5.2002. In the subsequent order dt.19.07.2002, Hon'ble Court directed that OERC should not give effect to 40% hike of tariff w.e.f. 01.08.2002.

4. On 03.02.2003 in Misc. Case No.7410 and 8953 of 2002 arising out OJC No.6751/2001, the Hon'ble High Court ordered as under:-

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03.02.2003

These applications have been filed on behalf o the GRIDCO praying for modification of the orders dated 13.5.2002 and 19.7.2002.

"We have heard Sri P K Mohanty, learned counsel for GRIDCO, Sri S S Mohanty for OERC, Sri Sanjit Mohanty for NESCO and SOUTCHO, Sri S C Lal, for WESCO, Sri B K Nayak for CESCO, Sri G P Mohaty for opposite party No.11 in OJC No.3157 of 2001 and Sri K N Jena for the intervenors".

"By the first order dated 13.5.2002, this Court clarified that the Distribution Companies are at liberty to pay to the GRIDCO with regard to bulk supply at the rate indicated in the notification issued by OERC with effect from 1.5.2002 and by subsequent order dt.19.07.2002 direction was to the effect that OERC shall not give effect to 40% hike of tariff w.e.f. 01.08.2002".

"It is contended by Sri P K Mohanty, learned counsel appearing for the GRIDCO that the notification dated 30.4.2002 (Annexure-E/2 to Misc. Case No.7410 of 2002) was published in the news paper on 1.5.2002 and by virtue of section 26(v) of the Orissa Electricity Reform Act it should be effective within one week from that date, i.e. 1.5.2002. Learned counsel appearing for the distribution companies seriously objected to the submission that one-week from the date of notification shall be the effective date. It is also contended that the GRIDCO is not a supply licensee in terms of Section 2(o) of the Orissa Electricity Reform Act. But on hearing learned counsel for the parties and on perusal of the notifications, we are satisfied that the GRIDCO is a bulk supplier licensee. From the licence issued to GRIDCO , which is quoted hereunder fortifies the above finding reached by us".

'Licence granted by the Orissa Electricity Regulatory Commission under section 15 of the Orissa Electricity Reform Act, 1995 (2 of 1996) to Grid Corporation of Orissa Limited, Janpath, Bhubaneswar 751 022 (GRIDCO) for carrying out the business of Transmission and Bulk Supply of electrical energy within the Area of Transmission and Bulk Supply and with the powers and upon the terms and conditions specified in the licence.'

"Therefore, the notification dated 30.04.2002 shall be effective from 8.5.2002 and the bulk supply licensee can collect from the distribution companies tariff at the old rate effective before 1.5.2002".

"In the meantime, the Government of Orissa in Home Department has issued notification No.1068/ZE dated 29.1.2003 from which it appears that the State government after considering the recommendation of the committee of independent experts i.e. Sovan Kanungo Report and the

correctives suggested by the OERC, have decided to accept number of correctives, which are enumerated therein. One of them is that the depreciation would be calculated from April, 1992 as notified by the Government of India on the valuation of the assets prior to 1.4.1996 i.e (Rs.1,194.00 crores as on 1.4.1996 not Rs.2,223.00 crores which has been upvalued by the State government). The OERC in its turn would now make necessary calculation taking into consideration the aforesaid Govt. notification including financial implication and burden on the consumer. In this connection, we may refer to the Tariff order of the OERC. For the sake of convenience, we may quote clause 6.60.4 from page 116, the same”:

‘6.60.4 “The Commission have made several recommendations to the Government of Orissa for their implementation w.e.f. 01.04.2001. Accordingly the Commission have determined the Bulk supply Tariff and Transmission Tariff applying all correctives based on its recommendations to the Government. If a decision to the contrary is taken by the Government the revenue requirement for the FY 2002-03 as determined without applying the correctives shall be due for recovery from the consumers. It will raise the revenue requirement by Rs.387.69 crore on the basis of our present estimate which shall be as follows’.

CESCO	Demand charge	:	Rs.200/KVA/month
	Energy charge	:	142.13 paise/unit
WESCO	Demand charge	:	Rs.200/KVA/month
	Energy charge	:	146.70 paise/unit
NESCO	Demand charge	:	Rs.200/KVA/month
	Energy charge	:	135.25 paise/unit
SOUTHCO	Demand charge	:	Rs.200/KVA/month
	Energy charge	:	135.75 paise/unit

This is based on the assumption that the tariff approved in para 6.53.5.3 is effective from 01.05.2002 to 31.07.2002 and the above rate shall be valid from 01.08.2002 to 31.03.2003 provided the recommendation as indicated earlier are not accepted by the Government by 31.07.2002.

This tariff effective from 01.08.2002 shall be subject to such proportionate reduction as may be necessary to the extent the Government accepts the recommendation made by the Commission. The reductions being purely arithmetical in nature shall take effect without any further proceeding for amendment under section 26(6) of the OER Act 1995. However it is made clear that in case of such reduction a fresh notification under section 26(5) of the OER Act will be made by the licensees with the approval of OERC’.

“While considering this matter, the OERC will keep in view clause (v) of the notification of the State Government dated 29.1.2003 with a view to optimize purchase from Captive Power Plants like NALCO, ICCL, OHPC and OPGC in the event they offer lesser price than other sellers of power. The OERC will publish the outcome of the above exercise and after hearing the parties publish the financial effect on the distribution companies and report to this Court. The entire exercise with regard to fixation of tariff shall be completed by 15th of March, 2003. The orders dated 13.5.2002 and 19.7.2002 accordingly stand varied. XXX”

5. On 14.3.2002, the Hon'ble High Court against Misc. Case No.414 of 2003 and Misc. Case No.580 of 2003 arising out of OJC No.6751/2001 corrected some typographical errors of 3.2.2003 and permitted OERC to finalise the tariff order for 2002 and 2003 as per the order of 3.2.2003 by 15.7.2003. In this order the Hon'ble High court observed as follows.

“It is made clear that though the OERC can continue the exercise for determination of tariff, the same shall not be given effect to without leave of this Court.”

6. Accordingly, as per the direction of Hon'ble High Court, a public notice was issued on 17.04.2003 for re-determination of tariff for FY 2002-03 and fixed the date for hearing on 19.05.2003 which is quoted below :-

“Pursuant to the directions given by the Hon'ble High Court of Orissa in Misc. Case Nos.7410 & 8953 of 2002 arising out of OJC No.6751 of 2001 in the matter of L.I. Parija & Others. V. State of Orissa & Ors. vide orders dt.03.02.2003 as amended vide order dt.14.03.2003 passed in Misc. Case Nos.414 & 560 of 2003 arising out of the said OJC, the Commission considered the effect of the notification No.1068 dt.29.01.2003 issued by the Government of Orissa on the tariffs determined by the Commission by its order dt.19.04.2002 for the year 2002-03 and the resultant financial implications on the licensees (Grid Corporation of Orissa Ltd. and the four distribution companies) and the consumers. In the order dt.19.04.2002 the Commission, amongst others, had determined the tariff for the period from 01.05.2002 to 31.07.2002 on the assumption that the Government of Orissa will implement the recommendations and corrective measures suggested in the Kanungo Committee report and also some other corrective measures suggested by the Commission in the above order dt.19.04.2002”.

“The Commission has examined the notification dt. dt.29.01.2003 issued by the Govt. of Orissa to implement the recommendations of the Kanungo Committee and other corrective measures and the Commission is prima facie of the view that the Tariff determined by the Commission for the licensees for the period from 01.05.2002 to 31.07.2002 can be effectively continued for the subsequent period from 01.08.2002 to 31.03.2003 (i.e. for the year 2002-03) without any modification or change as the Govt. of Orissa has accepted the significant part of the recommendations of the Kanungo Committee and corrective measures contained in the Commission's order dt.19.04.2002. It is also relevant to note that under the orders passed by the Hon'ble High Court the tariff determined for the period till 31.07.2002 had continued till 31.03.2003. The Commission's order

dt.19.04.2002 had also applied the merit order despatch accounting for the supply from NALCO, ICCL, OHPC & OPGC as stated in Clause (v) of the notification dt.29.01.2003 issued by the Govt. of Orissa to optimise the power purchases”.

“In the above circumstances, the Commission is of the prima facie view that the Tariff determined by the Commission and made applicable for the period from 01.05.2002 to 31.07.2002 should be the applicable tariff for the entire period from 01.05.2002 to 31.03.2003. In such a case, there will be no impact on the licensees or the consumers. The Commission will, however, formulate its final views in the matter after hearing the interested parties”.

*“By this public notice, the Commission requests the interested persons including the parties in OJC No.6751 of 2001, the licensees, the State Government and the public to submit their objections and suggestions on the above views of the Commission. Such objections and suggestions are to be submitted in writing within 15 days of the publication of this notice. The Commission will hold a public hearing on **19.05.2003** at 11.00 A.M. in the matter in the Hearing Hall of the Commission’s office at Bhubaneswar and thereafter take a final decision after considering the objections/suggestions filed and submissions made during the hearing.”*

7. On 19.05.2003 the hearing for re-determination of tariff for FY 2002-03 was taken up and the final tariff order for FY 2002-03 was submitted to the Hon’ble High Court on 30.06.2003 by the counsel of the Commission to take leave of the Court to publish and implement the tariff order.

8. On 02.09.2003, the Hon’ble Court ordered in Misc. Case No.1380 and 1805 of 2003 arising out of OJC No.6751/2001 as follows:-

“6. We have perused the final order on the tariff for the year 2002-03 dated 23.6.2003 of the Commission, copy of which has been filed before us, and we find from the said final order that the Commission has tried as far as possible to calculate the depreciation as per Pre 1992 norms on the basis of whatever records were available and have found on the basis of such exercise that the revenue requirement for the year 2002-03 will undergo a downward change. The relevant portion of the final order dated 23.6.2003 passed by the Commission in this regard is quoted herein below:

‘Special Appropriation to cover a portion of previous losses kept in Regulatory Asset. Due to change in depreciation policy and deviation of govt. notification from the correctives suggested by the Commission, the revenue requirement for the year 2002-03 will undergo downward change. The licensees have been incurring losses every year due to excess power purchase cost by the Commission. As per the audited accounts for the financial year 1999-2000, GRIDCO has incurred an expenditure of Rs.1165.60 crore towards power purchase cost as compared to Rs.1051.82 crore approved by the Commission thereby incurred a loss of Rs.103.78 crore. The excess power purchase cost is beyond the control of the licensee and needs to be passed on to tariff unless subsidised by any other means’.

“But the Commission has decided to pass on the benefit of such downward change in the revenue requirement to GRIDCO and the four distributing companies. The relevant portion of the final order dated 23.6.2003 of the Commission in this regard is quoted herein below”:

‘Thus the Commission approves an amount of Rs.78.52 crores under the head special Appropriation to mitigate a portion of regulatory assets of the licensee recognised earlier’.

<i>Name of the Company</i>	<i>Reduction in revenue requirement due to reduction in power purchase cost</i>	<i>Reduction in revenue requirement due to disallowance of reasonable return</i>	<i>Reduction in revenue requirement due to change in depreciation policy</i>	<i>Reduction due to change in R&M expenses</i>	<i>Total amount of special appropriation</i>
<i>GRIDCO</i>	<i>3.05</i>	<i>16.54</i>	<i>29.04</i>	<i>0.00</i>	<i>48.63</i>
<i>CESCO</i>			<i>3.81</i>	<i>5.36</i>	<i>9.17</i>
<i>NESCO</i>			<i>3.54</i>	<i>4.74</i>	<i>8.28</i>
<i>SOUTHCO</i>			<i>2.88</i>	<i>2.66</i>	<i>5.54</i>
<i>WESCO</i>			<i>2.73</i>	<i>4.17</i>	<i>6.90</i>
<i>TOTAL</i>	<i>3.05</i>	<i>16.54</i>	<i>42.00</i>	<i>16.93</i>	<i>78.52</i>

“At the end of the said final order in paragraph-13, the Commission has observed that since the revised revenue requirement of the licensees, namely, GRIDCO, WESCO, NESCO, SOUTHCO and CESCO remain unchanged, there will be no impact of the tariff for the year 2002-03 as a result of the exercise conducted by the Commission pursuant to the orders passed by this Court on 3.2.2003 and 14.3.2003”.

7. *“The correctives suggested by the Sovan Kanungo report as accepted by the State Government cannot be implemented over-night and will have to be implemented over a period of time. We, therefore, do not intend to dispose of the writ petition, but keep the same pending for the purpose of monitoring from time to time and ensure that the correctives suggested by the Sovan Kanungo report as accepted by the State Government are implemented by the concerned authorities with all sincerity. But so far as the corrective regarding adoption of Pre 1992 norms for depreciation on the basis of valuation of assets prior to their upvaluation is concerned, we find from the final order dated 23.6.2003 of the Commission that after adopting the said corrective and undertaking the exercise as far as practicable, the Commission has found a downward change in the revenue requirement for the year 2002-03, but has decided to pass on the benefit of such downward change in the revenue requirement to GRIDCO and the four distributing companies. We are not quite sure as to whether this decision of the Commission to pass on the benefit of the downward change in the revenue requirement for the year 2002-03 entirely to GRIDCO and the four distributing companies is consistent with the provisions of section 26 of the Orissa Electricity Reform Act, 1995. It will appear from a plain reading of section 26(ii) of the said Act that the Commission shall be bound by not only the parameters relating to financial principles laid down in sections 57 and 57-A of the Electricity (Supply) Act, 1948 and in the 6th Schedule thereto, but also the factors which would encourage efficiency and economic use of the resources, good performance, optimum investments, performance of licence conditions and other matters which the Commission considers appropriate for the purposes of this*

Act as well as the interest of the consumers. Hence, the Commission will have to consider if the benefit of the downward change in the revenue requirement for the year 2002-03 due to change in depreciation policy and deviation of the Government Notification from the correctives suggested by the Commission should be passed on to the consumers instead of GRIDCO and the four distributing companies”.

8. *“Obviously before a final decision is taken in this regard by the Commission, the consumers and the GRIDCO and the four distributing companies will have to be heard by the Commission and for this purpose we direct the Commission to give an opportunity of hearing to the consumers and the GRIDCO and the four distributing companies in the manner provided in its Regulations and thereafter, finally fix tariff for the year 2002-03. It is also open for the petitioners and the intervenor to participate in the said hearing. The orders so finally passed by the Commission may be challenged by any party by way of appeal as provided in the Orissa electricity Reform Act, 1995 raising all grounds as are available to him under law in such an appeal”.*

9. *“Regarding tariff for the year 2003-04, counsel for the parties have submitted before the Court that the determination of the same will depend upon the finalisation of the tariff for the year 2002-03. The Commission will thus finalise the tariff for the year 2003-04 after finalisation of the tariff for the year 2002-03 after giving a hearing in accordance with the Regulations to the consumers and other parties likely to be affected. Tariffs for the year 2003-04 so finalised by the Commission may also be challenged by way of an appeal by any party taking all such grounds as are available under law”.*

“The orders passed by this Court on 3.2.2003 and 14.3.2003 accordingly stand modified”.

“The Misc. Cases are disposed of”.

“Urgent certified copy of this order be granted as per the rules”.

9. As per the direction of the Hon’ble High Court a public notice was issued by the Commission to take up hearing on 10.10.2003 regarding passing of 78.52 Crores under the head “Regulatory Assets” either to the consumers or to the licensees. The public notice is quoted as under:-

“The Hon’ble High Court of Orissa by Order dt.2.9.2003 in Misc. Case Nos.1380 and 1805 of 2003 arising out of OJC No.6751 of 2001 has directed the Commission to consider whether the benefit of the downward change in the revenue requirement for the year 2002-03 due to change in the depreciation policy and deviation of the Government Notification from the correctives suggested by the Commission should be passed on to the consumers instead of Grid Corporation of Orissa Ltd. and/or the four Distribution Companies. This direction has been given by the Hon’ble Court with reference to the following decisions of the Commission in the Tariff Order dt.23.6.2003:

‘Special Appropriation to cover a portion of previous losses kept in regulatory asset. Due to change in depreciation policy and

deviation of Government notification from the correctives suggested by the Commission, the revenue requirement for the year 2002-03 will undergo downward change. The licensees have been incurring losses every year due to excess power purchase cost as compared to approved power purchase cost by the Commission. As per the audited accounts for the financial year 1999-00. Gridco has incurred an expenditure of Rs.1165.60 crores towards power purchase cost as compared to 1051.82 crore approved by the Commission thereby incurred a loss of Rs.103.78 crore. The excess power purchase cost is beyond the control of the licensee and needs to be passed on to tariff unless subsidized by any other means.'

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'Now the Commission decides to pass on a portion of that Regulatory Asset in the Revenue Requirement of 2002-03 under Special Appropriation head. This will alleviate the burden on the consumers at the time of fixing future tariff while keeping the present tariff constant.'

'Thus the Commission approves an amount of Rs.78.52 crores under the head special appropriation to mitigate a portion of regulatory assets of the licensee recognized earlier.'

X X X X X

"Pursuant to the above and as directed by the Hon'ble High Court, the Commission will hold a proceeding on **10.10.2003 at 11.00 A.M.** at the office of the Commission to hear all interested parties on the above issue and other related issues including on the impact of the decision on the above issue on the tariff for the subsequent year 2003-04."

"You are hereby given notice that in case you are interested you may appear in person or through authorized representative at the hearing on the above date & time. You may also submit your written suggestions/objections on the issue, if so desired, on or before 06.10.2003 to the Commission with advance copy to Chairman-cum-Managing Director, Grid Corporation of Orissa Ltd., Janpath, Bhubaneswar and the four Distribution Companies, namely, Managing Director, CESCO, 2nd Floor, IDCO Towers, Janpath, Bhubaneswar, Managing Director, WESCO, At/P.O. Burla, Dist. Sambalpur, Managing Director, NESCO, At/P.O. Januganj, Dist. Balasore & Managing Director, SOUTHCO, At/P.O. Courtpeta, Berhampur, Dist. Ganjam."

10. Copies of the notice were also posted separately to the following objectors:-

1. Mr. L.I. Parija, Canteenment Road, Cuttack – 753 001
2. The Secretary, UCCI, Barabati Stadium, Cuttack 753 001
3. The General Secretary, Centre of Indian Trade Union, 251, Kharvelanagar, Bhubaneswar.
4. The General Secretary, OCA, Biswanath lane, Cuttack-753 002.
5. The General Secretary, State Public Interest Protection Council, At/P.O. Tala Telenga Bazar, Town/Dist. Cuttack – 753 009.

6. The President, Priyadarsini Mahila Samiti,
Vill/P.O. Gandibedi, Dist. Balasore.
7. The Secretary, Centre for Weaker Section Development,
At. Brahmapur, P.O. Kharasapur, Dist. Balasore.
8. The President, Paribartan, At. Sahadevkhunta, P.O./Dist. Balasore.
9. The General Secretary, Kansa Bansa Sanskrutika Parisada,
At/P.O. Sadampur, Soro, Dist. Balasore.
10. The Principal Secretary to Govt., Deptt. of Energy, Bhubaneswar.
11. The Chairman-cum-Managing Director, GRIDCO,
Janpath, Bhubaneswar.
12. The Chief Executive Officer, CESCO, 2nd Floor, IDCO Towers,
Bhubaneswar.
13. The Managing Director, SOUTHCO, At/P.O. Courtpetta,
Berhampur, Dist. Ganjam.
14. The Managing Director, NESCO, At/P.O. Januganj, Dist. Balasore.
15. The Managing Director, WESCO, At/P.O. Burla, Dist. Sambalpur.
16. The Chairman, Power Grid Corporation of India Ltd.,
B-9, Qutab Institutional Area, Katwaria Sarai, New Delhi - 110016
17. Mr. Chakradhar Behera, Advocate, At/P.O. Tulsipur, Town, Dist. Cuttack
18. Mrs. Beenapani Panda, W/o. Prafulla Kumar Panda, Sekh Bazar, Cuttack
19. Mr. Ashok Kumar Samal, Tala Telenga Bazar, Cuttack 753 009.
20. Sk. Azizun Rahman, Dewan Bazar, Cuttack-1
21. Mr. Saroj Kumar Sahu, Khan Nagar, Cuttack – 753 010.
22. Mr. Bibekananda Ramanuj Dash, At. Jagannath Ballav, Cuttack – 1.

11. Before start, the Commission wanted to apprise itself and the objectors on the legal scope of the hearing as per the orders of the Hon'ble High Court. Thereafter, on 10.09.2003, Sri S. Mohanty, the legal counsel of the Commission read the order dated 2.9.03 passed by the Hon'ble High Court in Misc. Case Nos. 1380 and 1805 of 2003 arising out of O.J.C. No.6751/2001 and pointed out that in this hearing, the Commission will have to consider if the benefit of the downward change in the revenue requirement for the year 2002-03 due to change in depreciation policy and deviation of the Government Notification from the correctives suggested by the Commission should be passed on to the consumers instead of GRIDCO and four distributing companies. He pointed out that the Hon'ble Court has not directed reconsideration of the quantum of the downward change in the revenue requirement (calculated by the Commission as Rs.78.52 crore), but the direction was to consider whether some or all of this amount should be passed on to consumers rather than to licensees as regulatory assets. He further suggested that the hearing should be confined to the above point only and the objectors should accordingly make their submissions. Thus, the ambit and scope of the hearing was made intelligible to the esteemed audience before the actual hearing was taken up on that day.

12. In the beginning of the hearing, the staff of the Commission made a presentation which basically highlighted, inter alia, two important aspects to bring to the notice of the audience, i.e., 1) The concept of regulatory asset and how this concept has been dealt with by other State Electricity Regulatory Commissions like MPERC, APERC, HERC, MERC, etc. (2) the way the concept of Regulatory

Asset has been applied in OERC's earlier tariff orders of 1998-99, 2000-01 and in the final order of 2002-03. The presentation also covered the amount of revenue requirement proposed by the licensees vis-à-vis the amounts actually accepted by the Commission. It was explained in the presentation that "regulatory assets" are nothing but previous losses of the licensee arising out of revenue shortfall from approved expenditure recognized by the appropriate regulatory authority to be passed on to tariff at a future date, and that loss sustained by the licensee due to factors beyond the control of the licensee is normally recognized as a regulatory asset, and that sometimes full amount of such recognized loss is not allowed to be recovered in one go to avoid tariff shocks and the amount is kept under the head regulatory assets to be recovered in future tariffs. It was further explained to the objectors that, the consumers share the benefits only when there is a 'clear profit' which is derived by deducting expenditure properly incurred and special appropriation as approved by the Commission from the income as per the provisions of para XIII(2) of the Schedule VI to the Electricity (Supply) Act, 1948. Previous losses as approved by the Commission is an allowable expense under the head 'special appropriation' for arriving at the clear profit. In the revised calculation of Revenue Requirement, after allowing previous losses under special appropriation, there is no clear profit left to be shared with the consumers as per the provisions of the Schedule VI of the Electricity (Supply) Act, 1948. In response to a query, the staff of the Commission explained that the Regulatory Assets has a carrying cost in the form of interest, if it is funded by loan capital or by way of dividend, if it is funded by the equity capital. The consumer has to bear the carrying cost till the amortization of the regulatory asset. In other words, sooner it is recovered or paid back to the licensees the consumers are relieved of the burden of carrying cost.

13. OBJECTIONS RAISED AND SUGGESTIONS SUBMITTED BY THE OBJECTORS DURING THE PUBLIC HEARING

The Commission received 14 written objections. These were from (1) Sri L. I. Parija, Cantonment Road, Cuttack; (2) M/s Utkal Chambers of Commerce and Industry Limited (UCCI), Barabati Stadium, Cuttack; (3) Orissa Consumers' Association, Biswanath Lane, Cuttack; (4) M/s. Akhila Bharatiya Grahak Panchayat, Orissa, Parlakhemundi (5) Kansa Bansa Sanskrutika Parisada, Soro, Balasore (6) Confederation of Indian Industry(CII), Eastern Region, Bhubaneswar; (7) Mr. R. P. Mohapatra, 775, Jayadev Vihar, Bhubaneswar; (8) M/s. Indian Charge Chrome Limited (ICCL), Bhubaneswar; (9) M/s. Grid Corporation of Orissa Limited, Bhubaneswar; (10) M/s NESCO, Balasore; (11) M/s. SOUTCHO, Berhampur; (12) M/s. WESCO, Burla; and (13) State Public Interest Protection Council, Tala Telenga Bazar, Cuttack and (14) The CEO, CESCO, IDCO Towers, Bhubaneswar. Most objectors were present in the hearing except those in serial nos (4), (5), (8) and (13) above. Besides, 12 interested parties were also invited to participate in the above hearing. They were (1) Mr. Chakradhar Behera, Advocate, Tulasipur, Cuttack (2) Mrs. Beenapani Panda, W/o Prafulla Ku. Panda, Sekh Bazar, Cuttack (3) Mr. Ashok Kumar Samal, Tala Telenga Bazar, Cuttack (4) Sk. Azizun Rahman, Dewan Bazar, Cuttack (5) Mr. Saroj Kumar Sahu, Khan Nagar, Cuttack (6) Mr. Bibekananda

Ramanuj Dash, Jagannath Ballav, Cuttack, (7) The President, Priyadarsini Mahila Samiti, Gandibedi, Balasore (8) The Secretary, Centre for Weaker Section Development, At-Brahmapur, P.O. Kharasapur, Dist-Balasore, (9) The President, Paribartan, At-Sahadevkhunta, Balasore (10) The General Secretary, Center of Indian Trade Union, 251, Kharavelanagar, Bhubaneswar, (11) The Principal Secretary to Govt. of Orissa, Deptt. Of Energy, Bhubaneswar, and (12) The Chairman, Power Grid Corporation of India Ltd., New Delhi. However, none of them nor their representative was present in the hearing. Out of the written objections filed with the Commission, many of those objections were found to be of general nature whereas others were specific to the objective of the public hearing on the Commission's Order on Bulk Supply Tariff and Retail Supply Tariff for the year 2002-03, dated 23 June 2003.

Based on the nature and type of the objections, these have been categorised broadly as indicated below:

(a) Legal Objections

Sri L I Parija of Cantonment Road, Cuttack submitted that the notice by the Commission seeking objections in pursuance of the High Court Order dated 2 September 2003 in Misc. Case No. 1380/03 arising out of OJC No. 6751/01 had not been properly construed / interpreted by the Commission. Sri Parija added that in its above order, the Hon'ble High Court had made it clear that the tariff for 2003-04 should only be finalised after determination of tariff for 2002-03. Since the tariff for 2002-03 has not yet been finalised, the Commission's notice seeking objection pending the hearing for determination of tariff for 2003-04 along with the hearing of 2002-03 is illegal. This casts doubt about its impartiality.

(b) General Objections

Most of the objectors at the hearing prayed before the Commission that many of their earlier submissions, though heard and recorded by the Commission in its orders, had neither been dealt with properly nor any judgement passed on those issues by the Commission. The objectors prayed that the BST, transmission tariff and RST for 2002-03 may be recalculated based on the audited figures available.

(c) Transmission and Distribution Losses

Sri M V Rao, Chairman Power Committee, M/s UCCI, Cuttack, Sri R P Mohapatra of Bhubaneswar and Sri K N Jena of Orissa Consumers' Association dealt with the issue of T&D losses in detail. While seeking clarification regarding the logic behind acceptance of a level of T&D losses for the year 2001-02, they pointed out that there was no cogent reason for effecting any change in the permissible loss levels for 2001-02 by the Commission while determining tariff for 2002-03. They added that even the Kanungo Committee Report had reported that no reliable data on energy accounting could be made available in absence of good working meters in case of 40-50% of the consumers, absence of metering in the LV side of the distribution transformers and when large number of illegal

connections exist. This was corroborated by the fact that the licensees provided different loss figures for 2000-01 to the Commission and the Kanungo Committee, within a very short interval.

It was also further expressed that the Commission should compute Distribution losses taking the difference between purchase and sale of power at HT & LT and expressing the same as a percentage of purchase of power at HT & LT. The benchmark for efficiency should be fixed considering the LT and HT sector alone which shall give a clear picture in the case of improvement in the loss position. Mr. R P Mohapatra added that this would induce the Distcos to conduct pilot loss studies to determine losses separately, to install feeder metering under the APDRP programme and to carry out sustained efforts to install/replace meters and to eliminate illegal extraction of energy. He stated that the overall distribution losses for the year 2001-02 should be restored to the earlier benchmark of 31.46%.

(d) Audited Accounts

Some of the objectors including Sri S K Nanda and Sri M V Rao stated that since Audited Accounts for FY 2001-02 were now available for the licensees, the Commission should consider these Audited Accounts while finalising the Revenue Requirement for 2002-03 in its final order. Sri L I Parija in his petition drew the attention of the Commission to the facts that the accounts of all these companies in several areas were badly maintained and not even audited.

(e) Power Purchase Costs

The Secretary, Akhil Bharatiya Grahak Panchayat in his petition pointed out that the licensee has been procuring power from costlier sources while cheaper sources were left unutilised. He added that though Orissa had a 30% stake in the joint venture with AP in Machkund, Gridco did not procure the entire share and in turn purchased the high cost power from NTPC.

Sri M. M. Nanda, DGM Gridco submitted that Gridco, which was the bulk supplier in the state and purchased power only for resale to the Distcos, had suffered substantial losses in previous years on account of actual power purchase costs being higher than the cost of power approved by the Commission in its tariff orders. This was attributed to higher demand by the Distcos as well as higher drawl from costlier sources, which had resulted in losses and these costs should be passed on to tariff.

(f) Details of Fixed Assets

Sri L I Parija stated that the Commission has not explained the necessity of the escalation and up-valuation of the asset value of Gridco and OHPC. CII, Eastern Region, Sri R P Mohapatra and Sri K N Jena pressed for maintenance of a Fixed Asset Register, which is a statutory requirement both under the Companies Act and the Commission's guidelines. They also submitted that the Commission had

not actually verified and checked the Fixed Assets Register of the licensees to determine the cost of the assets and their actual life in order to correctly determine the depreciation to be charged on these assets. It was also stated that cost of Gross Fixed Assets used by the Commission in its calculation of depreciation for both Gridco and the Distcos did not seem to be correct, as the amount of assets added since 1 April, 1999 was not based on the Audited Accounts.

Sri R P Mohapatra opined that irrespective of the purchase or transfer value of the assets, the “original cost of the fixed assets” should be the depreciated according to book value as defined in Para XVII (6) of the Sixth Schedule and Para I (b) and II of the Fourth Schedule. He submitted that this exercise should have been carried out from the year 1997-98 onwards and the savings on account of this should have been quantified.

(g) Depreciation

Sri S K Nanda of CII pointed out that following the Straight Line Method (SLM) for the computation of depreciation in the absence of a Fixed Assets Register was putting the consumers at a disadvantage since there was no record of assets which have been depreciated upto 90% of their original book value. Sri Nanda argued that addition of assets (Rs.532.35 crores for GRIDCO and Rs.637.38 crores for DISTCOs) shown in the calculation of depreciation did not seem to be correct as the same were not based on audited figures.

Sri R P Mohapatra stated that at least in cases of 30%-40% of the total assets, 90% of their value has already been depreciated. Therefore, he suggested that the Commission should allow depreciation for 60% of the assets pending creation of the assets register.

(h) Interest & Financing Charges

Most objectors including Sri S K Nanda of the CII, Sri K N Jena of Orissa Consumers' Association, as well as Sri R P Mohapatra of Bhubaneswar took strong **exception** to allowance of interest charges on the securitisation of arrears of power purchase dues as part of tariff in the Commission's final order dated 23 June 2003. It was also submitted that these costs were not allowed by the Commission in its previous tariff orders on the grounds that these expenditures were not meant for creation of assets. The objectors prayed that allowing these expenditures would be a recurring burden on the consumers every year.

They further submitted the Commission had not taken into account DPS of 2% per month collected from the defaulting consumers which should be sufficient enough to meet the interest payables on bonds. The same should now be considered by the Commission while recalculating the revenue requirement for 2002-03. Sri R P Mohapatra stated that this interest should not be passed on to the consumers as the same was unjust.

(i) Past Losses and Regulatory Assets

Some of the objectors prayed that the past losses considered by the Commission in its earlier orders were not based on audited figures and should now be revised on the basis of the latest audited accounts available. Sri S K Nanda, of CII opined that the Commission should check the prudence of these past losses before considering the same as part of tariff. Losses arising out of negligence or inefficiency of the licensee should not be allowed as a pass through since this will act as a premium for inefficiency.

Sri M V Rao of UCCI wanted to know the logic behind the Commission's approval of certain amount of past losses in the final order for 2002-03. Sri R P Mohapatra added that the Hon'ble Commission had observed in its earlier order dt.19.04.2002 that previous losses could be admitted only under the following conditions:

- a) Losses occurring due to reasons beyond the control of the licensee and to the satisfaction of the Hon'ble Commission.
- b) Losses occurring inspite of the licensee being efficient as per the review of the Hon'ble Commission.
- c) Losses occurring inspite of the expenditure of the licensee being within the norms approved by the Hon'ble Commission.
- d) Losses being authenticated by reliable audit.

Since none of the conditions as laid down above have been fulfilled by the licensees, they were not entitled to receive any special appropriations towards 'previous loss'. Sri Mohapatra also stated that passing on this present amount of Rs.78.52 crore to the consumers shall not have any material effect as this would mean less payment than hitherto by the consumers and subsequently by DISTCOs and ultimately by GRIDCO. Sri Mohapatra suggested that the following aspects should be considered by the Commission to reduce the revenue requirements of the licensees for 2002-03.

- a) The amount of Rs.78.52 crore already determined and passed on by the Commission as special appropriation.
- b) The amount of interest charges on the bonds issued by the licensees.
- c) Reduction of the depreciation charges as prayed by the objector in para 1.7 above. The amount of reduction in depreciation is to be calculated from the year 1997-98 to 2002-03.
- d) Reduction in revenue requirement on account of determination of the 'original cost' of the fixed assets as the depreciated book value, for the years 1997-98 to 2001-02.
- e) Recalculation of the revenue requirement for 2002-03 based on the approved distribution loss of 31.6% and transmission loss of 3.7% for the year 2001-02.

Sri Mohapatra prayed the Commission to calculate the total reduction in revenue requirement for the period 1997-98 to 2002-03 and pass on the entire benefit to the consumer through a suitable mechanism.

Sri K N Jena of the Orissa Consumers' Association stated that there was no such concept as "regulatory asset" since it did not lead to the creation of any physical asset and hence should not be allowed to be serviced through tariffs.

(j) Special appropriation

The amount of special appropriation of Rs.78.52 crore as provided to the five licensees was vehemently objected to by the objectors while some of them including Sri R.P. Mohapatra argued that the revenue requirements for 2002-03 for GRIDCO and DISTCOs should be reduced to the extent of special appropriation. Representative of CII, Bhubaneswar argued that the proposal to pass Rs.48.63 crore to GRIDCO was not reasonable.

GRIDCO in reply to the objection stated that the decision of the Commission to pass on the benefit of downward change to the tune of Rs.48.63 crore under special appropriation head in the revenue requirement for 2002-03 to the licensee was fully justified and should not be changed. GRIDCO further stated that the Commission has allowed pass through of a portion of the losses giving sufficient reasons with an intention that this will accentuate the burden on the consumers at the time of fixing future tariff while keeping the present tariff constant. Moreover, it may be stated that the power purchase cost claimed by GRIDCO is based on the accounts audited by the C&AG for the year 1999-00 and hence, the same is reliable. If the present amount of special appropriation is withdrawn, the same has to be allowed to be recovered in future tariffs along with the carrying cost. This will mean additional burden on the consumers in terms of tariff incidence. The distribution companies prayed the Commission not to change the decision of providing special appropriation to them in the tariff order of 23rd June, 2003 and to adjust the uncovered deficits that still remain in the revenue requirements in future years. They strongly argued that withdrawal of the special appropriations granted to them shall violate the financial principles as laid down in the Sixth Schedule of the Supply Act.

DISCOMs reply

Sri Srikant Kumar Paikray, CEO, CESCO pleaded that the decision of the Hon'ble Commission for passing the benefit of downward change to the tune of Rs.6.90 crore under special appropriation in the revenue requirement for 2002-03 in favour of CESCO due to change in depreciation policy, is justified and should not be changed. If the special appropriation is withdrawn, the same has to be allowed to be recovered in future tariff and thus the same will be an additional burden on the consumers. Therefore, the order of the Hon'ble Commission for

special appropriation to cover a portion of the approved previous losses kept in regulatory asset is just, appropriate and reasonable.

Mr. Lal, Advocate appearing on behalf of the BSES-owned distribution companies argued that the decision taken by the Hon'ble Commission to pass on special appropriation of the order of Rs.78.52 crore is strictly in accordance with Section 26 of the OER Act, 1995 and the financial principles as laid down in Section 57 & 57-A of the Electricity (Supply) Act and the Sixth Schedule thereof. The question of passing on the benefit of downward change in the revenue requirement to the consumers would arise only when the utilities are making profit in excess of the reasonable return permitted under the Sixth Schedule. Since the licensees are sustaining losses, the very moot question of passing on the benefits to the consumers is redundant given the facts and circumstances of the case. In fact such a decision shall be out of jurisdiction of the Commission particularly because of the fact that none of the utilities are making profit.

Mr. Lal further pointed out that the concept of regulatory asset was not a new one and it was very much recognised under the law.

Sri N C Das, MD of NESCO pointed out that the Commission, in its earlier tariff orders, had left total uncovered deficits of Rs.150.19 crore out of which only a sum of Rs.8.28 crore had been allowed as Special Appropriations. Sri Das submitted that this deficit was in fact much larger since the revised tariffs were applicable only for a few months. Secondly, the Commission had allowed distribution losses at 32% and 31% for 1999-00 and 2000-01 respectively while the actual losses had been much higher for these years. All these factors have led to substantial losses which should not be considered as Regulatory Asset by the Commission to be recovered in future tariffs. Similar petitions were made by the other two BSES distribution companies namely, WESCO and SOUTHCO.

(k) Transmission Charges

CII, Eastern Region stated that the cost of energy or any interest paid on loans incurred or bonds issued to securitise the old arrears should not form a part of the transmission cost. Even if these costs are allowed, they should form a part of the cost of power and not of transmission cost. The transmission charges fixed for wheeling the power from CPPs should, therefore, be recalculated without considering the above interest charges.

M/s ICCL stated that there was no actual transmission of power used at the ICCL plants in Theruvali, since the power was transported merely by the method of displacement. Secondly, the existing contract between GRIDCO and ICCL does not provide for the levy of any transmission tariff. The objector prayed that no transmission tariff should be made applicable to the electricity supplied by the applicant to the grid at Choudwar. Or else the Commission at best may fix some service charges for transmitting power from Choudwar to Theruvalli. In any case, the charges should not be more than 17.5 paise/unit as has been recommended by GRIDCO in its tariff application.

(l) Support from the State Government

Sri M V Rao of the UCCI pointed out that the State Government's entire financial support and subvention have been completely stopped from 1 April 1996 and the Commission had indicated savings on this account to the GOO to the extent of Rs.2,770 crores. He also pointed out that all other reforming states like Andhra Pradesh, Haryana, Rajasthan, Gujarat and Uttar Pradesh were providing necessary subsidy to limit the incidence of tariff hikes on consumers. Mr Rao argued that such support should also be made available from Govt of Orissa.

(m) Special Tariffs

WESCO pointed out that the Commission had approved a special agreement executed with M/s INDAL for supply of 50 MW power at a guaranteed load factor of 90% at a special rate of Rs.1.82 per kwh which was linked to the BST. Under the special agreement signed with INDAL, a consumption of 100 MU was projected for INDAL's plant for 2002-03 in the revenue requirement of WESCO @Rs.1.82 P/U. However, while calculating the revenue of WESCO, the calculation for this 100 MU has been made @Rs.3.17 P/U. Hence, there was a difference of Rs.1.35/U for these 100 MU. In fact, the actual consumption of INDAL was 173.06 MU. Therefore, adequate compensation to WESCO in its revenue requirement is needed.

(n) Other Objections

Sri R P Mohapatra strongly urged the Commission to take stringent actions against the distribution licensees since there has been no sign of any improvement in their efficiency. He also added that the DISTCOs had failed to bring in fresh investments, not even the required working capital.

Sri L I Parija in his written submission stated that the Commission had failed while discharging its duties in accordance with Clauses 10(ii), 11(c), 11(d), 11(e) and 11(i) of chapter 2 of the OER Act, 1995 which safeguard the interest of the consumers. He pointed out that the Commission had neither investigated and taken exemplary action against the mis-management, improper practices and wasteful expenditure of GRIDCO and the DISTCOs nor had taken any serious note of the objections raised by the various auditors of the licensees in their audit reports.

14. Commission's observations

(a) The present case arose due to the orders of the Hon'ble High Court in Misc. Case Nos.1380 and 1805 of 2003 where it was observed that

"We are not quite sure as to whether this decision of the Commission to pass on the benefit of the downward change in the revenue requirement for the year 2002-03 entirely to GRIDCO and the four distributing

companies is consistent with the provisions of Section 26 of the Orissa Electricity Reform Act, 1995.”

The Hon'ble Court further observed the following:

“Hence, the Commission will have to consider if the benefit of the downward change in the revenue requirement for the year 2002-03 due to change in depreciation policy and deviation of the Govt. notification from the correctives suggested by the Commission should be passed on to the consumers instead of GRIDCO and the four distributing companies. Obviously before a final decision is taken in this regard by the Commission, the consumers and the GRIDCO and the four distributing companies will have to be heard by the Commission and for this purpose we direct the Commission to give an opportunity of hearing to the consumers and the GRIDCO and the four distributing companies in the manner provided in its Regulations and thereafter, finally fix tariff for the year 2002-03.”

(b) The Commission heard the objectors on 10.10.2003. Most of the objections submitted by the objectors were beyond the scope of the hearing which was limited to the moot question as to whether the decision of the Commission to pass on Rs.78.52 crore to GRIDCO and the four distribution companies was in accordance with Section 26 of the OER Act, 1995 and the relevant financial principles as laid down in Sections 57 and 57-A of the Electricity (Supply) Act, 1948 and the Sixth Schedule thereof. In fact, most of the objections reached to T&D losses, audited accounts, power purchase cost, depreciation, interest and financing charges, transmission charges, financial support from the State Govt., special tariff between WESCO and INDAL, etc. These objections were presented before the Commission in earlier hearings pertaining to determination of tariff for the year 2002-03 and the Commission had dealt with it. Very few objectors presented their views on past losses resulting in regulatory assets and specifically the question of special appropriation as defined in para XVII, Clause (2) of the Sixth Schedule to Electricity (Supply) Act, 1948.

(c) The legal objections raised by Sri L.I. Parija in the para 1.1 of his written submission above do not hold good as the Commission had notified inviting objections and suggestions on the specific issue as highlighted in the Hon'ble High Court's order dated 02.09.2003 in Misc. Case No.1380 and 1805 of 2003 arising out of OJC No.6751 of 2003. The Commission is fully aware of the fact that the tariff for 2003-04 shall only be finalised after finalisation of tariff for FY 2002-03. The Commission felt that the treatment of special appropriation of Rs.78.52 crore would have a direct bearing on the already concluded tariff proceeding for FY 2003-04 and therefore, opportunity was given to the objectors to be heard on the said impact.

(d) Sri M.V. Rao of UCCI had stated that there was no concrete reason for the change in the allowable loss levels for 2001-02 while determining tariff for 2002-03 as mentioned in para 1.3 above. Mr. Rao had further observed that even the Kanungo Committee Report had reported that there could be no reliable data on

energy accounting in the absence of good working meters in case of 40-50% of the consumers.

(e) The Commission would like to emphasize on the observations of the Kanungo Committee in Annexure-16 where the Committee considered the following Distribution Loss levels from 2001-02 to 2005-06 as under with a reduction of 5% every year :

	2001-02	2002-03	2003-04	2004-05	2005-06
Distribution Loss(%)	42.21	37.21	32.21	27.21	22.21

Further the Committee had observed in page 35 of their report as follows:

“Considering that we are now taking the base year (2000-01) T&D loss as a much higher level of 46.63% as reported by the utilities, compared with 39.5% indicated in the SAR for the base year 1996-97 and the fact that several years have already passed giving adequate experience to all concerned in identifying the problems and prioritizing them for giving focussed attention to achieve optimal results, we feel that the indicative target of 5% suggested by us is achievable”.

(f) Regarding Mr. L.I. Parija’s submission on extravagant expenditure incurred by the licensees, the Commission would like to clarify that each item in the revenue requirement is scrutinized and its prudence is established before allowing the same to be passed on to tariff.

(g) **Past Losses, Regulatory Assets and Special Appropriation :** Some of the objectors stated that the past losses considered by the Commission in its earlier orders were not based on audited figures. The Commission would like to stress upon the point that the accounts of the licensees excepting CESCO were audited and hence, the same are reliable. Since the Commission had earlier indicated in its order dated 19.04.2002 that the previous loss can be admitted under certain conditions like (a) Losses occurring due to reasons beyond the control of the licensee and to the satisfaction of the Hon’ble Commission. (b) Losses occurring inspite of the licensee being efficient as per the review of the Hon’ble Commission. (c) Losses occurring inspite of the expenditure of the licensee being within the norms approved by the Hon’ble Commission. (d) Losses being authenticated by reliable audit, etc. the question of allowing losses arising out of negligence or inefficiency of the licensees does not arise at all.

(h) Some objectors including Sri R.P. Mohapatra had stated that since none of the above conditions were fulfilled by the licensees, they were not entitled to receive any special appropriations. The Commission would like to state that the concept of regulatory asset and special appropriation was adopted by the Commission in earlier tariff orders to avoid any tariff shock to the consumers. In the tariff order of 1999-00 and 2000-01 the Commission had approved carry-forward of the gap between the expected revenue and the revenue requirement within the approved benchmark for adjustment during the future years. Hence the

Commission has so far taken steps to pass through regulatory asset in the tariff if it is incurred within the benchmark fixed by the Commission. Again in the Bulk Supply Tariff order dated 19.04.2001 for FY 2000-01, the Commission had decided as follows: "The Commission has approved GRIDCO's revenue requirement for the FY 2000-01 as Rs.1466.78 crore. GRIDCO is expected to recover the entire revenue requirement at the approved tariffs over a period of 12 months. Since the Bulk Supply Tariff approved in this order will be effective from 1st February, 2001 the licensee will be permitted to carry forward the gap between the expected revenue and the approved revenue requirement for 2000-01 within the benchmarks approved by the Commission for adjustment during the future years." Thus, the licensee have an accrued right to recover such losses as have been allowed by the Commission to be passed through, but the Commission in its effort to avoid tariff shock and protect the interests of the consumers staggers the process of recovery over a span years. Whenever the Commission directs special appropriation of revenue towards losses allowed to be passed through, the Commission in effect means that the tariff burden of the consumers relating to the past period which was not included in the tariff of the past period to avoid tariff shock then, is now allowed in the tariff.

ORDER

15. (a) The Hon'ble High Court have directed the Commission to consider the issue as to whether the benefits of the downward change in the revenue requirement for the year 2002-03 amounting to Rs.78.52 crore should entirely be passed on to Gridco and the four distribution companies and whether this was consistent with the provisions of Section 26(1) of the OER Act, 1995 and also the financial principles laid down under section 57 and 57-A of the Electricity (Supply) Act, 1948 read with 6th Schedule thereto. We produce below the relevant portion of Section 26 of the OER Act, 1995 for clarity.

"Licensee's revenue and tariffs – 26 (ii) The Commission shall, save as provided in sub-section (3), be entitled to prescribe the terms and conditions for the determination of the licensees revenue and tariffs by regulations duly published in the Gazette and in such other manner as the Commission considers appropriate and, for doing so, the commission shall be bound by the following parameters, namely –

- (a) the financial principles and their applications provided in sections 57 and 57-A of the Electricity (Supply) Act, 1948 and in the Sixth Schedule thereto:*
- (b) the factors which would encourage efficiency, economy use of the resources , good performance, optimum investments, performance of license conditions and other matters which the Commission considers appropriate for the purposes of this Act and*
- (c) the interest of the consumers.*

(iii) Where the Commission departs from factors specified in the Sixth Schedule to the Electricity (Supply) Act, 1948 while determining the licensees revenues and tariffs, it shall record the reasons therefor in writing.

(b) The OER Act, 1995, among other things, also gives liberty to the Commission to depart from the provisions of Sixth Schedule of the Electricity (Supply) Act, 1948 recording the reasons for the deviations which, of course are not applicable in the present case, as the Commission has gone by the provision of Sixth Schedule of the Supply Act, 1948 while deciding the issue. The provisions of the Sixth Schedule needs to be analysed about the apportionment of 78.52 crore. The provisions of Sixth Schedule is quoted as under:-

“(1) If the clear profit of a licensee in any year account is in excess of the amount of reasonable return, one-third of such excess, not exceeding [five percent] of the amount of reasonable return, shall be at the disposal of the undertaking. Of the balance of the excess, one-half shall be appropriated to a reserve which shall be called the Tariffs and Dividends Control Reserve and the remaining half shall either be distributed in the form of a proportional rebate on the amounts collected from the sale of electricity and meter rent also or carried forward in the accounts of the licensee for distribution to the consumers in future, in such manner as the State government may direct.

(2) The Tariffs and Dividends Control Reserve shall be available for disposal by the licensee only to the extent by which the clear profit is less than the reasonable return in any year of account”

(c) From the above mentioned paragraph, it is evident that clear profit in any year account in excess of the amount of reasonable return can be appropriated in the manner mentioned above. In the Sixth Schedule para (xvii) para 2 the clear profit is defined as under:-

*(2) “clear profit” means –
the difference between the amount of income and the sum of expenditure plus specific appropriations, made up in each case as follows:-*

(a) income derived from –

- (i) gross receipts from sale of energy, less discounts applicable thereby;*
- (ii) rental of meters and other apparatus hired to consumers*
- (iii) sale and repair of lamps and apparatus*
- (iv) rents, less outgoings not otherwise provided for*
- (v) transfer fees*
- (vi) investments, fixed and call deposits and bank balances*
- (vii) other general receipts accountable in the assessment of Indian income-tax and arising from and ancillary or incidental to the business of electricity supply –*

(b) [expenditure properly incurred on]-

- (i) generation and purchase of energy*
- (ii) distribution and sale of energy*
- (iii) rents, rates and taxes, other than all taxed on income and profits;*
- (iv) interest on loans advanced by the Board*

(iv-a) interest on loans borrowed from organisations or institutions approved by the State govt.
 (iv-b) interest on debentures issued by the licensee;
 (v) interest on security deposits;
 (vi) legal charges
 (vii) bad debts
 (viii) auditor's fees
 (ix) management including managing agent's remuneration as provided for in para XIII
 (x) depreciation, computed as [hereinbefore] set out
 (xi) other expenses [excluding interest on debentures and loans] admissible under the law for the time being in force in the assessment of Indian Income-tax and arising from and ancillary or incidental to the business of electricity supply;
 (xii) contributions to provident fund, staff pension and gratuity computed under any law for the time being in force or any such scheme as is approved by the State Govt.
 (xii-a) expenses on apprentice and other training schemes;
 (xiii) bonus paid to the employees of the undertaking –
 (a) where any dispute regarding such bonus has been referred to any tribunal or other authority under any law for the time being in force relating to industrial or labour disputes. In accordance with the decision of such tribunal or authority;
 (b) in any other case, with the approval of the State Government;]
 (c) special appropriations sufficient to cover-
 (d) (i) previous losses (that is to say excess of expenditure over income) which have arisen from the business of electricity supply to the extent in any year [permitted by the State Government];
 (ii) all taxes on income and profits;
 (iii) instalments of written-down amounts in respect of intangible assets and new capital issue expenses to the extent in any year actually appropriated for the purpose in the books of the undertaking; provided that the amounts so appropriated shall not exceed the amount found by dividing the written-down cost of such assets by the number of complete years remaining before the next option of purchase under the licence arises;
 (iv) contributions to the Contingency Reserve, computed as [hereinbefore] set out;
 (v) contributions towards arrears of depreciation;
 [(v-a) contributions to the Development Reserve referred to in para V-A]
 [(v-b) debt redemption obligation of the private licensees which may be done on a year to year basis, taking into account the requirements of debt redemption and resource generation through depreciation, retained surplus;]
 (vi) other special appropriations permitted by the State Government."

(d) From the above-mentioned definition of clear profit, it is quite obvious that the same will be arrived at as a difference between income and expenditure properly incurred. Special appropriations sufficient to cover previous

losses are also included as an expenditure as will be seen in para 2(c) quoted above.

(e) According to the Sixth Schedule special appropriations which is termed, as a regulatory asset is a necessary expenditure which is to be included in the revenue requirement of the licensees. Commission did not adjust the amount in earlier Tariffs, as it would have raised the retail tariff. In the present case, a downward change in the revenue requirement after application of all correctives provided scope for such adjustment without raising the consumer tariff. In the instance case, Commission had adjusted special appropriations termed as Regulatory Asset amounting to Rs.78.52 crore out of Rs.113.78 crore which has been carried forward from the past year 1999-00 as a difference in power purchase cost based on Audited Accounts of the licensees.

(f) It may be pointed out that the past losses of Rs.113.78 crore have been treated as Regulatory Asset in view of the Commission's decision in the previous tariff years. Ordinarily the amount of Rs.113.78 crore would have been allowed to be included in the tariff of the relevant year or the immediate subsequent year in which such losses occurred. However, this would have caused a tariff shock. The Commission therefore, postponed the pass through of Rs.113.78 crore. This amount was therefore, a duly recognised liability in the tariff orders of the previous year to be borne by the consumers in the subsequent years. When the benefit of downward change in the revenue requirements for the year 2002-03 due to change in depreciation policy etc. was available, the Commission allowed the special appropriation of the past losses to the extent of Rs.78.52 crore. The Commission has therefore, in effect duly given the benefits of downward changes mentioned above to the consumers subject however, that the amount has been adjusted against the obligations of the consumers to meet the increase in tariff which the licensees were entitled to in the past years but such increase was postponed to avoid tariff shock.

(g) All the other objections raised by the objectors do not arise out of the order passed by the Hon'ble High Court. In any event all such objections were made during the tariff hearing of the year 2002-03 and have been considered in the tariff order dated 19.04.2002.

(h) The Commission therefore, is of the considered opinion after hearing the objectors, that the sum of Rs.78.52 crore, a portion of the regulatory asset under special appropriation, is a necessary expenditure and need to be included in the Revenue Requirement of the licensees for FY 2002-03. By this adjustment, the Bulk Supply Tariff and Retail Supply Tariff will remain unaffected in accordance with Commission's Tariff Order dated 19.04.2002.

(B.C. Jena)
MEMBER

(D.C. Sahoo)
CHAIRMAN