

Before

UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

Misc. Application No. 38 of 2023

In the matter of:

Petition to review/reconsider the Commission's Order dated 16.08.2023 on the Suo-moto proceedings in the matter of request for seeking approval of revised payment terms for release of gas payments for M/s Gama Infraprop Private Ltd. and M/s Sravanthi Energy Private Ltd.

In the matter of:

Uttarakhand Power Corporation Ltd.

... Petitioner

AND

In the matter of:

M/s Gama Infraprop Private Ltd.

M/s Sravanthi Energy Private Ltd.

... Respondents

CORAM

Shri D.P. Gairola

Member (Law)-Chairman (I/c)

Shri M.K. Jain

Member (Technical)

Date of Order: October 17, 2023

Uttarakhand Power Corporation Ltd. (herein after referred to as "UPCL" or "the Petitioner") has filed a Petition for review of the Commission's Order dated 16.08.2023 on the Suo-moto proceedings in the matter of request for seeking approval of revised payment terms for release of gas payments for M/s Gama Infraprop Private Ltd. (herein after referred to as "GIPL" or "the Respondent No. 1") and M/s Sravanthi Energy Private Ltd. (herein after referred to as "SEPL" or "the Respondent No. 2") under the provisions of Regulation 54 read with Regulation

59 of the Uttarakhand Electricity Regulatory Commission (Conduct of Business), Regulations, 2014 (herein after referred to as “UERC CBR”) read with the relevant provisions of the Electricity Act, 2003 and the relevant Regulations.

1 Background

- 1.1 The Petitioner, i.e. UPCL had signed a PPA with M/s GIPL (107 MW) on 11.02.2016 and M/s SEPL (214 MW) on 28.07.2016 after getting the same approved by the Commission vide its Order dated 08.02.2016 and 20.07.2016 respectively, and the terms & conditions therein were mutually agreed between the parties and the parties were fully aware about these terms before executing the PPA. The Petitioner submitted that the PPA is a bi-lateral agreement executed between the parties with free consent and as per the provisions of the Regulations.
- 1.2 The Petitioner submitted that as per the PPA, the payment has to be made to the generators with the following payment terms and conditions:

““Due Date” shall mean the thirtieth (30th) day after a Monthly Bill or a Supplementary Bill is faxed/mailed to the Buyer and confirmed telephonically by the Buyer and by which date such Monthly Bill or a Supplementary Bill is payable by Buyer;”

Rebate:

(a) For payment of bills in full through the letter of credit on presentation, a rebate of 2% of the bill amount shall be allowed.

(b) Where payments of bills in full are made by a mode other than through the letter of credit but within a period of one month of presentation of bills by the generating company, a rebate of 1% of the bill amount shall be allowed.

Surcharge:

For default in payment beyond sixty (60) days from the billing, a surcharge (“Late Payment Surcharge”) at the rate of 1.25(%) percent per month or part thereof shall be levied on the amount remaining unpaid.”

- 1.3 The Petitioner submitted that the Commission vide its Order dated 25.01.2017, on the Petition filed by M/s Gama Infraprop Pvt. Ltd. in the matter of amendment of Clause No. 9 relating to “Billing and Payment”, Clause No. 1.1.32 relating to “Due Date” and Clause No. 9.4 relating to “Payment Security Mechanism” of Power Purchase Agreement for procurement of 107 MW of Power on Long Term Basis from 225 MW Gas based Combined Cycle Power Plant of M/s Gama Infraprop Pvt. Ltd. and UPCL, directed UPCL as follows:

“Based on the Commission’s views in the matter as discussed above it is hereby decided that:

- (i) The Petitioner may raise fortnightly Gas Supply Bills on the Respondent on actual basis as is being received from GAIL/supplier of gas. The final monthly bill would be raised by the generator after the month is over based on the Joint Meter Reading in accordance with the procedure laid down in the PPA duly adjusting the aforesaid amount already realized from UPCL for the first fortnight of the month.*
- (ii) UPCL shall not charge any rebate from the Gas generators till the currency of the Scheme and till further orders by the Commission in this regard. UPCL shall also make the payment to these generators within 3 working days from the receipt of bills.*
- (iii) Purpose of instituting LC Mechanism, as provided in the PPA, indicates both for payment of bills of the Petitioner by the Respondent as well as for ensuring security of payment. The provision of rebate of 2% has been so kept so as to ensure that timely payment within a week is made to the generator on presentation through LC. However, even if UPCL makes the payment within a reasonable time, i.e. within 3 working days of receipt of bill, even otherwise than LC, it can claim a rebate of 2% as the intent is to make timely payment. Accordingly, both the parties are directed to incorporate necessary changes so as to avoid ambiguity in the provisions of PPA as discussed above. However, the rebate shall not be applicable till the currency of the scheme of GoI.*

3.11 Furthermore, since the issues raised by the Petitioner would also apply on the other gas based generating station, i.e. M/s Sravanthi Energy Pvt. Ltd., whose PPA, already approved by the Commission vide Order dated July 20, 2016 and that also includes these similar provisions, the Commission directs that the above referred findings/decisions shall also apply to it so as to have a consistent approach in the matter and avoid disputes in the matter. UPCL is directed to take note of the same and report compliance within 7 days of the Order.”

1.4 The Petitioner submitted that UPCL filed a petition before the Commission for review/reconsideration of the Order dated 25.01.2017 wherein the following issues/difficulties were brought to the kind notice of the Commission:

“a. That the aggregate monthly bills of M/s Gamma and M/s Sravanthi are in the range of approx. Rs. 80-90 Cr, on which a rebate of 2%, comes out to be around Rs. 1.6-1.8 Cr, is being availed by UPCL as per the existing provisions of the PPA. Moreover as per the Order dated 25th January 2017 the direction would also apply on the other gas based generating station that means it would further be applicable for M/s Beta Infratech (107 MW) whose PPA is pending before Hon’ble UERC for

approval. Consequently the monthly bills of all the 3 nos. gas based generators would be approx. 110-120 Cr. and subsequently bi-monthly bill will be approx. 55-60 Cr. which is very huge amount, forgoing rebate will adversely impact the financial health of UPCL...

- b. Moreover, the generation of bill by GAIL or its payment by the Generator is not relevant in the matter at this stage when the payment of gas by GIPL and the payment of energy by UPCL has formed as cyclic process whereby the payment made by UPCL can be easily utilised by the generator for the payment of next two fortnightly bills of GAIL. That despite of the provision for suitable liquidity as per the tariff it is humbly submitted that UPCL is undergoing a serious financial crunch and has taken a considerable overdraft from various Banks. Moreover, most of the due dates of the energy bills raised to consumers of UPCL have due dates/disconnection dates after 15th of the month and hence compulsion of fortnightly payments and that too without a rebate will further stress the situation and seems not reasonable as at one hand UPCL raise funds by overdraft i.e. by paying the interest on it and on the other hand the genuine rebate is also not forwarded by the generators. Moreover, the advantage of rebate has been passed on to the esteemed consumers of the State and hence it is in no way appears to be justified that few generators be benefited at the cost of consumers of the State."

- 1.5 The Petitioner submitted that the Commission reviewed the issues/difficulties and vide its Order dated 17.04.2017 on the Petition filed by UPCL, directed both UPCL & the generator as follows:

"...However, M/s SEPL has submitted that it intends to forego interest on working capital in case UPCL does not charge rebate on their energy bills. The Commission has evaluated the submission made by M/s SEPL to forego interest on working capital in case UPCL does not charge rebate on their energy bills. The Commission finds it would be in the interest of consumer of the State if M/s SEPL's proposal is accepted in this regard since with the implementation of this arrangement there will be net reduction in generation tariff and consequently, reduction in power purchase cost of UPCL thereby reduction in retail/consumer tariffs..."

...Keeping in view, the overall benefit to UPCL and consumers of the State, the Commission allows implementation of the above arrangement between UPCL and M/s SEPL. The Commission also advises other Gas based generators to explore the option forwarded by M/s SEPL in the interest of UPCL and consumers of the State."

Directions:

"All the gas based generators may raise fortnightly Gas Supply Bills on UPCL on actual basis

as is being received from GAIL/supplier of gas. The final monthly bill would be raised by the generator after the month is over based on the Joint Meter Reading in accordance with the procedure laid down in the PPA duly adjusting the aforesaid amount already realized from UPCL for the first fortnight of the month.

UPCL shall not deduct any rebate from bills of M/s SEPL and shall make the payment to the generator within 3 working days from the date of receipt of such bills.

However, in case of other two Gas generators namely M/s GIPL and M/s Beta Infratech, the provisions of payment of bills and rebate shall be governed by their respective PPAs and the principles regarding timely payment of bills enunciated by the Commission in its Order dated 25.01.2017. Further, in line with the arrangement allowed to M/s SEPL in this order, the other two Gas generators can also approach UPCL, with proper justification, for entering into similar arrangement with respect to non-deductibility of rebate and waiving off interest on working capital in tariffs in the interest of consumers of the State under intimation to the Commission."

- 1.6 The Petitioner submitted that the Commission vide its letter dated 27.04.2023 on the representation made by M/s SEPL regarding revision in payment terms for release of gas payments on 5-day basis directed UPCL to submit as to why DPS/LPS should not be levied on UPCL on the delayed payment made to the generators beyond 3 days after receipt of bills in accordance with the MoP notification dated 03.06.2022.
- 1.7 The Petitioner submitted that in response to the same, UPCL vide letter dated 09.05.2023 submitted following:

"Making payments within time frame stipulated in the UERC's order dated 17-04-2017:

From combined reading of provisions of law as mentioned at para 1 (i) and 1 (ii) and para 1 (viii), it is amply clear that payment to generators has to be made within 3 working days from the receipt of the bills till the currency of the GoI scheme dated 27-03-2015 for utilization of gas based power generation capacity and the said scheme was applicable only for the period from FY 2015-16 to FY 2016-17 (refer para 1 (viii)). The relaxation provided to M/s SEPL after the validity of the scheme is mentioned at para 3.6 of the UERC's order dated 17-04-2017 which is limited to continuation of fortnightly billing (refer para 1 (i)). In this way, for a period after March, 2017, the payment of bills has to be made in accordance with the provisions of the PPA i.e. within 30 days from the date of receipt of bill.

Applicability of DPS/LPS on the Delayed Payments made to the generators within 3 days:

*As per rule 3 (1) (d) of The Electricity (Late Payment Surcharge) Rules, 2021, Late Payment Surcharge is payable if the payment of the monthly charges bill is made beyond due date (refer para 1 (v)) and as per rule 3 (1) (c), due date of the bill is as per PPA executed between UPCL and SEPL (refer para 1 (iv)). As per PPA, due date of the bill is 30 days after the date of receipt of the bill (refer para 1 (iii)). Further as per PPA, the Late Payment Surcharge is payable if the payment of the bill is made after 60 days from the receipt of the bill (refer para 1 (vi) & (vii)). **In this way the Late Payment Surcharge is payable if the payment is made after 60 days from the date of the receipt of the bill.** UPCL is adhering the above provisions of law for making the payment of the bills of M/s SEPL.”*

- 1.8 The Petitioner submitted that the Commission vide letter dated 17.05.2023 had initiated Suo-moto proceedings in the matter and decided to fix a hearing on dated 30.05.2023. The Petitioner submitted that pursuant to the hearing held on Hon’ble , the Commission vide its Order dated 16.08.2023 on Suo-moto proceedings in the matter of request for seeking approval of revised payment terms for release of gas payments passed following directions:

“2.11 Since the State based Gas based Generators have foregone the IoWC in lieu of early payment and the Commission is also not allowing IoWC in the AFC of the Gas based generators, accordingly, the Commission, considering the submissions of all the Respondents and further analysis as discussed above, approves the following methodology for payment of energy bills of State Gas based generators by UPCL.

- 1. In case UPCL makes payment through any mode to State Gas based generators within 3 working days from the date of receipt of the bill, it shall be entitled to deduct a rebate of 1.00% from the amounts payable to the generators on such bills. The rebate has been so kept so as to ensure that UPCL derives some benefit for making timely payment which can be utilised to offset the cost of overdraft, if any. Besides since the generators are not claiming interest on working capital, hence, the amount of rebate has to be moderate so that cash flows of the generators are also not stressed.*
- 2. No LPS would be levied on the State discom, i.e. UPCL if the bills are paid within a period of 7 working days from the date of receipt of the bills, post which LPS shall be levied in accordance with the applicable provisions of Electricity (Late Payment Surcharge and Related Matters) Rules, 2022 notified by MoP vide notification dated 03.06.2022, on the amount remaining unpaid considering the due date as 7 working days from receipt of bills.*

2.12 The Commission further clarifies that all the State Gas based generators may raise fortnightly Gas Supply Bills on UPCL on actual basis as is being received from GAIL/supplier of gas. The final monthly

bill including monthly AFC charges and Energy charges would be raised by the generator after the month is over based on the Joint Meter Reading in accordance with the procedure laid down in the PPA duly adjusting the aforesaid amount already realized from UPCL for the first fortnight of the month.

2.13 The Commission directs UPCL, M/s SEPL and M/s GIPL to carry out the necessary changes in the PPA and submit the compliance before the Commission within 10 days of this Order."

1.9 The Petitioner submitted that the Electricity (Late Payment Surcharge and Related Matters) Rules, 2022 notified by MoP vide notification dated 03.06.2022 states as follows:

*"Due Date" means the date by which the bill for the charges for power supplied by the generating company or electricity trading licensee or for the transmission service provided by a transmission licensee are to be paid, **in accordance with the agreement, as the case may be, and if not specified in the agreement, forty-five days from the date of presentation of the bill** by such generating company, electricity trading licensee or transmission licensee..."*

1.10 The Petitioner submitted that from the above Rules and in accordance with the PPA executed between UPCL and Gas based Generators, it is evident that due date is 30 days from the presentation of bill as per the Power Purchase Agreement which is in force and any deviation from such terms shall be only followed once the duly amended agreement is in place. Hence, the correlation of the terms mentioned in the PPA with the Electricity (Late Payment Surcharge and Related Matters) Rules, 2022 notified by MoP vide notification dated 03.06.2022 as mentioned in the Order dated 16.08.2023 seems to be an error apparent on record and has legal challenges in implementation of the Order.

1.11 The Petitioner submitted that, despite of the provision for suitable liquidity as per the tariff, it is undergoing a serious financial crunch and has taken a considerable overdraft from various Banks. Moreover, Selective payment terms to the Gas Based Generators is not appropriate as rest of the generators are being billed as per the terms & conditions of the PPA and the same is applicable to the Central Sector Generating Stations also. The Petitioner submitted that the methodology and philosophy of payment of energy bills has to be uniform in order to avoid any challenges, complexities and hardships to the Petitioner that may arise on account of LPS payable in case of default of payment within 7 days as directed in the impugned Order dated 16.08.2023.

1.12 The Commission forwarded the Petition filed by UPCL to both the Respondents, i.e., M/s

GIPL and M/s SEPL for seeking their comments on the same in response to which both the Respondents submitted that they have no additional comments to provide in the matter and that they had already submitted their comments earlier which have been taken on record in the Commission's Order dated 16.08.2023.

1.13 The Commission also held a hearing in the matter on 06.10.2023 to decide on the admissibility of the Petition.

1.14 The issues raised by the Petitioner in the Petition, alongwith the analysis of the Commission are dealt in the subsequent paras of this Order.

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

2.1 Powers of the Commission and Grounds for Review

2.1.1 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.

2.1.2 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.

- 2.1.3 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.
- 2.1.4 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.
- 2.1.5 The Petitioner in the review Petition submitted that from the Electricity (Late Payment Surcharge and Related Matters) Rules, 2022 notified by MoP and in accordance with the PPA executed between UPCL and Gas Generators, it is evident that due date is 30 days from the presentation of bill as per the Power Purchase Agreement which is in force and any deviation from such terms shall be only followed once the duly amended agreement is in place. Hence, the correlation of the terms mentioned in the PPA with the Electricity (Late Payment Surcharge and Related Matters) Rules, 2022 notified by MoP vide notification dated 03.06.2022 mentioned in the Commission's Order dated 16.08.2023 seems to be an error apparent on record and has legal challenges in implementation of the Order.
- 2.1.6 The Petitioner further submitted that despite the fact that the provision for suitable liquidity as per the tariff exists, it is undergoing a serious financial crunch and has even taken considerable overdraft from various banks. UPCL also submitted that the selective payment terms to the Gas Based Generators is not appropriate as rest of the generators are being billed as per the terms & conditions of the PPA and the same is applicable to the Central Sector Generating Stations. The Petitioner submitted that the payment of

energy bills has to be uniform in order to avoid any challenges, complexities and hardships to the Petitioner that may arise on account of LPS payable in case of default of payment within 7 days as directed in the impugned Order dated 16.08.2023.

Commission's Analysis and Ruling

2.1.7 The Commission analysed the submissions made by the Petitioner, and 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 the 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 contesting the determination of due date by the Commission through its Suo-moto Order dated 16.08.2023. The Petitioner stated that the due date has been defined in the executed PPAs with M/s GIPL and M/s SEPL which is in force and any deviation from such terms shall be only followed once the duly amended agreement is in place, and, therefore, the correlation of the terms mentioned in the PPA with the Electricity (Late Payment Surcharge and Related Matters) Rules, 2022 as mentioned in the Commission's Order dated 16.08.2023 appears to be an error apparent on record.

2.1.8 In this regard, the Commission observed that the said contention of the Petitioner is not acceptable, as the determination of due date by the Commission is in the nature of view/ decision taken by the Commission with respect to issue that the Commission took cognizance of on the request made by the Respondent No. 2 and, therefore, the same cannot be categorized under the nomenclature of "mistake or error apparent on the face

of the record”. The instant review Petition bringing a challenge to the clarifications/decision given by the State Commission vide its Suo-moto Order dt. 16.08.2023 is actually an endeavour to assail exercise of regulatory power by the State Commission.

2.1.9 The ground for review of Commission’s Order dated 16.08.2023 on account of determination of due date by the Commission 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 come within the purview of any other sufficient reason related to aforementioned two provisions.

2.1.10 A PPA is an agreement between a generator and a utility or a consumer for purchase of power. Further, there is no denial that any amendment to the PPA has to be mutual and in accordance with the law. However, for any contract to come into existence, there needs to be fulfilment of the conditions mentioned under Section 10 of the Indian Contract Act, 1872, which are:

- Free consent of parties competent to contract,
- A lawful consideration,
- A lawful object.
- Not be expressly declared void by contract law.

Among these conditions, free consent can be construed or understood to be the actions of the parties. For a lawful contract, consent may not be required to be in words and such consent is referred to as an implied consent. Implied consent also refers to an agreement given by a person’s action or inaction that is inferred through circumstances. Hence, implied consent is in contrast to express consent, where the agreement is directly and clearly given with explicit words.

2.1.11 In the instant matter, it would be relevant to examine whether the due date in the original PPA was amended by express or implied consent of the parties or not. The Commission in its Order dated 17.04.2017 had directed UPCL that UPCL shall not deduct any rebate from bills of M/s SEPL and shall make the payment to the generator within 3 working

days from the date of receipt of such bills, and the same methodology was accepted and adopted by the other gas-based Generator also, i.e., M/s GIPL. Later, the Commission in its Order dated 06.12.2017 gave an opportunity to both UPCL and the Gas based generators to sit together and work out in the interest of the consumers of the State whether the payment of electricity bills is to be made in terms of the PPA or the existing arrangement approved by the Commission vide its Order dated 17.04.2017 shall continue. The relevant extract of Order dated 06.12.2017 is reproduced hereunder:

“4.2 The Petitioner shall not deduct any rebate from the bills of the Respondent gas generators till 31st March 2018. However, it is open for both the Petitioner and the Respondents to sit together and work out in the interest of the consumers of the State whether the payment of electricity bills is to be made in terms of the PPA or the existing arrangement approved by the Commission vide its Order dated 17.04.2017 shall continue and intimate to the Commission their agreement on the issue within one month of the date of Order alongwith proper justification.”

(Emphasis Added)

- 2.1.12 The Petitioner and the Respondents at that time did not make any representation to the contrary, that too considering the fact that the Order dated 06.12.2017 allowed UPCL to reassess the payment arrangement approved vide Commission's Order dated 17.04.2017, UPCL had almost 8 months from April, 2017 to December, 2017 which is a sufficient period to assess the benefit or otherwise which would have accrued to UPCL out of the billing arrangement approved by the Commission vide its Order dated 17.04.2017.
- 2.1.13 The Commission would like to state that even in the absence of any amendment to the PPA to this effect since the conduct of the parties was to comply with the same and no appeal had been preferred, hence, this issue has attained finality. Moreover, the Petitioner has been filing tariff Petition each year which provides its sufficient opportunity to make representation on the issues faced it before the Commission, however, UPCL has never ever raised this concern w.r.t. the payment terms of State Gas based Generators for the consideration of the Commission in the past, which clearly depicts that the condition and the arrangement approved by the Commission through its Order dated 17.04.2017 was acceptable to both the parties and the same has attained finality through their conduct. Infact while approving the ARR for the Petitioner company the Commission has been

considering the working capital requirement of UPCL based on 15 days payment to the gas based generators in the State which otherwise would have further reduced. Moreover, in the truing up Petition filed by the gas generators in the State for past years, where the generators did not claim interest on working capital in accordance with the Commission's Order dated 17.04.2017, the Petitioner never submitted that working capital be allowed to the generators as it does not want any amendment in the PPA to this effect. Infact UPCL continued accepting increased working capital requirement for itself and thereby interest on the same but also a reduced power purchase cost on account of surrendering of interest on working capital by the gas based generators and as a result consumer tariffs worked in its favour. Thus, from the above, it is implicitly clear that there was an implied consent by UPCL to amend the PPA in accordance with the Order of the Commission dated 17.04.2017.

- 2.1.14 This provision was so directed as the Commission had allowed the generator to raise fortnightly bills as it had foregone claiming interest on working capital in the interest of consumers of the State and, accordingly, UPCL was required to pay the bills within 3 working days of receipt of the same. Thus, the due date was changed by the Commission's Order dated 17.04.2017 to 3 working days from the receipt of bill.
- 2.1.15 Accordingly, in light of the above discussion, the Commission is of the view that the grounds relied upon by UPCL for seeking review of Commission's Order dated 16.08.2023 does not warrant the review of impugned Order dated 16.08.2023. Therefore, the Commission is not going into merits of the claims made by UPCL for review of Commission's Order dated 16.08.2023 in the matter of determination of due date by the Commission.
- 2.1.16 Further, the Petitioner has time and again raised issue with respect to its financial position and hardship being faced by it in honouring its liability towards the payment of power purchase bills. In this regard, the Commission would like to draw reference towards the submission made by UPCL vide its letter no. 4658/UPCL/RM/C-19 dated 30.09.2023 wherein it had provided the details of division wise collection of dues in compliance to the direction given by the Commission in the tariff Order dated 30.03.2023. From the analysis of the aforesaid submission of UPCL, the Commission observed that the overall

collection efficiency of UPCL during the first three months of FY 2023-24, i.e., April, May and June is 53.83%, 72.38% and 78.36% respectively which has been a recurring phenomenon for the Petitioner's company.

- 2.1.17 The Collection efficiency of almost 50% in the month of April clearly depicts that the Petitioner is unable to manage its business operations efficiently wherein it is unable to recover the cost of the product and services supplied by it almost to the tune of 50%. This clearly marks a position of cash gaps for the Corporation making it dependent on the outside borrowings to meet its operational expenses which entails additional cost in the form of interest which has also been referred by the Petitioner in its review Petition wherein it has mentioned that it has availed overdrafts to make timely payment of electricity bills to the generators. The Petitioner cannot be allowed to pass on the burden of its own inefficiencies on the consumers of the State in the name of financial crunches wherein it is solely responsible for such a situation to arise. The issue of financial crunch would not arise if UPCL would have been proactive to ensure that the collection efficiency targets fixed by the Commission are met every month.
- 2.1.18 Besides with respect to the submissions of UPCL that the selective payment terms to the Gas Based Generators is not appropriate as rest of the generators are being billed as per the terms & conditions of the PPA and the same is applicable also to the Central Sector Generating Stations. In this respect the Commission had examined the benefit of allowing fortnightly billing to the gas generators in lieu of their surrendering the claim of Interest on working capital in detail in its Order dated 16.08.2023 and also 17.04.2017 which are not being reiterated again and UPCL has again failed to establish that such benefit shall not accrue to it or there is an error in Commission's calculations. The calculations done by the Commission are in accordance with its tariff Regulations. The comparison being made by other generators in the present case is not appropriate as other generators are availing the benefit of interest on working capital and hence, their payment terms are in accordance with their PPAs. Infact in case of Central generating stations, the MoP, GoI vide its Order dated 28.06.2019 has directed the NLDC and RLDC to dispatch power only after a Letter of credit for the desired quantum of power has been opened by the discom. Further, vide its Corrigendum dated 17.07.2019 the MoP also modified the Order dated

28.06.2019 by making a provision of advance payment by discom to the generator an amount corresponding to atleast one day of purchase of electricity. Hence, conditions of scheduling power from Central Generating companies have been made more stringent and thus, the comparison made by UPCL to other generators hold no ground.

2.1.19 Thus, the Commission does not find any merit in the contentions raised by the Petitioner and is of the view that no revision in the Commission's Order dated 16.08.2023 is required to be carried out.

2.1.20 The Commission, in view of the above, rejects the Review Petition filed by UPCL against the Commission's Order dated 16.08.2023, as not maintainable, and, accordingly, UPCL is directed to submit an amended PPA within 10 days of the date of Order.

2.1.21 Accordingly, Miscellaneous Application No. 38 of 2023 stands disposed off.

(M.K. Jain)
Member (Technical)

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