

2. Date on which the Order Appeal against is communicated and proof thereof, if any :

The Order Appeal against was received by the Appellant on 28th March, 2010 from OERC along with a covering letter.

3. The address of the Appellant for service is as set out hereunder:

- (i) Postal address including Pin code:
Plot No.N-1/22, Nayapalli, IRC Village, Bhubaneswar, Orissa PIN-751012. All correspondence may be directed to the advocates representing the Appellant.
- (ii) Phone No. including Mobile No.: 0680-2202348,,
0674-2558737, 09437055180,
- (iii) Email: southco@southcoorissa.com
- (iii)** Fax: 0674-2558343, 0680-2202261,2217642
- (iv)** Address of Counsel with phone no., fax no., email:
Mulla & Mulla & Cragie Blunt & Caroe,
207/502, Nilgiri Apartments, 9, Barakhamba road, New Delhi 110001. Phone: 23321501-04-07,
Fax: 23321502,
email: smieetaainna@mullas.net & smita.inna@gmail.com

4. The address of the Respondents for service of all notices in the appeal are as set out hereunder:

- (i) Orissa Electricity Regulatory Commission,
Bidyut Niyamak Bhawan, Unit-VIII,
Bhubaneswar 751012, Dist: Khurda, Orissa.
Mobile No. : 09937085217
PhoneNo.0674-2393097,
FaxNo.0674-2393306,
email: oriarc@rediffmail.com
Address of the Counsel : not available
- (ii) Orissa Electrical Consumers' Association,
Sibasakti Medicine Complex, B.K. Road, Cuttack
Phone, Fax, not available
Email: not available
Address of Counsel: not available

- (iii) GRIDCO, Janpath, Bhubaneswar
Phone, Fax, not available
Email: not available
Address of Counsel: not available

- (iv) Department of Energy,
Govt of Orissa
Phone, Fax, not available
Email: not available
Address of Counsel: not available

5. Jurisdiction:

The Appellant declare that the said matter, the directions, decisions and order against which they want redressal is within the jurisdiction of the Hon'ble ATE.

6. Limitation:

The Order was passed on 20th March, 2010 and received by the Appellant on 29th march, 2010 under cover of a letter, a copy whereof annexed and marked as **Annexure – 1**. The Appeal is within time.

7. Facts of the Case:

- 7.1. The Appellant is a Distribution Company in the State of Orissa registered under the provisions of the Companies Act, 1956 and is inter alia, a Distribution and Retail Supply Licensee in the Western part in the State of Orissa.

- 7.2 Respondent No.1 is the Orissa Electricity Regulatory Commission (herein after referred as 'OERC') constituted under the provisions of the said Act and is a Commission under the provisions of Section 82 of the Electricity Act, 2003 (hereinafter referred to as "the Electricity Act").

- 7.3 Respondent Nos. 2 to 34 are parties who objected to the proposal submitted by SOUTHCO for their ARR and Retail Supply Tariff.
- 7.4 By reason of the process of reforms in the electricity sector, the Appellant is a licensee carrying out distribution and retail supply to the Southern part of the state of Orissa since 1st April 1999 along with other Distribution Licensees namely North Eastern Electricity Supply Company of Orissa Ltd. (NESCO) and Western Electricity Supply Company of Orissa Ltd. (WESCO) (hereinafter referred to as "DISCOMS").
- 7.5 The Appellant filed an application before the OERC, being Case No.143 of 2009 for approval of its Annual Revenue Requirement (ARR) and Retail Supply Tariff (RST) for FY 2010-11 on 30.11.2009. The extract of the application in so far as the same is relevant to the issues in question in the present petition, is hereto annexed and marked **Annexure – 2**. The Appellant craves leave to refer to the said ARR and RST proposals to facts.
- 7.6 To the Appellant proposals 34 objections were received from various parties and reply to all the points/ issues raised were submitted to the objectors with a copy to OERC. Appellant craves leave to refer to the objections and the rejoinder to the objections to the ARR and RST proposal, when produced.
- 7.7 OERC after hearing the parties passed an Order on the application of the Appellant for approval of ARR and Retail Supply Tariff (RST) for FY 2010-11 on March 20, 2010, copy of the said Order dated 20-03-2010 passed in Case No.143 of 2009. The RST for DISCOMs was determined by a Common Order.
8. (a) **Facts in Issue:**
As stated in paragraphs 7 and 9 herein.
- (b) **Questions of Law:**
- 8.1 Whether the OERC was right in approving the distribution loss levels, collection efficiency and AT&C loss levels of the DISCOMs for

2010-11 without taking into consideration the opening loss levels of the utilities and findings of the Abraham Committee Report.

- 8.2 Whether the OERC was right in approving the sales revenue of the Appellants without taking into account the existing power regulation scenario in the state and its impact on the revenue flows for 2010-11
- 8.3 Whether OERC was right in disallowing the arrears payments arising out of 6th Pay Commission and Wage Board Arrears and actuarial valuations of terminal benefits due while approving the employees expenses for the year 2010-11 in the impugned Order.
- 8.4 Whether the OERC was right in disallowing the Repair & Maintenance Expenses, Administrative & General Expenses as proposed by the Appellants for the year 2010-11.
- 8.5 Whether the OERC was right in continuing with the truing up exercise on a provisional basis without deciding upfront the principles of truing exercise
- 8.6 Whether OERC was right in computing load factor on the basis of maximum demand only

9. **Grounds of Relief with Legal Provisions:**

- 9.1 OERC has erred by determining the normative targets of distribution losses, collection efficiency and AT&C loss levels without taking into account the opening loss levels of the utilities and findings of the Abraham Committee and guidelines of the R-APDRP, MoP, Govt of India.
- 9.2 OERC has erred in estimating the revenues of the Appellant by assuming extra sales in the LT Category and approving sales in the HT& EHT category without taking into consideration the restrictions on account of power regulation in the state.

- 9.3 OERC has erred in disallowing the inclusion of legitimate costs arising out of arrear payments due to 6th Pay Commission and Wage Board revision and terminal benefits in the employee costs of the Appellant for FY 2010-11 being the impugned order.
- 9.4 OERC has erred in disallowing the genuine Repair & Maintenance and Admin & General Expenses proposed by the Appellant for FY 2010-11 which would affect the operational flexibility of the Discoms.
- 9.5 OERC has erred by not deciding upfront the principles of truing up and continuing to determine truing up on a provisional basis based on frequently changing basis.
- 9.6 The Retail Supply Tariff Order for FY 2010-11 is challenged essentially under the following heads; which have been elaborated hereinafter
- a. Unrealistic Distribution Loss Targets
 - b. Revenue Computation
 - c. Employee Costs
 - d. Repair & Maintenance Expenses
 - e. Administrative & General Expenses
 - f. Truing Up
- 9.6.1 Unrealistic Distribution Loss Targets – That, OERC has erred in the determination of distribution loss targets and AT&C losses to be achieved by the Appellants in FY 2010-11.
- 9.6.1.1 That SOUTHCO, based on the actual AT&C loss levels of FY 2008-09 (being the previous year), and estimated AT&C loss levels for FY 2009-10 (being the current year) had proposed the AT&C Loss levels to be achieved for FY 2010-11 (for the ensuring year), in accordance with regulation 5 (3) of the OERC (Terms & Conditions for Determination of Tariff) Regulation 2004, the details of which are as under.

	FY2008-09 (Audited)	FY 2009-10 (Estimated)	FY 2010-11 (Estimated)	OERC Approvals

		by Appellant)	by Appellant)	for FY 2010-11
Distribution Loss	47.78%	46.77%	42.76%	27.82%
Collection Efficiency	93.88%	96%	97%	98%
AT&C loss	50.98%	48.90%	44.47%	29.27%

9.6.1.2 That OERC, in para 296 of the impugned order, while determining the loss reduction target for FY 2010-11, had taken note of the Sovan Kanungo Committee observations which had recommended an aggressive loss reduction trajectory, interim funding support to the tune of Rs 3240 Cr for the reform process to come to fruition and requisite administrative support from the State Government in terms of police escort for carrying out special drives to prevent unauthorized use and consumption of electricity.

9.6.1.3 That OERC framed the Terms and Conditions for determination of Tariff Regulation under Electricity Act 2003, wherein the method of the fixation of the loss reduction target is provided. The provision 5(3) of the said regulation is reproduced below;

"5. XX

(3)Distribution Loss

- (a) To set the base line of distribution loss estimate, the Commission may either require the licensee to carry out proper loss estimation studies under its supervision, or initiate a study itself.
- (b) The Commission shall approve a realistic and achievable loss target for the year under review based on the opening loss levels, licensee's filings, submissions and objections raised by the stakeholders. This approved loss target will be used for computing sale of power to consumers for that year."

OERC has fixed the unrealistic and unachievable Distribution Loss target contrary to the provision of the aforesaid regulation without considering the base level of distribution losses.

9.6.1.4 That OERC, in para 299 of the impugned order had also mentioned about the Abraham Committee appointed by the Ministry of Power, Govt of India, which had recommended fixation of AT& C loss reduction targets as per the prevailing loss levels in the utility such as -

Utilities having AT&C losses above 40% - reduction by 4% per year

Utilities having AT&C losses between 30 and 40% - reduction by 3% per year

Utilities having AT&C losses between 20 and 30% - reduction by 2% per year

However, the Govt of India guidelines for the R-APDRP during the XIth Plan (dated 22.1.2008) had prescribed AT& C loss reduction targets as under

Utilities having AT&C losses above 30 % - Reduction by 3% per year

Utilities having AT& C losses below 30% - Reduction by 1.5% per year.

However , instead of adhering to the findings of the Abraham Committee, which had prescribed a trajectory of loss levels linked to prevailing loss levels in an utility and being fully seized of the fact that recommendations of the Sovan Kanungo Committee regarding interim funding and administrative support was never implemented in full, the OERC has without taking into account the existing ground realities have fixed normative levels of distribution losses and AT& C targets which are unrealistic and difficult to achieve.

9.6.2 **Computation of Revenue** – **(A) Notional Sales:** That OERC has erred in approving unrealistic loss reduction targets and approving sales in excess of that prayed for. That while approving the quantum of power purchased by the Discoms, the OERC has assumed higher sales in the LT category, which is “notional’ in nature. On account of

such adjustment, the revenues are inflated to the extent of Rs 73.63 Cr for Southco, the details of which are as under

FY 2010-11	Southco	
Sales in MU	Prop	App
LT	923.99	1182.5
HT	234.14	238.8
EHT	290.16	287.8
Total	1448.29	1709.1
SMD in MVA	410	377
Energy Purchase in MU	2530	2368
Distribution Loss %	42.76%	27.82%
D-Loss disallowed		14.94%
Average RST (LT)- Rs per unit		2.08
Notional Revenue in (Rs Cr)		73.63

(B) Non Consideration of Impact of Load Regulation –

- I. That OERC in Case No 1/2010 pertaining to the Order (Protocol) on Power Regulation in the state under Section 23 of the Electricity Act 2003) had issued several directives, under the Load Shedding Protocol, a few of which are as under

Bhubaneswar – One hour morning peak and one hour evening peak
District HQ – One hour morning peak and one hour evening peak
Urban – Two hour during morning peak and one hour during evening peak
Rural - Two hour during morning peak and two hour during evening peak
HT Industries – 25% restriction
EHT Industries – 15% restriction

Copy of the extracts of the Order (Protocol) on Power Regulation in the State under Section 23 of the Electricity Act 2003 is placed as **Annexure - 3.**

- II. That the Appellants, on 8th March 2010, prior to the promulgation of the Order on ARR & RST for FY 2010-11 filed submissions before the OERC highlighting the impact of power regulation on the revenue inflow of the

licensees on account of load regulation on the industrial and commercial categories of the consumers, being the subsidizing categories, and, calling for back to back support in the Bulk Supply Price and also for withdrawal of incentives to HT & EHT Categories which were otherwise given in a power surplus scenario. The Discoms prayed for back to back adjustment in the input cost i.e the BSP of the licensee and requested for truing up the impact of the power regulation effected during the current year 2009-10 and the financial implications through measures including subsidy support from Govt of Orissa. A copy of the said submissions is placed as **Annexure - 4**.

- III. The financial impact on account of such restriction was to the tune of Rs 8.53 Cr for Southco. The OERC was requested to pass an order as deemed fit for back to back adjustment in arrear BSP dues as input adjustment costs. The possibility of the Discoms not being able to fulfill their obligation to make full BSP payment on account of low revenue receipts was mentioned and necessary orders taking into account the emergent situation was sought for. That OERC in para 295 of the impugned order has mentioned about the reasons for power regulation and the procedures and stipulations prescribed by the Commission in its Order dated 14.01.2010 in Case No 1/2010. It was further clarified that as per as per Para 23 (20) of the said Order dtd.14.01.2010, the industries in their area were to decide among themselves for staggered weekly holiday/closure days. It was stated that the Regulation protocol is applicable to such industries like LT industries who are not subject to round the clock load restrictions of 25% as in the case of HT industries and 15% in case of EHT industries, and that, weekly power holiday is not applicable to continuous processing industries such as Ferro Alloys, Cold Storage and Ice factory etc.
- IV. That OERC in para 329 of the impugned order pertaining to levy of Demand Charge in case of power cut stated that vide Case no. 1/2010, Order (Protocol) on power Regulation in the State under Section 23 of the Electricity Act, 2003 has been issued, and according to the order, the demand of EHT Industries & HT Industries are to be restricted by 15% & 25% respectively. The demand charge of those industries whose load has been restricted shall be billed on the restricted demand and the load

factor to be calculated also on the restricted demand. For the purposes of billing, demand charges shall be calculated on maximum demand recorded or 80% of restricted contact demand which ever is higher. In all other cases of unrestricted supply the consumer is liable to pay the demand charges as per existing Regulation and or Tariff Order. This also conforms to the provision under Regulation 110 of the OERC Distribution (Condition of Supply) Code, 2004.

However, OERC in spite of being fully seized of the matters in hand and being aware of the difficulties arising out of load restriction and its impact on the revenue inflows of the Appellants erred in passing an order treated it as a "business as usual" case.

9.6.3 **Employees Expenses** – The Appellant herein proposed employee expenses for FY 2010-11 on the following heads :

- Salaries, dearness allowance and bonus of existing employees and new recruits – Rs 81.86 Crs.
- Other Staff Costs (Reimbursement of Medical Expenses, HR, leave encashment, ex-gratia and etc – Rs 15.00 Cr
- Terminal Benefits (Pension, Gratuity and leave)–Rs 102.17 Crore
- Staff Welfare Expenses – Rs 0.37 Cr

The total employee costs (after capitalization) proposed for FY 2010-11 was to the tune of Rs 199.40 Crs

In the impugned order the approval of employee cost by OERC is discussed in paragraphs 385 to 415. A perusal of Table 57 which shows the proposed employee cost under various heads for FY 2010-11 and the approval thereof for FY 2010-11 would show that OERC has not allowed any arrears which have actually been paid by result of the revision of the pay scales pursuant to the Sixth Pay Commission's Report and the Wage Board. The arrears paid were a part of the proposal, i.e. the ARR Petition filed before OERC which is extracted hereinabove. Item 2 of Table 57 shows that OERC has not allowed anything towards arrears of the Sixth Pay Commission and Wage Board. The purported basis of such disallowance appears in paragraph 386 to 389 of the impugned order. A perusal of paragraph 387 would show that OERC did not provide for arrear payment in the ARR of

2009-10 since according to it the same would have allowed a sizeable increase in the ARR which would have had a cascading effect of tariff. However, in the tariff order for FY 2009-10 in paragraph 328 to 330 while the Commission provisionally allowed revision at an average rate of 30% on pre-revised basic pay, DA and HRA for FY 2009-10 only without considering the payment towards arrear . It further held that the differential amount if any would be taken care of in truing up exercise after the audited accounts are available to OERC and after being satisfied that extra efforts have been made to enhance the billing and collection efficiency. This was on the alleged basis that such differential amount was to be met upon efficient collection of revenue as held in paragraph 328 of the tariff order for FY 2009-10.

While SOUTHCO is entitled to such arrears as being incurred towards employee cost under the tariff regulations, there was no reason or justification for OERC at the instance to link the payment of the same towards the ability of SOUTHCO to enhance the billing and collecting efficiency. These costs were undoubtedly allowed nonetheless provisionally in the tariff order for FY 2009-10.

It is submitted that OERC erred in linking the payment of such arrears towards the billing and collection efficiency of the DISCOMs. It is submitted that the same has no relevance to the entitlement of the DISCOMs towards employee costs in the ARR for FY 2010-11.

Without prejudice to above, It is submitted that OERC has erred in holding that the DISCOMs had not complied with the orders of the Commission as set out in paragraphs 387 and 388 of the impugned order. OERC erred in not allowing payment of arrear salary on the alleged ground that the DISCOMs has not complied with the orders of the Commission. OERC has failed to appreciate that these arrears were paid towards legitimate employee cost as a result of the Sixth Pay Commission and the Wage Board and the DISCOMs were entitled to the same under the tariff regulations. The said arrear salary was never allowed in the ARR of the DISCOMs. In fact, in the tariff order for FY 2009-10 OERC had held that the differential amount would be taken care of in truing up exercise which OERC has failed to do on extraneous grounds such as those

reflected in paragraphs 388 and 389 of the impugned order. The chronology of events mentioned above would show that the DISCOMs had complied with the directions given by OERC in its letter dated 29th January, 2010 and information on the collection of revenue was duly submitted to OERC on , i.e., well before the impugned tariff order having been passed. Thus OERC while approving employee cost ought to have considered the payment of arrears made by the DISCOMs to its employees amounting to Rs. 18.23 Cr in FY 2009-10 and such allowance would be definitely a part of the truing up exercise agreed to be undertaken by OERC in the tariff order for FY 2009-10.

In Table 56 OERC has approved terminal liabilities of the DISCOMs as set out therein. Insofar as SOUTHCO is concerned an amount of Rs. 58.22 crore has been allowed to the DISCOMs towards terminal liabilities for FY 2010-11. This is as against the proposed amount for FY 2010-11 of Rs. 103.78 crore. It is submitted that the assumption on the basis of which the calculation is made in table 55 of the impugned order is incorrect inter alia for the reason that the valuation assumed is on 31st March, 2008. These figures have in fact undergone a sea change by principally for two reasons one being the recruitment of new employees and the retirement of existing employees and by reason of the revision in the pay scales of the employees as a result of the Sixth Pay Commission and the Wage Board. A provision is required to be made for the employees who are newly appointed and there is a payout for the employees who retire. This ought to have been taken into account by the Hon'ble Commission by considering the actuarial valuation as on 31st March, 2008. DISCOMs had submitted their proposal for admitting the expenses towards terminal liabilities as on 21.03.2009 and projected to 31.03.2010 based on recent the actuarial valuation by the same Actuaries i.e. Mr. Budhdev Chatterjee.. There is nothing in the impugned order more particularly paragraphs 408 to 415 that suggests that actuary valuation study conducted by Mr. Budhdev Chatterjee is either incorrect or unreliable. Hon'ble comission has not disputed in findings of the said actuary study and has unilaterally proceeded to appoint an independent actuary merely to delay the approval of terminal benefit of the employees of the DISCOMs in the current tariff order. In the circumstances, it is submitted that as explained by the DISCOMs in the ARR relevant extract

whereof have already been produced above. SOUTHCO was entitled to a sum of Rs. 103.78 crore towards terminal liabilities in the present tariff order.

9.6.4 Repair and Maintenance Expenses - The proposal of the DISCOMs for approval of repair and maintenance expenses is given in paragraph 426 at Table 60 of the impugned order. The proposal is under two heads (a) proposed for the FY 2010-11 which is the repair and maintenance expenses proposed to be incurred for the current year, and (b) proposed to be passed on for the previous years being the difference between the approval and the actual as contained in Table 44 of the impugned order. OERC has disallowed the amount towards repair and maintenance expenses being the difference between the amount spent during the relevant year from FY 1999-2000 onwards as per the audited figures and the amount approved under the said head on the alleged ground that non-utilization of the said amount did not result in reduction of tariff for the relevant years. However OERC failed to appreciate that as stated hereinabove all receivables of DISCOMs were escrowed with GRIDCO. The realization of the escrow account was towards power purchase cost, employee cost/expenses and repair and maintenance cost etc. The facts mentioned hereinabove along with relevant documents would show that the DISCOMs did not have sufficient funds to expand the approved costs towards repair and maintenance expenditure. Further it is submitted that there is no question of any unspent amount being counted twice for fixation of tariff. Admittedly OERC has done a truing up exercise as is apparent from paragraphs 465 to 478. A perusal of paragraph 475 would show that insofar as repair and maintenance expenses are concerned the same are allowed as per the audited actual. Thus the expenditure which is considered as a pass through in the tariff on truing up is such expenditure which is audited and actually incurred and not approved for the relevant financial year, for example in the case of SOUTHCO as is apparent from Table 44 an amount of Rs. 18.38 crore was approved for FY 2007-08 and the audited figure show that

SOUTHCO was able to spend only Rs. 5.50 crore by reason constraint mentioned hereinabove in FY 2007-08. Such expenditure as per the audited accounts having been trued up would be the actually figure considered as a pass through in tariff and in the approved figure which is always on an assumption at the beginning for which it is approved. It is for this specific reason that truing up exercise is carried out. It is submitted that SOUTHCO is entitled to such differ expenditure mentioned in paragraph B above which is on a normative basis and which could be expanded in the current year. OERC having considered the distribution losses on a normative basis has erred in disallowing the said amount of Rs. 69.67 crore for reasons mentioned in paragraph 427 of the impugned order.

9.6.5 **Administrative & General Expenses** – The Appellants in their tariff proposal for FY 2010-11, have proposed approval of A&G expenses under two heads one being normal A&G expenses and the other being additional A& G expenses. In the case of SOUTHCO Rs. 18.07 crore was claimed towards normal A& G expenses and Rs. 16.63 crore was claimed towards additional expenses, the details of which are as under.

	Proposal	OERC Approval
Normal A&G Expenses	18.07	11.94
Additional A&G Expenses		
Franchisee	1.22	0
Spot Billing additional coverage	1.04	0
Replacement & shifting of meters	3.42	0
Consumer Indexing and networking Documentation	1.18	0
IT Automation Expenses	0.02	0
Commercial Call Centers	1.70	2.28
Cess on building construction and electrical installation	2.43	0
Energy Police Station	3.74	3.74
Others	1.88	0
Total	34.70	17.96

OERC erred in holding that additional A&G expenses that insofar as additional expenses are concerned it may take a view to allow them separately on submission of documentary evidence including demand note raised by the State Government. Table 59 would show that the following expenses have been allowed as additional expenses as against expenses claimed by SOUTHCO.

OERC erred in holding that declining employee base, computerization and IT automation will lead to a decline in A&G expenses whereas in reality such costs would increase with the massive additions of consumers following the Rajiv Gandhi Grameen Vidyutikaran Yojana (RGGVY) and other programme. It is submitted that consumer indexing and network documentation are the first steps to IT Automation which ought to have been allowed as a prudent cost.

The Appellants submit that, they are required to pay Cess as per Building and Other Construction Workers (RE&CS) Act 1996, being a sovereign levy ought to have been considered as a part of the A&G expenses. In the circumstances, it is submitted that SOUTHCO was fully justified in claiming expenditure towards aforesaid items and OERC erred in not approving the said amount of Rs. 34.70 crore towards A&G Expenses.

9.6.6 Truing Up

It is settled position of law that a Regulatory Commission is required to carry out a truing up expenses at the end of a financial year while approving the ARR for the next financial year.

A perusal of SOUTHCO's ARR proposal for FY 2010-11 would show that OERC has failed to carry out the truing up for the purpose and continues to do so on a provisional basis since the last 3 years.

The principal reason being, that there are no regulations/ guidelines laid down by OERC for the manner in which a truing up expenses required to be carried out for distribution licensees. As a result of the aforesaid, OERC has not only been postponing the truing up expenses though the same appearing on the face of the record as having provisional truing up

the accounts, thereby causing grave prejudice to the DISCOMs. Any amortization of regulatory assets every year being granted to the DISCOMs is on an adhoc/provisional basis as the truing up expenses itself is on an adhoc basis. Paragraphs 465 to 478 would clearly show that OERC has changed the principles of truing up from year to year which is clear from the following:

- OERC vide para 6.6 of the RST Order dated 22.03.2007 for FY 2007-08 stated that the Hon'ble Commission had provisionally approved the truing up figures of DISCOMs which were subject to finalization after discussion with all the stakeholders, and had directed the Discoms vide para 7.24.5 of the said order to file their comments of DISCOMs within 15th May 2007. Again, OERC vide para 413 to 415 of the RST Order for FY 2008-09 had reiterated that the truing up figures calculated previously were provisional and that the same will be finalized after necessary compliance of different directives. Likewise, OERC vide para 400 of the RST Order for FY 2009-10, stated that, in continuation to the earlier truing up exercise the figures have been updated up to 2007-08 on provisional basis based on availability of audited accounts of the DISCOMs. In RST Order for FY 2010-11, vide para 469 has decided to defer the truing up exercise on the grounds that the receivables audit report submitted till 31.03.2009 needs to be updated to 31.3.2009. Thus for 4 consecutive years, in the absence of clear principles and guidelines truing up is done on a provisional basis leading to regulatory uncertainty, and as a result the Discoms are unable to recover such costs.
- That, it is most respectfully submitted that separate principles are being adopted for each element of cost and revenue for truing up purposes and that, there needs to have consistency in adoption of such principles as mentioned in the tables below

Table - 50, Retail Supply Tariff Order for FY 2007-2008							
	FY00	FY01	FY02	FY03	FY04	FY05	FY06
Power Purchase Cost	Accepted as per Audited Accounts		As per audited accounts, power purchase costs accepted in full				
Distribution Losses	Audited Distribution losses accepted		Distribution losses as per Kanungo Committee filing	Audited Distribution Losses accepted for true-up; same as the benchmark accepted in the Business Plan Order		Benchmark losses as per the Business Plan targets accepted for true-up	
Sales	As per Audited Accounts		Estimated, as per actual power purchase and distribution loss as filed by the Distcos	Estimated as per the Actual Power Purchase Costs and benchmark distribution losses as per the Business Plan		Estimated as per the Actual Power Purchase Costs and benchmark distribution losses as per the Business Plan	

Based on the above mentioned principles, the Commission derived the truing up requirement for SOUTHCO and resulted in a shortfall of Rs.260.44 Crore up to 2005-06.

Table-63, Retail Supply Tariff Order for FY 2009-2010									
	FY-00	FY-01	FY-02	FY-03	FY-04	FY-05	FY-06	FY-07	FY-08
Power Purchase Cost	As per the audited accounts, power purchase costs accepted in full								
Distribution Losses	Audited Distribution losses accepted		Distribution losses as per Kanungo Committee filing	Benchmark losses as per the Business Plan order accepted for true-up					

Table-63, Retail Supply Tariff Order for FY 2009-2010									
	FY-00	FY-01	FY-02	FY-03	FY-04	FY-05	FY-06	FY-07	FY-08
Sales	As per Audited Accounts		Estimated, as per Actual Power purchase and D-Loss as filed by the DISCOMs	Estimated as per the Actual Power Purchase Costs and benchmark Distribution losses as per the Business Plan order					
Employee Cost	Allowed as per Audited actual								
A&G Expenses	Allowed as per figures approved in the ARR								
R&M Expenses	Allowed as per Audited actual								
Provision for bad and doubtful debt	Allowed as per figures approved in ARR.								
Depreciation	Allowed as per Audited actual								
Interest chargeable to Revenue	Allowed as per Audited actual								
RoE	Not considered as a part of true up								
Contingency reserve	Not considered as a part of true up								

It is respectfully submitted that in the RST order FY 2009-2010 dated 20.03.2009, OERC updated the truing up exercise up to FY 2007-08 on the basis of audited accounts of the licensee, but in a totally different method. The method followed during FY 2007-08 has not been adhered to and yet again the figures starting from the beginning i.e from FY 1999-2000 to FY 2007-08, has been done in a different manner. The outcome of such an exercise leading to constant changing of figures is as under :-

Table 1

As per RST Order FY 2007-08 dated 22.03.2007				
Financial Year	As per OERC	As per OERC	As per OERC	As per OERC
	ARR based on audited accounts	ARR considered for truing up	Total Revenue considered for truing up	Truing up requirement
(1)	(2)	(3)	(4)	(5)=(4)-(3)
FY 1999-00	291.35	261.77	204.82	(56.95)
FY 2000-01	316.91	272.70	221.71	(50.99)
FY 2001-02	332.83	282.17	249.62	(32.55)
FY 2002-03	347.46	273.58	265.24	(8.34)
FY 2003-04	338.91	289.87	261.36	(28.51)
FY 2004-05	360.19	345.16	265.72	(79.43)
FY 2005-06	317.52	308.93	305.26	(3.67)
				(260.44)

Table 2

Revised Table as per hearing dated 14.05.2007				
Financial Year	As per OERC	As per OERC	As per OERC	As per OERC
	ARR based on audited accounts	ARR considered for truing up	Total Revenue considered for truing up	Truing up requirement
(1)	(2)	(3)	(4)	(5)=(4)-(3)
FY 1999-00	291.35	263.29	204.82	(58.47)
FY 2000-01	316.91	275.57	221.71	(53.86)
FY 2001-02	332.83	287.40	249.62	(37.78)
FY 2002-03	347.46	287.29	265.24	(22.05)
FY 2003-04	338.91	303.64	261.32	(42.32)
FY 2004-05	360.19	359.54	265.72	(93.82)
FY 2005-06	317.52	314.26	305.27	(8.99)
				(317.29)

Table 3

SOUTHCO	1999-00	2000-01	2001-02	2002-03	2003-04	2004-05	2005-06	2006-07	2007-08	Total Gap
Gap in Revenue Requirement	16.97	14.13	29.51	40.23	36.86	(45.88)	37.38	29.86	5.34	
Gap in Revenue from Sale of Power	(34.66)	(33.61)	(11.28)	(45.34)	(26.65)	(6.36)	(17.02)	(5.26)	32.95	
Total Gap (for the year)	(17.69)	(19.48)	18.23	(5.11)	10.21	(52.24)	20.35	24.60	38.28	
Add: Approved gap in ARR allowed by the Commission	(25.91)	(31.11)	(53.13)	(13.38)	(49.33)	(34.27)	(15.60)	(45.31)	(3.78)	
Gap considered for True up	(43.60)	(50.59)	(34.90)	(18.49)	(39.12)	(86.51)	4.75	(20.71)	34.50	
Total Gap(+/-)										(254.66)
Regulatory Asset allowed by the commission										
2006-07										31.91
2007-08										31.91
2008-09										0.00
Total Gap towards true up										(190.84)

From the above three tables 1, 2 &3, it is evident that in the absence of truing up principles, the outcome of the truing up exercise is uncertain. In this particular instance the licensee is shown to have a surplus of Rs.254.66 crs which is not the case. For the years 2006-07 and 2007-08, OERC approved the ARR`s which showed a Gap of Rs.51.34 crs and Rs.3.78 Cr respectively and while approving the ARR for FY 10, in table 61, the Gap is shown as Rs.20.71 crs and surplus of Rs.34.50 crs respectively for the year 2006-07 and 2007-08 which is erroneous.

On facts the receivable audit for the DISCOMs is admittedly conducted up to 31st March, 2005. It is submitted that there was no warrant or justification for OERC to postpone truing up expenses till the pronouncement of final order of the receivable audit of the DISCOMs at least till 31st March, 2005.

OERC vide para 6.4.5 of the RST Order for FY 2007-08 had directed the Discoms to submit the receivables audit report by 31.12.2007, which was complied to by SOUTHCO on 28.02.2008. The Appellants were further directed by OERC to submit soft copies of the Receivables Audit findings, which was duly complied with on 20.05.2008. Certain queries were raised by Gridco, which were replied to by the Discoms on 26.09.2009.

On the basis of the aforesaid data SOUTHCO would be entitled to amortization of a regulatory asset amounting to Rs.560 Crs upto 31st March, 2005. The aforesaid figure has been arrived at on a truing up being carried out up to 31st March, 2005. The receivables audit was conducted under the auspices of the OERC wherein CA firms registered in the state of Orissa were deployed for conducting the receivables audit of LT Category of consumers starting from 1.4.99 on a consumer wise basis. The terms of deployment and remuneration were also fixed by the Hon`ble Commission.

This submission is without prejudice to SOUTHCO submission that OERC ought to have conducted a truing up exercise upto 31st March, 2009. It is submitted that sufficient data was available with OERC and it was not necessary for OERC to differentiate the same till the pronouncement of the final order on the receivable audit for DISCOMS inasmuch as the same would form a part of the DISCOMS tariff order.

9.6.7 Financial Impact

	Southco	Remarks
Power Purchase Costs of Discoms in Rs Cr	54	Increase in Bulk supply price, transmission tariff and SLDC charges as compared to FY 10
Employees Cost Disallowed in Rs Cr	65.44	On account of 6 th Pay arrears and terminal benefits
Repair & Maintenance Expenses in Rs Cr	77.27	Denial of R&M shortfall in previous years
Administrative & Gen Expenses in Rs Cr	16.74	Disallowance of additional A&G expenses
Cost of Notional Sales in Rs Cr	73.63	Overestimation of sales in LT category

	Southco	Remarks
Financial Impact of Power Regulation in Rs Cr	8.53	Impact on account of 15% restriction in EHT & 25% restriction in HT category
Total	296	

9.6.8 Computation of Load Factor

That Appellant in their ARR Application for FY 11 had proposed for withdrawal of graded slab tariff for HT/EHT Consumers and prayed for computation of load factor as per principles adopted by the OERC in RST Order for FY 2007-08 i.e computation of load factor on the basis of CD or MD whichever is higher.

That OERC in para 349 to 351 of the impugned order has allowed graded slab tariff for HT and EHT Consumers and directed for computation of load factor on the basis of Maximum Demand only.

That OERC in para 286 of the RST Order for FY 2009-10 had directed for calculation of load factor on the basis of maximum demand, which is currently before the Hon`ble Tribunal in Appeal 28,29,33 of 2010 for adjudication.

That OERC, has erred in departing from the principles adopted in RST Order for FY 2007-08 wherein it was held that load factor computation should be made on the basis of consumption ratio and not on load factor as the latter would defeat the purpose of allowing concessional tariff. In the current instance, OERC has allowed concessional tariff but directed for computation of incentive tariff on load factor and not on consumption ratio.

10. **Matters not previously filed or pending with any other Court:**

The Appellant declare that they have not filed any Writ Petition or Suit regarding the matter in respect of which this Appeal has been made before any Court or any other authority nor any such Writ Petition or Suit is pending before any of them.

11. **Specify below explaining the grounds for such relief (s) and the legal provisions, if any, relied upon**

Kindly refer to para 9 above. The Appellant further crave leave and reserves its rights to add to, alter or amend the Appeal and/or grounds in support of the Appeal.

12. Details of interim application, if any, preferred along with this Appeal :

The Appellant do not prefer any separate Interim application at this stage.

13. Details of Appeals, if any preferred before this Tribunal against the said Impugned order/ direction, by Respondents with numbers, dates and interim order, if any, passed in that appeal :

No such Appeal has been preferred either by the Appellant or the Respondents against the above mentioned impugned order / direction.

14. Details of Index:

1. List of Dates and Events.
2. Memo of Appeal with Annexures.

(An index containing the details of the documents in chronological order relied upon is enclosed)

15. Fees for the Appeal:

A BANK draft of ICICI Bank Ltd. for sum of Rs. _____-in favour of the Accounts Officer, Appellate Tribunal for Electricity, in respect of the fee for Appeal is enclosed.

16. List of Enclosures:

1. Vakalatnama
2. Demand Draft for Rs.
3. Index Containing details of documents to be relied upon.

- 17. Whether the order appealed as communicated in original is filed? If not, explain the reason for not filing the same.**

Yes original filed.

- 18. Whether the appellant/s is ready to file written submissions/ arguments before the first hearing after serving the copy of the same on Respondents.**

Yes.

- 19. Whether the copy of memorandum of appeal with all enclosures has been forwarded to all Respondents and all interested parties, if so, enclose postal receipt/ courier receipt in addition to payment of Prescribed process fee.**

Not forwarded, pending issue of notice.

- 20. Any other relevant or material particulars/ details which the Appellant(s) deems necessary to set out:**

At the time of hearing, if need be so.

- 21. Reliefs Sought:**

In view of the facts mentioned in paragraphs 7 above and grounds set out in paragraphs 9 above, the Appellant pray that this Hon'ble ATE may be pleased to grant the following reliefs to the Appellant:

- (a) To direct OERC to redetermine the ARR of Appellant and Retail Supply Tariff for the year 2010-11 by considering the above grounds as proposed by Appellants.

- (b) To determine the ARR of the Appellant and Retail Supply Tariff for the year 2010-11 on the basis of actual loss levels and adhere to the findings of the findings of the Abraham Committee in determining the trajectory for loss reduction
- (c) To direct OERC to take into consideration the impact of load regulation on Appellants revenue and provide a back to back mechanism for adjustment of input costs either through adjustment of bulk supply price or subsidy from Government
- (d) To allow employees costs, R&M and A&G expenses as proposed by the Appellants being critical in operations of Discoms
- (e) To direct OERC to determine the principles of truing up upfront
- (f) To direct OERC to compute Load Factor on the basis of MD or CD whichever is higher and pass further orders as required by this Hon'ble ATE.

Dated at Delhi this day of May, 2010.

Counsel for Appellant

Appellant

DECLARATION BY APPELLANT

The Appellant above named hereby solemnly declares that nothing material has been concealed or suppressed and further declares that the enclosures and types set of material papers relied upon and filed herewith are true copies of the originals/ fair reproduction of the originals/ true translation thereof.

Verified at New Delhi on this at day of May 2010.

Counsel for Appellant

APPELLANT

Verification

I, Sri Tapan Kumar Mishra , S/o. Late Udaya Chandra Mishra, aged 58 years, working as Vice President in the office SOUTHCO, Berhampur, do hereby verify that the contents of the Paras _____ to _____ are true to my personal knowledge / derived from official record and para _____ to _____ are believed to be true on legal advice and that I have not suppressed any material facts.

Date :

Place

Signature of the appellant or
authorized officer

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
NEW DELHI

APPELLATE JURISDICTION

APPEAL No. OF 2010

IN THE MATTER OF :

Southern Electricity Supply Company
of Orissa Limited

... APPELLANT

VERSUS

Orissa Electricity Regulatory Commission
and Others

... RESPONDENTS

AFFIDAVIT

I, Sri Tapan Kumar Mishra, Vice President of the Appellant above named, having my Office at Corporate Office, Courtpeta, Berhampur 760004, do hereby solemnly affirm and state as follows :

1. I say that I am the Vice President of the Appellant above named and as such I am familiar with the facts of the case.
2. I have read and understood the contents of the accompanying Appeal and Annexures thereto.
3. I say that the facts stated in the Appeal are based on information derived from the records of the Appellant and believed by me to be true.
4. I say that the Annexures to the Appeal are true copies of their respective originals.

5. I say that nothing herein is false and no material has been concealed there from.

DEPONENT

VERIFICATION

Verified at _____ on this the 10th day of May, 2010 that the contents of the above Affidavit are true and correct to the best of my knowledge. Nothing material has been concealed nor withheld there from.

DEPONENT

LIST OF DATES AND EVENTS

Sr.No.	Dates	Events
1.	30.11.2009	SOUTHCO filed Application before OERC being Case No.143 of 2009 for approval of their ARR and Determination of Retail Supply Tariff for F.Y.2010-11
2	27.01.2010	Rejoinder to the objections received by the Appellant to the proposal of the ARR and Determination of Retail Supply Tariff for F.Y.2010-11
3	17.02.2010	OERC heard parties on DISCOM's Application for approval of their ARR and Retail Supply Tariff for F.Y. 2010-11
4	20.03.2010	OERC passed Order on DISCOM's Application for approval of ARR and Retail Supply Tariff for F.Y. 2010-11