Before

UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

Misc. Application No. 24 of 2020

In the matter of:

Application seeking Review under Regulation 54 of UERC (Conduct of Business) Regulations, 2014 read with relevant provisions of the Electricity Act, 2003 for review of the Order dated 18.04.2020 passed by the Commission in the matter of Petition for approval for Revised Aggregate Revenue Requirement for FY 2002-21 alongwith true-up of FY 2018-19 and Annual Performance Review of FY 2019-20.

In the matter of:

Power Transmission Corporation of Uttarakhand Ltd. …Petitioner

AND

In the matter of:

Uttarakhand Power Corporation Ltd. … Respondent

CORAM

Shri D.P. Gairola	**Member (Law)**
Shri M.K.Jain	**Member (Technical)**

Date of Hearing: October 21, 2020

Date of Order: November 20, 2020

The Order relates to the review Petition dated 07.08.2020 filed by Power Transmission Corporation of Uttarakhand Ltd. (hereinafter referred to as "Petitioner" or "PTCUL" or "Licensee") for review of Tariff Order dated 18.04.2020 passed by the Commission in the matter of approval of Revised Aggregate Revenue Requirement (ARR) for FY 2020-21 alongwith true-up of FY 2018-19 and Annual Performance Review (APR) of FY 2019-20 under

Regulation 54 of the Uttarakhand Electricity Regulatory Commission (Conduct of Business), Regulations, 2014.

The Petitioner in the above Petition has prayed the following:

a. Admit the present Review Petition,

b. Grant an expeditious hearing to the Petitioner,

c. To condone the delay in filing the review Petition,

d. Review the impugned Order dated 18.04.2020,

e. Allow the relief sought in the Tariff Order due to error apparent on the face of the records,

f. Condone any inadvertent omissions/ errors/short comings and permit the applicant to add/change/modify/ alter this Petition and make further submissions as may be required at later stage and also other claims of the Petitioner in the previous Tariff Petitions shall remain the same.

g. Pass such further order(s) as deem fit and proper and necessary in the facts and circumstances of the case, to grant relief to the Petitioner.

1. Background

1.1 The Petitioner on 29.11.2019 had filed a Petition for determination of ARR of FY 2020-21 (hereinafter referred to as “Tariff Petition”). Subsequently, the Commission vide its Tariff Order dated 18.04.2020 determined the ARR for FY 2020-21.

1.2 The Petitioner on 07.08.2020 filed a Petition seeking review of the above referred Order dated 18.04.2020. There were some discrepancies in the review Petition filed before the Commission which were rectified by the Petitioner vide its submission dated 25.08.2020. The Copy of the Petition alongwith other submissions were forwarded to Uttarakhand Power Corporation Ltd. (hereinafter referred to as “UPCL” or “Respondent”) for submission of comments. No comments have been received from UPCL in the matter. A hearing was held in the matter on 21.10.2020.

2. Petitioner's Submissions

2.1 The Petitioner submitted that the present Review Petition has been filed under Regulation 54 of UERC (Conduct of Business) Regulation, 2014 read with the applicable provisions of the Code of Civil Procedure, 1908 and the Electricity Act, 2003 seeking review of the Commission's Tariff Order dated 18.04.2020 in the Petition filed by the Petitioner for determination of ARR for FY 2020-21 alongwith true-up for FY 2018-19 and APR for FY 2019-20.

2.2 The Petitioner submitted that the Commission while determining the tariff has not considered certain aspects. Further, material evidence & data placed on record by it have not been fully considered by the Commission which amounts to errors apparent on the face of record and, therefore, is subject to the review jurisdiction of the Commission.

2.3 The Petitioner submitted that the following issues are covered in the instant review Petition:

a) Disallowance of IDC in Capitalisation of FY 2018-19,
b) Interest on Loan for FY 2018-19, FY 2019-20 and FY 2020-21,
c) Refinancing Gains for FY 2018-19,
d) Capitalisation rate in A&G expenses for FY 2018-19, FY 2019-20 and FY 2020-21,
e) Normative employee expenses for FY 2019-20 and FY 2020-21.

2.4 With regard to disallowance of capitalisation for FY 2018-19, the Petitioner submitted that the Commission had disallowed the IDC for "LILO of 220 kV D/C Roorkee (PGCIL) Puhana – Roshnabad Line at 220 kV S/s Pirankaliyar", "2x50 MVA 220/33 kV Sub-station, Pirankaliyar" and "220 kV GIS Sub-station Harrawala, Dehradun". The Petitioner also submitted that the Commission has not considered the reasons submitted by the Petitioner alongwith evidence and also not refused the same with proper justification for disallowance of IDC in the above-mentioned projects and has followed the approach of either deducting 50% IDC attributing the reasons of delay partially to the Petitioner or disallowing the whole IDC.

2.5 With regard to the IDC disallowed for '2 X 50 MVA 220/33 kV Substation, Pirankaliyar', the Petitioner submitted that the Commission has disallowed the entire additional IDC due to delay in commissioning of the project, stating that the Petitioner should have

accounted for the monsoon season as it is a natural phenomenon that happens every year. However, the Petitioner would like to highlight that even if the delay due to monsoon season had been accounted at the time of investment approval, the net effect would have remained the same i.e. increase in IDC.

2.6 With regard to IDC disallowed for 'LILO of 220 kV D/C Roorkee (PGCIL) Puhana-Roshnabad Line at 220 kV S/s Piran Kaliyar', the Petitioner submitted that Commission has accepted that the scope of work has been extended, however, the Commission has not allowed the proportional increase in the completion timeline and has disallowed the 50% of IDC over and above the IDC pertaining to scheduled completion time.

2.7 With regard to the IDC disallowed for '220 kV GIS Sub-station IIP Harrawala Dehradun', the Petitioner submitted that the Commission has disallowed 50% of the additional IDC attributing the reason of delays to the Petitioner, however, heavy rainfalls, demonetization, ban in mining activities, permission for tree cutting are beyond the control of the Petitioner.

2.8 The events mentioned as above for time overrun of the said Projects are sufficient reasons to peruse the evidence provided in this regard and also for its acceptance by the Commission.

2.9 The Petitioner submitted that these deductions not only deprive the Petitioner of the legible return on the invested money but also resulted in depletion of internal accruals as it essentially means funding the whole disallowed amount through equity only. The Petitioner prayed to the Commission to revisit the disallowance in above projects as it is clearly evident that the reasons for delay cannot be attributed to the contractors or else the Petitioner would have recovered the same amount through Liquidated Damages. The above projects are funded through PFC and REC loans with debt-equity ratio of 70:30 and any disallowance shall result in reduced amount of approval for loan balance and thus, in repaying the loans through internal accruals as highlighted above. The Petitioner submitted Rs. 3.04 Crore pertaining to IDC of the aforesaid projects has been wrongfully disallowed by the Commission and needs to be reviewed.

2.10 With regard to interest on loan, the Petitioner submitted that the Commission has made an error while calculating the weighted average rate of interest. The Commission has not

considered the interest capitalised during FY 2018-19 for computing the weighted average rate of interest, thus considering the weighted average rate of interest as 9.94% instead of actual 10.71% causing a loss to the Petitioner. Further, there is an error in computing the interest on loan even while considering the rate of interest as 9.94%.

2.11 With regard to refinancing gain, the Petitioner submitted that it has been able to improve its creditworthiness by managing its cash flow in an efficient manner, resulting in an upgraded credit rating. The Petitioner submitted that it reached out to PFC and REC to refinance its exiting loan portfolio with its enhanced credit rating. However, instead of changing its lenders for refinancing its loan portfolio, the Petitioner pursued PFC and REC to reduce its interest rate, as it would have resulted in saving of prepayment fees to the existing lenders and processing fees to the new lenders, if the Petitioner had opted for change in the lender. As per the Regulation 27(7) of MYT Regulations, 2018, the costs associated with the refinancing activities shall be borne by the consumers, thus resulting in a negligible savings to the consumer after sharing of refinancing gains between the consumers and transmission licensee. Considering the benefits of the consumers paramount, the Petitioner pursued PFC and REC for the rebate, which essentially means reduction in the premium charged for the loans, thus resulting in the change in the conditions of loan agreement. The Petitioner has been able to bring down the interest costs by INR 3.32 crores and as per MYT Regulations,2018 the Petitioner can retain INR 2.21 Crore i.e. 2/3rd of the savings.

2.12 With regard to A&G expenses, the Petitioner submitted that the Commission has computed the capitalisation rate after deducting the security expenses and license fee from the total A&G expenses. However, the Petitioner believes that the methodology followed by the Commission is wrong as it does not exclude the security expenses capitalised during the year from the expenses capitalised to compute the capitalisation rate. So, deducting security expenses and licensee fee from the gross expenses while including the same in expenses capitalised for computing the capitalisation rate does not provide an exact figure.

2.13 The Petitioner submitted that in the similar context Hon'ble APTEL, in its judgment dated 30.03.2015 in Review Petition No 5 of 2015 in Appeal No 174 of 2012 regarding

O&M expenses, had stated that "actual costs need to be considered". The issue regarding Gross Employee cost Vs. Net Employee cost has already been examined by Hon'ble APTEL in an Appeal No. 47 of 2012 in case of Maharashtra State Power Generation Company Limited Vs. Maharashtra State Regulatory Commission. The relevant extract of paragraph of said order is re-produced for reference:

> *"The Annual Revenue Requirement comprises of two expenditures viz., Capital Expenditure and Revenue Expenditure. Capital Expenditure includes Return on Equity, Financing costs and Depreciation of the Capital cost of the asset. Revenue expenditure includes Operation and Maintenance (O&M) expenditure, interest on working capital etc. The O&M expenditure has three components viz., Employees Cost, Administrative and General Expenses and Repair and Maintenance costs. As the nomenclature O&M indicates, employee's costs includes the salaries and other allowance payable to employees employed in Operation and Maintenance of the projects. Utilities, like the Appellant herein, have two categories of employees viz., (i) category employed in Construction and Erection of projects and (ii) category employed in Operation and Maintenance of projects. The cost of employees employed in construction activity is capitalised along with capital cost of the asset and the utility earns Return on Equity, Depreciation, financing costs etc for the lifetime of the project. The cost of employees involved in the O&M activity is added to O&M expenses. O&M expenses are the expenses which have been incurred in operation and maintenance of the project and would not include the expenses which had been incurred in construction of the project. All those expenses, including employees' cost, which have been capitalised and entitles the utility to earn RoE and other benefits for the lifetime of the project cannot be considered as O&M expenses for that year. Only the expenditure which has been actually incurred in operation and maintenance can form part of O&M expenses. Thus, there is no such term as 'gross O&M' expense or 'net O&M' expenses. The acceptance of the Contention of the Appellant would amount to allowing such amounts both as a revenue expense and also form a part of the capital base on which the Appellant could claim RoE, depreciation etc resulting in to double-accounting and, therefore, not permissible."*

Thus, considering the capitalisation rate of ~31% when only 26.83% of actual employee expenses (excluding expenses pertaining to UITP projects) are being capitalized is ipso facto wrong. The Petitioner has claimed the A&G expenses of Rs. 24.70 Crore against the approved amount of Rs. 24.34 Crore pertaining to FY 2018-19 in Tariff Order.

2.14 With regard to employee expenses for FY 2019-20 and FY 2020-21, the Petitioner submitted that the Commission earlier proposed to raise the employee expenses trajectory for Third Control Period by allowing a one-time hike of 15% in EMP_n of FY

2018-19 to compute the EMP_{n-1} for FY 2019-20. Thus, the Petitioner believes there is an error in the Tariff Order dated 18.04.2020 while computing the normative employee expenses for FY 2019-20 and FY 2020-21.

2.15 The Petitioner submitted that due the aforesaid changes, true-up for FY 2018-19, APR for FY 2019-20 and ARR for FY 2020-21 shall change. The detailed breakup of the ARR approved and that should have been approved is as follows:

Particulars	**Approved in Tariff Order**	**As claimed in Review Petition**	**Approved in Tariff Order**	**As claimed in Review Petition**
	Truing up for FY 2018-19		**ARR for FY 2020-21**	
O&M expenses	129.72	129.97	162.80	177.55
Interest on loan (including Refinancing Gains)	42.31	50.68	55.07	59.37
Return on Equity	25.32	25.32	38.65	38.80
Income tax	10.25	10.25		
Depreciation	66.46	66.56	85.11	86.19
Interest on working capital	4.82	4.98	10.59	11.79
Aggregate Revenue Requirement	**278.90**	**287.76**	**352.22**	**373.70**
Add:				
True up of previous years	-83.43	-83.43	-88.58	-77.80
Minus:				
Non-Tariff Income	20.88	20.88	10.00	10.00
Revenue from STOA charges	2.73	2.73	4.07	4.07
Revenue from Natural ISTS Lines	34.89	34.89	0.00	0.00
Sharing of Availability incentive	0.58	0.58		
Less: SLDC Charges	0.00	0.00	13.83	13.83
Total	**136.39**	**145.26**	**235.74**	**268.00**

2.16 The Commission forwarded the copy of the Petition alongwith other submissions to UPCL for comments. However, UPCL has not submitted any written comments in the matter till date. Further, the Commission conducted a hearing on 21.10.2020, wherein the representative of UPCL stated that as the financial year is about to complete and revising the ARR at this point of time will not be feasible. Further, the effect of the review Petition, if any, should be considered in the next tariff proceedings.

3. Commission's Views & Decisions

3.1. The present Review Petition dated 07.08.2020 has been filed by PTCUL for review of the Tariff Order dated 18.04.2020 passed by the Commission in the matter of approval of ARR for FY 2020-21 alongwith true-up of FY 2018-19 and APR for FY 2019-20. There were

some discrepancies in the review Petition filed before the Commission on 07.08.2020 which were rectified by PTCUL vide its submission dated 25.08.2020.

3.2. Before going into the merits of the Petition filed by PTCUL 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

3.3. 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.

3.4. For further clarity, the relevant provisions of the Code of Civil Procedure are reproduced as hereunder:

"Order XLVII, Rule 1(1) of the Code of Civil Procedure, 1908, provides for an application for review which reads as under:

"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."

It is well settled that there are definitive limits to the exercise of the power of review;

Order XLVII, Rule 1 of the Code provides for filing an application for review. Such an application for review would be maintainable not only upon discovery of a new and important matter or evidence or when there exists an error apparent on the face of the record but also if the same is necessitated on account of some mistake or for any other sufficient reason.

It is obvious that there cannot be re-hearing of the matter during review and an error, which is not self evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of record justifying exercise of review power."

3.5. Moreover, the Hon'ble Supreme Court in Sow Chandra Kante & Anr. vs. Sheikh Habib (1975) 1 SCC 674, held as under:

"1. Mr Daphtary, learned counsel for the petitioners, has argued at length all the points which were urged at the earlier stage when we refused special leave thus making out that a review proceeding virtually amounts to a rehearing. May be, we were not right in refusing special leave in the first round; but, once an order has been passed by this Court, a review thereof must be subject to the rules of the game and cannot be lightly entertained. A review of a judgment is a serious step and reluctant resort to it is proper only where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility. A mere repetition, through different counsel, of old and overruled arguments, a second trip over ineffectually covered ground or minor mistakes of inconsequential import are obviously insufficient. The very strict need for compliance with these

factors is the rationale behind the insistence of counsel's certificate which should not be a routine affair or a habitual step. It is neither fairness to the Court which decided nor awareness of the precious public time lost what with a huge backlog of dockets waiting in the queue for disposal, for counsel to issue easy certificates for entertainment of review and fight over again the same battle which has been fought and lost. The Bench and the Bar, we are sure, are jointly concerned in the conservation of judicial time for maximum use. We regret to say that this case is typical of the unfortunate but frequent phenomenon of repeat performance with the review label as passport. Nothing which we did not hear then has been heard now, except a couple of rulings on points earlier put forward. May be, as counsel now urges and then pressed, our order refusing special leave was capable of a different course. The present stage is not a virgin ground but review of an earlier order which has the normal feature of finality."

3.6. Several judgments have been cited on this aspect which reiterates the same principles. The principles laid down by the Hon'ble Supreme Court in **Kamlesh Verma Vs. Mayawati & Ors** in this regard are being reproduced hereunder:

"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" have been interpreted in ***Chhajju Ram v. Neki, AIR 1922 PC 112 and approved by this Court in Moran Mar BasseliosCatholicos v. Most Rev. Mar Poulose Athanasius &Ors. (1955) 1 SCR 520,*** *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***.

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 reheard 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."*

3.7. 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.

3.8. Further, as per Regulation 54(1) of UERC (Conduct of Business) Regulations, 2014, a Petition for review can be filed within 60 days of the making of any decision, direction or order by the Commission. The relevant portion of the Regulation is reproduced hereunder:

"The Commission may on its own or on the application of any of the persons or parties concerned, within 60 days of the making of an decision, direction or order, review such decisions, directions or orders and pass such appropriate orders as the commission thinks fit."

The Commission, before going into merits of the Petition, firstly would like to examine the Petitioner's request regarding the condonation of delay in filing of the Petition. In this regard, the Commission analysed the submissions made by PTCUL and observed that as per the UERC (Conduct of Business) Regulations, 2014, PTCUL was required to file the current Review Petition latest by 17.06.2020, however, in view of the

current situation regarding COVID 19 and nationwide lockdown imposed earlier by the GoI/GoU thereby affecting the day to day operation at the PTCUL's headquarter, therefore, PTCUL was unable to file the current Review Petition on due time.

The Commission, taking cognizance of the fact the COVID-19 pandemic is an uncontrollable factor that has affected the entire world, decides to condone the delay in filing the review Petition.

3.9. While going into the merits of the Petitioner's contentions, the Commission is guided by the principles as aforesaid. It is clear from the nature of issues raised by the Petitioner at this stage in the Review Petition and also in its submissions before the Commission during the course of the hearing that the Petitioner wants to reopen the following issues:

A. Projects for which IDC was disallowed during FY 2018-19 without considering the reasons submitted by the Petitioner are as follows:
    a. LILO of 220 kV D/C Roorkee (PGCIL) Puhana – Rohshnabad Line at 220 kV S/s Pirankaliyar;
    b. 2x50 MVA 220/33 kV S/s Pirankarliyar; and
    c. 220 kV GIS S/s IIP Harrawala, Dehradun.
B. The Commission has not considered the interest capitalized during FY 2018-19 while computing weighted average rate of interest on loans for FY 2018-19 which has also been considered for computing interest on loan for FY 2020-21.
C. Disallowance of Refinancing gain.
D. Wrong capitalization rate has been considered while computing A&G expenses for FY 2018-19 and onwards.
E. Earlier the Commission proposed the revised employee expenses trajectory for the third Control Period by allowing one-time hike of 15% in EMP_n of FY 2018-19 to compute the EMP(n-1). However, the Commission has considered EMP_n for FY 2018-19 as approved for FY 2019-20.

Considering the above issues, PTCUL has claimed revised ARR of Rs. 268.00 Crore against the approved ARR of Rs. 235.74 Crore for FY 2020-21.

3.10. The Commission has given detailed reasons in its Order dated 18.04.2020 in support of the views on the determination of tariff in accordance with the provisions of the Act/Regulations after taking into consideration the submissions of the Petitioner. Concluded decision on initiation of adjudication proceedings cannot be reopened in this manner. Even if it is assumed for the sake of argument that the judgment of this Commission is erroneous, as held by the Hon'ble Supreme Court in **Kamlesh Verma Vs. Mayawati & Ors,** a review is by no means an appeal in disguise whereby erroneous decision is reheard and corrected. Review lies only for correcting patent error or discovery of new and important matter or evidence which could not be produced by the parties at the time of the earlier proceedings or mistake or error apparent on the face of the record. Keeping the above discussion in view, the Commission has dealt accordingly with the Petitioner's contention as detailed as possible in the following paras.

A. Disallowance of IDC

3.11. With regard to IDC disallowed for 'LILO of 220 kV D/C Roorkee (PGCIL) Puhana-Roshnabad Line at 220 kV S/s Pirankaliyar', the Petitioner submitted that Commission has accepted that the scope of work has been extended, however, the Commission has not allowed the proportional increase in the completion timeline and has disallowed the 50% of IDC over and above the IDC pertaining to scheduled completion time.

In the matter, it is worth mentioning that the Petitioner has stated limited facts of the case to prove its claim. The Commission vide its Para 3.3.3.2 of Tariff Order specifically mentioned that original estimate was made for 19 towers & 5.22 km line as per walk over survey in DPR, however, after detailed survey length of line increased to 5.55 km and no. of towers increased to 21. Further, additional works were also executed by the Petitioner such as construction of gantry which was not part of the original DPR. In case of change in scope, the Petitioner should have approached its Board of Directors for approval of the revised completion period. However, no step was taken by the concerned officers of PTCUL in the matter. Accordingly, the Commission based on the principles set by the Hon'ble ATPEL in its judgement in Appeal No. 72 of 2010, considering the fact that ROW issue was beyond the control of the Petitioner, however, getting approval for the revised scheduled completion period due to change in scope was

very much under control of the Petitioner, disallowed 50% of the IDC pertaining to the delayed period considering the reason as not fully uncontrollable . The relevant extract of the Order is as follows:

"…

Further, with regard to time overrun, the Commission observed that the actual completion period is 32 months against the schedule completion period of 10 months. There is a delay in completion of the project of 22 months. The Petitioner submitted that the reason for delay in commissioning of the project is change is scope and RoW related issues.

The Petitioner has claimed the actual IDC of Rs. 0.56 Crore. As discussed in the above paragraph of this Order, the actual completion period is 32 months as against the scheduled completion period of 10 months. In accordance with the principles approved in Para 3.3 of this Order, the Commission has computed the IDC corresponding to scheduled completion period as Rs. 0.17 Crore. Hence, the increase in IDC due to time overrun is Rs. 0.38 Crore. The Commission finds that the reason for delay are partly attributable to PTCUL and partly beyond its control based on the submissions of the Petitioner. Accordingly, the Commission approves 50% of the increase in IDC on account of time overrun. Therefore, the allowable IDC works out to Rs. 0.36 Crore…."

Based on the above discussion, the Commission is of the view that the contention of the Petitioner is not tenable.

3.12. With regard to the IDC disallowed for '2x50 MVA 220/33 kV Substation, Pirankaliyar', the Petitioner contented that the Commission has disallowed the entire additional IDC due to delay in commissioning of the project on the basis that the Petitioner should have accounted for monsoon as it is a natural phenomenon that happens every year. However, the Petitioner submitted that even if the delay due to monsoon season had been accounted at the time of investment approval, the net effect would have remained the same i.e. increase in IDC.

In the matter, it is pertinent to mention that the Petitioner has emphasised only on the delay due to monsoon whereas the Commission has disallowed increased IDC due to delay by the Contractor. In Para 3.3.3.1 of the Tariff Order, the Commission has mentioned that there was delay of 2 year 5 months in Designing and Engineering work of

Sub-station by the firm and delay of more than 2 years 7 months in carrying out the civil works, i.e. earth filing, cable trench, internal road and control room by the firm. PTCUL has executed a contract with the contractor for a particular job that should be done within a specific time. In case of delay on account of reasons attributable to the Contractor, the Petitioner is solely responsible since as a client it is required to monitor the works of the contractor and conduct follow up properly based on the scientific project planning and monitoring tools. The said reasons for delay falls under the category of controllable factors. Therefore, the Commission applying the methodology defined by the Hon'ble APTEL in its judgement in Appeal no. 72 of 2010, had disallowed the increase in IDC on account of delay in completion of the work. The relevant extract of the Tariff Order is as follows:

"3.3.3.1

…

The actual hard cost claimed by the Petitioner as on CoD is Rs. 30.81 Crore. Further, the Petitioner has claimed the additional capitalization of Rs. 12.50 Crore towards this scheme from CoD to March 31, 2019. As the total hard cost of Rs. 43.31 Crore including additional capitalization is within the cost approved by the Commission vide its Investment Approval Order, therefore, the Commission approves the same. Further, the Petitioner has claimed the actual IDC of Rs. 2.70 Crore. The actual completion period is 56 months as against the scheduled completion period of 12 months as per the submission of the Petitioner. In accordance with the principles approved in Para 3.3, the Commission has computed the IDC corresponding to scheduled completion period as Rs. 0.57 Crore. Hence, the increase in IDC due to time overrun is Rs. 2.13 Crore. The delay is mainly because of delay by the firm in completion of the work and unprecedented rain during monsoon. The Commission is of the view that the delay by the firm is attributable to the Petitioner and as far as rain during monsoon is concerned, it is a natural phenomenon that happens every year, the Petitioner should have factored in all the weather related issues while deciding the scheduled completion period. Accordingly, the Commission finds that the reasons for delay are mainly attributable to PTCUL. Therefore, the Commission does not approve any increase in IDC on account of time overrun. Hence, the allowable IDC works out to Rs. 0.57 Crore. Accordingly, the Commission approves the total cost of Rs. 43.88 Crore including IDC of Rs. 0.57 Crore for '(2X25 MVA) 220/33 kV Sub-station at Piran Kaliyar'."

Therefore, based on the above, the claim of the Petitioner is not tenable.

3.13. With regard to the IDC disallowed for '220 kV GIS Sub-station IIP Harrawala Dehradun', the Petitioner submitted that the Commission has disallowed 50% of the additional IDC attributing the reason of delays to the Petitioner, however, heavy rainfalls, demonetization, ban in mining activities, permission for tree cutting are beyond the control of the Petitioner.

The Commission would like to reiterate that the Petitioner has presented limited facts before the Commission to justify its claim for IDC disallowed by the Commission. The Petitioner has stated that heavy rainfall, demonetization, ban in mining activities were beyond the control of the Petitioner. It is worth mentioning that the Petitioner has emphasised on the reasons which the Commission has also considered uncontrollable. Apart from the aforesaid reason, there was one more reason submitted by the Petitioner for the delay in the execution of the aforesaid work, i.e. the Petitioner constructed such sub-station with GIS technology for the first time. The Commission was not satisfied with the aforesaid reason submitted by the Petitioner for delay in completion of the project as the contractors must have been selected based on its experience of executing such type and volume of work. In the matter, the Commission vide Para 3.3.4.1 explicitly mentioned that the Commission was not convinced with the reasons submitted by the Petitioner as the contractor(s) selected for construction of GIS S/s must have been selected based on their expertise in implementation of such technology. Therefore, the reasons for delay are partly attributable to the Petitioner. The relevant extract of the Tariff Order is as follows:

"3.3.4.1

…

The Petitioner has claimed the actual IDC of Rs. 2.80 Crore. In accordance with the principles approved in Para 3.3 of this Order, the commission has computed the IDC corresponding to scheduled completion period as Rs. 1.34 Crore. Hence, the increase in IDC due to time overrun is Rs. 1.46 Crore. One of the reasons submitted by the Petitioner for delay in commissioning of the project is that the Petitioner constructed such Sub-station with GIS technology for the first time. The Commission is not convinced with the reason submitted by the Petitioner as the contractor(s) selected for construction of GIS s/s must have been selected based on their expertise in such technology. Based on the above discussion, the Commission

finds that the reason for delay are partly attributable for PTCUL and partly beyond its control. The Commission approves 50% of the increase in IDC on account of time overrun. Therefore, the allowable IDC works out to Rs. 2.07 Crore. Accordingly, the Commission approves the total cost of Rs. 56.29 crore towards '220 kV S/S IIP Dehradun (Harrawala)'.

Based on the above discussions, it is explicitly clear that there were certain critical activities including reasons for delay, which were completely under control of the Petitioner and therefore, the claim of the Petitioner for full allowance of the IDC is not tenable on account of reasons discussed above.

B. Interest on Loan

3.14. The Petitioner submitted that it believes that the Commission has made an error while calculating the weighted average rate of interest as it has not considered the interest capitalised during FY 2018-19 for computing the weighted average rate of interest, thus considering the weighted average rate of interest as 9.94% instead of actual 10.71%.

In the matter, it is worth mentioning that during ARR proceedings, the Commission vide letter dated 06.03.2020 directed the Petitioner to submit the details of opening loan, closing loan, total interest charged to P&L account and interest capitalized duly segregating the same between UITP and Non-UITP schemes for FY 2018-19. The Petitioner vide its submission dated 12.03.2020 had furnished the details. The Commission observed that the interest amount capitalized (CWIP) and interest amount charged to P&L account as submitted above by the Petitioner did not reconcile with the amount available in Trial Balance for FY 2018-19. Further, as per the Electricity Act, 2003 the Commission is required to issue Retail tariff Order for distribution licensee within 120 days from the date of filing of the APR Petition and also it is pertinent to mention that ARR of PTCUL is also an input the Retail tariff/ARR. Accordingly, to work out the tariff in time bound manner, instead of seeking further information from the Petitioner, the Commission relied on the annual audited accounts for FY 2018-19. The Commission has considered the Interest charged to CWIP from the Trial Balance for FY 2018-19. Further, interest charged to P&L account and Loan details have been considered from audited annual accounts for FY 2018-19.

The Commission in Para 3.6.6 of the Tariff Order has clearly mentioned that the gross interest on long term borrowings (Interest charged to P&L account and CWIP) has been considered for determination of weighted average rate of interest. The Relevant extract of the Tariff Order is as follows:

> *"The Commission has considered the approved closing loan balance for FY 2017-18 as the opening loan balance for FY 2018-19. The Commission has worked out the Interest Charges considering the loan amount corresponding to the assets capitalised in FY 2018-19 based on the approved means of finance. The repayment of loans has been considered as equivalent to the depreciation worked out by the Commission on the approved GFA for FY 2018-19. The actual weighted average interest rate of 9.94% has been considered based on the actual interest rate for the year considering total actual long-term borrowings and gross interest on long-term borrowings based on the audited books of accounts for FY 2018-19."*

It is explicitly clear from the above discussion that the Commission has considered the Interest charged to CWIP and Interest charged to P&L account to calculate the weighted average rate of interest on normative loan. Therefore, the contention of the Petitioner that the Commission has not considered the interested charged to CWIP is not tenable and hence, rejected.

3.15. Further, the Petitioner has stated that there is an error in computing the interest on loan even while considering the rate of 9.94%. Considering the average of the opening and closing balances of loan as approved by the Commission, the interest on loan works out to Rs. 44.88 Crore @ 9.94% instead of Rs. 42.31 Crore.

In the matter, before going into the computation of interest on normative loan, the Commission would like to mention that the repayment of the normative loan is considered equivalent to the allowable depreciation. Further, depreciation is considered on pro rata basis for the projects put under commercial operation for part of the year. The Commission has adopted the same methodology for calculating the interest on normative loan. The same methodology was followed while approving the ARR for FY 2019-20 and no objection was raised by the Petitioner. The Commission has adopted the aforesaid practice to bring parity between depreciation on the projects capitalized during the year and interest on loan, charged to P&L account, which would be applicable only from the date of capitalization.

C. Refinancing Gains

3.16. The Petitioner submitted that it has been able to improve its creditworthiness by managing its cashflow in an efficient manner, resulting in an upgraded credit rating. Instead of changing its lenders for refinancing its loan portfolio, the Petitioner pursued with existing lenders namely PFC and REC to reduce its interest as cost negotiation with the same lenders it would have resulted in saving of prepayment fees of the existing lenders and processing fees to the new lenders. The Petitioner has been able to bring down the interest cost by Rs. 3.32 Crore and accordingly 2/3rd amount i.e. Rs. 2.21 Crore shall be retained by the Petitioner.

During the proceedings of APR/ARR Petition, the Commission had gone through all the correspondence made with the financial institutions with regard to the reduction of the interest rate and there is no such document that supports the claim of the Petitioner w.r.t. refinancing of the debts. It is important to highlight that utilities are expected to manage their funds in optimum manner in the best interest of their business and maintaining creditworthiness is part and parcel of the business operation and cannot be considered any base for claiming benefit of re-financing. Refinancing is the replacement of an existing debt obligation with another debt obligation. However, in the present case, there is mere reduction in interest rate due to change in credit rating. Therefore, the claim of the Petitioner is not tenable.

D. Wrong capitalization rate while computing A&G expenses

3.17. The Petitioner submitted that the methodology followed by the Commission is wrong as it does not exclude the security expenses capitalised during the year from the expenses capitalised to compute the capitalisation rate. So, deducting security expenses and licensee fee from the gross expenses while including the same in expenses capitalised for computing the capitalisation rate does not provide an exact figure. The Petitioner referring to judgement dated 30.03.2015 in Review Petition no, 6 of 2015 of Hon'ble APTEL, stated that actual costs need to be considered. The issue regarding Gross Employee cost Vs. Net Employee cost has already been examined by Hon'ble APTEL in an Appeal No. 47 of 2012 in case of Maharashtra State Power Generation Company Limited Vs. Maharashtra State Regulatory Commission.

In the matter, the Commission would like to mention that expenses pertaining to License Fee and security expenses have been approved based on actuals. Normative A&G expenses for the previous year are escalated with the WPI inflation of the current year. The License fee is excluded from the normative gross A&G expenses while taking the impact of WPI inflation because License fee is to be paid in accordance with the UERC (Fee and Fine Regulations) (Second Amendment), 2018 and has nothing to do with WPI inflation. Further, as far as security expenses are concerned, the Commission vide Tariff Order dated 27.02.2019 had explicitly mentioned that there was significant increase in security personnel expenses due to construction of new S/s in the State of Uttarakhand. The Commission taking cognizance of the fact the aforesaid expenses are of uncontrollable nature, therefore, allowed the same at actuals.

Further, it cannot be denied that license fee and security expenses are paid by the licensee for the entire business which includes commissioned projects as well as projects under construction. Accordingly, the capitalization rate is to be calculated considering the aforesaid expenses. The Commission has adopted the same methodology in Tariff Order dated 27.02.2019 while determining the approved normative A&G expenses. The relevant extract of the Tariff Order dated 18.04.2020 is as follows:

"3.6.4
… The Commission during the proceedings of true-up of FY 2017-18 had observed that the expenses towards security personnel have been increasing substantially in the recent years. Considering the expenses towards the security personnel and increase in Licensee Fee being of uncontrollable nature, the Commission had allowed the same at actuals. The Commission has adopted the same methodology in the present proceedings for true-up for FY 2018-19..."

The Commission reiterates that the Commission has adopted the same methodology as adopted in the previous years. Security expenses have not been excluded from the total capitalisation as these expenses are incurred for the projects under construction also and excluding the same from the capitalised expenses will outrightly depict the wrong capitalisation rate. Further, as security expenses have been increased substantially in the recent years, that is why the same has been allowed on actual basis.

Based on the above discussion, the Commission is of the view that the claim of the Petitioner is not tenable.

E. Non-consideration of 7th Pay Commission impact while computing Normative Employee Expenses for FY 2019-20 and FY 2020-21

3.18. The Petitioner submitted that Commission earlier had proposed to revise the employee expenses trajectory for the third Control Period by allowing a one-time hike of 15% in EMPn of FY 2018-19 to compute the EMPn-1 for FY 2019-20. Thus, the Petitioner believes there is an error in the Tariff Order dated April 18, 2020 while computing the normative employee expenses for FY 2019-20 and FY 2020-21.

In the matter, it is to be noted that the Commission had determined the trajectory for the third Control Period i.e. FY 2019-20 to FY 2021-22 based on the actual expenses incurred for the past three to five years vide its Tariff Order dated 27.02.2019. Further, Trajectory of any control period keeps on changing based on the actuals. Furthermore, the Commission shall review the employee expenses for FY 2019-20 and FY 2020-21 based on the actuals at the time of truing of respective year considering the impact of 7th pay Commission based on the methodology adopted in Tariff Order dated 27.02.2019.

4. All the facts have been repeated by the Petitioner which were known to it at the time of original tariff proceedings and as discussed above, the claims sought by the Petitioner are not tenable, there shall not be any impact on any of the components of tariff for Truing-up of FY 2018-19 and ARR for FY 2020-21. Therefore, in light of the provisions in the Statutes, the facts of the case, the submissions of the Petitioner and precedents set by the Hon'ble Supreme Court and the Hon'ble ATE, it is clear that the grounds stated by the Petitioner for review do not satisfy the grounds for review under the Code of Civil Procedure as there is no error apparent on the face of record or any new facts which could not be presented at the time of the proceedings in most of the issues. Hence, the instant Review Petition brought before the Commission is rejected and disposed off.

Ordered accordingly.

(M.K. Jain) **Member (Technical)**	**(D.P. Gairola)** **Member (Law)**