BEFORE THE ORISSA ELECTRICITY REGULATORY COMMISSION,
Bhubaneswar

Filing No. …………
Case No. …………

IN THE MATTER OF:

Petition under Section 94 of the Electricity Act, 2003 and Section 10(1) of the Orissa Electricity Reform Act, 1995 and inter alia, Regulation No. 70 of the Orissa Electricity Regulatory Commission (Conduct of Business) Regulations, 2004 framed under Section 181 of the Electricity Act, 2003

And

The Order dated February 26, 2005 passed in Case No140 of 2004 (Approval of Annual Revenue Requirement and Determination of Retail Supply Tariff for FY 2004-05) by the Hon'ble Commission

And

The Order dated March 22, 2005 passed in Case No 141 of 2004 (Approval of Annual Revenue Requirement and Determination of Retail Supply Tariff for FY 2005-06) by the Hon'ble Commission

AND

IN THE MATTER OF:

Ms North Eastern Electricity Supply Company of Orissa Ltd
Januganj, Balasore - Petitioner

THE HUMBLE PETITIONER ABOVE NAMED MOST RESPECTFULLY SHOWETH:

The Petitioner, North Eastern Electricity Supply Company of Orissa Limited (NESCO), is a Company registered under the provisions of the Companies Act, 1956 and is, inter alia, Distribution and Retail Supply Licensee in the State of Orissa.

The Petitioner filed a Petition before the Hon'ble Commission being Case No. 140 of 2004 for approval of its Annual Revenue Requirement (ARR) and Retail Supply Tariff for FY 2004-05 on October 28, 2004. The Hon'ble Commission has passed the Order on approval of ARR and Retail Supply Tariff for FY 2004-05 on February 26, 2005 (RST Order for FY 2004-05).

The Petitioner filed a Petition before the Hon'ble Commission being Case No.141 of 2004 for approval of its ARR and Retail Supply Tariff for FY 2005-06 on November 25, 2004. The Hon'ble Commission has passed the Order on approval of ARR and Retail Supply Tariff for FY 2005-06 on March 22, 2005 (RST Order for FY 2005-06).

The petitioner filed a petition for review of order dated 22.3.2005 in the matter of determination of load factor (para 7.14) and reserved its right to file petition through affidavit for review of other issues of the said tariff order. NESCO, by the present combined application, seeks a review/modification of the said Tariff Orders as most of the issues arising of said two Orders are interrelated, as set out herein below.

1 Negative Clear Profit

The Hon’ble Commission was pleased to approve the ARR and Tariff for FY 2004-05 and FY 2005-06 based on revenue deficit of Rs.19.18 Crore and Rs. 22.31 Crore respectively.

It is pertinent to note that the Hon’ble Commission has not met the revenue deficit completely through revenue from tariffs for the period from FY 1999-00 to FY 2003-04 and has not allowed additional revenue requirement towards such past revenue deficits in the subsequent approvals of Annual Revenue Requirement even though the Hon’ble Commission has observed the following vide Clause 6.16 in the RST Order for FY 2003-04:

“*The Commission is aware of the gaps in the overall computation of the realization from tariffs and the consequent Clear Profit computations among the four distribution licensees. The Commission expects to use the plans of the four distribution licensees as well as GRIDCO, to rationalize these differences in its next tariff judgment for FY2004-05.*”

The following Table illustrates that the Petitioner has not been granted revenue recovery to the extent of Rs 204 Crore with respect to the revenue requirement approved by the Commission on a cumulative basis over the period from FY 1999-00 to FY 2005-06.

Approved Clear Profit (Rs Crore)	**FY00**	**FY01**	**FY02**	**FY03**	**FY04**	**FY05**	**FY06**	**Total**
NESCO	(11)	(10)	(91)	(38)	(13)	(19)	(22)	(204)

The Hon'ble Commission has clarified its position for meeting the revenue gap by stating the following in Clause 7.1.2 of the RST Order for FY 2004-05:

"*It is the duty of the Commission to scrutinise the claims of licensee with a fine tooth-comb and allow properly/prudently incurred expenditure for revenue requirement. But after we do so,* ***Revenue Requirement finally determined has to be realised through tariff. This is the position in Law and has to be appreciated by the consumers of all categories***.

…

In Clause 7.1.3 ….*Only one full month of the current financial year shall be available if the existing tariff is revised for implementation by the licensee. The tariff and revenue requirement application for the financial year 05-06 is also before the Commission to be disposed of in accordance with section 64(III) of the Electricity Act, 2003. The Commission, therefore, decides that it will be administratively convenient if the uncovered gap as determined in the foregoing paragraphs for the year 04-05 is carried forward to the ensuing financial year and disposed of while finalising the revenue requirement and the tariff for 2005-06.*"

However the Hon'ble Commission has stated vide Clause 6.19.2 in the subsequent RST Order for FY 2005-06 that "*The Commission further recognizes the revenue gap in respect of the other three DISTCOs and orders that this gap will be treated as a regulatory assets for pass through in subsequent tariff orders on receipt of audited accounts.*"

Further, the Commission has observed vide clause 6.14.4 in the RST Order for FY 2005-06 that "*… the Commission does not consider it necessary to allow the past loss or regulatory assets as claimed by the licensees.*"

In this regard, the Petitioner requests the Hon'ble Commission to consider the Clause 8.2.2 of the draft Tariff Policy of GoI which states that "*The facility of a regulatory asset has been adopted by some Regulatory Commissions in the past to limit tariff impact in a particular year. This should be done only as exception, and subject to the following guidelines:*

a. The circumstances should be clearly defined through regulations, and should primarily include natural causes or force majeure conditions. Under business as usual conditions, the opening balances of uncovered gap must be covered through transition financing arrangement or capital restructuring.

b. Carrying cost of Regulatory Asset should be allowed to the utilities

c. *Recovery of Regulatory Asset should be time bound and within a period not exceeding three years at the most and preferably within control period*
d. *The usage of the facility of Regulatory Asset should not be repetitive.*"

The financially constrained DISCOMs are considerably disadvantaged by such continual creation of Regulatory Asset. It would be extremely difficult for the Petitioner to manage the distribution business with a negative clear profit of Rs. 19.18 Crore and Rs. 22.31 Crore for FY 2004-05 and FY 2005-06, respectively. The Petitioner's financial position becomes even more difficult on account of working capital gap arising of non-recognition of actual collection efficiency in determination of revenue gap for the Financial Year. Considering the Return on Equity of Rs. 10.55 Crore each for FY 2004-05 and FY 2005-06 as approved by the Commission, the Petitioner will not be in a position to meet its prudent expenses for the Financial Year as approved by the Commission save alone the returns.

It is also relevant to mention that the Hon'ble Commission has been pleased to allow GRIDCO to adjust surplus of Rs 217.35 Crore for FY 2004-05 and Rs 15.72 Crore in FY 2005-06 in GRIDCO's revenue requirement against past losses of GRIDCO. The position seems to indicate application of non-uniform principles across the sector participants.

Considering the magnitude of impact on the Petitioner, it is hereby humbly requested to the Hon'ble Commission that the decision of carry forward of revenue deficit for FY 2004-05 and FY 2005-06 as a Regulatory Asset may be reconsidered. The Hon'ble Commission may also consider reduction in Bulk Supply Tariff of GRIDCO to meet the revenue requirement of DISCOMS in full considering the available surplus of revenue for FY 2004-05 and FY 2005-06 with GRIDCO.

2 Past Losses and Regulatory Assets

The Petitioner had filed a Petition with the Hon'ble Commission for recognition and acceptance of Regulatory Asset for accumulated past losses for the period from FY 1999-00 to FY 2003–04 and its amortisation through recovery of tariff at a future date. The Regulatory Asset was attributable to unrealistic distribution loss level target fixed for determination ARR of DISCOMs and retail supply tariffs, non-recognition of collection efficiency, prudent expenses in excess of the revenue requirement, procurement of higher quantity of power and the price variance in power purchase, reduction in sale to consumers and denial of Clear Profit with respect to the revenue requirement approved by the Commission.

The Hon'ble Commission has directed in the RST Order for FY 2004-05 to address these issues in the subsequent Order. However, the Hon'ble Commission have opined in clause 6.1.2 of the RST Order for FY 2005-06 that "*The Commission is of the opinion that notwithstanding any claim made by the companies the fact remains that the accumulated liabilities have been* *securitised by issue of bonds allowing interest in tariff to be recovered through BST. DISTCOs are being protected as the Commission has allowed securitisation of all such liabilities.*"

Based on the Hon'ble Commission's ruling, the Petitioner understands that the Hon'ble Commission would admit the servicing cost of such securitised liabilities (i.e. interest payable) and repayment of such securitised liabilities as a component of subsequent ARRs. The Petitioner is in agreement with the observation of the Commission that the Regulatory Asset should be adjusted to the extent that the revenue requirement is recognised towards repayment of securitised liability in the approval of subsequent ARRs. The Commission's approval of pass through of repayment liability as a component of Annual Revenue Requirement is in effect an implicit approval of Regulatory Asset to the extent of quantum of securitised liabilities. This is so because the Liabilities would match the Assets in the Balance Sheet of a Company in any double entry accounting system. Such securitised liabilities (attributable to accumulated losses) on the Liability side of the Balance Sheet is represented by a Regulatory Asset (i.e. the accumulated losses) on the Asset side of the Balance Sheet.

The Petitioner would further like to submit to the Hon'ble Commission that the quantum of securitised liabilities does not fully represent the Regulatory Asset on the Asset side of the Balance Sheet. The Petitioner has additional accumulated liabilities towards statutory authorities and its suppliers which is also attributable to accumulated past losses i.e. the Regulatory Asset being claimed by the Petitioner. The Petitioner respectfully submits to the Hon'ble Commission that repayment of such accumulated liabilities towards statutory authorities and its suppliers should also be allowed as a component of subsequent ARRs on the similar lines as that of securitisation of liabilities of GRIDCO and NTPC Bonds. This in effect means that amortisation of Regulatory Asset to the extent of repayment of such accumulated liabilities should also be allowed to be recovered through subsequent ARRs.

Further, the Commission has ruled in clause 6.14.4 of the RST Order for FY 2005-06 "…However*, with collection of a part of receivables, the licensees will be able to wipe out the outstanding liabilities, as evidenced from Audit Report. In view of the above, the Commission does not consider it necessary to allow the past loss or regulatory assets as claimed by the licensees.*"

The Petitioner respectfully submits to the Hon'ble Commission that non collection of receivables is attributable to issues such as legacy of non payment of dues, societal culture of acceptance of such non payment, theft in the system, tariff not being reflective of cost, inefficacy of system being inherited by the Petitioner in addition to the issues raised by the Hon'ble Commission. The Petitioner has taken several steps and has been able to effect substantial improvement in collection efficiency from FY 1999-00 to FY 2003-04. The Petitioner has and would remain committed to the power sector in Orissa to bring about the improvements to the system..

It has been imperative to note that the collection efficiency in the State of Orissa was never more than 72% to 75% before privatisation of the power sector. It has been a widely known fact and recognized and accepted by various Committees constituted to study issues related to power sector in the country that it is a common practice across all State Electricity Boards (SEBs) to raise bogus bills at the year-end to show lower distribution losses. As a result the books of SEBs carries huge non-realisable and bogus receivables.

The Petitioner respectfully submits that in the past the Hon'ble Commission determined the Retail Supply Tariffs of DISCOMs based on the conventional method of distribution loss level without considering the collection efficiency i.e. without considering the "Aggregate Technical and Commercial Losses" (AT & C Losses).

The Petitioner further submits that the past Retail Supply Tariffs were determined with deficit/negative clear profit and based on the unrealistic distribution loss level targets. The losses attributable to such deficit/negative clear profit and unrealistic distribution loss level targets do not represent the "Receivables" and the liabilities/Regulatory Asset cannot be adjusted against such receivables as directed by the Hon'ble Commission.

The Petitioner humbly requests the Hon'ble Commission to recognise, acknowledge and accept the Regulatory Assets claimed by the Petitioner and allow amortisation of Regulatory Asset through recovery of tariff in future years to service the non-asset bearing liabilities.

The Petitioner has noted that the Hon'ble Commission has allowed GRIDCO to adjust its revenue surplus during FY 2004-05 and FY 2005-06 against its past-accumulated losses thereby signalling that the past accumulated losses in the Sector are allowed to be adjusted as and when the Sector is able to absorb such losses. Accordingly, the Petitioner reasonably expects that the Hon'ble Commission would also accept the claim of recovery of such past accumulated losses i.e. Regulatory Asset keeping in view the issues raised herein. Considering the magnitude of impact of the decision on the viability and sustainability of the Petitioner, the Petitioner respectfully requests the Hon'ble Commission to reconsider its decision in this regard.

3 Clarification on securitisation of past liabilities

The Hon'ble Commission has ruled in clause 6.14.2 of the RST Order for FY 2005-06 that "*In this connection, the Commission observe that the Distribution Companies approach the Commission through their business plan for restructuring their existing financial liabilities* *inclusive of securitisation of outstanding dues payable to GRIDCO and resecuritisation of NTPC bonds in favour of GRIDCO on account of failure of DISTCOs to pay the power purchase dues. The Commission is of the opinion that notwithstanding any claim made by the companies the fact remains that the accumulated liabilities have been securitised by issue of bonds allowing interest in tariff to be recovered through BST. DISTCOs are being protected as the Commission has allowed securitisation of all such liabilities…"*

The Petitioner requests the Hon'ble Commission to clarify by a way of Clarificatory Order the moratorium period, repayment period and repayment instalments applicable for such securitised liabilities. The Petitioner further requests the Hon'ble Commission to consider the longer moratorium on repayment of loan considering the accumulated losses, huge unserviceable liabilities and precarious financial conditions of Discoms.

4 AT&C loss Concept

In line with the Order of the Hon'ble Commission in Case No 8/2003 dated June 18, 2003 on setting guiding principles for determination of Annual Revenue Requirement of Distribution Licensees of the State on a long term basis, the Petitioner had filed their Annual Revenue Requirements considering actual collection of revenue during the Financial Year for FY 2004-05 and FY 2005-06. This was in accordance with the Hon'ble Commission's decision to employ AT&C loss as a benchmark to assess the performance of licensees during the Control period. The Hon'ble Commission has also noted in the clause 5.3 of the RST Order for FY 2005-06 that "*For the first control period, the Performance Targets shall relate to the system losses and the collection efficiency for different consumer categories, along with the AT&C losses. The licensee will be expected to perform and improve its efficiency as per the overall AT&C targets fixed by the Commission.*"

Though the Hon'ble Commission has set the AT&C performance targets for measuring, monitoring and controlling the efficiency of the operation of the Petitioner, the Hon'ble Commission has approved ARR and determined RST for FY 2004-05 and FY 2005-06 for the DISCOMs based on the distribution loss target and not based on the AT&C loss target. The Commission has considered the distribution loss target for ARR determination on the grounds that the AT&C loss shall serve as an indicator for the purpose of payment of incentive with reference to measurement of performance and penalty only. For the purposes of tariff determination, the revenue requirement of the DISCOMs has been determined based on accrual of revenue during the financial year based on the set target of T&D loss for the Financial Year without considering actual collection of revenue. There is merit for AT&C loss to be considered for determination of tariff. This would also avoid multiple standards as a measure of performance.

The Commission vide clause 5.4.8 of the RST Order for FY2004-05 has specified that the difference between the 100% collection efficiency and collection efficiency as approved by the OERC after provisioning of 2.5% of Accrued Revenue as bad debts to be treated as working capital requirements and carrying cost/interest on working capital has been allowed as a pass through in the ARR. The Petitioner is expected to arrange the working capital towards such gap in collection of revenue. The Hon'ble Commission had agreed to admit interest on such short term loans to meet working capital requirements in accordance with the LTTS Order dated June 18, 2003. Though the Order specified admission of interest on such working capital loans, the same has not been included as a component of approved ARR for FY 2004-05 and FY 2005-06. Further, the Hon'ble Commission has not considered a component towards repayment of such working capital.

The following Table illustrates the impact in terms of revenue loss to the Petitioner attributable to non collection of revenue beyond the target level of collection efficiency for FY 2004-05 & FY 2005-06 arising of the above treatment:

NESCO			FY2004-05	FY 2005-06
Revenue Requirement	(a)	Rs Crore	473	527
Proposed Collection Efficiency	(b)	%	94	93.0
Approved Collection Efficiency	(c)	%	92	93.0
Bad Debts	(d)	%	2.5	2.5
Return on Equity	(e)	%	2.2	2.0
Total Allowed Collection Efficiency (c+d+e)	(f)	%	96.7	97.5
Gap in Collection Efficiency	(g)	%	3.3	2.5
Collection Gap	(h)	Rs Crore	15	13.17
Interest on Working Capital @ 10% allowed by the Hon'ble Commission	(i)	Rs Crore	2	1.32
Net Revenue loss to the Petitioner	(j)	Rs Crore	17	14.49

The Petitioner respectfully submits for the Commission's consideration that considering the past accumulated losses and huge liabilities, it would be extremely difficult for the Petitioner to arrange working capital finance to bridge the revenue gap, which would arise of non-recognition of collection efficiency in determination of tariff.

It is relevant to point out that AT&C performance benchmark has been successfully implemented by DERC for monitoring and controlling the performance and approving the Annual Revenue

Requirement and Tariff of the privatised DISCOMs. The Petitioner submits to the Commission that employing a single performance measure for determining operational efficiencies and annual revenue requirements is essential to ensure the turnaround in the Orissa Power Sector by allowing the cash which is due to the Petitioner. If the cash requirement of the Petitioner is not met then the Petitioner will not be able to maintain the system and effect necessary improvements in the system to achieve the turnaround.

Considering the magnitude of impact it has on its viability and sustenance, the Petitioner respectfully submits to the Commission that the Hon'ble Commission may reconsider its decision regarding employing T&D loss in place of AT&C loss for determination of Annual Revenue Requirement.

5 Disallowance of T&D loss

In the RST Order for FY 2004-05, the Commission has specified the following methodology for determining the quantum of energy to be sold:

"*5.3.2.1 The quantum of energy to be sold will be determined after deducting the units deemed to have been lost in distribution applying the bench-mark loss level, as adopted by the Commission.*

5.3.2.2 The Anticipated Energy Sale (MU) has been computed applying Distribution Loss (%) on the Energy to be purchased (MU) as tabulated below.

5.3.4 The projected sale at EHT and HT based on the load growth has been kept at the same level, as proposed by the Distribution licensees. The quantum of sale at LT has been arrived at after deducting the proposed sale at HT & EHT from the total sale as tabulated below.

5.3.5 The category wise sale at LT has been computed by apportionment of the differential figure at LT (i.e. the difference between the approved total sale and approved sale at HT & EHT) amongst all the categories under LT."

The above treatment would result into estimation of notional/deemed revenue to the extent of excess T&D loss i.e. actual T&D loss in excess of the set target of T&D loss. This would have the following financial impact on the Petitioner.

LT Sales in MU	Proposed Sales (MU)	Approved Sales (MU)	Average Tariff rate in LT per unit (Rs. /Kwh)	Notional Revenue loss to each DISCOMs (Rs. in crores)
FY 2004-2005				
NESCO	674.23	855.30	2.17	39.3
FY 2005-2006				
NESCO	820	874	2.07	11.18

The excess loss consists of excess losses on account of technical and commercial loss in the system. For excess technical loss, the DISCOMs actually incur additional cost towards power purchase. For commercial losses in the system, the Utility is not able to collect the revenue though the energy is being consumed by some consumers in the system. For such commercial losses, the Utility is losing revenue. The Hon'ble Commission has considered such loss of revenue for both technical as well as commercial portion of excess loss. **However even for the excess commercial loss, actual additional cost incurred by the DISCOMs is the cost of additional power purchase for meeting such commercial losses in the system.**

It is relevant to see the precedence by other State Electricity Regulatory Commission as regards the rate of disallowance of excess T&D loss. The Maharashtra Electricity Regulatory Commission (MERC) in its Tariff Order for FY 1999-00 assessed T&D loss for FY 1999-00 at 31.87% and set the target for FY 2000-01 at 26.87%. In their subsequent Tariff Petition for FY 2001-02, MSEB reported an actual T&D loss level of 39.60% against an approved loss level of 26.87% for FY 2000-01. While applying the rate at which the excess T&D loss needs to be disallowed, **MERC disallowed the cost of excess loss at the cost of power purchase by taking** the view that "*The cost of the excess losses is the cost of additional power purchase required on account of the higher energy input requirement. The Commission has considered the average NTPC power purchase rate to determine the unit rate of the excess energy input requirement, which works out to Rs. 1.649 per unit, based on the Commission's projections.*" MERC has continued with the same view while determining the Tariff Order for FY 2003-04.

Considering the above, the Petitioner requests the Hon'ble Commission to consider cost of power purchase for disallowing excess T&D loss.

6 Demand Forecasts

The Hon'ble Commission has accepted the proposal of higher sale for FY 2005-06 based on the proposal of higher quantum of energy sales to EHT and HT category for FY 2005-06. However, the Hon'ble Commission, for the purpose of estimation of demand charge payable on power purchase from GRIDCO, has considered the Simultaneous Maximum Demand (SMD) forecast based on the SMD approved for FY 2004-05 which is based on actual SMD during the Financial Year. Proposed higher sale to EHT and HT category is going to be supported by the introduction of discounts for new industries and mini steel plants by the Hon`ble Commission. However, this would lead to an increase in SMD and the Petitioner would have to bear the overdrawal charges to the extent SMD exceeds the SMD considered in the ARR. The following Table illustrates the impact on the Petitioner arising of the Hon'ble Commission's decision to consider Demand Charges payable on power purchase for FY 2005-06 based on actual SMD during FY 2004-05:

DISCOMs	Proposed by the DISCOMs (Demand in MVA)	Approved by the Hon'ble Commission (Demand in MVA)	Financial impact (Rs. Crore)
NESCO	525.00	467.12	13.89

As is evident from the above Table, the Petitioner would be required to pay overdrawal charges of Rs. 13.89 Crore for exceeding the SMD considered by the Commission while approving ARR and Tariff for FY 2005-06.

Considering the above, the Petitioner humbly requests the Hon'ble Commission to reconsider the approval of demand charges based on projection of SMD for FY 2005-06 and allow such additional cost through either an increase in Retail Supply Tariff or reduction in Bulk Supply Tariff.

7 Treatment of Delayed Payment Surcharge (DPS)

The Hon'ble Commission vide Clause 8.33.9 of the RST Order for FY 2005-06 has directed that "*the provision for Delayed Payment Surcharge @2% per month in respect of domestic, general purpose <=110 kva, irrigation and LT industrial (S) supply categories of consumer as stipulated in the RST order for FY 2003-04 will not be applicable with effect from the date of implementation of this Tariff order*".

However, DPS to the tune of Rs. 8.96 Crore has been estimated for FY 2005-06 based on actual collection of DPS during FY 2004-05 while determining net Annual Revenue Requirement for FY 2005-06. The Petitioner would like to apprise the Hon'ble Commission that the Petitioner has been collecting most of the revenue on account of Delayed Payment Surcharge (DPS) from the very categories which have been exempted by the Hon'ble Commission from payment of DPS. With the exemption of DPS for the above categories, the Petitioner would not be able to generate revenue on account of DPS during FY 2005-06. Accordingly, the Petitioner submits to the

Commission that in such a case of error apparent the other income considered on account of revenue towards DPS shall be considered as Nil while determining the revised Annual Revenue Requirement for FY 2005-06.

8 Prayers:

In view of above submissions, the Petitioner therefore prays that

1. The decision of carry forward of revenue deficit for FY 2004-05 and FY 2005-06 based on the revenue requirement approved by the Commission as a Regulatory Asset may be reconsidered. The Hon'ble Commission may also consider reduction in Bulk Supply Tariff of GRIDCO to meet the revenue requirement of DISCOMS in full considering the available surplus of revenue for FY 2004-05 and FY 2005-06 with GRIDCO.

2. Recognise, acknowledge and the accept the Regulatory Assets and permit amortisation of Regulatory Asset through recovery of tariff in future years.

3. The moratorium period, repayment period and repayment instalments applicable for securitised liabilities may be clarified.

4. The decision regarding employing T&D loss in place of AT&C loss for determination of Annual Revenue Requirement may be reconsidered.

5. Cost of power purchase in place of loss of revenue may be considered for disallowing excess T&D loss.

6. Approval of demand charges related to purchase of power based on projection of SMD for FY 2005-06 may be reviewed considering implication of overdrawal charges on the Petitioner.

7. Other income considered on account of revenue towards DPS be considered as Nil while determining the revised Annual Revenue Requirement for FY 2005-06.