

Before

UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

Misc. Application No. 51 of 2024

In the matter of:

Petition for review of the Commission's Order dated 28.03.2024 on the Annual Revenue Requirement and Tariff Petition of UPCL for FY 2024-25.

In the matter of:

Uttarakhand Power Corporation Ltd.

... Petitioner

CORAM

Shri M.L. Prasad Member (Technical) / Chairman (I/c)

Shri Anurag Sharma Member (Law)

Date of Order : August 30, 2024

Uttarakhand Power Corporation Ltd. (hereinafter referred to as "UPCL" or "the Petitioner") has filed a Petition for review of Commission's Order dated 28.03.2024 on True up of FY 2022-23, APR for FY 2023-24 and ARR for FY 2024-25 under Section 94(1)(f) of the Electricity Act, 2003 (herein after referred to as "the Act"), Regulation 54(1) of the Uttarakhand Electricity Regulatory Commission (Conduct of Business), Regulations, 2014 (herein after referred to as "UERC CBR"), Regulation 103 of the Uttarakhand Electricity Regulatory Commission (Terms and Conditions for Determination of Multi Year Tariff), Regulations, 2021, and under Section 114 r/w Order XLVII of the Code of Civil Procedure 1908.

1. Background

1.1 The Commission had notified Uttarakhand Electricity Regulatory Commission (Terms and Conditions for Determination of Multi Year Tariff) Regulations, 2021 (hereinafter referred to as "UERC Tariff Regulations, 2021") for the fourth Control Period from FY 2022-23 to FY 2024-25 specifying therein terms, conditions, and norms of operation for licensees, generating companies and SLDC. The Commission had issued tariff Order dated March 28,

2024, for FY 2024-25, including truing up of for FY 2022-23 and Annual Performance Review for FY 2023-24.

The Petitioner filed a Review Petition dated 08.07.2024 on the grounds that the Commission vide tariff Order dated 28.03.2024 has disallowed various expenses for FY 2022-23 during truing-up exercise which is an apparent error on the face of record resulting in financial loss to UPCL.

- 1.2 The Petitioner through the current Review Petition has made an additional claim of ARR as summarized in the Table below:

S. No.	Particulars	Amount (Rs. Cr.)
1	R&M Expense	14.99
2	Depreciation	59.65
3	Return on Equity	31.18
4	Bad Debts written off	212.96
5	Additional claim of pending certificates till 2021-22	170.7
6	Revenue from additional sales considered by UERC	132.94
7	Delayed Payment Surcharge on receivables from GoU	112.39
8	Interest on working capital	19.98
9	Sharing of Gain/Loss	(11.66)
10	Additional ARR	743.13
11	Carrying Cost	176.58
12	Total additional ARR including Carrying cost	919.71

- 1.3 The Commission, in order to provide transparency to the process of tariff determination and give all the stakeholders an opportunity to submit their objections/suggestions/comments on the proposals of the Distribution Licensee, directed UPCL to publish the salient points of its proposals in the leading newspapers. The salient points of the proposal were published by the Petitioner in the following newspapers:

Table 1: Publication of Notice

S. No.	Newspaper Name	Date of Publication (Notice related to Review Petition dated 08.07.2024)
1.	Amar Ujala, Uttarakhand	26.07.2024
2.	The Times of India, New Delhi	27.07.2024

Through the above notice, the stakeholders were requested to submit their objections/suggestions/comments latest by 09.08.2024 on the admissibility of the Review Petition filed by UPCL (copy of the notice is enclosed as **Annexure-I**). The Commission received total 54 Nos. of objections/ suggestions/comments in writing on the Review Petition filed

by UPCL (List of stakeholders is enclosed as **Annexure-II**). The Commission also held a public hearing in the matter on 14.08.2024 to decide on admissibility of the Petition.

- 1.4 The issues raised by the Petitioner in the Petition, alongwith the analysis of the Commission are dealt in the subsequent section.

2. Stakeholders' Objections/Suggestions, Petitioner's Responses and Commission's Views

The Commission has received suggestions and objections on UPCL's Petition for review of Tariff Order dated 28.03.2024 on True-up for FY 2022-23, Annual Performance Review of FY 2023-24 and determination of Annual Revenue Requirement for FY 2024-25.

The Commission during the public hearing received various comments from stakeholders, some of which were of such nature which do not relate to the Review Petition filed by UPCL. The Commission has not taken such comments into consideration while dealing with the current Review Petition filed by UPCL.

Since, several issues are common and have been raised by more than one Respondent, all suggestions/responses/comments have been clubbed issue-wise and summarized below.

2.1 General

2.1.1 Stakeholder's Comments

Shri Mohd. Arif, Shri Dinesh Joshi, Shri Sid, Shri Anajan Sunil, Shri Mahipal Singh, Ms. Pragati, Shri Prem, Shri Nagendra Bhatt, Shri Shalen, Shri Siyaram Maurya, Shri Laxman Singh, Shri Kamal Tiwari, Shri Vikas Thapliyal, Shri Shekhar, Shri Ashutosh, Ms. Hema Bisht, Shri Vikas Dhiman, Shri Inder Raj Dhall, Smt. Geeta Bisht, Shri Kailash Chandra Toshniwal, Shri Amit Negi, Shri Ved Prakash Pharswan, Shri Sachin Sharma, Shri Jayhaswal, Shri Surendra Bisht, Shri Par Singh, Shri Neeraj Kumar, Shri Gagan Panwar, Shri Jodha Singh, Shri Shahzad Ali, Shri Ram, Shri Harendra Singh Negi, Shri Amit Rawat, Shri Tarun Giri, Shri Yash Veer Arya, Shri Surendra Kandpal, Ms. Jyoti Purohit, Shri Gagan Panwar, Shri Prabhat Dhyan, Shri S.K. Anand, Shri Pawan Agarwal, M/s Devarpan Foods Pvt. Ltd., Shri Shakeel A. Siddiqui, Shri Ashok Bansal, Shri Devendra Kumar Agarwal, Shri Pankaj Gupta, M/s KVS Castings Private Limited, M/s Vipul

Industries, M/s Shree Ganesh Roller Flour Mills and others (name could not be traced since the same was not mentioned in the e-mail) have opposed the proposed tariff hike through the Review Petition filed by UPCL and submitted that UPCL should focus on improving its services, reducing losses, curb down cases of theft etc. to curtail down the impact of its inefficiencies which is being burdened on the consumers of the State.

Further, M/s Ganesh Roller Flour Mills submitted that the peak hours during winter months is on a very higher side and the same may be considered as normal hours, and the revenue loss on account of the same can be compensated by reducing line losses and collection of long due arrears by UPCL.

Further, M/s Vipul Industries submitted that their tariffs have increased due to conversion from kWh billing to kVAh billing on account of merging of two sub-categories of LT Industry as a single category, i.e. LT Industry having contracted load upto 75 kW (100 BHP).

2.1.2 Petitioner's Reply

In response to the same, UPCL during the public hearing submitted that it is making sincere efforts to improve its services. Measures have been taken to improve the collection efficiency, reduce line losses and AT&C losses, metering of feeders through smart meters etc. and the same would go a long way to provide a qualitative and reliable supply to the consumers of the State.

2.2 Maintainability

2.2.1 Stakeholder's Comment

Shri Shakeel A. Siddiqui, on behalf of M/s Kashi Vishwanath Textile Mill (P) Ltd. and M/s Galwalia Ispat Udyog (P) Ltd., Shri Ashok Bansal, President, Kumaun Garhwal Chamber of Commerce and Industry, and Shri Rajeev Gupta, Kashi Vishwanath Steels Private Limited, submitted that the Petition filed by UPCL is not maintainable as the scope of review is limited, the Court has the power to review its Order/Judgement to correct a "patent error" and not "minor mistakes of inconsequential import". A review is by no means an appeal in disguise. That means the Court is allowed not to take fresh stock of the case but to correct manifest errors that have resulted in the miscarriage of

justice. Various Judgement passed by the Apex Court were quoted in support of their submission and it was mentioned that the power of review is permissible where some mistake or error apparent on the face of record is found and the error apparent on record must be such an error which may strike one on a mere looking at the record and would not require any long-drawn process of reasoning. They further submitted that the Petition filed by UPCL is barred by time under the provisions of Electricity Act, 2003 r/w UERC (Conduct of Business) Regulations, 2014.

Further, Shri Pankaj Gupta, President, Industries Association of Uttarakhand, submitted that the Review Petition filed by UPCL is time barred. He further submitted that if UPCL has any grievance against the Tariff Order, the available recourse with UPCL is going for Appeal before the Appellate Tribunal. He further submitted that this Petition is an appeal in disguise, and the Commission cannot sit in appeal against its own order. The Commission has already in its Tariff Order dealt with all the issues raised in this Review Petition, and all the grounds raised in the Petition are ground of appeal, which have been duly considered by the Commission and now seeking a review on the same will tantamount to seeking a second hearing of its claims which is against law and also judgments of Hon'ble Supreme Court.

2.2.2 Petitioner's Reply

In response to the same UPCL submitted that the review Petition filed by them fulfils the ground of review as laid down in relevant section of CPC and the Commission may allow the review Petition and pass suitable orders. UPCL w.r.t the limitation in filing of the Review Petition, during the public hearing, submitted that due to model code of conduct operative till 04.06.2024, the meeting of the Board of Directors could not be convened which is a pre-requisite for filing the Review Petition in the matter, and hence the delay is justified and liable to be condoned.

2.3 Gross Fixed Assets

2.3.1 Stakeholder's Comment

Shri Pawan Agarwal, Vice President, Uttarakhand Steel Manufacturers Association, M/s Devarpan Foods Pvt. Ltd. and M/s KVS Castings Pvt. Ltd., submitted that part of the capitalization for FY 2022-23 and previous years was rejected by the Commission on

account of anomalies in the EI certificates submitted by UPCL and the impact of the same should not be allowed to UPCL unless the anomalies are rectified as required by the Commission.

Further, Shri Shakeel A. Siddiqui, and Shri Ashok Bansal, while referring to the Tariff Order dated 28.03.2024, submitted that the Petitioner in the Review Petition has accepted that it has taken steps and is in process to prepare the data of capitalization in the format prescribed by the Commission. Moreover, the Petitioner has submitted that it has assigned the work of identification of source of funding (grant and others) of capital assets to M/s K.G. Somani & Co., LLP, Chartered Accountants but they could not do the work. This clearly shows that UPCL has already presented the issue before the Commission which has been discussed in detail in the Tariff Order, and there is nothing new which has not been taken on records by the Commission, hence, the Review Petition is liable to be rejected. Shri Rajeev Gupta further submitted that the deductions made by the Commission in the GFA is totally attributable to negligent and lackadaisical approach of UPCL and the impact of the same cannot be passed upon the consumers of UPCL.

2.3.2 Petitioner's Reply

In response to the same, UPCL during the public hearing reiterated the grounds raised in the Review Petition filed by it and submitted that the same may be allowed to UPCL.

2.4 Provisions for Bad and Doubtful Debts

2.4.1 Stakeholder's Comment

Shri Pawan Agarwal submitted that UPCL is putting the burden of its own inefficiency, of inability to recover the electricity dues, on the industrial/other consumers of the State. He further submitted that most of the arrear pertains to Govt. departments and the burden of non-recovery should not be passed on to other consumers. As a prudent practice, UPCL should endeavor to make recovery from those consumers who are in default rather than passing the burden of non-recovery on other consumers.

Further, M/s Devarpan Foods Pvt. Ltd., M/s KVS Castings Pvt. Ltd., and Shri Rajeev Gupta, submitted that UPCL is not doing proper compliance of the directives

given by the Commission with respect to submission of the required information for the purpose and is unnecessarily creating pressure to get the approval without showing the facts.

Further, Shri Shakeel A. Siddiqui, Shri Ashok Bansal, while referring to the Tariff Order dated 28.03.2024 submitted that UPCL has already presented the issue before the Commission which has been discussed in detail in the Tariff Order, and there is nothing new which has not been taken on records by the Commission, hence, the Review Petition is liable to be rejected.

2.4.2 Petitioner's Reply

In response to the same, UPCL during the public hearing reiterated the grounds raised in the Review Petition filed by it and submitted that the same may be allowed to UPCL.

2.5 Distribution Losses

2.5.1 Stakeholder's Comment

Shri Pawan Agarwal, submitted that in the State of Uttarakhand the consumption of electricity by the Industrial consumers is almost 50% wherein line losses are negligible, and, therefore, approving the distribution loss level at 13% is not correct. The same should be fixed at 8% and the savings be passed on to industrial consumers through reduction in tariffs as the industrial consumers are directly hit by such huge distribution losses.

2.5.2 Petitioner's Reply

In response to the same, UPCL during the public hearing reiterated the grounds raised in the Review Petition filed by it and submitted that the same may be allowed to UPCL.

2.6 Delayed Payment Surcharge on Receivable from GoU

2.6.1 Stakeholder's Comment

Shri Pawan Agarwal, submitted that the claim on account of DPS receivable from GoU is not tenable and should not be allowed by the Commission.

Further, M/s Devarpan Foods Pvt. Ltd., M/s KVS Castings Pvt. Ltd., and Shri

Rajeev Gupta, submitted that w.r.t DPS receivable from GoU, the Commission had already opined that an internal agreement between UPCL and GoU on the applicability of DPS is not as per the UERC Tariff Regulations, 2021. Further, the Commission had also observed in the Tariff Order dated 28.03.2024 that because of the inefficiency and imprudent financial management of UPCL, UPCL is either unable to collect its dues from the consumers or the collected dues are not wisely utilized by it. Therefore, the burden of inefficiency and ineffectiveness of UPCL cannot be passed on to the consumers.

Further, Shri Shakeel A. Siddiqui, and Shri Ashok Bansal while referring to the Tariff Order dated 28.03.2024 submitted that UPCL has already presented the issue before the Commission which has been discussed in detail in the Tariff Order, and there is nothing new which has not been taken on records by the Commission, hence, the Review Petition is liable to be rejected.

2.6.2 Petitioner's Reply

In response to the same, UPCL during the public hearing reiterated the grounds raised in the Review Petition filed by it and submitted that the same may be allowed to UPCL.

2.7 Revenue from Additional Sales

2.7.1 Stakeholder's Comment

Shri Pawan Agarwal submitted that the claim of UPCL on this account is purely based on their distribution loss and should not be allowed by the Commission.

Further, M/s Devarpan Foods Pvt. Ltd. and M/s KVS Castings Pvt. Ltd., submitted that the Commission had already directed UPCL to produce division wise commercial diary to check sales and revenue, but UPCL is not presenting the same to hide its shortcomings, and therefore, the burden of the same should not be passed on to the consumers.

Further, Shri Shakeel A. Siddiqui, and Shri Ashok Bansal, while referring to the Tariff Order dated 28.03.2024 submitted that UPCL has already presented the issue before the Commission which has been discussed in detail in the Tariff Order, and there is nothing new which has not been taken on records by the Commission, hence, the Review Petition is liable to be rejected.

2.7.2 Petitioner's Reply

In response to the same, UPCL during the public hearing reiterated the grounds raised in the Review Petition filed by it and submitted that the same may be allowed to UPCL.

2.8 Interest on Working Capital

2.8.1 Stakeholder's Comment

Shri Pawan Agarwal, and M/s Devarpan Foods Pvt. Ltd., submitted that the rate of IoWC is determined by the Commission after due deliberation and in accordance with the Regulations, and no modification should be allowed to UPCL on account of the same.

Further, Shri Shakeel A. Siddiqui, and Shri Ashok Bansal while referring to the Tariff Order dated 28.03.2024 submitted that UPCL has already presented the issue before the Commission which has been discussed in detail in the Tariff Order, and there is nothing new which has not been taken on records by the Commission, hence, the Review Petition is liable to be rejected.

2.8.2 Petitioner's Reply

In response to the same, UPCL during the public hearing reiterated the grounds raised in the Review Petition filed by it and submitted that the same may be allowed to UPCL.

2.9 Carrying Cost and Others

2.9.1 Stakeholder's Comment

Shri Pawan Agarwal, M/s Devarpan Foods Pvt. Ltd., and M/s KVS Castings Pvt. Ltd., submitted that carrying cost, and other claims made by UPCL are directly attributable to the grounds claimed by the Petitioner in its Review Petition, and since those grounds are not maintainable, therefore, there is no point in allowing the consequential claims to UPCL.

Further, Shri Shakeel A. Siddiqui, and Shri Ashok Bansal while referring to the Tariff Order dated 28.03.2024 submitted that UPCL has already presented the issue before the Commission which has been discussed in detail in the Tariff Order, and there is nothing new which has not been taken on records by the Commission, hence, the

Review Petition is liable to be rejected.

2.9.2 Petitioner's Reply

In response to the same, UPCL during the public hearing reiterated the grounds raised in the Review Petition filed by it and submitted that the same may be allowed to UPCL.

3. Petitioner's submission, and Commission's Analysis and Findings

3.1 Powers of the Commission and Grounds for Review

3.1.1 Before going into the merits of the Petition filed by UPCL on various issues, the Commission first looks into the powers vested in it to review its Orders, for the purpose of taking a view on maintainability of the Petition. In this regard, reference is drawn to Section 94(1)(f) of the Act which specifically empowers the Commission to undertake review, which can be exercised in the same manner as a Civil Court exercises such powers under section 114 and Order XLVII of the Code of Civil Procedure, 1908 (Civil Procedure Code 1908). The powers available to the Commission in this connection have been defined in Section 114 and Order 47 of the CPC. Under the said provisions, review of the Order is permitted on three specific grounds only, namely:

- i. Discovery of new and important matter or evidence, which after the exercise of due diligence was not within the applicant's knowledge or could not be produced by him at the time of passing of the Order.
- ii. Mistake or error apparent on the face of the record; or
- iii. Any other sufficient reasons.

3.1.2 The application for review has to be considered with great caution to necessarily fulfil one of the above requirements to be maintainable under law. On the discovery of new evidence, the application should conclusively demonstrate that (1) such evidence was available and is of undoubted character; (2) that it was so material that its absence might cause miscarriage of justice; (3) that it could not be even with reasonable care and diligence brought forward at the time of proceedings/passing of Order. It is well settled principle that new evidence discovered, if any, must be one, relevant, and second, of such character that had it been given during earlier proceedings, it might possibly have altered the

Judgment.

- 3.1.3 With regard to mistake or error apparent on the face of the record, the error should be apparent enough to be noticed and presented before the Court during review proceedings to take cognizance. However, if it is a case that the Petitioner was not able to properly explain a legal position at the time of proceedings, it does not make a ground for a review. It may be pointed out here that Hon'ble Supreme Court and Hon'ble High Courts have in catena of Judgement have held that review jurisdiction is not a substitute for an appeal and cannot be exercised for reconsideration of issues already decided by a Court in its original Order. The error and mistake for correction in review proceeding should be apparent on the face of the record and the same should be self-evident. Hon'ble Supreme Court in the case of Lily Thomas & Ors Vs Union of India & Ors [(2000) 6 SCC 224] has categorically decided this question leaving no room for further doubts. This position was also reiterated by the Hon'ble Supreme Court in the case of State of Haryana Vs. Mohinder Singh [2002 (9) SCC 629].
- 3.1.4 As regard the third ground of review under order XLVII of the CPC namely "for any other sufficient reason", it is a well settled principle that the expression "any other sufficient reason" will have a meaning analogous to grounds specified immediately before. This position of order XLVII cannot be used to nullify the specific requirements stipulated in the earlier portions of the same provision. In this connection the decision of the Hon'ble Supreme Court, again in the case of Lily Thomas etc. vs. Union of India and others spells out the position unambiguously. In view of this well settled position the scope of the third condition of order XLVII of the CPC that is, "any other sufficient reason", cannot be extended to include all other reasons irrespective of whether they are in conformity with the specific requirements stipulated under order XLVII itself or not.
- 3.1.5 It is a well-settled law that a review of the Orders of the Court/Commission should be used sparingly after examining the facts placed before the Court. An erroneous view or erroneous Judgment is not a ground for review, but if the Judgment or Order completely ignores a positive rule of law and the error is so patent that it admits of no doubt or dispute, such an error may be corrected in the review. A review is by no means an appeal in disguise whereby an erroneous decision is re-heard and corrected but lies only against

a patent error. A review can only lie if one of the grounds listed above is made out.

3.1.6 With this background on legal provisions related to Review Petition, the Commission has examined the issues raised by the Petitioner to assess whether all or any of the issues raised by the Petitioner qualify for review.

3.1.7 Further, the Petitioner in its Petition as well as during the public hearing submitted that it could not file the Petition on time since the model code of conduct on account of Lok Sabha Elections was operative till 04.6.2024, due to which the meeting of its Board of Directors could not be convened, which is a pre-requisite for filing the Review Petition.

The Commission observed that the submission of the Petitioner made during the public hearing do not align with the submission made in the Review Petition as far as the matter of limitation is concerned. The Petitioner was fully aware that as per Regulations it was required to file the Review Petition within 60 days of the receipt of Order, i.e. by 25.06.2024, accordingly, it could have convened the meeting of its BoD immediately after 04.06.2024. However, the Petitioner was not at all serious in complying with the legal requirements which is all the more evident by its letter dated 22.06.2024 seeking time extension for filing the Review Petition till 15.07.2024. However, when time extension was denied by the Commission it immediately filed the Review Petition on 08.07.2024 after convening its BoD meeting on 05.07.2024. The same could have been planned earlier also so as to file the review Petition within the stipulated time. However, it is observed that UPCL has made it a habit to wake up at the last moment and then approach the Commission for time extension. The Commission as a one-time relaxation condones the delay in filing of the present Review Petition by UPCL, however, in future no request for time extension by UPCL shall be entertained and UPCL is required to adhere to the timelines provided in the Act, Rules, Regulations and Orders/directions of the Commission.

3.2 Issues for Review raised in the Petition

3.2.1 Gross Fixed Assets (GFA)

Petitioner's Submissions

a. The Petitioner in the review Petition submitted that in the ARR and Tariff Petition for

FY 2024-25 UPCL had submitted the opening GFA for FY 2022-23 as Rs. 8406.43 Crore, as per the audited accounts, for the truing-up exercise, but the Commission in its Order dated March 28, 2024, has considered the opening GFA for FY 2022-23 as Rs. 7937.50 Crore as per the closing GFA approved for FY 2021-22, without considering the effect of Transfer scheme and EI certificates. The Petitioner submitted that although it had not sought the prior year impact of finalized transfer scheme in the ARR, but the assets as per transfer scheme have already been considered under the claim of opening assets for FY 2022-23, as per the audited accounts, after GoU vide its order no. 263/I(2)/2022-05-20/2007-TC, dated 08.03.2022 notified the scheme for transfer of assets and liabilities executed between UPPCL and UPCL on 12.10.2003.

The Petitioner submitted that the claim of transfer scheme was computed for the period from 10/2003 (date of signing of the transfer scheme) to FY 2021-22 separately, along with carrying cost, which worked out to Rs. 3933.21 Crore which needed significant increase in tariff, and, therefore, the Petitioner had not claimed the same, rather it requested the GoU to provide subsidy in tariff equivalent to Rs. 4370.11 Crore, which is under consideration by the GoU. The Petitioner further submitted that it would separately file a Petition with the Commission regarding the impact of transfer scheme for the previous year's once the decision of the GoU is received, however, the asset base as per audited accounts for FY 2022-23 may be considered in order to avoid any financial hardships in the subsequent years.

- b. The Petitioner further submitted that all the EI certificates for the period upto March 2023 were submitted to the Commission, but the Commission observed various anomalies in these certificates and did not consider the GFA amounting to Rs. 161.93 Crore for the period upto March 2022 and Rs. 397.67 Crore for FY 2022-23, and, accordingly, the Commission considered GFA amounting to Rs. 559.60 Crore lower than the GFA as per books of accounts due to non-submission of EI certificates. The Petitioner further submitted that it has taken steps and is in the process to prepare the data of capitalization in the format prescribed by the Commission, and shall submit the same before the Commission in due course. The Petitioner submitted that non consideration of GFA which is as per Audited Accounts is an apparent error on

the face of record and, accordingly, the Commission is requested to kindly consider the same and allow return on the same.

- c. The Petitioner further submitted that non-consideration of the above GFA against transfer scheme as well as EI certificates pertaining to past years has resulted in lower approval for various ARR parameters, i.e., R&M expense, depreciation, and ROE, however, the Petitioner is required to incur expense against the entire amount of assets which is resulting in significant amount of financial burden for the Petitioner. The Petitioner, accordingly, requested the Commission to consider the GFA as per the audited accounts for approving the various ARR elements including the R&M, Depreciation and RoE. The Petitioner also submitted that it has referred tariff orders of various States and found that the capitalization as per audited accounts is being allowed by the respective SERCs in the matter.
- d. The Petitioner, w.r.t GFA, further submitted that in the ARR and Tariff Petition for FY 2024-25 it had submitted that the opening value of GFA created out of grant was Rs. 2926.22 Crore as per the audited accounts of FY 2022-23, however, the Commission in the tariff Order has considered the opening GFA of Rs. 3623.47 Crore towards grant, as approved in its Order dated March 30, 2023. The Petitioner submitted that due to consideration of grant more than the grants as per the books of account, the claim on account of Depreciation and ROE has been allowed on a lower side to the Petitioner company which is an apparent error on the face of record and needs a review of the Tariff Order in the matter.

The Petitioner further submitted that the Commission in the capitalization policy of UPCL, while approving the same had itself accepted that linking of receipts on capital grant, consumer contribution and subsidy to the creation of fixed assets and charging depreciation/writing back proportionate amount is practically not possible. The Petitioner submitted that it had also assigned the work of identification of source of funding (grant & others) of capital assets to M/s K.G. Somani & Co., LLP, Chartered Accountants but they could not do the work, and accordingly, the Commission is requested to kindly guide in the matter and consider the amount of grant as per audited accounts for FY 2022-23 and allow return on the same

accordingly.

Commission's Analysis and Ruling

- e. The Commission analysed the submissions made by the Petitioner and observed that the Petitioner has broadly claimed review towards the value of GFA based on the following grounds:
 - i. Non consideration of the Impact of Transfer Scheme.
 - ii. Non consideration of EI Certificates submitted (Rs. 559.60 Crore).
 - iii. Consideration of grant more than the grant as per books of accounts.
- f. The Commission in the tariff Order dated 28.03.2024 had already deliberated in detail on all the three aspects. The Petitioner during the review proceedings has not brought anything before the Commission which could be considered as discovery of new and important matter or evidence or mistake or error apparent on the face of record. The submission of the Petitioner merely aims at reconsideration of already concluded matter which is not permitted through a review.
- g. The Petitioner has raised the issue of non-consideration of Impact of Transfer Scheme. In this regard, as detailed out in the Tariff Order, the Commission observed that even though the Petitioner has not filed any consequential claims in the Tariff Petition on account of transfer scheme sanctioned by the GoU vide notification dated March 08, 2022, the Petitioner has increased the opening GFA value on its own, after considering the impact of the aforesaid notification. The Commission, considering the fact that since the Petitioner has not sought any consequential impact of the notification, did not consider the same, however, allowed the Petitioner liberty to claim the same in the next tariff filing. The relevant portion of the Tariff Order is reproduced hereunder:

"3.1.4.2

...

It is also observed that the Petitioner without seeking the impact of finalized transfer scheme in the ARR, has simply sought relief in terms of higher R&M expenses by considering the entire assets value of the transferred assets. The Commission does not appreciate such an approach on the part of the Petitioner as the same would reflect

pseudo approval for the assets that have not yet been recognized by the Commission under the regulatory regime.

...”

[Emphasis Added]

“3.2.1

...

The Government of Uttarakhand vide its Notification dated March 08, 2022 sanctioned the Scheme for division of assets and liabilities executed between Uttar Pradesh Power Corporation Ltd. and Uttarakhand Power Corporation Ltd. on October 12, 2003. The aforesaid Notification further stated that GFA amounting to Rs. 1058.18 Crore is included in the notified Scheme. The Commission has taken note of the Notification and observes that even though the Petitioner has not filed any consequential claims on this account, the Petitioner has increased the opening GFA value after considering the impact of the aforesaid notification. As the Petitioner has not sought any consequential impact of the notification, the Commission in the current tariff proceedings has not considered the same. The Petitioner is, however, at liberty to claim the same in the next tariff filing.

...”

- h. Besides, any claim towards fixed assets has to be examined in detail with respect to its value as well as its financing thereof. Any standalone claim with respect to addition in the value of assets cannot be accepted. For this reason the Commission in its Tariff Order dated 28.03.2024 has held that since the Petitioner has not sought any consequential impact of the notification of transfer scheme, the Commission in the current tariff proceedings has not considered the same. Thus, as can be seen from above, the rationale for non-consideration of impact of transfer scheme has been clearly explained in detail by the Commission in the tariff Order and, accordingly, there is no error apparent on the face of record and there is no new evidence which can be considered and, hence, this issue does not qualify for review.
- i. Further, w.r.t the issue of non-consideration of EI Certificates, as detailed out in the Tariff Order, the Petitioner was directed to submit the segregation of fixed assets added into HT and LT works and to submit the Electrical Inspector clearance for HT works for FY 2022-23 alongwith all the pending capitalisation which were disallowed till FY 2021-22. The Petitioner was also directed to rectify the anomalies in the EI

certificate provided for FY 2016-17 to FY 2021-22 and submit the details as per the format specified by the Commission. The Petitioner has, however, failed to rectify the anomalies pointed in the past EI certificates and instead made a claim of Rs. 170.70 Crore towards the impact of non-consideration of capitalisation on account of non-submission of EI certificates. In the past, the Commission observed certain anomalies in the EI certificates submitted by the Petitioner, like duplicate EI certificate, illegible certificate, multiple certificates on same day etc. for which UPCL was provided sufficient opportunity from time to time to rectify and submit the details before the Commission, however, UPCL did not comply with the same to the satisfaction of the Commission.

Further, with regard to FY 2022-23, the Petitioner submitted the EI certificates and details of LT works and other works amounting to gross capitalisation of Rs. 878.04 Crore, out of which the Commission considered an amount of Rs. 454.52 towards the capitalization related to LT works based on the details provided by the Petitioner and Rs. 61.24 Crore was considered towards other assets for which EI certificate was not required. The amount related to HT works was not considered as the E.I. Certificates for works capitalised during FY 2022-23 had certain anomalies as follows.

1. Works had been certified by Electrical Inspector although the fees for said certification was deposited at a subsequent date, that too almost after 1.5 years from the date of certification by the EI, for eg. EDD Gairsain where inspection was done on 23.04.2022 and inspection fees was deposited on 22.01.2024.
2. In most of the certificates, there was no mention of the fact whether the works had been found to be satisfactory or not.
3. The respective certificates were not signed by the concerned Electrical Inspector, for eg. EDD Rishikesh.
4. The fees for inspection had been deposited on one single date whereas inspection was done on different dates, for eg. in EDD Rudrapur-2 the inspection fees for more than 300 certificates had been deposited on 07.12.2023.
5. Multiple inspection was carried on one single date, for eg. EDD Rudrapur-2.

- j. The Commission, during the tariff proceedings, asked the Petitioner to submit justification for such discrepancies in the certificates submitted, in response to which UPCL only made submissions which were limited only to the divisions which were pointed out by the Commission itself. The Commission even subsequently clarified to the Petitioner that it had pointed out certain divisions as an example to highlight the discrepancy, however, the same was not limited to those divisions only. The Commission observed similar discrepancies w.r.t. other divisions, and UPCL was required to check the similar issues in other divisions as well and provide a detailed justification for the same alongwith the justifications as to how the assets have been capitalised before proper clearances from the Electrical Inspector, as the certificates submitted before the Commission were incomplete. In response to the same, the Petitioner once again submitted certificates related to certain divisions before the Commission, stating that the rectification has been made in them and that the Petitioner shall ensure that such anomalies are not repeated in future.
- k. The Commission considering the submission of the Petitioner was of the view that the Petitioner has never been able to provide a proper justification for the anomalies pointed out by the Commission, rather, time and again same certificates have been rectified and submitted before the Commission without even analysing the root cause of such problem which raises a question on the sanctity of the documents submitted by the Petitioner before the Commission, as the EI certificate by their nature are unique document, which by no means can be created/rectified at a later date. Moreover, the rectification on a later date dissolves the purpose of EI certificate as they could not be said to be based on actual inspection, rather they take shape of merely a paper formality to be complied by the utility.

Further, due to incomplete and erroneous submission of EI certificates since FY 2016-17, the Commission has not been able to carry out the final truing up of the past two control periods. The Commission, considering the gravity of the matter allowed an opportunity to the Petitioner to submit the pending EI certificates properly tagged and indexed in the format provided by the Commission within six months from the date of the tariff Order. The relevant portion of the Tariff Order dated 28.03.2024 is reproduced hereunder:

“3.2.1

...

With regard to FY 2022-23, the Petitioner has claimed a net capitalisation of Rs. 816.80 Crore as per the audited accounts. The Petitioner was directed to submit the segregation of fixed assets added into HT and LT works and to submit the Electrical Inspector clearance for HT works for FY 2022-23 alongwith all the pending capitalisation which were disallowed till FY 2021-22. The Petitioner was also directed to rectify the anomalies in the EI certificate provided for FY 2016-17 to FY 2021-22 and submit the details as per the format specified by the Commission. The Petitioner has, however, failed to rectify the anomalies pointed in the past EI certificates and instead has made a claim of Rs. 170.70 Crore towards the impact of non-consideration of capitalisation on account of non-submission of EI certificates. With regard to FY 2022-23, the Petitioner submitted the EI certificates and details of LT works and other works amounting to gross captialisation of Rs. 878.04 Crore, out of which the Commission has considered an amount of Rs. 454.52 towards the capitalization related to LT works based on the details provided by the Petitioner and the balance amount related to HT works has not been considered for the reasons discussed in subsequent paras of this Order. Further, an amount of Rs. 61.24 Crore has been considered towards other assets that do not require EI certificates, in FY 2022-23.

The Commission, while carrying out truing up for FY 2019-20 had observed as follows.

“The Commission examined the Electrical Inspector certificates submitted by the Petitioner and observed as follows:

- i) Duplicate EI certificates towards same works were submitted for certain projects.*
- ii) Some EI certificates were not legible, hence, works cannot be ascertained.*
- iii) EI certificates did not reconcile with the schemes provided in the summary of the covering letter.*
- iv) Multiple EI certificates for 7-8 schemes issued by same Electrical Inspector on a single day.*
- v) Details of work inspected not mentioned specifically.*

In this regard, the Commission sought information from UPCL in response to which it was submitted by the Petitioner that the field units of UPCL were engaged in the Revenue Collection drive as the month of March being the peak month of revenue collection, and the information collation would take a lot of time, therefore, the submission of the requisite information seems quite difficult and time taking. The Petitioner, accordingly, requested the Commission to grant waiver from submission of the same. “

The Commission further directed the Petitioner as follows:

“.... The Commission directs the Petitioner to submit the complete requisite information within 6 months from the date of this Order or otherwise, the Commission shall not allow the disallowed capitalisation for FY 2019-20.”

It is observed that the Petitioner did not comply with the above. The Commission in the current proceedings vide its letter dated January 23, 2024, provided the Petitioner another opportunity to remedy the above. The Petitioner, however, could not remedy the above defects. The Commission in its Order dated March 31, 2022 had observed as follows.

“It is observed that the Petitioner on one hand is making submissions before the Commission that it is facing severe cash flow issues and on the other hand it is falling behind in claiming ARR by furnishing proper capitalisation details. This exhibits a callous and indifferent approach in complying with the directions of the Commission. Since, the delay is on account of the inefficiency of the Petitioner, hence, no carrying cost will be allowed to the Petitioner for delayed approval of pending capitalisation of FY 2016-17, FY 2017-18, FY 2018-19 & FY 2019-20. The Commission is further of the view that unless the complete capitalisation details for FY 2016-17 to FY 2019-20 is provided, truing up for these years shall not be done. The Commission has, however, allowed the impact of capitalisation details submitted for FY 2016-17 to FY 2019-20 in the truing up for FY 2020-21.”

The Petitioner submitted E.I. Certificates for works capitalised during FY 2022-23. However, following anomalies were observed in the EI certificates submitted by the Petitioner.

- 1. Works have been certified by Electrical Inspector although the fees for said certification has been deposited at a subsequent date, that too almost after 1.5 years from the date of certification by the EI, for eg. EDD Gairsain where inspection has been done on 23.04.2022 and inspection fees has been deposited on 22.01.2024.*
- 2. It has not been mentioned in most of the certificates that whether the works have been found to be satisfactory or not.*
- 3. The respective certificates were not signed by the concerned Electrical Inspector, for eg. EDD Rishikesh.*
- 4. The fees for inspection have been deposited on one single date whereas inspection has been done on different dates, for eg. in EDD Rudrapur-2 the inspection fees for more than 300 certificates has been deposited on 07.12.2023.*
- 5. Multiple inspection carried on one single date, for eg. EDD Rudrapur-2.*

The Commission, accordingly, vide its letter dated February 14, 2024 directed the

Petitioner to submit justification for such discrepancies in the certificates submitted. In response to the query, the Petitioner vide its letter dated February 21, 2024, submitted as follows:

- “(a) As per the Report received from concerned Executive Engineer of EDD, Gairsain it is to inform that due to scarcity of staff, the fee could not be deposited on a prior date, but when realized by the office of Executive Engineer, the same was deposited on a later date. In this matter letter no. 1118 dated 19.02.2024 of EE, EDD, Gairsain is being annexed as Annexure-2.*
- (b) The certificates wherein “satisfactory” has not been checked are only due to overlooking by the officer. They are satisfactory works, so Hon’ble UERC is requested to consider those certificates, as the works were satisfactory.*
- (c) The Electrical Inspector certificates of HT works pertaining to the Rishikesh Division has been again obtained and are being annexed as Annexure-3.*
- (d) In this connection, it is to inform that works related lines and transformers were constructed/installed in nearby areas, so the fee were submitted on the same date and multiple inspections were carried out on single date under EDD, Rudrapur-2.”*

Subsequently, the Commission vide its letter dated 28.02.2024, clarified to the Petitioner that the Commission had pointed out certain divisions as an example to highlight the discrepancy, however, the same is not limited to those divisions only. The Commission observed the similar discrepancies w.r.t. other divisions as well, and UPCL was required to check the similar issues in other divisions as well and provide a detailed justification for the same alongwith the justifications that how the assets have been capitalised before proper clearances from the Electrical Inspector as the certificates submitted before the Commission were incomplete.

In response to the same, the Petitioner once again submitted certificates related to certain divisions before the Commission, stating that the rectification has been made in them, and submitted that the Petitioner shall ensure that such anomalies are not repeated in future.

The Commission has gone through the submissions of the Petitioner and has taken serious note of the way unauthentic data without any verification is being furnished by the Petitioner. Moreover, the Petitioner has never been able to provide a proper justification for the anomalies pointed out by the Commission, rather, time and again same certificates have been rectified and submitted before the Commission without even analysing the root cause of such problem. This raises a question on the sanctity of the documents submitted by the Petitioner before the Commission, as the EI certificate by their nature are unique document, which by no means can be created/rectified at a later date to rectify the deficiency observed. Moreover, the rectification on a later date dissolves the purpose of EI certificate as they could not be said to be based on actual

inspection, rather they take shape of merely a paper formality to be complied by the utility. This has become a long drawn issue and inspite of categorical directions by the Commission, the Petitioner is not giving a serious note to this issue, and continuously charging the HT assets without proper EI certificate which may pose a danger/safety issue if any material thing gets overlooked.

Further, due to incomplete and erroneous submission of EI certificates since FY 2016-17, the Commission has not been able to carry out the final truing up of the past two control periods. The Commission, time and again has been providing opportunity to the Petitioner to submit the pending EI certificates complete in all respect, however, the Petitioner, even after multiple opportunities has failed to rectify the issues. The callous attitude with which the Petitioner is being working is quite evident from the replies submitted above, wherein frivolous reasons are being submitted as an excuse to justify submission of incomplete and unauthenticated data. The Commission is of the view that it cannot allow the Petitioner to continue with the current approach and, therefore, directs the Petitioner to submit the pending EI certificates properly tagged and indexed in the format provided by the Commission within six months from the date of this Order failing which the Commission may not allow these assets to be capitalised in the previous years and any such capitalisation, if allowed may be allowed prospectively after the date of submissions of such EI certificates.

Further, while making such submissions in future, the Petitioner is directed to re-categorise the asset capitalisation as per the following:

The assets shall be capitalised in the year in which the last of the following activity is completed.

- l. Date of Inspection Certificate certifying satisfactory work.*
- m. Date of submission of fees for Inspection.*
- n. Date of Capitalisation in the books of account.*

In this regard, the Commission will also like to direct the Director (Finance) of the Petitioner Company to prepare a policy and ensure that no HT works are capitalized in the books of accounts, unless all activities related to EI certification is completed, failing which he shall be personally held responsible for the non-compliance of the Commission's directions.

...

In view of the decision taken above, the Commission has continued with its approach and allowed the impact of capitalization in the truing up for FY 2022-23 for which details have been submitted for FY 2016-17 to FY 2021-22. However, the Commission is not carrying out truing up for these years since the Petitioner is yet to rectify the anomalies in the past EI certificates as

mentioned above.

The Petitioner has submitted the details of LT works (including other assets) amounting to Rs. 515.76 Crore capitalized during FY 2022-23. The Commission has, therefore, only allowed LT works and other assets amounting to Rs. 515.76 Crore after considering Decapitalization against these assets amounting to Rs. 96.63 Crore based on the deletions of assets, as per books of accounts in FY 2022-23. The Commission has, therefore, approved net additional capitalisation of Rs. 419.13 Crore for FY 2022-23."

- o. Further the reliance placed by the Petitioner on the tariff orders of various State Commissions wherein capitalization is being allowed by the respective SERCs as per the audited accounts, is misplaced and unfounded. This Commission also relies upon the audited accounts for carrying out the truing up of previous years. However, the Petitioner conveniently chose to ignore the provisions of Regulation 3(20)(iv) of the MYT Regulations, 2021 which clearly requires the distribution licensee to obtain clearance from the Electrical Inspector before charging any HT/EHT lines or sub-stations.
- p. As can be seen from the above discussion and relevant extract of the Tariff Order, the Commission had already deliberated in detail w.r.t non-consideration of the capitalization for the respective years in the absence of proper EI certificates, and, accordingly, **there is no error apparent on the face of record and there is no new evidence which can be considered and, hence, this issue does not qualify for review.**
- q. The submission of 3 set of dates by UPCL during the intervening period is basically the compliance of the directives issued by the Commission in its Tariff Order dated 28, March 2024. As discussed in the Tariff Order, the Commission after carefully examining the submissions of UPCL, considering its inability to furnish the proper EI certificates for past years in timely manner, had given an opportunity to UPCL to furnish the details of capitalization of all the previous years in the format prescribed by the Commission, based on which the Commission shall take appropriate view in the matter. This is a deliberate and thoughtful exercise by the Commission to conclude the long drawn issue of pending capitalization of previous years cannot be considered as **an error apparent on the face of records or any new evidence which**

was not in the knowledge of UPCL or could not be produced by them earlier. Hence, these are no legally tenable ground for review.

- r. Further, w.r.t the issue of consideration of the value of grant more than the grant as per the books of accounts, the Commission, as detailed out in the Tariff Order, observed that UPCL had considered opening grants of Rs. 2926.22 Crore towards opening GFA of Rs. 8406.43 Crore for FY 2022-23 as against the trued-up value of Rs. 3528.59 Crore towards opening GFA of Rs. 7766.53 Crore, as approved in Tariff Order dated March 30, 2023. On an explanation sought from UPCL in this regard, it was submitted by UPCL that it considered the impact of transfer scheme and all pending EI certificates while claiming GFA and had also revised its grant contribution in the Opening GFA for FY 2022-23. UPCL submitted that this resulted in variance in the balance of the GFA as submitted in the past (Rs. 2,605 Crore) and the balance as submitted in the latest response as per Audited Accounts (Rs. 2,094.85 Crore).
- s. The Commission, during the tariff proceedings, after going through the submissions of UPCL observed that the Commission has been approving the funding of Assets, since the creation of UPCL, based on actual funding submitted by the Petitioner, based on the audited accounts and after carrying out due prudence check, and truing up till FY 2021-22 has been carried out based on the same. The Commission did not find any merit for such re-instatement of funding as no material explanation was provided by UPCL, and, accordingly, had considered the amount of grant as approved by it in its Order dated March 30, 2023. The relevant portion of the Tariff Order dated 28.03.2024 is reproduced hereunder:

“3.2.2.1.2

...

The Commission observed that UPCL has considered opening grants of Rs. 2926.22 Crore towards opening GFA of Rs. 8406.43 Crore for FY 2022-23 as against the trued-up value of Rs. 3528.59 Crore towards opening GFA of Rs. 7766.53 Crore, as approved in Tariff Order dated March 30, 2023. The Commission, accordingly, sought explanation from UPCL on the variation in the opening GFA considered by it. UPCL vide its reply dated February 01, 2024 submitted that it has considered the impact of transfer scheme and all pending EI certificates while claiming GFA. With regard to grants, the Petitioner has revised its grant contribution in the Opening GFA for FY 2022-23 and in the previous tariff proceeding while dealing with truing up of FY

2021-22 the Petitioner had submitted that there is a great difficulty in identifying the assets created out of grants and consumer contribution and corresponding depreciation to be charged as well as writing back of the same (in case of scrap) at the time of dismantling of such assets. UPCL submitted that the same has also been covered in the Capitalization Policy of UPCL approved by the Commission, wherein it has been mentioned that the linking of receipts of capital grant, consumer contribution and subsidy to the creation of fixed assets and charging depreciation/writing back proportionate amount is practically not possible. UPCL submitted that this has resulted in variance in the balance of the GFA as submitted in the past (Rs. 2,605 Crore) and the balance as submitted in the latest response as per Audited Accounts (Rs. 2,094.85 Crore). The Petitioner in the current tariff proceedings has continued with its earlier values of grant and has further submitted that as per the directions of the Commission the exercise of identification of such assets along with their source of funding and their corresponding depreciation, has already been assigned on 31.10.2021 initially for 4 months and is still being carried out by M/s K.G. Somani & Co., LLP, Chartered Accountants and is expected to be completed by the end of FY 2023-24. UPCL, accordingly, requested the Commission to currently consider the value of Grants as per the Audited Accounts.

The Commission has gone through the submissions of the Petitioner and observes that the Commission has been approving the funding of Assets, since the creation of UPCL, based on actual funding submitted by the Petitioner based on the audited accounts and after carrying out due prudence check, and truing up till FY 2021-22 has been carried out based on the same. The submission made by UPCL in the current tariff proceedings raises serious concern on the quality of information being supplied by UPCL in support of its claims. The Commission, therefore, do not find any merit for such re-instatement of funding as no material explanation has been provided by UPCL. The Commission has, therefore, considered the amount of grant as approved by it in its Order dated March 30, 2023. The Petitioner is directed to complete the ongoing study being carried out by M/s K.G. Somani & Co., LLP, Chartered Accountants for identification of assets and associated funding.

..."

- t. As can be seen from the above discussion the issue related to non-consideration of revised value of grant has been explicitly dealt by the Commission in the Tariff Order, and accordingly, **there is no error apparent on the face of record and there is no new evidence which can be considered and, hence, this issue does not qualify for review.**

- u. Further, with respect to additional claim related to R&M expenses, Depreciation, Return on Equity and claim of pending EI certificates till FY 2021-22 on these capital expenditure and consideration of grant as per audited accounts, the Commission is of the view that these factors are directly dependent upon the amount of capitalization and funding approved by the Commission, and, accordingly, shall be dealt with, once the capitalization for these schemes is allowed by the Commission.
- v. **The Commission further directs UPCL to compile the details of financing of the assets capitalized by UPCL in its books of accounts, starting from FY 2003-04 to FY 2023-24, and submit the same along with the next tariff Petition based on which the Commission shall take appropriate view w.r.t reinstatement of the value of the grant, if so required.**

3.2.2 Provisions for Bad and Doubtful Debts

Petitioner's Submissions

- a. The Petitioner in the review Petition submitted that it had filed its claim of bad debts written off to be allowed in the Annual Revenue Requirement and Tariff Petition for FY 2023-24, but the Commission did not consider the same stating that in the absence of specific approval and details and reasons of year wise surcharge waived off, the Commission has not approved any Bad Debts for FY 2021-22, and directed the Petitioner to submit its claim duly certified by Statutory Auditor along with specific approval of BoD alongwith the next tariff Petition justifying the write off.
- b. The Petitioner submitted that as per the direction of the Commission, based on details certified by Statutory Auditor and as approved by Board of Directors in the meeting held on 16.12.2023, the claim of Bad Debts Written Off was included in the true-up of expenses for FY 2022-23 for an amount of Rs. 212.96 Crore, however, the Commission disallowed the entire claim on the following grounds:
 - i. The information w.r.t. to details of the amount of fictitious arrears as per Form-6 of the policy has not been maintained properly by the field units.
 - ii. The Committee for review and monitoring of matters related to Permanent disconnection has not been constituted till date.

- iii. The information related to age wise category wise receivable is not available with UPCL.
 - iv. Difference in revenue arrears as per Annual Accounts and billing data base.
- c. The Petitioner further submitted that the field units have again been directed to properly maintain the details of the amount of fictitious arrears as per Form-6 of the write-off policy and the same shall be ensured and the details shall be submitted during the tariff determination proceedings for FY 2025-26. UPCL further submitted that the Committee for review and monitoring of matters related to Permanent disconnection is in process and shall be constituted soon. Further, as regards to the difference in revenue arrears as per Annual Accounts and billing data base, the Petitioner submitted that it has assigned the work of reconciliation of arrears shown differently in various records to M/s KG Somani & Co. LLP Chartered Accountants who submitted his report in June 2023 and pointed out the difference in electricity arrears in various records of UPCL as follows:

Particulars	Amount (Rs. Crore)
Arrears as per Audited Accounts	1462.65
Arrears as per Ledger	2910.09
Arrears as per Commercial Diary	2201.53

- d. UPCL submitted that as per the report of the Consultant, the arrears as on 31.03.2023 is Rs. 1614.68 Crore, and the corrective action on the report of consultant is in progress. UPCL further submitted that various States have a provision for bad and doubtful debts and their Commission allows certain amount of bad debts as per their regulation, and as per the Tariff Order dated 30.03.2023, the Petitioner has submitted the required documents (details certified by the Statutory Auditor and approval by Board of Directors), and therefore, disallowance of the claim on this head for an amount of Rs. 212.96 Cr is an apparent error on the face of record and needs to be allowed now.

Commission's Analysis and Ruling

- e. The Commission analysed the claims made by the Petitioner in this regard alongwith stakeholder's comments and Petitioner's response on the same. The Petitioner in its submission had itself elaborated the grounds on which the disallowance is made,

which clearly concludes that the matter has already been deliberated in detail by the Commission in the Tariff Order dated 28.03.2024. Moreover, the Petitioner in the review Petition submitted that it has given directions to its field units to maintain details as per Form-6 of the write-off policy. The Petitioner further submitted that the formation of Committee for review and monitoring of matters related to permanent disconnection is in process, and corrective action on the report of the consultant appointed to reconcile the electricity arrears is in progress.

- f. As can be seen from the submission made by UPCL, it is still in the process of complying with the categorical anomalies pointed out by the Commission in the Tariff Order for not allowing the provisions for bad and doubtful debts. The aforesaid policy for bad and doubtful debts was approved by the Commission way back in 12.10.2021, and after passage of more than 2.5 years UPCL is still passing direction to its field units to maintain details as per Form-6, and also the committee for review and monitoring of matters related to permanent disconnection has not been formed till date. This is very surprising and disappointing, and it is even more surprising to note that UPCL has preferred a review for the claim which is directly related to inaction on its part and considered the same to be a ground for review.
- g. As detailed out in the Tariff Order and as submitted by the Petitioner in the review Petition the Commission has already dealt with the matter in detail. The relevant extract of Tariff Order dated 28.03.2024 is reproduced hereunder:

“3.2.3

...

The Commission has gone through the submissions of the Petitioner and observes that out of the total Bad Debt written off amounting to Rs. 659.76 Crore, surcharge waiver amounts to Rs. 139.67 Crore. It is further observed that the Petitioner has not submitted the year wise surcharge waived off for necessary co-relation with the principal amount written off. The Commission is of the view that surcharge waiver is a voluntary relief provided by the Petitioner mostly at the behest of Government and, therefore, honest consumers cannot be loaded with the impact of such waiver. Excluding the amount of surcharge waived off, the principal amount written off works out to Rs. 520.09 Crore. The Commission has already allowed the Petitioner a total provision of Rs. 333.75 Crore till FY 2008-09 which also includes the opening balance of the

provision inherited from UPPCL. Hence, the amount of bad debts written off by UPCL works out to Rs. 186.34 Crore.

The Commission further in its MYT Order dated March 31, 2022, observed as follows.

“The Commission has gone through the submissions of the Petitioner and observes that the Petitioner has failed to submit any specific approval of its BoD for writing off Bad Debts and, therefore, has not considered the same in the current proceedings. Merely mentioning that the financial statements have been approved by its BoD and hence, write offs have also been approved is devoid of merits. When a particular action requires specific approval of BoD, the same has to be taken specifically and it cannot be inferred that the approval has been accorded indirectly. Moreover, the Commission has in its past tariff orders held that any surcharge waiver will have to be borne by UPCL and it cannot be allowed to be passed on to the consumers. Thus, UPCL is required to submit the details of bad debts written off year wise giving separate details of surcharge waived off. The Commission shall consider the same once specific approvals are submitted in future tariff filings alongwith the requisite details.”

Further, the Commission asked the Petitioner, apart from other details, to submit whether the due procedure as laid down in the approved policy on provisioning and writing off of bad and doubtful debts, has been followed by the Petitioner, and also whether any officer of the corporation has been held responsible towards increasing irrecoverable revenue/fictitious arrears. The Commission also asked the Petitioner to submit the Age wise category wise receivables as on 31.03.2023 and steps taken to recover the dues. In response to the same, the Petitioner submitted as follows:

- a. The information w.r.t. to details of the amount of fictitious arrears as per Form-6 of the policy has not been maintained properly by the field units, which shall be ensured from FY 2024-25 onwards.
- b. The Committee for review and monitoring of matters related to Permanent disconnection has not been constituted till date and the steps shall be taken for constitution of the Committee during FY 2024-25.
- c. The information related to age wise category wise receivable is not available with UPCL.

The Commission analysed the submissions made by the Petitioner and is surprised by the lackluster approach of the Petitioner in complying with the basic requirements of policy, which was approved by the Commission way back in the year 2021 on a specific request made by the Petitioner in this regard. The submission of the Petitioner that they would ensure that data in

Form-6 is captured properly, and the steps shall be taken for constitution of Committee in the FY 2024-25 shows that had the Commission not asked for such details, the Petitioner on its own would not have taken any steps to ensure the same.

Further, from Table 3.33 above, it is surprising to note that Rs. 23.77 Crore and Rs. 33.72 Crore has been written off as bad debts of the Government Public Utilities in FY 2020-21 and FY 2022-23 respectively. The dues of Government utilities cannot be treated as bad. Furthermore, in LT & HT Industries Rs. 48.59 Crore has been written off as bad debts in FY 2020-21. It is beyond explanation as to how such figures can be termed as fictitious arrears. The only explanation to the same can be booking of fictitious sales and revenues to camouflage the losses and then subsequently writing off such revenues considering them as fictitious. Besides the figures of arrears as on 31.03.2022 in 2 statements of UPCL varies considerably. In its CS-4 statement the arrears as on 31.03.2023 is Rs. 2201.53 Crore, however, in its audited statement of accounts, the arrears as on 31.03.2023 is Rs. 1462.65 Crore. UPCL is also required to reconcile the two figures.

The Commission, accordingly, does not find any merit in allowing the claims of the Petitioner with respect to writing off of bad and doubtful debts while carrying out true up of FY 2022-23.

*In view of the above, and in the absence of details of fictitious arrears waived off, the Commission is not inclined to approve any Bad Debts for FY 2022-23. The Petitioner is directed to submit the division wise category wise details of actual bad debts written off till date within 2 months of the date of Order. Furthermore, **the Petitioner is, however, at liberty to submit its claim duly certified by Statutory Auditor along with specific approval of BoD alongwith the next tariff Petition justifying the write offs, and after ensuring that the due process as per the approved policy has been complied with and also alongwith the replies of the observation of the Commission made herein.***

[Emphasis Added]

- h. Further, it would also be worthwhile to note that UPCL has written off about Rs. 546 Crore for the period FY 2011-12 to FY 2022-23 claiming the same as fictitious arrears. Hence, if this proposition of UPCL is to be accepted, it will also be relevant to examine how much fictitious sales was booked in its account against such arrears and its treatment thereof, so that the distribution losses of UPCL were camouflaged. Accordingly, UPCL is also required to submit the details of such fictitious sales booked during the above-mentioned period and its rectification made if any during the next tariff proceedings. Besides, as per the Table given above, 4 different set of

figures of arrears as on 31.03.2023 has emerged. This clearly suggests that no reconciliation of arrears have been carried out by UPCL which is the main reason of different set of statements showing different amount of arrears. **The Commission directs Director(F), UPCL to propose a methodology for reconciling the arrears on half yearly basis, within one month of the date of Order for approval of the Commission.**

- i. Hence, as can be seen from the above discussion, **there is no error apparent on the face of record and there is no new evidence which can be considered and hence this issue does not qualify for review.**

3.3 Delayed Payment Surcharge on Receivable from GoU

Petitioner's Submissions

- a. The Petitioner submitted that the Commission had sought explanation from the Petitioner for not recovering the DPS amount on the amounts recoverable from the Government consumers, in response to which the Petitioner submitted that no Interest/DPS is payable by UPCL on dues payable to GoU and by GoU on dues payable to UPCL, as per the decision taken in the meeting held on 15.10.2012 in the chamber of Secretary Finance, Government of Uttarakhand (GoU).
- b. The Petitioner submitted that the Commission in its Order dated March 28, 2024, has mentioned the following as per para 3.2.6 "Non-Tariff Income":

"...the Petitioner and GoU have come to an internal agreement on the applicability of DPS which is not as per the UERC Tariff Regulations, 2021. The Commission has been allowing UPCL all the costs that is to be paid to the Government, however, UPCL due to its inefficiencies and also imprudent financial management has either not been able to collect its dues from the consumers or is utilising the said amount in creation of fixed assets which can very well be ascertained from the fact that every year UPCL is claiming assets to be created out of its equity/internal resources when it is having negative net worth and is claiming RoE on the same. Hence, the entire burden of this inefficient practices cannot be loaded on to the consumers. The Commission, accordingly, is of the view that both the Petitioner as well as the Commission are bound by the provisions of UERC Tariff Regulations, 2021, and the Regulation is not subject to any such agreements which may be agreed between the Petitioner and its consumers. Therefore, any impact arising out of such agreement is to the account of the Petitioner."

- c. The Petitioner submitted that the Commission has estimated the DPS on Government Consumers for FY 2022-23 on a pro-rata basis amounting to Rs. 112.39 Crore considering the DPS on Government Consumers for previous years and added it to the non-tariff income. The Petitioner submitted that as per policy of GoU mentioned above, UPCL does not compute interest on receivables from GoU and, accordingly, this amount is not reflected in its accounts and requested the Commission to exclude the amount of Rs. 112.39 Crore against the DPS on Government Consumers for FY 2022-23 from the non-tariff income as the same is a direct financial burden on the Petitioner company which is an apparent error on the face of records and needs to be reviewed.

Commission's Analysis and Ruling

- d. As detailed out in the Tariff Order dated 28.03.2024, and as per the extract of para 3.2.6 of the Tariff Order quoted by the Petitioner as mentioned above, the Commission has already concluded its view in the matter and reasoned that non charging of interest by UPCL on GoU dues and vice versa is an internal agreement between UPCL and the GoU, and the same in no way aligns with the provisions of the MYT Regulations, 2021. The Commission has been allowing UPCL all the costs that is to be paid to the Government, however, UPCL due to its inefficiencies and also imprudent financial management has either not been able to collect its dues from the consumers or is utilising the said amount in creation of fixed assets which can very well be ascertained from the fact that every year UPCL is claiming assets to be created out of its equity/internal resources when it is having negative net worth and is claiming RoE on the same. Hence, the entire burden of this inefficient practices cannot be loaded on to the consumers. The Commission, accordingly, was of the view that both the Petitioner as well as the Commission are bound by the provisions of UERC Tariff Regulations, 2021, and the Regulation is not subject to any such agreements which may be agreed between the Petitioner and its consumers. Therefore, any impact arising out of such agreement is to the account of the Petitioner.
- e. Furthermore, the Commission had approved the prepaid metering scheme in its Tariff Order for FY 2012-13. The Commission made the prepaid metering mandatory for Government connections upto 25 kW in its Tariff Order for FY 2017-18. However, till

date UPCL has not complied with this direction of the Commission. Had the said direction of the Commission were complied, the situation of arrears on Government connections would not have arisen.

- f. Accordingly, as discussed above, **there is no error apparent on the face of record and there is no new evidence which can be considered and hence this issue does not qualify for review.**

3.4 Revenue from additional sales

Petitioner's Submissions

- a. The Petitioner submitted that in the ARR and Tariff Petition for FY 2024-25 it had submitted the actual sales for FY 2022-23 as 13491.21 MU and requested the Commission to approve the actual sales as claimed for true-up, however, the Commission in its Order dated March 28, 2024, has re-casted sales from 13491.21 MUs to 13174.78 MUs for FY 2022-23 due to low ABR as compared to the normative ABR computed by the Commission.
- b. The Petitioner submitted that the Average Billing Rate (ABR) of various categories in different divisions cannot be compared with a normative ABR as the load factor and slab wise consumption is not same for all the consumers. Further, the Commission has computed the normative ABR considering the number of consumers and load at the end of the year, whereas new consumers with different loads are added/disconnected during the year which has not been factored in while computing the normative ABR. This is an apparent error on the face of record and needs review in the matter.
- c. The Petitioner further submitted that as per the audited annual accounts for FY 2022-23, the distribution losses for FY 2022-23 was 14.38%, whereas the Commission based on the re-casted energy has estimated the said losses as 16.39% and after sharing of loss, additionally considered revenue from sales of Rs. 132.94 Crore, which is a direct financial burden on the Company due to error apparent on the face of the record. The Petitioner submitted that it has referred tariff orders of various states and found that no recasting of billed energy & distribution losses is being made by the respective SERCs in the matter.

Commission's Analysis and Ruling

- d. The Commission in its previous Tariff Orders has been analysing the division wise commercial statements of UPCL and observed that the average billing rate (ABR) of certain categories of consumers in some divisions were even less than the energy charge approved for that category and directed the Petitioner to rectify such anomalies. However, no efforts at the Petitioner's end have been notice, so as to rectify such anomalies, nor any satisfactory reply has been provided to the Commission on the same. Accordingly, the Commission during truing up of previous years has been re-casting the category wise sales of those categories that were having abnormally low ABR.
- e. The Commission during the proceedings of Tariff Order dated 28.03.2024 also sought the commercial diary of UPCL for FY 2022-23 to check the division wise sales and revenue. The Petitioner in its reply submitted the same. The Commission while analysing the same found that the ABR of almost all the categories for some of the divisions were abnormally low as compared to the ABR approved by the Commission for FY 2022-23. The Commission further observed that instead of any improvement vis-à-vis earlier years, the ABR related anomalies have only increased in FY 2022-23. In view of the discrepancies observed in the sales data in the commercial diary submitted by the Petitioner for FY 2022-23 and reply submitted, the Commission in the Tariff Order again re-casted the category wise sales of those divisions that have abnormally low ABR.
- f. The approach adopted by the Commission in re-casting the sales while carrying out the truing up for FY 2022-23 is detailed in the Tariff Order dated 28.03.2024 which is consistent with the approach adopted not only by the Commission in its previous tariff orders but also by the Petitioner in re-casting of sales in previous tariff proceedings. The Petitioner itself in the previous proceedings recasted the sales of unmetered categories based on the load factor of the metered consumers of the category which was based on the total load of the consumers in that category. The Petitioner in its Review Petition has submitted that the approach adopted by the Commission for re-casting the sales is not correct. In this regard, the Commission would like to highlight that the Commission in its previous Tariff Orders has been re-casting the sales for unmetered categories/sales booked on assessed consumption based on the load factor of metered consumers which

was nothing but consumption divided by load. Hence, this is not the first time that the Commission has re-casted the sales of UPCL. The Commission from time to time has issued several directions to UPCL for correcting these anomalies but the Petitioner had failed to take any concrete action on the same. The re-casting of energy sales done by the Commission in previous Tariff Orders have attained finality. The Commission continuing with the practice adopted in previous Tariff Orders has re-casted the sales of UPCL for FY 2022-23 as well. Moreover, the Petitioner without examining the reasons for such anomalies has made a general statement wherein it has contended that the Commission has computed the normative ABR considering the number of consumers and load at the end of the year, whereas new consumers with different loads are added/disconnected during the year which has not been factored in while computing the normative ABR. Even if Petitioner's submission is considered then also, this logic will not apply where the ABR of certain division was even less than the Energy charges approved for the consumer category.

- g. Further, w.r.t the contention of the Petitioner regarding the recasting of the distribution losses, the same is on account of recasting of sales as discussed above and the Commission had already deliberated in detail on this aspect in the Tariff Order. The relevant extract of the Tariff Order dated 28.03.2024 is reproduced hereunder:

"3.1.2 Distribution Losses

The Petitioner in its Petition has submitted its distribution losses for FY 2022-23 as 14.38%. The Commission for FY 2022-23 had approved the distribution losses of 13.50% based on the loss reduction trajectory approved in the MYT Order for the Control Period from FY 2022-23 to FY 2024-25. However, as per the actual data submitted by the Petitioner and the re-casted sales approved by the Commission, the actual distribution losses for FY 2022-23 works out to 16.39%.

The Commission observed that even though sales to HT industries increased by 5.91% and sales to Commercial consumers increased by 14.15% vis-à-vis FY 2021-22, the distribution loss for FY 2022-23 is even higher than the actual losses of 14.70% approved for FY 2021-22. The Commission during Technical Validation Session sought justification from UPCL on increased losses. UPCL submitted that there has been substantial increase in length of LT line from 70748 Km. in March 2022 to 73599 Km. in March 2023 (increase by 2851 Km.) and in length of 11 kV line from 46201 Km. in March 2022 to 47461 Km. in March 2023 (increase by 1259 Km.).

Further, the number of Distribution transformers has increased from 83400 in March 2022 to 87368 in March 2023 (increase by 3968 no.). The Petitioner further submitted that it is undertaking significant steps through Central Government scheme such as RDSS towards loss reduction works and modernization of distribution network across various divisions, which also covers replacement of consumer meters to smart meters and metering of DTR, etc., and the scheme shall enable the utility in reducing its distribution loss going forward. The Petitioner, thus, requested to approve the Distribution losses of 14.38% instead of the loss trajectory approved by the Commission.

While the technical part of the losses could be explained using HT:LT sales but the billing efficiency contributes to the non-technical part of the Distribution losses. No plausible reason has been offered by UPCL for reduction in billing efficiency when meter reading activity has majorly been outsourced by UPCL. Besides, it is unimaginable that despite increase in industry sales as well as commercial sales where distribution losses are less, overall distribution losses of UPCL are increasing. Further, the losses are high specially in urban areas like Rudrapur, Kashipur, Gadarpur, Bajpur, Roorkee, Khatima, etc. which is beyond comprehension. Hence, the Commission does not find any reason to allow actual losses to UPCL as claimed by it. The Commission, in accordance with the approach adopted in its previous Orders, has allowed the actual quantum of power purchase made by the Petitioner. Considering the actual energy input of 15757.27 MU at distribution periphery (T&D interface) for FY 2022-23 and applying the approved loss level of 13.50% for the year, the Commission re-estimated the sales of 13630.04 MU for FY 2022-23. As against this sale of 13630.04 MU, the actual re-casted sales approved by the Commission for FY 2022-23 is 13174.79 MU. Therefore, there is a loss of sales to the tune of 455.24 MU on account of commercial inefficiencies of the Petitioner resulting from its failure to achieve the distribution losses target approved by the Commission. The Commission has worked out the average billing rate of Rs. 6.24/kWh on the approved re-casted sales of 13174.79 MU. The Commission for FY 2022-23 has not carried out revenue adjustment for supply of power to UPCL's employees & pensioners as the Average billing rate is similar to the ABR of other domestic consumers. The Commission considered the sales revenue for FY 2022-23 as Rs. 8218.09 Crore. Further, the Commission has computed the additional revenue on account of loss in sales due to higher distribution loss of Rs. 283.97 Crore for FY 2022-23. Moreover, since distribution loss is a controllable parameter, the Commission has carried out the sharing of the impact of excess distribution loss in accordance with the provisions of UERC Tariff Regulations, 2021."

- h. As can be seen from the above discussion, the Commission has already dealt with this

issue in detail after considering all the submissions made by UPCL and as such no new fact or information has been brought on record by UPCL in the current Review Petition which can be termed as legitimate grounds for review. UPCL, instead of carrying out the analysis and finding out the reasons for actual ABR being lower than normative ABR, is trying to mislead the Commission with the arguments which are factually not correct. Accordingly, **there is no error apparent on the face of record and there is no new evidence which can be considered and hence this issue does not qualify for review.**

3.5 Interest on Working Capital

Petitioner's Submissions

- a. The Petitioner submitted that the Commission in its Tariff Order dated March 28, 2024, has considered the rate of Interest on Working capital as 10.50%, however, the weighted average of 'one year Marginal Cost of Funds based Lending Rate (MCLR)' as declared by the State Bank of India plus 350 basis points for FY 2022-23 comes out to be 11.29% and the Petitioner has considered the same for the computation of the interest on working capital.

Commission's Analysis and Ruling

- b. Regulation 33 of MYT Regulations, 2021 reads as follows:

"33. Interest on Working Capital

Rate of interest on working capital shall be on normative basis and shall be equal to the weighted average of 'one year Marginal Cost of Funds based Lending Rate (MCLR)' as declared by the State Bank of India from time to time for the financial year in which the application for determination of tariff is made plus 350 basis points.

...

"

- c. The MYT Regulations states that rate of IoWC shall be weighted average of 'one-year MCLR' as declared by SBI from time to time for the FY in which application for determination of tariff is made plus 350 basis point. The Petition for determination of tariff for FY 2022-23 was filed in FY 2021-22 and the one-year MCLR for FY 2021-22 was

7%. Therefore, rate of IoWC was rightly considered as 10.5% (7%+3.5%) by the Commission. Accordingly, **there is no error apparent on the face of record and there is no new evidence which can be considered and hence this issue does not qualify for review.**

3.6 The Petitioner's claim w.r.t sharing of gains/losses and carrying cost for FY 2022-23 are consequential claims resulting from the grounds of review raised by the Petitioner in the Review Petition. Since the Petitioner failed to establish any tenable ground for review of the Tariff Order, accordingly, there is no occasion for Commission to delve upon on the consequential claims raised by the Petitioner.

3.7 Besides above, the Commission has delved upon the principles settled by judicial pronouncements for reviewing any Order, which are succinctly summarized in the matter of Kamlesh Verma Vs Mayawati & Ors (2013) 8 SCC 320 which is being reproduced below:

"20. Thus, in view of the above, the following grounds of review are maintainable as stipulated by the statute:

20.1. When the review will be maintainable:

(i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him; (ii) Mistake or error apparent on the face of the record;

(iii) Any other sufficient reason.

The words "any other sufficient reason" has been interpreted in Chajju Ram vs. Neki¹⁷, and approved by this Court in Moran Mar Basselios Catholicos vs. Most Rev. Mar Poulse Athanasius & Ors.¹⁸ to mean "a reason sufficient on grounds at least analogous to those specified in the rule". The same principles have been reiterated in Union of India v. Sandur Manganese & Iron Ores Ltd. & Ors. ²⁵ ,.

20.2. When the review will not be maintainable: -

(i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.

(ii) Minor mistakes of inconsequential import.

(iii) Review proceedings cannot be equated with the original hearing of the case.

(iv) Review is not maintainable unless the material error, manifest on the face of the order,

undermines its soundness or results in miscarriage of justice.

(v) A review is by no means an appeal in disguise whereby an erroneous decision is re-heard and corrected but lies only for patent error.

(vi) The mere possibility of two views on the subject cannot be a ground for review. (vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.

(viii) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.

(ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negatived.

Moreover, error referred to by Petitioner for seeking review is far from being the 'error' that invokes reviewing jurisdiction. Therefore, the Review Petition cannot be entertained and is rejected as non-maintainable. In view of the same there is no error apparent on the face of record and hence issue do not qualify for review.

- 3.8 Similarly, in **Col. Avatar Singh Sekhon v. Union of India and Others (1980) Supp SSC 562**, the Hon'ble Supreme Court had observed that a review of an earlier order cannot be done unless the court is satisfied that the material error, which is manifest on the face of the order, would result in miscarriage of justice or undermine its soundness. Further, in the matter of **Lily Thomas & Ors Vs Union of India & Ors [(2000) 6 SCC 224]** the Hon'ble Supreme Court had observed that, "...Error contemplated under the rule must be such which is apparent on the face of the record and not an error which has to be fished out and searched. It must be an error of inadvertence..."

XXX XXX XXX

"...Error apparent on the face of the proceedings is an error which is based on clear ignorance or disregard of the provisions of law. In T.C. Basappa v. T. Nagappa this Court held that such error is an error which is a patent error and not a mere wrong decision..."

Further, in the matter of **State Of Haryana And Ors. vs Mohinder Singh And Ors.** the Hon'ble Supreme Court in its order dated 12th November 2002 had observed as follows:

"3. ...

Reliance has been placed in support thereof on the decision reported in Parsion Devi and Ors. v. Sumitra Devi and Ors., wherein it has been observed as follows:-

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

10. Considered in the light of this settled position we find that Sharma, J. clearly overstepped the jurisdiction vested in the Court under Order 47 Rule 1 CPC. The observations of Sharma, J. that "accordingly, the order in question is reviewed and it is held that the decree in question was of composite nature wherein both mandatory and prohibitory injunctions were provided" and as such the case was covered by Article 182 and not Article 181 cannot be said to fall within the scope of Order 47 Rule 1 CPC. There is a clear distinction between an erroneous decision and an error apparent on the face of the record. While the first can be corrected by the higher forum, the latter only can be corrected by exercise of the review jurisdiction."

4. Mr. Raju Ramachandran, learned senior counsel appearing for the respondents with equal force contended that the High Court purported to do substantial justice by allowing the claim in the review petition and the same would not call for any interference, particularly having regard to the fact that the High Court, according to the learned counsel, merely set right an otherwise serious anomaly, and that too keeping in view an earlier decision in almost a similar case, as against which an unsuccessful attempt to appeal before this Court, seems to have been also made.

5. We have carefully considered the submissions of learned counsel appearing on either side. The division bench in the High Court, in our view, **completely overstepped the limits of its review jurisdiction and on the face of it appears to have proceeded as though it is a rehearing of the whole petition which had been earlier finally disposed of.** It has often been reiterated that the scope available for a litigant invoking the powers of review is not one more chance for rehearing of the matter already finally disposed of. The course adopted in this case by the High Court appears to be really what has been held by this Court to be not permissible. ..."

[Emphasis added]

From the above, it is clear that present Petition does not fall under the scope of

Review. The Commission deliberated upon various issues raised in the review Petition and as discussed above, upon these issues the Commission has already deliberated upon and has taken a reasoned view in the Tariff Order dated 28.03.2024. Such reasoned view of the Commission cannot be considered as an error so as to qualify as a ground for seeking review. The review sought by the Petitioner points to a dissatisfaction /disagreement with the view of the Commission taken in the impugned Order. Mere dissatisfaction over the view of a Court or disagreement with the view of the Court and calling such view as erroneous/wrongful, does not open doors to seek review which has a very narrow and limited scope, well defined by provisions of Section 114 r/w Order 47 of CPC and the judicial pronouncements.

3.9 The Commission, in view of the above, rejects the Review Petition filed by UPCL against the Commission's Order dated 28.03.2024, as not maintainable, and, accordingly, Miscellaneous Application No. 51 of 2024 stands disposed off.

3.10 Ordered Accordingly.


(Anurag Sharma)
Member (Law)

(M.L. Prasad)
Member (Technical)/ Chairman (I/c)

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44.	Sh. Prabhat Dhyani	General Secretary	Uttarakhand Parivartan Party	Shaheed Park, Lakhanpur, Ramnagar, Nainital, Uttarakhand.
45.	-	Director	M/s Devarpan Foods Pvt. Ltd.	Narain Nagar Industrial Estate, Bazpur Road, Kashipur-244713, Distt. Udham Singh Nagar
46.	Sh. Shakeel A. Siddiqui	Industrial Advisor	M/s Kashi Vishwanath Textile Mill (P) Ltd.	5th KM, Stone, Ramnagar Road, Kashipur-244713, Distt. Udham Singh Nagar
47.	Sh. Shakeel A. Siddiqui	Industrial Advisor	M/s Galwalia Ispat Udyog Ltd.	5th KM, Stone, Ramnagar Road, Kashipur-244713, Distt. Udham Singh Nagar
48.	Sh. Ashok Bansal	President	M/s Kumaon Garhwal Chamber of Commerce & Industry Uttarakhand	Chamber House, Industrial Estate, Bazpur Road, Kashipur, Udham Singh Nagar
49.	Sh. Devendra Kumar Agarwal	Managing Director	M/s Kashi Vishwanath Steels Pvt. Ltd.	Narain Nagar Industrial Estate, Bazpur Road, Kashipur-244713, Distt. Udham Singh Nagar.
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51.	Sh. Pankaj Gupta	President	Industries Association of Uttarakhand	Mohabewala Industrial Area, Dehradun-248110.
52.	-	Director	M/s KVS Castings Pvt. Ltd.	Narain Nagar Industrial Estate, Bazpur Road, Kashipur-244713, Distt. Udham Singh Nagar
53.	Sh. Gulshan Rai	-	M/s Ganesh Roller Flour Mills	Mohabewala Industrial Area, Subhash Nagar, Dehradun
54.	-	-	M/s Vipul Industries	C/o Manoj Flour Mill, Sahastradhara Road, Dehradun



UTTARAKHAND POWER CORPORATION LIMITED

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PUBLIC NOTICE

Public Hearing to decide on admissibility of the Petition for review of the Commission's Tariff Order dated 28.03.2024 on the Annual Revenue Requirement & Tariff Petition for FY 2024-25 filed by Uttarakhand Power Corporation Limited (UPCL) before the Uttarakhand Electricity Regulatory Commission

Sallent Points of the Review Petition

- Uttarakhand Power Corporation Limited (UPCL), the sole Distribution and Retail Supply Licensee in the State, has filed a Review Petition before Uttarakhand Electricity Regulatory Commission (UERC or Commission) for review of the Commission's Tariff Order dated 28.03.2024 on the Annual Revenue Requirement & Tariff Petition for FY 2024-25.
- Through the above Petition, UPCL has made an additional claim of ARR amounting to Rs. 919.71 Crore as summarized below.

S.No.	Particulars of claim (additional claim of ARR for FY 2022-23)	Rs. Crore
1.	R&M Expense	14.99
2.	Depreciation	59.65
3.	Return on Equity	31.18
4.	Bad Debts written off	212.96
5.	Additional claim of pending certificates till 2021-22	170.7
6.	Revenue from additional sales considered by UERC	132.94
7.	Delayed Payment Surcharge on receivables from GoU	112.39
8.	Interest on working capital	19.98
9.	Sharing of Gain/Loss	(11.66)
10.	Additional ARR	743.13
11.	Carrying Cost	176.58
12.	Total additional ARR including Carrying cost	919.71

- UPCL has proposed to recover the additional revenue gap of Rs. 919.71 Crore through increase in tariffs to be made effective from 01.04.2024. UPCL has, accordingly, proposed an average tariff hike of 8.54% (Rs. 0.63 per unit) in the existing tariffs as approved in the Tariff Order of the Commission.
- Responses/suggestions, if any, are sought from consumers and other stakeholders to decide on admissibility of the Petition. Responses may be sent to the Secretary, Uttarakhand Electricity Regulatory Commission, either In person, or by post at 'Vidyut Niyamak Bhawan', Near ISBT, PO-Majra, Dehradun-248171 or through e-mail to secy.uerc@gov.in by 09.08.2024.
- The Commission has also decided to hold a Public Hearing in the matter on 14.08.2024 at 11:30 AM in the Commission's office on the above-mentioned address. Any person, who wishes to put his views on the subject before the Commission, is invited to appear before the Commission and make the submission in the above public hearing.
- Detailed Petition can be seen free of cost on any working day at the Commission's office or at the offices of Chief Engineer (Commercial) at Victoria Cross Vijeta Gabar Singh Urja Bhawan, Kanwall Road, Dehradun/Chief Engineer (Distribution), Garhwal Zone, UPCL, Shivalik Complex, 2nd Floor, Near LIC Divisional Office, Haridwar Road, Dhampur, Dehradun/Chief Engineer (Distribution), Kumaon Zone, UPCL, 132-KV Substation, Kathgodam, Haldwani/Chief Engineer (Distribution), Haridwar Zone, UPCL, Roshnabad, Haridwar/Chief Engineer (Distribution), Udham Singh Nagar Zone, UPCL, 33KV Sub-Station, Sector-2, SIDCUL, Pantnagar, Rudrapur-263153. Relevant extracts can also be obtained from the above mentioned offices of the Petitioner.
- The Petition is also available at the website of the Commission (www.uerc.gov.in) and at the Petitioner's website (www.upcl.org).

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Managing Director

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