

Before
UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

Misc. Application No.: 140 of 2024
&
Misc. Application No.: 141 of 2024

In the Matter of:

Review of UERC Order dated 30.09.2024 with regard to “Determination of Additional Surcharge in accordance with the provisions of UERC (Terms and Conditions of Intra-State Open Access) Regulations, 2015 to meet the fixed cost of UPCL arising out of its obligation to supply electricity to the Open Access Consumers for the period 01.10.2024 to 31.03.2025.

And

In the Matter of:

1. M/s Galwalia Ispat Udyog Pvt. Ltd.
Narayan Nagar, Kashipur.
2. M/s Kumaun Garhwal Chamber of Commerce & Industry (KGCCI),
Chamber House, Industrial Estate, Bazpur Road,
Kashipur, Udham Singh Nagar.

...Petitioner(s)

&

In the Matter of:

Uttarakhand Power Corporation Ltd.,
Victoria Cross Vijeta Gabar Singh Urja Bhawan,
Kanwali Road, Dehradun.

...Respondent

Coram

Shri M.L. Prasad	Chairman
Shri Anurag Sharma	Member (Law)

Date of Hearing: January, 21, 2025

Date of Order: March 12, 2025

ORDER

This Order relates to Petitions filed by M/s Galwalia Ispat Udyog Pvt. Ltd and M/s Kumaun Garhwal Chamber of Commerce & Industry (KGCCI) (hereinafter referred to as “the Petitioners”) in the matter of Review of Commission’s Order dated 30.09.2024 with regard to “Determination of Additional Surcharge in accordance with the provisions of UERC (Terms and Conditions of Intra-State Open Access) Regulations,

2015 to meet the fixed cost of UPCL arising out of its obligation to supply electricity to the Open Access Consumers for the period 01.10.2024 to 31.03.2025.”

As per sub-Regulation (4) of Regulation 54 of the UERC (Conduct of Business) Regulations 2014, a review application, if being rejected, is required to be disposed within 30 days from the date of hearing, however, in the instant matter, the same could not be done due to the ongoing tariff proceedings at Commission and pre-fixed dates for public hearing at different locations in Uttarakhand. Hence, the order got delayed and same is regretted.

1. Background

- 1.1 The Commission vide its order dated 30.09.2024 in the matter of “Determination of Additional Surcharge in accordance with the provisions of UERC (Terms and Conditions of Intra-State Open Access) Regulations, 2015 to meet the fixed cost of UPCL arising out of its obligation to supply electricity to the Open Access Consumers for the period 01.10.2024 to 31.03.2025 has decided the Additional surcharge as Rs. 1.15 per Unit for the period from October 2024 to March 2025.
- 1.2 M/s Galwalia Ispat Udyog Pvt. Ltd vide its letter dated 02.12.2024 has filed the application for the review of the Commission’s Order dated 30.09.2024, in the matter of Determination of Additional Surcharge in accordance with the provisions of UERC (Terms and Conditions of Intra-State Open Access) Regulations, 2015 to meet the fixed cost of UPCL arising out of its obligation to supply electricity to the Open Access Consumers for the period 01.10.2024 to 31.03.2025.
- 1.3 M/s Kumaun Garhwal Chamber of Commerce & Industry (KGCCI) vide its letter dated 03.12.2024 has filed the application for the review of the Order dated 30.09.2024 of the Commission, in the matter of Determination of Additional Surcharge in accordance with the provisions of UERC (Terms and Conditions of Intra-State Open Access) Regulations, 2015 to meet the fixed cost of UPCL arising out of its obligation to supply electricity to the Open Access Consumers for the period 01.10.2024 to 31.03.2025.

- 1.4 The Commission clubbed the applications filed by M/s Galwalia Ispat Udyog Pvt. Ltd & M/s KGCCI in the matter for hearing, since both the applications were similar and involved a common issue.
- 1.5 Upon admittance of the applications, the Commission decided to schedule the hearing on 21.01.2025 in the matter, for which intimation was sent to the Petitioners and the Respondent. The Respondent was directed to submit their comments on the aforesaid applications to the Commission along with a copy to the Petitioners.
- 1.6 The Respondent vide its letter dated 16.01.2025 submitted the comments in the matter.
- 1.7 During the hearing, Petitioners and Respondent both made their submissions in detail before the Commission and the same are mentioned and examined in the paras below.

2. The Petitioners have submitted that:

- 2.1 The Regulation suggests that the rate of additional surcharge is to be fixed on a prospective basis, should such fixed rate of surcharge need not be evaluated/ true up to be done on receipt of actual data after completion of the half year for which the surcharge rate has been derived. The same has not been done since the first order was passed by Hon'ble UERC in 2019. The methodology was detailed in the first Order dated 29.08.2021 issued in the matter by the Commission.
- 2.2 Rule 22 (3) of the Electricity (Amendment) Rules, 2024 provides the rider for additional surcharge levied on any Open Access Consumer that it
- 2.3 shall not be more than the per unit fixed cost of power purchase of the distribution licensee concerned.

Provided that for a person availing General Network Access or Open Access, the additional surcharge shall be linearly reduced from the value the year in which General Network Access or Open Access was granted so that, if it is continued to be availed by this person, the additional surcharge shall

get eliminated within four years from the date of grant of General Network Access or Open Access:

Further, the proviso of section 8.5.1 of the National Tariff Policy, 2016, stated as follows:

“Provided that the surcharge shall not exceed 20% of the tariff applicable to the category of the consumers seeking open access.”

- 2.4 In the Impugned Order Hon'ble UERC has not considered or answered to the aforesaid provisions and it is silent on the riders mentioned in the Electricity Rules and National Tariff Policy as well as there is no supporting working in the Petition filed by the Discom which justifies the imposition of the aforesaid provisions of the Rules and Policy.
- 2.5 In the Impugned Order the Commission has neither identified any stranded capacity nor drawn any correlation between the stranded capacity and the power drawn under open access while calculating additional surcharge. In fact, in terms of the Impugned Order, it is presumed by the Commission that all power drawn under open access will lead to stranding of power, therefore rendering applicable Regulation redundant i.e. the Commission has not demonstrated that there is Stranding of power on account of STOA leave alone conclusively demonstrating the same. There is not even a whisper of any Stranding of power on account of STOA in the Impugned Order. The Impugned Order has given a complete go by to applicable Regulation.
- 2.6 In the impugned order the Commission finds that it will be a fair proposition to consider the fixed costs of 6 plants i.e. Jhajjar, Dadri Gas, FG Unchahar-3, FG Unchahar-4, Anta and Auriya, even though the quantum of total power surrendered from these projects is more than the quantum of short-term open access. Therefore, the Commission has assumed that every unit of power under Open Access will lead to the stranding of power, the fixed cost of which is being passed on to the Appellants, which is grossly unfair and contrary to the provisions of law.

2.7 The above practice being followed by the Commission is not prevalent in other Regulatory Commissions of different States of India, who evaluates additional Surcharge based upon following:

- (a) Available energy during the period as a whole,
- (b) Scheduled energy for meeting the requirement of consumers,
- (c) Total long-term PPAs and not only selective plants,
- (d) Short-term open-access purchases
- (e) Fixed cost already realized is deducted from the stranded fixed cost

2.8 The comparison of open access charges in Uttarakhand and Uttar Pradesh is an eye-opener, the Commission is simply taking care of UPCL and killing the industrial consumers. The increase in charges in the form of additional charges and cross-subsidies only makes the open access power non-viable thereby giving monopoly status to DISCOM. This is only going to hurt the industries directly and thereby benefit the DISCOM by unethical means. Healthy competition is always required for the benefit of all.

Particulars	Uttarakhand	Uttar Pradesh
Additional Surcharge	1.09 (Ist HY) (2024-25) 1.12 (II nd HY) (2024-25)	NIL
Cross Subsidy	0.63	11-66 kV – 0.67 66-132 kV – 0.76
Distribution Loss	13.00%	11 kV – 7.75% 33 kV – 0.46% Above 33 kV – 0.21%

2.9 If we go through the orders decided by the Commission in previous years, we will find that:

- (a) In Oct-18 to Mar 19 stranded power was taken as for imposition of additional surcharge for the period Oct-19 to Mar-20 as 155.34 MW whereas in actual during the period 122.53 MW power was stranded.
- (b) In Oct-19 to Mar 20 stranded power was taken as for imposition of additional surcharge for the period Oct-20 to Mar-21 as 122.53 MW whereas in actual during the period 107.30 MW power was stranded.

- (c) In Apr-20 to Sep 20 stranded power was taken as for imposition of additional surcharge for the period Apr-21 to Sep-21 as 107.59 MW. Whereas in actual during the period 47.67 MW power was stranded.
- (d) In Apr-21 to Sep 21 stranded power was taken as for imposition of additional surcharge for the period Apr-22 to Sep-22 as 107.30 MW whereas in actual during the period 5.85 MW power was stranded.
- (e) In Oct-21 to Mar 22 stranded power was taken as for imposition of additional surcharge for the period Oct-22 to Mar-23 as 5.85 MW whereas in actual during the period 10.36 MW power was stranded.
- (f) In Apr-22 to Sep 22 stranded power was taken as for imposition of additional surcharge for the period Apr-23 to Sep-23 as 7.43 MW whereas in actual during the period 26.53 MW power was stranded.
- (g) Overall, against 549.71 MU stranded power calculated only 327.67 MU were stranded in the relevant 6 half year mentioned above.

The Petitioner lastly submitted that UPCL vide its version and the Commission by adopting the aforesaid principle are acting against the provisions of applicable law, and the same needs to be corrected as this is causing an unavoidable loss to the consumers of the State.

3. The respondent has submitted that:

- 3.1 The Review Petitions filed by the Petitioners are sans merit. The Petitioners have filed the present Petitions under Section 94 (1) (f) of the Electricity Act, 2003 Section 114, Order XLII (1) of the Code of Civil Procedure, 1908 and Regulation 54 (1) of the UERC (Conduct of Business Regulations), 2014 for review of the order dated 30.09.2024, whereby Additional Surcharge was determined for the period October 2024 to March 2025 to meet the fixed cost of UPCL arising out of its obligation to supply electricity to the open access consumers. The order passed by the Commission is clear and does not require any interference under review jurisdiction.
- 3.2 The issues pertaining to the levy of an additional surcharge has been addressed by the Hon'ble Commission vide its order dated 30.09.2024.

Furthermore, the same issues raised in the present matter were also raised by the Petitioners in Petition No. 38 of 2024. The issues raised in Petition No. 38 of 2024, which are relevant to the current proceedings with its reply, submitted by the Respondent vide letter dated 04.09.2024.

- 3.3 In light of this, the Petitioner's submission that the Petitioner's arguments/submissions were not considered while passing the impugned order is clearly misconceived. The Petitioners, in invoking review jurisdiction, appears to be seeking a de novo adjudication, which exceeds the scope of the present review Petitions.
- 3.4 With the pronouncement of the Order the Commission has become functus-officio and the ground which has been taken in the present matter cannot be considered under the Review Petitions.
- 3.5 The power conferred upon the Commission U/S 94(1) (f) of Electricity Act, 2003 are limited and can be exercised only to cure an error which is apparent on the face of record. The grounds raised in the Petition are beyond the purview of review jurisdiction and in fact the Petitioner is seeking re-hearing of the same issue under the guise of the review. The Apex Court in case of State of West Bengal Vs. Kamal Sengupta (2008) 8 SCC 612 has held that “a party cannot be permitted to argue de novo in the garb of review.”
- 3.6 The Petitioners in their Petitions have made considerable emphasis on the judgment passed by the Hon'ble Supreme Court in the matter of **SESA Sterlite V. OERC, (2014)8 SCC 444** and the judgment passed by the Appellant Tribunal for Electricity in Appeal No.169 of 2006 in the matter of **RVK Energy Private Limited V. Central Power Distribution Co of AP Ltd & Ors.** However, it is respectfully submitted that the said judgment was passed on peculiar facts of the case and few lines of judgment could not be read in isolation with the other discussion made therein, even otherwise the judgments referred cannot be a ground to recall the earlier order as same would be beyond the power conferred U/S 94(1) (f) of Electricity Act, 2003.
- 3.7 The Petitioners' contention that various provisions of the Electricity Act 2003, Electricity Rules, provisions of UERC (Terms and Conditions of Intra-State

Open Access), 2015 Regulations, and the Tariff Policy concerning Additional Surcharge have not been followed is incorrect. It is abundantly clear from the order of the Commission that all relevant provisions were duly considered and addressed. The Commission, in its order, comprehensively examined the relevant provisions of the Act, Rules, Regulations, and the Tariff Policy, to ensure compliance. The operative part of the order, which is reproduced below, reflects the thorough analysis undertaken by the authority in its decision-making process.

"4.3. The Additional surcharge determined by the Commission has been done in accordance with the provisions of the Electricity Act, 2003, Tariff Policy and UERC (Terms and Conditions of Intra State Open Access) Regulations, 2015."

3.8 Furthermore, all the issues raised in the present petition have already been dealt by the Commission in its earlier order dated 30.09.2024. The Petitioners' arguments merely reiterate points that have been conclusively addressed, and no new grounds have been presented to justify a review of the Order dated 30.09.2024. As such, the filing of this petition serves no meaningful purpose and can be considered a futile exercise. There is no error apparent on the face of the record, nor any new facts or substantial circumstances that warrant a reconsideration of the earlier order.

4. Commission Observation, Views & Decision

4.1 The instant Review Petitions are directed against the Order dated 30.09.2024 of this Commission, whereby, the Additional Surcharge was fixed for the period from 01.10.2024 to 31.03.2025. Since the instant Petitions are Review Petitions, Commission observes that review proceedings shall be strictly confined to the scope and ambit of Order XLVII Rule 1, CPC which states that:

"1. Application for review of judgment- (1) Any person considering himself aggrieved, –

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(C) by a decision on a reference from a Court of Small Causes,

and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review."

- 4.2 In light of above, Commission proceed to examine the Petition and submissions made by the petitioners and the respondent. This Commission has carefully perused the record and submissions made by the Petitioners. Petitioners have relentlessly referred to an error apparent on face of record as the basis of these Petitions. To establish that there is an error apparent in the impugned Order, the Petitioners have made many submissions which are mentioned at para 3 above and relying upon the same have claimed that Order needs to be reviewed. In this regard, let us glance over what 'error apparent' means in legal parlance and how the higher Courts have explained the implication and application of error apparent on face of record and scope of review Petition.

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 [(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..."

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“...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...”

In spite of various submissions and the arguments made by the Petitioners, they have failed to establish that there is any error apparent on record as held in the judgements mentioned above, we have observed that Petitioners are probably dissatisfied with the decision of the Commission and are infact submitting the order to be erroneous, as has been held in various orders passed by the Commission that review cannot be an appeal in disguise, therefore, if the Petitioners are dissatisfied with the Orders of the Commission then the proper remedy for the Petitioners were to file an appeal and not the present review Petitions.

Further, while emphasizing the error apparent on record petitioners have also stated that Commission has missed out in considering the provisions of Electricity (Amendment) Rules, 2024, in this regard also, firstly this is an assumption wrongly drawn by the Petitioners, moreover, this cannot be treated as error apparent on record. Further, Petitioners failed to understand that as per provision of Section 181 (2) (q) of the Electricity Act, 2003, the State Commission is to provide by way of Regulation the provision for payment of additional charges on charges of wheeling etc., at present the said aspect is covered by provisions of UERC (Terms and Conditions of Intra-State Open Access) Regulations, 2015 and until amended the same will continue to apply.

- 4.3 It is also noticed that certain facts/grounds raised by Petitioners are not new and have already been decided vide Order dated 19.06.2020 in the similar matter of M/s Kashi Vishwanath Steel Pvt. Ltd., M/s Galwalia Ispat Udhyog Pvt. Ltd. & M/s Indian Glycols Ltd. and the parties have appealed against the Commission order dated 19.06.2020 before the Hon'ble APTEL particularly regarding the methodology adopted by the Commission for the determination of Additional Surcharge. The said appeal is still pending for the decision before the Hon'ble APTEL. Hence, submission of the Petitioners

and ground raised in the Petitions have already been heard in a similar main matter in the past and the request of the Petitioner to rehear and reconsider and those issues again in a review cannot be accepted. It appears that the Petitioners only wants us to take alternate view in the matter which is not permissible under review jurisdiction. We want to clarify, it is settled law that power of review cannot be confused with appellate power which enables a superior court to correct all errors committed by a subordinate court. It is not a second opportunity for rehearing of the original matter so as to take a different view. A Petition regarding old and overruled arguments cannot be accepted to reopen concluded adjudication. In this regard, it is relevant to refer to S. Madhusudan Reddy Vs V. Narayana Reddy & Ors. Civil Appeal No. 5505 of 2022, the Hon'ble Supreme Court wherein it has been observed that:

"...In the guise of exercising powers of review, the Court can correct a mistake but not substitute the view taken earlier merely because there is a possibility of taking two views in a matter. A judgment may also be open to review when any new or important matter of evidence has emerged after passing of the judgment, subject to the condition that such evidence was not within the knowledge of the party seeking review or could not be produced by it when the order was made despite undertaking an exercise of due diligence. There is a clear distinction between an erroneous decision as against an error apparent on the face of the record..."

In continuation to this, we would like to throw light on the principles of review i.e. as to when a review is maintainable and when not, which is succinctly summarized in the matter of Kamlesh Verma Vs Mayawati & Ors (2013) 8 SCC 320 which are 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 Poulose 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."*

In the instant case, all the grounds and submissions made towards the dissatisfaction/ disagreement of Petitioners with the view of the Commission in the impugned order. Mere dissatisfaction over the view of a Court or disagreement with the view of the Court in a matter does not open doors to seek review which has a very narrow/limited scope. There are no sufficient grounds of review of Order dated 30.09.2024, we would like to reiterate that grounds of review are very narrow and very specific that cannot be twisted for gaining personal interest. If the Petitioner is willing for rehearing/reconsideration of the facts and evidence placed in the main matter, it may perhaps file an appeal against the impugned Order.

4.4 We are not satisfied by the submissions and arguments of the Petitioners which seems to be misconceived and bereft of any substance. Therefore, in light of facts and law discussed above, the Commission rejects the Petitions as non-maintainable.

Ordered accordingly.

(Anurag Sharma)
Member (Law)

(M.L. Prasad)
Chairman