Before

UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

Misc. Application No. 18 of 2022

In the matter of:

Petition for review of the Commission's Order dated 31.03.2022 on True up for FY 2020-21, Annual Performance Review for FY 2021-22 and Annual Revenue Requirement for FY 2022-23.

In the matter of:

Uttarakhand Power Corporation Ltd. … Petitioner

CORAM

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

Shri M.K. Jain Member (Technical)

Date of Order : June 29, 2022

Uttarakhand Power Corporation Ltd. (hereinafter referred to as "UPCL" or "the Petitioner") has filed a Petition for review of Commission's Order dated 31.03.2022 on True up of FY 2020-21, APR for FY 2021-22 and ARR for FY 2022-23 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") and under Section 114 and 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 31, 2022 for FY 2022-23, including Annual Performance Review for FY 2021-22. In accordance with the provisions of the UERC Tariff Regulations, 2018, the Commission had also carried out truing up for FY 2020-21 vide its aforesaid Order dated 31.03.2022.

The Petitioner filed a Review Petition dated 11.05.2022 on the grounds that there were certain errors apparent on the conclusions drawn on certain issues by the Commission in its Tariff Order dated 31.03.2022 and also new and important matter came up which was not within the knowledge of the Petitioner even after exercise of due diligence.

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.	Additional Power Purchase Cost on account of higher demand, and lower availability of power, costly power in Power Exchange/short term market due to high prices of coal and gas in international market.	922.32
2.	Estimation of Revenue for FY 2020-21	24.16
Total		**946.48**

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 11.05.2022)
1.	Amar Ujala, Uttarakhand	19.05.2022
2.	The Times of India, New Delhi	20.05.2022

Through the above notice, the stakeholders were requested to submit their objections/suggestions/comments latest by 06.06.2022 on the admissibility of the Review Petition filed by UPCL (copy of the notice is enclosed as **Annexure-I**). The Commission received total 10 Nos. objections/ suggestions/comments in writing on the Review Petition filed by UPCL.

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 31.03.2022 on True-up for FY 2020-21, Annual Performance Review of FY 2021-22 and Determination of Annual Revenue Requirement for FY 2022-23. The Commission also held a public hearing in the matter on 06.06.2022 to decide on admissibility of the Petition.

The Commission during the public hearing received various comments from stakeholders, some of which were of such nature that does not relate to the maintainability of the review Petition filed by UPCL. The Commission has not taken such comments into records 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 Pankaj Gupta, President, Industries Association of Uttarakhand, and Shri Rajeev Agarwal, Vice President, Industries Association of Uttarakhand opposed the review Petition filed by UPCL stating the there are no grounds for review that are being fulfilled. They also stated that if UPCL wishes to bring this matter for consideration of the Commission then the same should be in the form of a fresh Petition and not through review Petition. Other stakeholders who were present during the public hearing also opposed the review Petition filed by UPCL and submitted that the same should not be accepted by the Commission.

2.1.2 Petitioner's Reply

In response to the same, UPCL during the public hearing 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.

2.2 General

2.2.1 Stakeholder's Comment

Shri Sanjay Agarwal, President Mussorie Hotel Association, raised objection against the review Petition filed by UPCL for FY 2022-23 stating that UPCL charges Fixed Charges, Electricity Duty, Green Energy Cess apart from the energy charges. It was further submitted that the energy charges for electric connections more than 25 kW is charged on kVA basis instead of kW which is almost 12% more than the energy charges and fixed charges based on kW, and the method of calculating the energy charge and other charges on kVA are misleading and unjust. He further submitted that wastage of electricity in the offices of the department should be saved, and energy charges should also be charged from the existing and the retired employees of the organization and they should be treated as normal consumers. He further submitted that strict vigilance should be kept on the purchases done by the department, and the suppliers providing inferior quality of material should be blacklisted and the concerned employees should be punished for the involvement in such activities.

2.2.2 Petitioner's Reply

In response to the same UPCL submitted that the Electricity Act, 2003 mandates for imposition of fixed charge in addition to the energy charge for electricity supplied. UPCL submitted that irrespective of the actual consumption of energy, UPCL is required to be prepared to supply energy according to the contracted load of the consumers, and for this purpose, a certain amount of expenditure has necessarily to be incurred by UPCL which is not related to energy consumed but related to the contracted load of the consumer, and the recovery of this amount should be done through demand / fixed charges whether or not the consumer consumed electricity.

UPCL further submitted that as per Section 3 of Uttar Pradesh Electricity (Duty) Act (Uttarakhand adaptation and modification) Order 2001, State Government is empowered to fix the rates of Electricity Duty to be charged from various category of consumers, and Government of Uttarakhand vide its notification no. 79/I/2016-

01(3)/01/2003, dated 25.01.2016 has fixed these rates applicable w.e.f. 01.01.2016 and UPCL is charging electricity duty as per Government Orders which is payable by UPCL to GoU. Further, as per Section – 4 of the Act, Green Energy Cess upto 10 paise per unit shall be levied on the electricity supplied to Commercial and Industrial Consumers of the State, which shall be levied, collected and payable by UPCL, and as per GoU notification dated 17.06.2015, rate of Cess has been determined @ 10 paise per unit. UPCL submitted that the aggrieved consumers may take up these matters with the GoU.

UPCL further submitted that the kVAh billing has been introduced with a view to encourage energy conservation wherein the consumer is benefited by maintaining unity/healthy power factor, and also as per Section 62 (4) of the Electricity Act, 2003, the tariffs may be differentiated according to consumers load factor, power factor, voltage, total consumption of electricity etc.

UPCL further submitted that as regards the question of wastage of electricity in the offices of UPCL, UPCL vide its letter dated 29.04.2022 has issued instructions to all its officers to save electricity and to make the consumers aware about the same. Further, as regards recovery of electricity charges from the working and retired employees of UPCL, UPCL submitted that the employees of UPCL are being given the facility of departmental electricity connection since U.P. State Electricity Board was in existence. Under this facility, a fixed lump-sum amount is charged from the employees according to their designation towards electricity charges for electricity supplied to them. Erstwhile, UPSEB was unbundled under the provisions of Uttar Pradesh Electricity Reforms Act, 1999 and Section-23(7) of the said Act provides "terms and conditions of service of the personnel shall not be less favorable to the terms and condition which were applicable to them before the transfer". The same spirit has been echoed under first proviso of Section 133(2) of the Electricity Act, 2003. The benefits for employees / pensioners as provided in Section 12(b)(ii) of the Uttar Pradesh Reform Transfer Scheme, 2000 includes "concessional rate of electricity", which means concession in rate of electricity to the extent it is not inferior to what was existing before 14th January, 2000. The rates and charges indicated above for this category are strictly in adherence of above statutory provisions. As UPCL is the successor entity of UPPCL (formed as a result of unbundling of UPSEB), the above legal provisions are also applicable on it (UPCL). UPCL submitted that all the three corporations, i.e. UPCL, UJVNL and PTCUL vide their combined office memorandum bearing no. 5391/UPCL/RM/N-36 dated 17.07.2020 revised the fixed charges and imposed caps on electricity consumption by the working/retired employees and family pensioners of UPCL, UJVNL and PTCUL from 01.07.2020, and the consumption over and above the cap fixed shall be charged at the rates specified in domestic category and these fixed charge have also been revised/increased for FY 2021-22 and FY 2022-23. UPCL further submitted that the Commission in its Tariff Order dated 27.02.2019 at para 2.22.1.3 has stated as follows:

"…

The Commission would like to clarify that in the previous Tariff Orders, the Commission had not been allowing the impact of concessional supply to departmental consumers including pensioners of UPCL, UJVN Ltd. and PTCUL and has been considering revenue corresponding to the ABR of domestic consumers and the same approach has been adopted while carrying out the truing up for FY 2017-18.

..."

UPCL further clarified that the departmental purchases are made as per Rules, Regulations and Orders applicable in UPCL.

2.3 Additional Power Purchase Cost

2.3.1 Stakeholder's Comments

One of the Stakeholder through email submitted that the Petitioner has given its analysis of additional Power Purchase only on the basis of maximum capped rate of Rs. 12/unit of IEX. There are other modes of power purchase also like bilateral, banking, through trader etc., and the Petitioner should give detailed analysis of power purchase from other modes also. Moreover, DEEP Portal power purchase analysis is also missing. He further submitted that the additional power purchase may be approved only after receiving the detailed analysis of all the modes of power purchase.

Shri Chaudhary Charan Singh, Chairman, Varishth Nagrik Samajik Sangathan, Haridwar submitted that the review Petition filed by UPCL should not be admitted since Uttarakhand being a hydro dominant State, can produce surplus power through hydro at cheaper rate. Further, the review Petition is not admittable as UPCL has filed Petition for revision of tariff for FY 2022-23, and also Fixed charges, Green Charges exists in the already approved tariff.

Shri Munish Talwar from Asahi India Glass limited, Roorkee submitted that UPCL has filed petition to increase/revise the tariff second time in a same FY within a short span of 2 months. Shri Talwar submitted that it has been revealed in the review Petition that there has been a substantial increase in Gas cost and Coal shortage which embarked in purchase of power by UPCL from external agencies on high cost, but now these prices have substantially reduced and likewise generation has increased. Shri Talwar submitted that at present there is increasing trend of power generation through Hydro power generators which is available at much cheaper cost and can be utilized by UPCL. It was submitted that if we compare with Feb/March 2022, power availability was 15 MU which has now increased to approx. 22 MU, and this increase can be used to overcome the shortcomings. He further submitted that now imported coal permission has been given by the Government again, so it can be utilized to meet the demands, and also the domestic coal availability is also increasing in the market, and therefore it is not justified to say that there is depletion of coal reservoirs in India, and this may be a short time decline only. Shri Talwar further submitted that Power Trading in present time is on much lower side as compared with previous months, and at present it can be observed that lower rate of power at energy exchanges (IEX/PXIL) is between INR (5-7) while earlier it was INR 12 or more than that, which makes it a viable option to procure power through exchanges which is more justified than purchasing power at higher rates through other sources, and the losses which UPCL has listed in its review petition can be recovered after some time when there is stability at National level.

M/s Vista Furnishing Limited, Haridwar submitted that UPCL has filed the Petition on the basis of internationally increased prices of coal and gas. It was submitted that the price hike is temporary and will remain for short term only as happened earlier also, and these prices are decreasing now, therefore, this is not a valid reason for tariff hike for whole year. It was further submitted that UPCL have made power contracts with gas and coal based power plants despite having availability of rich sources. It was also submitted that recently there has been tariff hike in April, 2022 and again huge hike in tariff in the form of additional energy charge will be a huge hammer on the backbone of industrial sector.

Shri Veeru Bisht, Social Worker, Mohanpur, Dehradun objected towards review Petition for Additional Energy Charges on electricity by UPCL for FY 2022-23.

Shri Sudhir Kumar, Hardiwar, Shri Shanti Prasad Bhatt, Uttarakhand Kranti Dal, Dehradun, and Shri Rajendra Chaudhary, Mahamantri, Uttarakhand Pradesh Congress Committee, 423/35, Civil lines, Roorkee submitted that there should be no tariff hike.

Shri Sunil Kumar Gupta (Reporter) "Teesri Aankh ka Tehlka", Dehradun objected on the review petition for Additional Energy Charges on electricity filed by UPCL for FY 2022-23.

2.3.2 **Petitioner's Reply**

In this regard, the Petitioner submitted that UPCL is a commercial organization and is required to meet its Annual Revenue Requirement out of the revenue realized from the consumers through electricity tariffs. UPCL submitted that against the average tariff hike of 6.02% proposed in the tariff Petition, the Commission had approved the average tariff hike of 2.68% in the Tariff Order issued on 31.03.2022. UPCL submitted that the status of demand and availability of power has substantially changed in the months of April 2022 & May 2022 as compared to the status of demand and availability at the time of filling of the Petition by the Petitioner as well as at the time of issuance of the MYT Order by the Commission. UPCL submitted that this is a new and important matter, which after exercise of due diligence was not within the knowledge of UPCL.

UPCL submitted that against the demand of about 2100 MW, it is presently having long term PPAs of 3685 MW. The overall requirement of power in the month of April, 2022 was 44-45 MUs/day, while the availability was just 30 MUs from long term PPAs and deficit was to the tune of 14-15 MUs per day. Further, during the first half of June, 2022 the per day demand has increased upto 53-54 MU and corresponding availability was around 41-42 MUs per day.

UPCL further submitted that overall energy mix of the State is skewed towards hydro power and its share is around 30% of the total energy and is purely seasonal, and during the recent times the hydro power has not been in a position to fulfil the State's requirement and also gas plants located within the state which have a long term PPA, are shut down due to abnormal hike in gas prices, which has led to substantial gap in the generation and demand in the State. UPCL submitted that the estimates and price quotes as received from one of the gas generators in the State had gas price of ~$20.68 MMBTU (Rs. 1608.7 MMBTU). Also, the availability of power in the power exchange is on the lower side (i.e. 18% during 01-04-2022 to 30-04-2022) and the rates are higher, due to substantial rise in the price of the gas and unavailability of domestic coal.

UPCL submitted that to meet the power demand in this situation, it is trying to manage power through available modes such as 56 MW from Central Sector (Bogaingaon), 100 MW from ESSAR, Tender purchases, Bilateral purchase, DEEP Portals, Power Exchange, Banking etc., however, due to lower availability of power and higher prices, UPCL is facing difficulty to meet the power demand. UPCL submitted that in this current situation with Gas remained unavailable due to high prices and the plant shut down, it has created huge supply gap (around 30%) and UPCL had to compulsorily resort to short term measures, as better availability of gas has always reduced dependency on open market/short term sources of UPCL.

UPCL submitted that during these testing times, it has explored all the possible modes for purchase of power at reasonable rates. Power is being procured through Day Ahead, Real Time Market and Term Ahead Market, and from time-to-time tenders are also being floated for purchase of power from DEEP Portal. UPCL also submitted that GoI has taken measures to mitigate this situation of power crisis in various forms.

UPCL further submitted that Regulation 83 of MYT Regulations, 2021, allows fuel charge adjustment only on the actual variation in fuel costs relating to power generated from Coal and Gas based generating stations as approved in the Tariff Order. UPCL submitted that FCA adjustment is only considered with change in the cost of Coal and Gas based generating stations and power purchase due to variation in the fuel cost and not on the total power purchase cost or variation in the exchange price or transmission charges. UPCL submitted that MERC & GERC allows variation in power purchase cost to include transmission charges also.

Additionally, UPCL in response to objections filed by Shri Chaudhary Charan Singh, further submitted that from entire ARR, all costs except variable power purchase cost from Thermal based power plants (Coal & Gas) are fixed in nature, i.e. fixed charges towards power purchase, O&M expenses, and financial costs would be incurred / claimed in ARR irrespective of sale of energy. The portion of fixed charge and variable charge in the total ARR is in ratio of 77.50: 22.50, whereas the recovery of revenue from fixed charge and variable charge is in ratio of 15.43: 84.57. UPCL submitted that it needs to be prepared with supply of power based on the contracted demand, irrespective of the consumption, and hence the obligation of payment of fixed charges for power purchase arises and ideally all such fixed costs needs to be recovered from demand/fixed charges of consumers, so that the Petitioner is able to manage its cash flow. It is because of this reason reduction in fixed charges may be detrimental to the Petitioner and hence undesirable.

Additionally, UPCL with respect to objection filed by Shri Munish Talwar and M/s Vista Furnishing Limited, Haridwar, further submitted that the exorbitant rates of power in power exchanges have severely affected the liquidity of the Corporation and to maintain the supply in coming months it is important that matching recovery must be allowed. UPCL submitted that the rates in the exchanges have come down on average basis but still in many slots prices are touching the ceiling rates, moreover prices have came down in comparison to earlier rates but still they are to the tune of Rs. 6-7/kWh and to sustain even with such rates UPCL needs support of hike in tariff. UPCL submitted that in the months of September, 2022 and October, 2022 the shortage scenario is again expected and to sail through, UPCL is in dire need of liquidity.

Additionally, UPCL in response to the objection filed by Sh. Sudhir Kumar, Shri Shanti Prasad Bhatt, and Shri Rajendra Chaudhary, further submitted that there is an error in the Tariff Order dated 31.03.2022 in estimation of revenue for FY 2020-21 by the Commission the impact of which is Rs. 24.16 Crore, and accordingly, UPCL has filed this review Petition for recovery of the additional ARR.

Additionally, in response to the objection filed by Shri Sunil Kumar Gupta, UPCL further submitted that the review has been filed for increase in the Power Purchase Cost due to substantial increase in the price of Gas, and error in estimation of revenue for FY 2020-21 by the Commission in the Tariff Order dated 31.03.2022.

3 Petitioner's submission, and Commission's Analysis and Ruling

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 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 (CPC). 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:

a. 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.

b. Mistake or error apparent on the face of the record; or

c. 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 It may be pointed out here that Hon'ble Supreme Court and Hon'ble High Courts have also 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 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 other matter in State of Haryana Vs. Mohinder Singh, 2003 (1) AWC 567 SC, JT 2002 (10) SC 197.

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 & Ors. (Supra) 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. It is clear that the application for review does not meet even this condition.

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 must 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 for 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.

3.2 Power Purchase

Petitioner's Submissions

3.2.1 The Petitioner in the review Petition submitted that the State of Uttarakhand is presently facing power crisis due to various factors, viz less availability of power in the Indian Exchanges because of exceptionally high prices of Coal & Gas on account of international crisis, exceptional temperature rises and consequent demand rise, lower water availability for hydro power plants etc. The Petitioner submitted that against the current demand of about 2100 MW, the Petitioner is presently having long term Power Purchase Agreement (PPA) of approximately 3685 MW. The current overall requirement of power is approximately 44 - 45 MU per day which is increasing day by day while the Petitioner is receiving just 30 MU of energy from long term PPAs and facing a deficit of around 14-15 MU of energy. The overall energy mix of the State is skewed towards hydro power and its share is around 30% of the total energy and the same is purely seasonal. During the recent time the atmospheric temperature has increased abnormally whereas the water flow in rivers has not improved with the same pace and also the gas plants located within the State which have a Long Term PPA with the Petitioner for 321 MW and could supply on an average 7 MU per day, were forced to shut down due to abnormal hike in gas prices leading to substantial gap between generation and demand in the State. The Petitioner submitted that the normal price of imported gas was about $ 7.5 per Metric Million British Thermal Unit, which has now reached to $ 40 per Metric Million British Thermal Unit. Moreover, the availability of power in the power exchanges is on lower side and even the rates of power in exchanges reached to the tune of Rs. 20.00/unit. The Petitioner submitted that the Central Electricity Regulatory Commission (CERC) has recently reduced the ceiling price for sale of power from exchange to Rs. 12.00/unit. To meet the power demand, the Petitioner is trying to purchase power in the available modes by inviting the bids through DEEP Portal (Discovery of Efficient Price Portal) of Govt. of India, as well as through TAM (Term ahead market), DAM (Day ahead market) and RTM (Real time Market) in IEX/PXIL (Power Exchanges) at around Rs. 12 per unit or higher in DAM, RTM and in TAM but due to lesser availability of power from the power exchanges and abnormal increase of Power Purchase cost, the Petitioner is facing difficulty in meeting the power demand of the State since the Power Purchase cost from power exchange has increased abnormally as compared to previous year and rate of power purchase allowed by the Commission. The power purchase in all the above modes (DAM, TAM & RTM Modes) is resulting in higher outflow of cash resulting in paucity of funds in the Petitioner company and adversely affecting its operations.

3.2.2 The Petitioner further submitted that this situation of increase in demand due to onset of early summers and shutdown of gas based generating stations of the State could not be predicted at the time of filing of Business Plan and Multi Year Petition in the month December, 2021 and also the same could not be predicted by the Commission at the time of issue of the Order, i.e. on 31.03.2022. The Commission approved 2524.61 MU availability of power from the gas based generating stations of the State whereas the said generating stations are presently in shutdown due to very costly power (the normal price of imported gas was about $ 7.5 per Metric Million British Thermal Unit, which has now reached to $ 40 per Metric Million British Thermal Unit and the Petitioner company is forced to procure/replace this power from the Power Exchanges/DEEP Portal. The Petitioner submitted that this is the new and important matter which even after exercise of due diligence, was not within the knowledge of the Petitioner company and, therefore, the impugned Tariff Order issued by the Commission on 31.03.2022 needs to be reviewed in view of Order XLVII (1) of the Code of Civil Procedure, 1908. The Petitioner further submitted that, although the continuation of the said situation cannot be predicted, however it is expected that the said situation will not be over till September, 2022 and may even prolong further and, therefore, the Petitioner company is required to recover the additional cost of power purchase through consumer tariffs.

3.2.3 The Petitioner submitted that the Commission has approved the quantum of power from the State based gas generating stations equivalent to 2524.61 MU at an average price of Rs. 6.46 p.u. with variable cost of Rs. 4.80 p.u. The Petitioner submitted that availability of power from the above generating stations is about 7 MU per day, and has worked out the impact of replacement of power from the gas based generating stations with Power Exchanges/DEEP Portal as follows:

(i)	Per day availability	: 7 MU
(ii)	Availability from 01.04.2022 to 30.09.022 (183 days)	: 1281 MU

(iii)	Variable cost approved by UERC	:	Rs. 4.80 p.u.
(iv)	Market price of power	:	Rs. 12 p.u.
(v)	Additional financial burden/ARR for FY 2022-23 (Rs. 12 p.u. – Rs. 4.80 p.u). x 1281 MU	:	Rs. 922.32 Cr.

<u>Commission's Analysis and Ruling</u>

3.2.4 The Commission analysed the submissions made by the Petitioner and the comments of the stakeholder's alongwith UPCL's response on the same. Before going into merits of the Petition, the first question that comes up is whether the instant Petition filed by UPCL is maintainable or not in light of the provisions of Section 114 and Order 47 of the CPC, under which the review of the Order is permitted on three specific grounds only, namely:

a. 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.

b. Mistake or error apparent on the face of the record; or

c. Any other sufficient reasons.

As can be seen from above, the review of an Order is permitted only if the criteria for review as mentioned above are met and in no other case the Act permits the review of an Order of the Commission. The Petitioner has filed the instant review Petition stating that the variation in power purchase cost is new and important matter which even after exercise of due diligence was not within the knowledge of the Petitioner company.

3.2.5 In this regard, the Commission observed that the said contention of the Petitioner is not acceptable, as variation in power purchase cost due to change in climate, environmental & market conditions cannot be termed as discovery of new and important evidence warranting a review of the Order passed by the Commission. Demand forecast and power purchase by a Discom is a dynamic process. The Petitioner is an established entity in the business of electricity distribution and must have faced situations of varied nature in the past which may or may not be like the current scenario, but the utility is expected to gain a lot of experiences from the events that happened in the past. Like previously in the start of Covid 19 pandemic wherein demand of UPCL crashed and simultaneously power purchase by Discom also was reduced, UPCL never approached the Commission seeking revision in tariff.

3.2.6 The weather conditions, the scarcity of coal & gas, high prices of inputs in international market etc. are all the part and parcel of the business operations being carried out by the Petitioner which they are expected to resolve or think a way out, through their prudent business practices and experience gained in the sector. These types of factors which influence the price of procurement of electricity are highly volatile and may change in favour of the Petitioner company at a later date. Thus, these factors cannot form the basis of review of an Order for the simple reason that if at a later date if the situations become normal or are in favour of the Petitioner such that the power is available at a very cheap rate or if Government of India introduces any policy to provide a relief to the power sector to cope up with the above situation or the demand crashes down, then again the tariff would have to be reworked to give affect to such change in the same manner in which the Petitioner is proposing the revision of tariff on account of increase in power procurement cost. This practice is not logical and will only create confusion amongst the consumers and would defeat the very purpose of MYT regime which provides for a certainty to a large extent with regard to future trend in electricity prices of the State.

3.2.7 The Commission also sought information from UPCL regarding source wise and day-wise details of power procured from external sources during the period 01.04.2022 to 20.05.2022, and based on information submitted by UPCL it was observed that the power has been procured by UPCL from the energy exchange in the range of Rs. 2.99/kWh to Rs. 13.49/kWh in the months of April, 2022, and in the month of May, 2022 (till 20.05.2022) the rate of power procurement from the energy exchange is in the range of Rs. 4.07/kWh to Rs. 13.89/kWh.

3.2.8 Further, the ground for review of Tariff Order dated 31.03.2022 on account of variation in power purchase cost does not satisfy the conditions for review as provided in the Section 114 and Order 47 of the CPC as the same can neither be termed as discovery of new and important matter, nor a mistake or error apparent on the face of record and also does not comes within the purview of any other sufficient reason related to aforementioned two provisions as at the time of filing the Petition and even before the issuance of the Tariff

Order the Petitioner was well aware of the fact that the gas based generating stations were shut down on the directions of UPCL due to non-availability of cheaper gas and this non-availability of cheaper gas and consequent shutdown of the gas stations cannot be treated as discovery of new & important matter. Hence, not a valid ground for review.

3.2.9 Accordingly, in light of the above discussion, the Commission is of the view that variation in power purchase cost of UPCL does not warrant the review of Tariff Order dated 31.03.2022. Therefore, the Commission is not going into the merits of the claims made by UPCL for review of Tariff Order dated 31.03.2022 on account of variation in power purchase cost.

3.2.10 The Commission would like to further state here that the actual costs, subject to prudence check, are allowed to the utilities during truing up proceedings of the respective years, and the Petitioner may bring up this matter at the time of truing of FY 2022-23 alongwith necessary justification and explanations, based on which the Commission shall take an appropriate view on the same.

3.3 Estimation of Revenue for FY 2020-21

Petitioner's Submissions

3.3.1 The Petitioner in the review Petition submitted that the Commission while truing up of the revenue for FY 2020-21 has wrongly added Rs. 19.31 Crore in the revenue of the said FY. The Petitioner submitted that the relief in tariff (except timely payment rebate) provided to the consumers has neither been considered as an expense nor reduced from the revenue in the books of the accounts of the Petitioner Company, however, an amount of Rs. 19.31 Crore has wrongly been added in the revenue by the Commission which is an apparent error on the face of record and needs to be reviewed. The Petitioner, accordingly, requested the Commission to allow a claim of Rs. 24.16 Crore (Rs. 19.31 Crore and carrying cost of Rs. 4.85 Crore on the same) on this account, through the instant review Petition.

Commission's Analysis and Ruling

3.3.2 The Commission analysed the claims made by the Petitioner in this regard alongwith stakeholder's comments and Petitioner's response on the same. The Commission in its Tariff Order dated 31.03.2022 in Table 4.37 while examining the monetary reliefs passed on to the consumers during Covid pandemic observed that the Petitioner had passed total relief of Rs. 58.45 Crore to the consumers against the relief received of Rs. 39.14 Crore and therefore, had held that the balance relief of Rs. 19.31 Crore was to be recovered from the State Government. The Commission for analysing the Petitioner's claim asked UPCL to submit copies of sample bills to demonstrate that the DPS which was directed to be waived off was charged in the bills of the consumers during the relevant period to form part of the revenue from sale of power for FY 2020-21. The Commission based on the submissions made by UPCL in the review Petition and also further information received from it observed that the DPS was charged in the bills of the consumers for the period prior to the Pandemic and hence, the Commission is of the view that to establish that whether or not the said DPS was charged on the bills of the consumers a thorough analysis of the claims made by UPCL is required, which is a time consuming exercise and cannot be concluded during the proceedings of this review Petition.

3.3.3 Moreover, the Commission in the Tariff Order dated 31.03.2022 has left a surplus of Rs. 5.39 Crore with UPCL while estimating the revenue for FY 2022-23 at approved tariffs. The relevant portion of the Tariff Order dated 31.03.2022 is reproduced hereunder:

> *"The estimated revenue for FY 2022-23 at approved tariffs works out to Rs. 7714.40 Crore, as against the net ARR of Rs. 7709.01. Crore worked out after adjusting trued-up surplus/gaps of previous years leaving a surplus of Rs. 5.39 Crore with UPCL.*
>
> *The Commission will consider the actual sales and revenues while carrying out the truing up for FY 2022-23."*

Accordingly, the Commission is of the view that there is no merit in revising the approved tariffs on this ground as the same is not yet finalised. Moreover, it involves a very small amount after adjusting the surplus of Rs. 5.39 Crore as approved in the Tariff Order dated 31.03.2022. Further, revising the tariffs on this ground at this stage will not have any substantial impact as the same being a very small amount is not expected to adversely affect the financial health of the utility. The Petitioner may bring up this issue alongwith the next tariff proceedings, wherein the Commission shall take appropriate view on the same.

3.3.4 The Commission, in view of the above, rejects the Review Petition filed by UPCL against the Commission's Order dated 31.03.2022, as not maintainable, and accordingly, Miscellaneous Application No. 18 of 2022 stands disposed off.

3.4 Ordered Accordingly.

(M.K. Jain) **Member (Technical)**	**(D.P. Gairola)** **Member (Law)/Chairman (I/c)**

UTTARAKHAND POWER CORPORATION LTD.

(A Govt. of Uttarakhand Undertaking)

उत्तराखण्ड पावर कारपोरेशन लि०

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PUBLIC NOTICE

Public Hearing to decide on admissibility of the Petition for review of the Commission's Tariff Order dated 31.03.2022 on the Annual Revenue Requirement & Tariff Petition for FY 2022-23 filed by Uttarakhand Power Corporation Limited (UPCL) before the Uttarakhand Electricity Regulatory Commission

Salient Points of the Review Petition

1. 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 31.03.2022 on the Annual Revenue Requirement & Tariff Petition for FY 2022-23.
2. Through the above Petition, UPCL has made an additional claim of ARR amounting to Rs. 946.48 Crore as summarized below.

S. No.	Particulars of Claim	Rs. Crore
1	Additional Power Purchase Cost on account of higher demand, and lower availability of power, costly power in Power Exchange/short term market due to high prices of coal and gas in international market.	922.32
2	Estimation of Revenue for FY 2020-21	24.16
	Total	**946.48**

3. UPCL has proposed to recover the additional revenue gap of Rs.946.48 Crore through increase in tariffs to be made effective from 01.04.2022. UPCL has, accordingly, proposed an average tariff hike of 12.27% in the existing tariffs as approved in the Tariff order of the Commission.
4. Responses/suggestions, if any, are sought from consumers and other stakeholders to decideon 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 **06.06.2022.**
5. The Commission has also decided to hold a Public Hearing in the matter on **06.06.2022 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.
6. 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, Kanwali Road, Dehradun/Chief Engineer (Distribution), Garhwal Zone, UPCL, 120-Haridwar Road, 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, UPCI,, 33KV Sub-Station, Sector-2, SIDCUL Pantnagar, Rudrapur-263153. Relevant extracts can also be obtained from the above mentioned offices of the Petitioner
7. The Petition is also available at the website of the Commission (www.uerc.gov.in) and at the Petitioner's website (www.upcl.org)

No. : 170/EE(CM)/UPCL /A-2 Date : 18.05.2022 **Managing Director**

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