

**Before**  
**UTTARAKHAND ELECTRICITY REGULATORY COMMISSION**

**Misc. Application No.: 43 of 2022**

**In the Matter of:**

Review/Reconsideration petition filed by Power Transmission Corporation of Uttarakhand Ltd., seeking review of the order dated 14.10.2022 passed in the matter of Waiver of Supervision Charges for upgradation works of 220 kV D/C Mahuakhedaganj-Kashipur including LILO of SEPL by replacement of ACSR Zebra Conductor with high capacity ACCC Conductor to be executed by M/s SEPL as per Commission Order dated 05.03.2021.

**And**

**In the Matter of:**

Power Transmission Corporation of Uttarakhand Limited  
Registered Office: Vidyut Bhawan,  
Saharanpur Road, Dehradun.

...Petitioner

**&**

**In the Matter of:**

M/s Sravanthi Energy Private Limited  
Registered Office: 7th Floor, Block -B,  
Building Number 9, DLF Cyber City,  
DLF Phase III, Gurugram - 122 002,  
Haryana, India.

...Respondent

**Coram**

**Shri D.P. Gairola**

**Member (Law)/Chairman(I/c)**

**Shri M.K. Jain**

**Member (Technical)**

**Date of Hearing: December 23, 2022**

**Date of Order: January 06, 2023**

**ORDER**

This Order relates to Petition filed by Power Transmission Corporation of Uttarakhand Ltd. (hereinafter referred to as “the Petitioner” or “PTCUL”) in the matter of Review/ Reconsider of the order dated 14.10.2022 passed by the Commission in the matter of waiver of Supervision charges for Upgradation works of 220 kV D/C Mahuakhedaganj-Kashipur line including LILO of SEPL by replacement of ACSR Zebra Conductor with high capacity ACCC Conductor to be executed by M/s Sravanthi Energy

Pvt. Ltd. (hereinafter referred to as “Respondent” or “SEPL”) as per UERC order dated 05.03.2021.

## **2. Background**

- 2.1 The Petitioner is a Transmission Licensee in Uttarakhand and had signed a Connectivity Agreement with SEPL for LILO of one circuit 220 kV Mahuakheraganj-Kashipur Line at 220 kV Switching sub-Station of SEPL for Phase I (214 MW) on 05.07.2017 and further, for Phase II (214 MW) dated 10.09.2021.
- 2.2 M/s Sravanthi Energy Pvt. Ltd. is a generating company having established a 214 MW (225MW ISO/Phase I) gas based Combined Cycle Power Plant on Build Own and Operate basis at village located at village Khaikhera, Kashipur in Udham Singh Nagar.
- 2.3 Earlier, the Commission in the year 2017, had *inter-alia* accorded investment approval to PTCUL for Replacement of ACSR Zebra Conductor in 220 kV D/c Mahuakheraganj -Kashipur Line (including LILO portion for M/s SPEL) with the High Capacity ACCC Conductor, vide Order dated 07.02.2017. However, when PTCUL did not execute the aforesaid work, the Respondent took the initiative of upgradation of D/c line and requested the Commission to allow it to undertake the said work. The Commission vide Order dated 05.03.2021 granted approval to SEPL for upgradation works.
- 2.4 Later, Respondent filed a Petition on dated 01.09.2022 before the Commission seeking waiver of supervision charges raised by PTCUL in the matter. The Commission vide impugned Order dated 14.10.2022 nullified the demand/request of PTCUL for levying of Supervision Charges.
- 2.5 Consequent to the above, the instant Review Petition was filed by PTCUL before the Commission on 28.10.2022 challenging the aforesaid impugned Order dated 14.10.2022 of this Commission. Accordingly, the Commission decided to schedule a hearing on admission.
- 2.6 On the day of hearing, Petitioner and Respondent made their arguments vociferously which were heard in detail by the Commission and the Commission has examined the same in the paras below. Besides, the Commission vide Order dated 23.12.2022 decided to reserve its judgment.

**3. The Petitioner has submitted that:**

- 3.1 Once Commission accepts an expenditure/cost of supervising the work, it would be an error apparent on record to deny such charges to the Petitioner;
- 3.2 Denial of supervision charges on the basis that the work after completion would be owned and operated by PTCUL is not a legally valid justification for the denial of such charges hence also the order needs to be reviewed;
- 3.3 Setting aside the demand of the Petitioner for supervision charges on the basis that it did not stand sound on the grounds of logic, prudence or law is exceeding the jurisdiction in granting the relief and is therefore clearly an error apparent on record which is liable to be corrected does not justify denial of supervision charges;
- 3.4 Burdening the Petitioner with the system strengthening of 220kV Mahuakheraganj-Kashipur line when the Petitioner had no requirement for strengthening the same;
- 3.5 The Commission in its impugned Order has accepted that the Respondent is acting as a contractor engaged by PTCUL and is investing its own money for upgradation of this line therefore, it is submitted that the nature of work being done by respondent is similar to the deposit work and being pari-materia there is no substantial difference in these types of work and the ones executed for the consumer on deposit basis for which supervision charges at the rate of 15% have been provided by the Hon'ble Commission on labor and material cost. In deposit works the purpose of work is the requirement of the beneficiary as is in the present case, the assets in both the cases would be under the ownership of PTCUL hence, there is no distinction on this ground also, therefore the clause 28 of Regulation 3.4.3 of UERC Supply Code Regulation 2020 shall be applicable or on the same principle on the basis of which the provisions have been made and found justified. Further, the benefit of supervision charges will be ultimately passed on to the consumers of the State as the same would be deducted from the non-tariff income in the ARR which consequently have positive impact on the ARR of UPCL;
- 3.6 The Commission has not considered in its impugned order that there is no clarity on the cost on which the concerned assets would be transferred to PTCUL after completion, as it appears that the assets may be transferred at

zero cost, which would imply that the same cannot be included in the Gross fixed Assets (GFA) due to which it is not possible to get the O&M charges as have been provided in the order of the commission, which is an error apparent on record and needs to be corrected;

- 3.7 There is no clarity in the order with respect to the period of the guarantee as mentioned in the order at point 'd' of the direction in para 5.4 of the impugned order which is an error apparent on record and needs to be corrected;
- 3.8 The Commission in its Order has acknowledged that the Petitioner is helping the Respondent by providing its time and expertise. The Supervision being provided by Petitioner comprises of timely processing of drawings, inspection at manufacturer's site, dispatch clearance and instructions, resolving RoW issues, liaison with different departments etc. All these activities require time and consequent cost of the Petitioner resources and must therefore be compensated in form of supervision charges;
- 3.9 Due to the scope of the Petition earlier filed by M/s SEPL various new and important matter and evidence could not be produced before the Commission due to which the matter could not be considered in correct perspective. If those facts and evidence were before the Commission, the impugned order would not have been passed. There are just and sufficient reasons for re-considering and reviewing the impugned order and the Commission in light of the facts stated it is requested to kindly re-considered the entire facts and grant supervision charges to the Petitioner as claimed by it from the Respondent.

**4. Respondent has submitted that:**

- 4.1 All the points raised in the Petition and argued during the hearing by Petitioner have already been argued before the Commission in the main matter and therefore the Petition should not be admitted.
- 4.2 Petitioner is not sure of which aspect of review does the Petition fall under. PTCUL at some paras have contested error apparent as basis of the Petition and in few have raised new evidence as basis of the Petition.
- 4.3 SEPL has taken up the responsibility of upgradation of the transmission line and the ownership of the transmission line is with PTCUL. In future, SEPL will

be one of the few beneficiaries. Therefore, demanding supervision charges from SEPL a generator is totally unjustified.

- 4.4 SEPL is a generator and is upgrading the existing asset on behalf of PTCUL by investing its money for the said work. Hence the demand by PTCUL for supervision charges and challenging the Hon'ble UERC commission order dated 14.10.2022 is not justified.
- 4.5 PTCUL is wrong to contend that it will not be able to get the O&M charges for the concerned assets as the Commission vide order dated 05.03.2021 has given directions for calculating the O&M charges in clause no. 3.9 of the said Order.
- 4.6 Guarantee for all the line equipment's against any defective design, material and manufacturing and workmanship shall be given by SEPL for a period of 24 months from the date of completion of execution and commissioning of the ACCC HTLS upgraded 220kV Transmission Line. Hence, the contention of PTCUL is mis founded.
- 4.7 Had the project been executed by PTCUL on its own through a tendering process, it would not have imposed the supervision charges on the contractor for the execution of the project. PTCUL should acknowledge the benefits being derived by the upgradation which have been clearly elucidated in Clause no. 3.4, 3.6, and 3.7 of the Hon'ble UERC commission order dated 05.03.2021, therefore, levying supervision charges on SEPL is not justified.
- 4.8 That it would not be out of place to mention that the Supply code is applicable on the consumers of the licensee and not the generator. The said 220 kV D/c line is used for evacuation of power generated from the Respondent's project and drawl of start-up power for which the Supply Code cannot be applicable to it. In this regard, Hon'ble APTEL in its Judgment dated May 24, 2011 on Appeal no. 166 of 2010 has held as under:

*"Further, consumer as defined in the Act is a person who is supplied with electricity for his own use. Here startup power is supplied to Respondent -1 to startup its generating unit. Once generating unit is synchronized with the grid, the power so generated is supplied to Appellant. Without startup power, generators cannot start and produce power. Thus, in way, startup power is supplied for the benefit of Appellant only. **From this point of view, a generator taking startup power***

*from distribution licensee and supply power to same licensee on startup, cannot be termed as a consumer.*

*(Emphasis added)”*

Thus, M/s SEPL is not a consumer and provisions of Supply Code with respect to the supervision charges is not applicable to it.

- 4.9 Besides above, the Respondent vide its letters dated 07.11.2022 & 21.11.2022 and during the hearing too, had informed and requested the Commission that the Petitioner is denying shutdown for completing the balance upgradation works of 1<sup>st</sup> Ckt. of 220 kV D/C Mahuakhedaganj-Kashipur line, i.e. SEPL-Mahuakhedaganj portion and additional work of earth wire re-sagging without assigning any reason thereof.

## **5. Commission Observations, Views & Decision**

- 5.1 The instant Review Petition is directed against the Order dated 14.10.2022 of this Commission, whereby, claim of Supervision Charges raised by PTCUL were disallowed vide the said Order. Since the instant Petition is a Review Petition, therefore, we observe 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."*

- 5.2 In light of the above, we proceed to examine the Petition and arguments arising out of the same. This Commission has carefully perused the arguments raised by the Petitioner where we found that Petitioner has relentlessly referred to error apparent on face of record as the basis of this Petition. To establish that there is an error apparent in the impugned Order, the Petitioner has raised many arguments which are provided at para 3 above. For instance, the Petitioner has argued that once Commission accepts expenditure/cost of supervising the work, it would be an error apparent to deny such charges to the Petitioner. In another argument, Petitioner has submitted that work after completion would be owned and operated by PTCUL, is not a legally valid justification for denial of supervision charges and therefore Order needs to be reviewed. In this regard, let us glance over what error apparent in legal parlance stands for and how the higher Courts have explained the implication and application of error apparent on the face of the record.

In Col. Avatar Singh Sekhon v. Union of India and Others (1980) AIR 2041,1981 SCC (1) 168, dated 31 July 1980, 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 Vs Union of India & Ors. (2000) 6 SCC 224, dated 05 April 2000, 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..."*

In the arguments raised vide the Petition and in the subsequent submissions made during hearing, we do not see any errors as contemplated in the orders quoted above, rather, we have observed that Petitioner is actually dissatisfied

with the decision of the Commission. Such dissatisfaction alone cannot be the cause to revisit the impugned Order.

- 5.3 Further, in an interesting argument, Petitioner has submitted that there is no clarity on the cost on which assets would be transferred to PTCUL after completion, as it appears that assets may be transferred at zero cost, which would imply that same cannot be included in the Gross Fixed Assets (GFA) due to which it is not possible to get O&M charges as have been provided in the order of the Commission. We are surprised to be listening to such an argument because the Commission in its Order dated 05.03.2021, at para 3.9, has already elaborated upon the treatment of O&M charges by using its inherent powers. Relevant para of the said order is reproduced hereunder: -

*“...Currently, the Regulations do not provide for O&M charges separately for lines and bays, hence, in order to remove any difficulty in this regard, the Commission using its inherent powers under the Conduct of Business Regulations, 2014 decides to adopt the O&M charges specified in the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2019 for lines, bays and ICTs which have been specified upto FY 2023-24 hereunder. However, subsequent to aforesaid financial year PTCUL shall approach the Commission for determination of these charges from time to time.*

**Table No. 1: Normative O&M Charges of Transmission Elements**

Year	2021-22	2022-23	2023-24
<b>Norms for sub-station Bays (Rs Lakh per bay)</b>			
220 kV	24.12	24.96	25.84
<b>Norms for AC lines (Rs Lakh per km per annum)</b>			
Double Circuit (Single Conductor)	0.404	0.419	0.433
<b>Norms for Transformers (Rs Lakh per MVA)</b>			
400 kV	0.384	0.398	0.411

*Accordingly, the Petitioner would be required to bear pro-rata O&M charges for the line, bays and ICTs utilised in proportion to power injected by Phase-II of the Petitioner's project vis-a-vis overall energy handled by these elements. The Petitioner is directed to account for the same separately and no incidence of the same should devolve on Phase-I of the project for which it has PPA with UPCL. Moreover, it is also clear that after the augmentation of the aforesaid line the ownership of the line would be handed over to PTCUL and subsequently, PTCUL would recover the proportionate O&M charges of the above transmission elements based on the normative charges as per Table given above from the Petitioner.”*



Further, clarity desired by Petitioner is already provided in the aforesaid Order. Petitioner is contesting old and overruled arguments which cannot be the basis of seeking/allowing review.

- 5.4 Besides above, Petitioner has argued that it has been burdened with the system strengthening of 220 kV Mahuakheraganj-Kashipur line when it had no requirement of strengthening the same. We do not see strength in such argument as it is a grievance against the impugned order and is not a matter for which review can be considered. However, for the sake of addressing the argument, we would like to state that Petitioner itself had approached the Commission seeking investment approval for the strengthening work of the above line. Moreover, the Commission vide the impugned Order has already elaborated upon emphasizing on the duties of the State Transmission Utility to ensure efficient transmission network, it is the duty of Petitioner to strengthen its system/network for evacuation of power being supplied by generators. This is the sole purpose of the existence of the Petitioner's company and hence Petitioner cannot display execution of such works as favour of any kind to generator which rather is other way round in this case.
- 5.5 We have heard and examined all arguments/submissions made by Petitioner and we have observed these facts/grounds to be nothing new for us to contemplate upon. We agree with the submission of Respondent that everything Petitioner has argued is already heard by this Commission in the main matter and request of Petitioner to reconsider entire facts of the case cannot be entertained. We want to clarify, as 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 rehearing of original matter. A Petition of old and overruled arguments is not enough to reopen concluded adjudication. In *S. Madhusudan Reddy Vs V. Narayana Reddy & Ors.* Civil Appeal No. 5505 of 2022, the Hon'ble Supreme Court has 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. Neki<sup>17</sup>, and approved by this Court in Moran Mar Basselios Catholicos vs. Most Rev. Mar Poulouse Athanasius & Ors.<sup>18</sup> 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. <sup>25</sup> ,.*

*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.*

5.6 In the instant case, all the arguments raised, points to a dissatisfaction/disagreement of Petitioner 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. If anything, apparent here in this matter is the desire of Petitioner to seek an alternate view in the decision.

5.7 Further, on the concern of the Respondent regarding denial of shutdown for completing the balance up-gradation works stated supra, the Commission had taken cognizance of the same and vide letter dated 22.11.2022 directed PTCUL to grant shutdown to SEPL, however, during the hearing this concern was again raised by SEPL that shutdown has not been granted to it. We cannot skip to ignore this concern that has been brought before us and we believe this act of PTCUL to be high handedness and unjustified, and is causing unnecessary delay in timely completion of the said work. The Commission hereby directs PTCUL to grant shutdown to SEPL as per mutually agreed schedule for smooth and timely completion of the said work without any further delay.

5.8 Thus, in light of the above, we would like to reiterate that grounds of review are very narrow and very specific that cannot be twisted for gaining personal interest. This forum is not satisfied by the arguments of Petitioner which seems to be misconceived and bereft of any substance. Therefore, in light of this, the Commission has decided to reject the Petition as non-maintainable.

Petition disposed.

Ordered accordingly.

**(M.K. Jain)**  
**Member (Technical)**

**(D.P. Gairola)**  
**Member (Law) / Chairman (I/c)**