Before

UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

Misc. Application No.: 95 of 2018

In the matter of:

Review petition filed under Regulation 54 of the UERC (Conduct of Business Regulations), 2014 for review of the order dated 21.08.2018 passed by the Commission in the matter of determination of Project specific Tariff for 12.6 MW SHP (Sarju-II) on Sarju river at Kapkote, Bageshwar district, Uttarakhand u/s 62 & 86(1)(b) and 86(1)(e) of the Electricity Act, 2003 read with Regulation 13 of UERC (Tariff and other Terms for Supply of Electricity from Non-Conventional and Renewable Energy Sources) Regulations, 2013.

In the matter of:

Uttarakhand Power Corporation Ltd. … Petitioner

AND

In the matter of:

Uttar Bharat Hydro Power Pvt. Ltd. … Respondent

CORAM

Shri Subhash Kumar Chairman

Date of Hearing: January 22, 2019

Date of Order: April 02, 2019

The Petition was filed by Uttarakhand Power Corporation Ltd. (herein after referred to as "UPCL" or "the Petitioner"), for review of the Order dated 21.08.2018 passed by the Commission in the matter of determination of Project specific Tariff for 12.6 MW Sarju II SHP of M/s Uttar Bharat Hydro Power Pvt. Ltd. (herein after referred to as "M/S UBHP" or "the generator" or "the Respondent"), on Sarju river at Kapkote, Bageshwar district, Uttarakhand u/s 62 & 86 (1)(b) and 86 (1)(e) of the Electricity Act, 2003 read with Regulation 13 of UERC (Tariff and other Terms for Supply of Electricity from Non- Conventional and Renewable

Energy Sources) Regulations, 2013. The Petitioner in the above Petition had prayed the following:

a. Take the petition on record and admit the same.

b. Reconsider/Review the order dated 21.08.2018 passed by the Commission in the matter of determination of project specific Tariff of Sarju-II SHP.

c. To condone the delay in filing the review petition.

d. Pass such other order(s) that may be deemed fit and proper in the facts and circumstances of the case.

1. Background

1.1 M/s UBHP filed a Petition seeking determination of project specific tariff for its 12.6 MW Sarju II Small Hydro Power Project, on Sarju River at Kapkote, Bageshwar District, Uttarakhand on 09.03.2017. The Commission vide its Order dated 21.08.2018 determined the project specific tariff for the 12.6 MW Sarju II SHP of M/s UBHP.

1.2 UPCL on 05.12.2018 filed a Petition seeking review of the above referred Order dated 21.08.2018. Copy of the petition was forwarded to M/s UBHP (Respondent) for submission of comments. In response, M/s UBHP vide its letter dated 28.12.2018 submitted its comments in the matter. Hearing was also conducted in the matter on 22.01.2019 at the Commission's office.

1.3 The Commission has considered the replies/information submitted by the Petitioner as well as contentions raised by the Respondent and the same have been discussed at appropriate places in the Order alongwith the Commission's views on the same.

2. Petitioner's Submissions

2.1 The Petitioner submitted that the Commission's order dated 21.08.2018 on determination of project specific Tariff of Sarju II SHP of M/s UBHP, being a Tariff order, required more time than usual for analyzing the same and ascertaining the appropriate remedy upon legal advise, which took greater time, hence, some delay in filing the present review petition has been caused. The Petitioner, accordingly, submitted that the delay is justified and is not deliberate and is liable to be condoned.

2.2 The Petitioner submitted that the Commission has considered the CUF as 45% and has held the same is as per Regulations, whereby, the higher of the calculated CUF of 44.14% and CUF of 45% as per Regulations is to be considered. The Petitioner submitted that the basis of calculation of CUF as 44.14% is an error apparent on record because the same is neither as per the Regulations nor as per practice/methodology followed by the Commission in past references.

2.3 The Petitioner submitted that Regulation 10(3)(a) of UERC RE Regulations, 2013 clearly mentions that "for Projects opting to have their tariffs determined on the basis of actual capital cost instead of normative capital cost as specified for different technologies under Chapter 5, the CUF(generation) for recovery of fixed charges shall be taken as that envisaged in the approved DPR or the normative CUF specified under Chapter 5 for the relevant technology whichever is higher" and in Chapter 5 of the same regulations vide regulation 28 the CUF for Small Hydro Generating Plants is specified as 45%. However, the Commission has not considered the said provisions of the Regulation and accordingly there is an error apparent on record.

2.4 The Petitioner submitted that the Commission while calculating the CUF of Sarju II SHP has mentioned as follows:

"The RE Regulations, 2013 does not specify whether the designed PLF would be based on 90% dependable year or 75% dependable year. In this regard reliance is placed on Regulation 3(25) of UERC (Terms and Conditions for Determination of Tariff) Regulations, 2015 which defines design energy as under:

"Design energy means the quantum of energy which can be generated in a 90% dependable year with 95% Installed Capacity of the Hydro Generating Stations""

The Petitioner submitted that the Commission has relied upon the provisions of the other Regulation which is an error apparent on record because the RE Regulations, 2013 clearly mandates to consider the CUF as envisaged in the approved DPR or the normative CUF (45%) whichever is higher.

The Petitioner submitted that in the present matter the CUF with lean season water discharge of 5% is given as 49% in the approved DPR of the project, which the Commission has adjusted to 46.46% with 15% lean season water discharges (as per the

State Law in Uttarakhand). This very value of CUF being higher than the normative CUF of 45% should have been considered as it is as per the provisions of RE Regulations, 2013.

2.5 The Petitioner submitted that in the past the Commission vide its orders dated 10.4.2014 and 16.3.2017 regarding determination of project specific tariffs for Vanala SHP and Sarju-III SHP respectively, has shown reliance upon the Regulation 3(25) of UERC Tariff Regulations, 2015 but have not considered the condition of 95% of Installed Capacity and rather have taken the CUFs as envisaged in the approved DPRs and later compared them with the normative CUF for determining the final CUF, however for Sarju II SHP, the Commission has after adjusting the CUF due to revised percentage of lean water discharge, has further downwardly re-adjusted the CUF considering 95% of the installed capacity and determined the value as 44.14%. The Petitioner submitted that this calculation is not only against the RE Regulations, 2013 but is also in variance of the traditions followed by the Commission in the previous orders and is error apparent on record. The Petitioner submitted that as it could not have anticipated the order, therefore, did not place this evidence before the Commission and accordingly it is new evidence relevant to the matter and should be considered.

2.6 The Petitioner submitted that as per the regulations the CUF for the plant should be 46.46% rather than 45% and accordingly the design energy should be 51.28 MU instead of 49.67 MU. The Petitioner further submitted that, considering 1% normative auxiliary consumption, the saleable energy for Sarju II SHP should be 50.77 MU rather than 49.17 MU as considered by the Commission. The Petitioner stated that the Commission has considered the saleable energy for the Sarju II SHP as 49.17 MU while the generator himself has considered the same as 49.82 MU which appears to be an error apparent on record and needs to be corrected.

2.7 The Petitioner submitted that the consideration of 1.6 MU (50.77-49.17) lesser saleable energy is at one end extending undue benefit to the generator and on the other hand causing a burden to the tune of approximately Rs. 33.00 Crore over the life of the project upon the consumers of the State and, therefore, there are justified reasons to review the said order and reconsider the same in light of the provisions of RE Regulations.

2.8 The Petitioner submitted that with regard to the allowance of 50% IDC for 29 months

from August, 2009 to December, 2011, the Commission at para 3.3.20(v) of the Order dated 21.08.2018 has thoroughly rejected the generator's plea/explanation of delay, yet has allowed 50% of the average interest cost for the same period which is not justified considering that generator was allowed the interest against the controllable factor at the cost of the consumers of the State. Therefore, there are justified reasons to review the said order and reconsider the same in light of the provisions of RE Regulations.

2.9 The Petitioner submitted that with regard to the allowance of 50% IDC for 10 months from August, 2015 to May, 2016, the Commission has wrongly considered the delay as uncontrollable as the generator was solely responsible for the occurrence of such situations that lead to delay in energization of plant till May, 2016. It is an error apparent on record and needs to be corrected.

2.10 The Petitioner submitted that M/s UBHP had to construct the 33 kV line from Sarju-II SHP to 33/11 kV sub-station Kapkote for evacuation of power from Sarju-II SHP, but they had not even started the construction of evacuation line till August 2015, when they have actually claimed that they were ready for the commissioning of plant. The construction of evacuation line was the part of the project and the plant could not be considered as completed till construction of evacuation line by the generator. M/s UBHP wilfully delayed the construction of evacuation line and had wrongly demanded the LILO connectivity from one of the UPCL's under construction line between Kapkote and Karmi sub-stations. The evacuation of plant at Kapkote sub-station was agreed by the generator throughout the journey of the project since its inception and they always were of the knowledge that the same should be required to be erected for evacuation of the plant. The generator intentionally did not erect the evacuation line and with the wrongful motive had sought the LILO connectivity from the under construction line of UPCL between Kapkote and Karmi sub-stations. When UPCL denied the connectivity the generator had approached the Commission, who inspite of objection of UPCL, had allowed ad-interim connectivity stating that the generation should not be bottled up and ordered M/s UBHP to construct the said line within one year time. UPCL further submitted that the Order issued by the Commission is self explanatory that only generator was responsible for the situation where ad-interim arrangement through LILO

came into picture and the Kapkote-Karmi line of UPCL had actually acted as a saviour to the generator and allowed the evacuation of generation from Sarju-II Plant at least one year in advance then it could be possible through the scheduled evacuation line to be constructed by the generator. The Petitioner submitted that these facts probably escaped notice of the Commission and as the Petitioner could not have anticipated the order it did not place this evidence before the Commission earlier. The Petitioner, accordingly, submitted that it is new evidence relevant to the matter and should be considered.

2.11 The Petitioner submitted that the Commission in its Order dated 21.08.2018 at para 3.3.20(vii), at one end has recognized that the generator has deposited the fees in the office of Electrical Inspector in February, 2016 (i.e. after 7 months from the claimed date of readiness for commissioning of project) for obtaining the clearance for energization of LILO network constructed by the Petitioner but on the other hand has given the leverage to the generator for delay from August 2015 to February, 2016 claiming that it would not make much difference even if the generator would have got the clearance from the Electrical Inspector in August, 2015 itself considering the energization of Kapkote-Karmi line of UPCL on 18.11.2015. The Petitioner further submitted that the Commission has not considered the fact that the generator has started the electrical clearance formalities after more than three months from the date of energization of Kapkote-Karmi line.

2.12 The Petitioner submitted that Kapkote-Karmi Line was part of internal project of UPCL and was not at all related to the evacuation of the generator's plant and the Commission allowed the provisional arrangement of LILO connectivity to the generator as an emergency measure only to avoid generation loss for which the generator was himself solely responsible for occurrence of such situation. The Petitioner further submitted that the generators should not be allowed benefit out of its own wrong and the IDC allowed for the period of 10 months from August, 2015 to May, 2016 should not be allowed to the generator as it is a controllable factor, hence, there is an error apparent on record and needs to be corrected and consequently order needs to be modified.

2.13 The Petitioner submitted that there are sufficient and justified grounds for reviewing/ reconsidering the said order and in the interest of justice the Order dated 21.08.2018 passed by the Commission, in the matter of determination of project specific tariff of

Sarju-II SHP of M/s UBHP, be reviewed/reconsidered.

3. Commission's Views & Decisions

3.1 Before considering the Petitioner's contentions on merits of the case, it is necessary to see the scope of the power of the Commission for review of its order. Review of an Order of the Commission can only be done if the Petitioner fulfils one of the grounds for review in accordance with the provisions of the Code of Civil Procedure, 1908. Section 114 of the Code of Civil Procedure (in short CPC) provides for a substantive power of review by a civil court and consequently by the appellate courts. Section 114 of the code although does not prescribe any limitation on the power of the court but such limitations have been provided for in Order 47, Rule 1 of the CPC.

The grounds on which review can be sought are enumerated in Order 47, Rule 1 of CPC, which reads as under:

"1. Application for review of judgment

(1) Any person considering himself aggrieved:-

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

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

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

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

Hence, the circumstances when review lies are:

(a) cases in which appeal lies but not preferred,

(b) cases in which no appeal lies,

(c) decisions on reference from Court of Small Causes; and

Further, the grounds for review are:-

(i) discovery of new and important matter or evidence, or

(ii) mistake or error apparent on the face of the record, or

(iii) any other sufficient reason.

3.2 The Respondent vide its letter dated 09.03.2017 submitted its comments in the matter claiming that the present review Petition is not maintainable on the grounds stated below:

a) That the Review Petition filed by the UPCL is barred by time and is liable to be rejected as such in limine.

b) That the relief sought by the Petitioner is outside the scope of the Review jurisdiction as per settled principles and UPCL is seeking a rehearing of the matter under the guise of the Review Petition which is not permissible. The Respondent in support of its contention cited out various judgments passed by Hon'ble Supreme Court as below:

*"**a. Parsion Devi –v- Sumitri Devi (1997) 8 SCC 715, wherein it was, inter-alia, held as under:***

> ***"6.** A perusal of the application filed by the judgment-debtors seeking review of the order dated 25-4-1989 shows that none of the grounds stated therein can strictly speaking be said to fall within the ambit and scope of Order 47 Rule 1 CPC. The review petition in effect challenged the correctness of the order of Gupta, J. on the question of limitation without pointing out any "error apparent on the face of the record" which could have been reviewed. Sharma, J. appears to have ignored the limits of the exercise of jurisdiction under Order 47 Rule 1 CPC while passing the impugned order and reversing the order of Gupta, J. on merits.*
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> ***7.** It is well settled that review proceedings have to be strictly confined to the ambit and scope of Order 47 Rule 1 CPC. In Thungabhadra Industries Ltd. v. Govt. of A.P.[AIR 1964 SC 1372 : (1964) 5 SCR 174] (SCR at p. 186) this Court opined:*
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> > *"What, however, we are now concerned with is whether the statement in the order of September 1959 that the case did not involve any substantial question of law is an 'error apparent on the face of the record'). The fact that on the earlier occasion the Court held on an identical state of facts that a substantial question of law*

arose would not per se be conclusive, for the earlier order itself might be erroneous. Similarly, even if the statement was wrong, it would not follow that it was an 'error apparent on the face of the record', for there is a distinction which is real, though it might not always be capable of exposition, between a mere erroneous decision and a decision which could be characterised as vitiated by 'error apparent'. A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error."

8. *Again, in Meera Bhanja v. Nirmala Kumari Choudhury [(1995) 1 SCC 170] while quoting with approval a passage from AribamTuleshwar Sharma v. AribamPishak Sharma [(1979) 4 SCC 389] this Court once again held that review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 CPC.*

9. *Under Order 47 Rule 1 CPC a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record.* ***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 the record*** *justifying the court to exercise its power of review under Order 47 Rule 1 CPC.* ***In exercise of the jurisdiction under Order 47 Rule 1 CPC it is not permissible for an erroneous decision to be "reheard and corrected".*** *A review petition, it must be remembered has a limited purpose and cannot be allowed to be "an appeal in disguise"*

10. *Considered in the light of this settled position we find that Sharma, J. clearly overstepped the jurisdiction vested in the Court under Order 47 Rule 1 CPC. The observations of Sharma, J. that "accordingly, the order in question is reviewed and it is held that the decree in question was of composite nature wherein both mandatory and prohibitory injunctions were provided" and as such the case was covered by Article 182 and not Article 181 cannot be said to fall within the scope of Order 47 Rule 1 CPC.* ***There is a clear distinction between an erroneous decision and an error apparent on the face of the record. While the first can be corrected by the higher forum, the latter only can be corrected by exercise of the review jurisdiction.*** *While passing the impugned order, Sharma, J. found the order in Civil Revision dated 25-4-1989 as an erroneous decision, though without saying so in so many words. Indeed, while passing the impugned order Sharma, J. did record that there was a mistake or an error apparent on the face of the record which was not of*

such a nature, "which had to be detected by a long-drawn process of reasons" and proceeded to set at naught the order of Gupta, J. ***However, mechanical use of statutorily sanctified phrases cannot detract from the real import of the order passed in exercise of the review jurisdiction.*** *Recourse to review petition in the facts and circumstances of the case was not permissible. The aggrieved judgment-debtors could have approached the higher forum through appropriate proceedings to assail the order of Gupta, J. and get it set aside but it was not open to them to seek a "review" of the order of Gupta, J. on the grounds detailed in the review petition. In this view of the matter, we are of the opinion that the impugned order of Sharma, J. cannot be sustained and we accordingly accept this appeal and set aside the impugned order dated 6-3-1997."*

b. Further, the Hon'ble Supreme Court in State of West Bengal –v- Kamal Sengupta (2008) 8 SCC 612, after referring to various decisions on the scope of review jurisdiction, at Para 35, has summarised the principles as under:

*"**35.** The principles which can be culled out from the above noted judgments are:*

(i) The power of the Tribunal to review its order/decision under Section 22(3)(f) of the Act is akin/analogous to the power of a civil court under Section 114 read with Order 47 Rule 1 CPC.

(ii) The Tribunal can review its decision on either of the grounds enumerated in Order 47 Rule 1 and not otherwise.

(iii) The expression "any other sufficient reason" appearing in Order 47 Rule 1 has to be interpreted in the light of other specified grounds.

(iv) An error which is not self-evident and which can be discovered by a long process of reasoning, cannot be treated as an error apparent on the face of record justifying exercise of power under Section 22(3)(f).

(v) An erroneous order/decision cannot be corrected in the guise of exercise of power of review.

(vi) A decision/order cannot be reviewed under Section 22(3)(f) on the basis of subsequent decision/judgment of a coordinate or larger Bench of the tribunal or of a superior court.

(vii) While considering an application for review, the tribunal must confine its adjudication with reference to material which was available at the time of initial decision. The happening of some subsequent event or development cannot be taken

note of for declaring the initial order/decision as vitiated by an error apparent.

(viii) Mere discovery of new or important matter or evidence is not sufficient ground for review. The party seeking review has also to show that such matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the court/tribunal earlier.

c) The Respondent further submitted that it had filed an Appeal against the Order dated 21.08.2018 including on issues of time overrun to the extent it has been decided against the Respondent. Therefore, the issue of time overrun raised by UPCL may not be considered in this review. In this regard, the Respondent relied on the decision of the Hon'ble Supreme Court in Kerala SEB v. Hitech Electrothermics & Hydropower Ltd., (2005) 6 SCC 651 d as below:

> *"10. This Court has referred to several documents on record and also considered the documentary evidence brought on record. This Court on a consideration of the evidence on record concluded that the respondent had been denied power supply by the Board in appropriate time which prevented the respondent from starting the commercial production by 31-12-1996. This is a finding of fact recorded by this Court on the basis of the appreciation of evidence produced before the Court.* ***In a review petition it is not open to this Court to reappreciate the evidence and reach a different conclusion, even if that is possible****……."*

3.3 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:*
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> *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.*
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> *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."*

3.4 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 entire matter and wants the Commission to re-consider each and every issue. This Commission has given detailed reasons in its Orders dated 21.08.2018 in support of the views on the determination of tariff for Sarju II SHP, in accordance with the provisions of the Act/Regulations and after taking into consideration the submissions of the Petitioner. Reconsideration of the entire matter cannot be undertaken by the Commission in as much as it is only material error or errors manifest on the face of the record or patent error which can be considered in a review petition. The Petitioner has tried to equate the review proceedings with the original proceedings. 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 in the following paras.

(A) <u>Capacity Utilisation Factor (CUF)</u>

3.5 With regard to CUF, the Petitioner contended that the basis of calculation of CUF as 44.14% by the Commission is an error apparent on record and needs to be reviewed. The Petitioner submitted that Regulation 10(3)(a) of RE Regulations, 2013 states that for Projects opting to have their tariffs determined on the basis of actual capital cost instead of normative capital cost as specified for different technologies under chapter 5, the CUF(generation) for recovery of fixed charges shall be taken as that envisaged in the approved DPR or the normative CUF specified under chapter 5 for the relevant technology whichever is higher and in chapter 5 of same regulations vide Regulation 28 the CUF for Small Hydro Generating Plants is specified as 45%.

3.6 The Petitioner further submitted that the CUF with lean season water discharge of 5% was given as 49% in the approved DPR of Sarju II SHP, which the Commission adjusted as 46.46 % with 15% lean season water discharges (as per the State Law in Uttarakhand) and this very value of CUF being higher should have been considered as per the Regulations. The Petitioner also submitted that, against the claim of saleable energy as 49.82 MUs by the Respondent, the Commission considered the same as 49.17 MUs which appears to be an error apparent on record.

3.7 The Commission has already dealt on the issue in detail in the impugned order, and is of the view that there is no error apparent on the face of law. The Petitioner in its Petition has itself elaborated the detailed methodology and approach of the Commission to arrive at the CUF for Sarju II SHP of M/s UBHP which clearly shows there is no ambiguity in understanding the approach followed by the Commission. From the submissions, there

does not appear to any new fact that has been discovered which needs further deliberation to be considered under review.

3.8 The Commission denies the Petitioner's contention that there is no basis for consideration of 44.1% as CUF. The Impugned Order has in detail considered the issue of Design Energy/CUF at Para 3.2, the relevant portion of which is reproduced hereunder:

"3.2 Design Energy

3.2.1 The Petitioner submitted the revised DPR dated April 2011 for its Sarju II SHP and stated that the CUF envisaged in the said DPR was considered as 45%. The Petitioner, as discussed earlier, requested the Commission to exercise its power to relax under the RE Regulations, 2013 and consider the CUF of the plant as 39% since the CUF envisaged in the revised DPR of April 2011 was based on availability of water at much higher levels, whereas, as per the actual water availability which is at a lower level, the Petitioner's CUF comes to 39%. The Petitioner submitted that such difference is solely due to the lack of water availability in the river which is beyond the control of the Petitioner.

3.2.2 Regulation 10(3) of RE Regulations, 2013 specifies as under:

"Project Specific Tariff, on case to case basis, shall be determined by the Commission in the following cases:

(a) For projects opting to have their tariffs determined on the basis of actual capital cost instead of normative capital cost as specified for different technologies under Chapter 5, the CUF (generation) for recovery of fixed charges shall be taken as that envisaged in the approved DPR or the normative CUF specified under Chapter 5 for the relevant technology, whichever is higher;..."

3.2.3 The Commission examined the revised DPR of the Petitioner's SHP wherein the CUF of the plant was stated as 49% as against the Petitioner's submission of 45% as discussed above. The Commission asked the Petitioner to provide the details regarding the calculation of Saleable Energy as envisaged in the DPR and hydrology data considered by the Petitioner for calculation of Saleable Energy to arrive at CUF of the plant as claimed in the Petition. The Petitioner, in response to the same, submitted that the revised DPR was prepared for cost escalation only and has stated that CUF considered in the revised DPR was considered on 75% dependable year basis. The Petitioner further submitted that in the original DPR

prepared by the Indo Canadian Consultancy Services Ltd. the environmental release was considered only 5% of lean season discharge instead of mandatory 10% lean season discharge.

3.2.4 *The Commission examined the revised DPR of April, 2011 submitted by the Petitioner and has found that as per revised DPR gross energy generation of 67.79 MUs for a capacity of 15 MW has been shown and with forced outage of 5% considered in the said DPR, the CUF has been arrived at 49%. The Commission further examined the original DPR of January 2008 of the Petitioner's SHP which contains the calculation of annual projected generation on 75% dependable year and the same has been shown as 64.86 MUs for 15 MW capacity. The Petitioner has also enclosed a letter of Secretary, Energy, GoU, wherein all the hydro project developers were directed to ensure a continuous minimum discharge equivalent to 15% of the average lean season in accordance with the directions of Hon'ble National Green Tribunal The Commission has, accordingly, considered the minimum 15% discharge so as to enable the Petitioner to comply with the directions of the Hon'ble NGT and also the State Government.*

3.2.5 *The RE Regulations, 2013 does not specify whether the design PLF would be based on 90% dependable year or 75% dependable year. In this regard reliance is placed on Regulation 3(25) of UERC (Terms and Conditions for Determination of Tariff) Regulations, 2015 which defines design energy as under:*

"Design Energy" means the quantum of energy which can be generated in a 90% dependable year with 95% installed capacity of the hydro generating station;"

However, in the absence of data on 90% dependable year, the Commission has relied upon the discharge data of 75% dependable year. Further, as discussed above a continuous minimum discharge equivalent to 15% of the average lean season discharge has also been factored. Hence, the same translates into an annual generation of 61.06 MU for 15 MW capacity at 100% machine availability or 58 MU at 95% machine availability which translates to a CUF of 44.14% which is lower than the normative CUF of 45% specified in the RE Regulations, 2013. Hence, the normative CUF of 45% has been considered as the CUF for recovery of AFC of the Petitioner's plant.

The gross energy at a CUF of 45% for plant having capacity of 12.6 MW translates to 49.67 MUs.

3.2.6 *Further, in accordance with the RE Regulations, 2013 normative auxiliary consumption*

including transformation losses of 1% has been reduced from the normative design generation of 49.67 MUs to work out the saleable energy of the said SHP which works out to 49.17 MUs against the saleable energy of 49.82 MUs considered by the Petitioner in its Tariff Petition for Sarju II SHP.

3.2.7 With respect to the Petitioner's contention for relaxing the CUF of the plant, the Commission is of the view that there is no merit in deviating from the Regulations, where the Regulations without any ambiguity clearly spells out the basis for considering the CUF for the generating stations. The Commission, accordingly, abstains from deviating from the methodology adopted for considering the CUF of the Petitioner's plant and approves the same as 45% as discussed above.

3.2.8 Para 4.2 of the Implementation Agreement dated 28.04.2004 executed between GoU and the Petitioner requires that a royalty of 10% will be applicable after 15 (fifteen) year of CoD in all cases of sale of power. Hence, saleable energy for the purpose of computation of tariff has been further reduced by 10% w.e.f. 16th year onwards. Approved saleable energy for 35 years is shown in Appendix-I."

3.9 As can be seen from above, the Commission has examined and discussed the issue of CUF of Sarju II SHP in detail based on the various submissions including the requirement of 15% minimum discharge as per the National Green Tribunal and Government of Uttarakhand. The Commission considered the minimum 15% discharge so as to enable the Petitioner to comply with the directions of the Hon'ble NGT and also the State Government as the same was not considered in the DPR of the project. The same was also in line with Hon'ble ATE's Judgment dated 18th September, 2009 in Appeal Nos. 50 & 65 of 2008 and IA Nos. 98 & 143 of 2008 wherein the learned Tribunal had held as under:

"The promoters of hydel power in the State of Himachal Pradesh as well as the Himachal Pradesh State Electricity Board shall be entitled to apply to the Commission for fixing project specific capital cost for any project in case the normative capital cost is not suitable to either of them. Similarly, if CUF of 45% for a specific project is contested by either party, it may approach the Commission with the site specific CUF."

Thus, to consider the impact of Hon'ble NGT's Order, the design energy of the

SHP was re-estimated and in this regard, reliance was placed on Regulation 3(25) of UERC (Terms and Conditions for Determination of Tariff) Regulations, 2015 in accordance with Regulation 3(2) of UERC RE Regulations, 2013 which specifies as under:

"Save as aforesaid and unless repugnant to the context or if the subject matter otherwise requires, words and expressions used in these regulations and not defined, but defined in the Act, or the UERC (State Grid Code) Regulations or the Commission's Regulations on determination of Tariff shall have the meanings assigned to them respectively in the Act or the State Grid Code or the Commission's Regulations on determination of Tariff."

3.10 The Commission in its impugned Order dated 21.08.2018 had clearly stated that the RE Regulations, 2013 does not specify whether the design energy would be based on 90% dependable year or 75% dependable year. Accordingly, the Commission placed reliance on Regulation 3(25) of UERC (Terms and Conditions for Determination of Tariff) Regulations, 2015 which defines design energy as under:

"Design Energy" means the quantum of energy which can be generated in a 90% dependable year with 95% installed capacity of the hydro generating station;"

As discussed in detail in the impugned Order, in the absence of data on 90% dependable year, the Commission relied upon the discharge data of 75% dependable year, and, after considering the continuous minimum discharge equivalent to 15% of the average lean season discharge worked out the CUF of 44.14% for Sarju II SHP.

3.11 The contention of the Petitioner that the Commission is in variance of its approach followed in earlier Orders in case of Vanala & Sarju III SHP, by considering the condition of 95% installed capacity to arrive at CUF of Sarju II SHP, is frivolous and without any legal backing. The Commission has already stated that it had considered the definition of Design Energy as per UERC Tariff Regulations, 2015 that clearly states that design energy means the quantum of energy that can be generated in a 90% dependable year with 95% installed capacity. In the absence of data related to 90% dependable year, the Commission considered the data related to 75% dependable year and in line with the aforesaid definition of Design Energy, considered the machine availability as 95%. The approach of the Commission is well thought of and is not ambiguous in any manner and accordingly cannot be considered as an error apparent on record. Furthermore, even if it

is assumed that the same is not in line with the earlier approach, then also it does not qualify the grounds on which a review can be sought.

3.12 The Petitioner stated that the Commission has worked out the lesser saleable energy as 49.17 MU against the generator's claim of 49.82 MU in the Petition for determination of project specific tariff of Sarju II SHP. In this regard, as discussed in detail in the Impugned Order dated 21.08.2018, the Commission would like to once again state that the saleable energy for the generator's plant has been worked out after factoring the requirement of continuous minimum discharge equivalent to 15% of the average lean season discharge as per the directions of the Hon'ble NGT and also the State Government.

3.13 The Petitioner also stated that the Commission's Order has resulted in extending undue benefits to the generator and burden of approximately Rs. 33.00 Crore on the consumers of the State over the life of the project. In this regard, the Commission would like to state that, the Commission being a Regulatory body, passes its Order in a purely unbiased manner based on the facts and figures, ensuring that none of the parties derive undue benefit or suffer undue hardship because of the decisions taken by the Commission. In the impugned Order dated 21.08.2018 also, the Commission has duly followed the policies and principles as laid down in the applicable Regulations and accordingly worked out the CUF and Design Energy for the generator's Sarju II SHP, thus, there does not arise any question of passing on any undue benefit to the generator or otherwise, and therefore, the contention of the Petitioner in this regard is denied.

3.14 In view of above discussion, the Commission is of the view that there is no error apparent on the face of the record or otherwise. The Review Petitioner under the guise of review is seeking rehearing and reconsideration of the issue of CUF which is not permissible, and accordingly review on the ground of CUF is rejected.

(B) Allowance of 50% IDC for 29 months

3.15 The Petitioner, with regard to the allowance of 50% IDC for 29 months from August, 2009 to December, 2011, submitted that in the impugned Order dated 21.08.2018, the Commission in its own findings as per para 3.3.20 (v) has thoroughly rejected the

generator's plea/explanation of delay and yet has allowed 50% of the average interest cost for the period which is not justified, as it had led to allowance of interest against the controllable factor to the generator and accordingly the impugned Order dated 21.08.2018 should be reviewed/reconsidered in light of the provisions of RE Regulations.

3.16 The Commission denies the Petitioner's contention in this regard as the same is baseless and without any legal backing. The impugned Order dated 21.08.2018 has in detail considered the issue of allowance of 50% IDC for 29 months at para 3.3.20 (v), the relevant portion of which is reproduced hereunder:

> "*(v) The Petitioner further submitted that the Hon'ble High Court of Uttarakhand passed an order on 16.07.2009, stating that no new stone crushers shall be set-up or established in the State of Uttarakhand. This led to an acute shortage of the aggregate due to which the project of the Petitioner was delayed. The Petitioner further submitted that only after the permission was granted by DM Bageshwar on 21.12.2011 for setting up the stone crushers, the project work could be regained back to normal pace thus delaying the overall project work by 24 months. The Respondent submitted that the delay in obtaining the permission of setting up a non-commercial stone crusher from District Magistrate, Bageshwar is simply due to the lackadaisical approach of the Petitioner as the Petitioner himself has submitted that Hon'ble High Court had allowed the same way back in June, 2010. Moreover, the Respondent submitted that, the implementation agreement regarding 12.6 MW capacity was executed with GoU only on 03.06.2011, and that only upon the execution of implementation agreement any work for the enhanced capacity should have been taken up. The Respondent further submitted that till the end of year 2010, the Petitioner was involved only in enhancing the capacity of the plant and preparing the DPR. The claims of the Petitioner have been examined based on the bills submitted by the Petitioner, wherein it has been observed that Civil works were being carried out continuously by it during the period July 2009 to December 2011 as is evident from the running bill for civil works raised by M/s Akasva Infrastructure Pvt. Ltd. and other contractors, as submitted by the Petitioner. Further, as can be observed from the above table that all the works related to major civil components of the SHP viz. HRT, Weir Tank, Power House etc. commenced and were under progress during the alleged ban of stone crusher period. Hence, the claim of the Petitioner that the project got delayed due to shortage of aggregate on account of ban on the stone crusher activities is not tenable.*

Further, it was also observed that during the period August 2009 to November 2011, disbursements were being received regularly by the Petitioner from its banker. Moreover, from the invoices submitted by the Petitioner, the Commission examined that works including civil works were undergoing during the alleged period and bills for the same were also being raised by the contractors/suppliers on regular basis. The Commission is of the view that the justification of the Petitioner for delay in carrying out project related activities due to shortage of aggregate on account of ban on stone crushing activities cannot be held as attributable to fully uncontrollable factors. Accordingly, the Petitioner's claim that the project got delayed due to the stay by Hon'ble High Court of Uttarakhand on crushing activities during the period July, 2009 to December, 2011 is not justified.

The Commission analyzed the submissions of the Petitioner and observed that stone crushing activities in the region were banned in view of the interim Order dated 16.07.2009 of the Hon'ble High Court. The Petitioner preferred an appeal in the year 2010 for an interim relief against the aforesaid Order of the Hon'ble High Court and the Court vide its Order dated 18.06.2010 clarified that the Order dated 16.07.2009 prohibiting stone crushing activities would not cover power projects which were working under an agreement with Government and have necessary clearances and provided that stone crushing activities were not carried out for commercial purposes. Further, after the High Court's Order dated 18.06.2010 the Petitioner was able to secure permission from DM Bageshwar only on 21.12.2011 for setting up stone crusher for its project.

In this regard, the Commission is of the view that the Petitioner should have immediately moved to the Hon'ble High Court for seeking interim relief against the Hon'ble High Court's Order dated 16.07.2009 vide which the stone crushing activities were banned in the region. Notwithstanding the fact that such prohibition would enormously hamper the Petitioner's ongoing construction activity on account of the project site being remotely located in the hilly region and largely dependent on local quarries, the Petitioner did not show that urgency and approached the Hon'ble High Court in 2010, i.e. almost one year after pronouncement of such prohibitory Orders by the said Hon'ble Court. The Commission feels that the Petitioner should have acted more promptly considering the fact that each day of delay in completion of the project amounts to additional cost towards interest during construction resulting in increase of overall capital expenditure in the project. The High Court vide its Order dated 18.06.2010

provided clarification on its order dated 16.07.2009 and granted relief to the Petitioner. However, another 1.5 years lapsed from the said High Court Order for the Petitioner to secure permission from DM Bageshwar for setting up stone crusher for its project.

Hence, in accordance with the principles laid down in the Hon'ble ATE's above referred Order and in the absence of any satisfactory justification of the Petitioner, the Commission disallows 50% of the average interest cost for 29 months, i.e. from August, 2009 to December, 2011."

3.17 The Commission in its impugned Order dated 21.08.2018 had clearly stated that based on the documents/information submitted by the generator, the claim of the generator that project got delayed due to stay by Hon'ble High Court of Uttarakhand on stone crushing activities can be treated as fully uncontrollable as works related to project were being carried out by the generator during the ban period. The relevant extract of the impugned Order is reproduced hereunder:

"…

The Commission is of the view that the justification of the Petitioner for delay in carrying out project related activities due to shortage of aggregate on account of ban on stone crushing activities cannot be held as attributable to ***fully uncontrollable factors****. Accordingly, the Petitioner's claim that the project got delayed due to the stay by Hon'ble High Court of Uttarakhand on crushing activities during the period July, 2009 to December, 2011 is not justified.*

…"

Emphasis Added

As can be seen from above, the Commission has clearly stated that the delay in carrying out the project related activities due to ban on stone crushing activities from July, 2009 to December, 2011 cannot be considered as fully uncontrollable factor, which clearly implies that although there was some legitimate delay due to ban on stone crushing activities but the same could have been mitigated had the generator acted more proactively, however, the exact period of delay that can be called fully controllable or uncontrollable cannot be established. Therefore, the Commission, in accordance with the principles laid down in the Hon'ble ATE's judgment April 27, 2011 in Appeal No. 72/2010, and in the absence of any satisfactory justification of the Petitioner, disallowed

50% of the average interest cost for 29 months, i.e. from August, 2009 to December, 2011.

3.18 The Commission has already dealt in detail on this issue in the impugned Order and is not reproducing the same again as the aforesaid Order is self explanatory. Moreover, the contention raised by the Petitioner is mere discussion on the already concluded issue and as such cannot be considered under review as neither there is any ambiguity nor any misrepresentation of fact in the Order passed by the Commission.

3.19 Therefore, as discussed above, there is neither any ground for review nor any new fact/evidence has been produced before the Commission that warrants the review/reconsideration of the Commission's Order dated 21.08.2018. Accordingly, the Commission rejects the review/reconsideration on the issue of allowance of 50% IDC as raised by the Petitioner as being frivolous and without any legal backing.

3.20 Also, the Respondent submitted, that they have filed an Appeal before the Hon'ble Tribunal against the impugned Order dated 21.08.2018, including the issues related to time overrun, and requested that the issue of time overrun raised by UPCL may not be considered in this review.

(C) <u>Delay in construction of evacuation line</u>

3.21 The Petitioner submitted that with regard to allowance of IDC for 10 months from August, 2015 to May, 2016, the delay should not have been considered as uncontrollable by the Commission, as the generator was solely responsible for the occurrence of such situations that lead to delay in energization of plant till, 2016.

3.22 The Petitioner submitted that M/s UBHP had to construct the 33 kV line from Sarju-II SHP to 33/11 kV sub-station Kapkote for evacuation of power from Sarju-II SHP but the generator had not even started the construction of evacuation line till August 2015 when they actually have claimed that they were ready for the commissioning of plant. The Petitioner further submitted, that the generator intentionally did not erect the evacuation line and with the wrongful motive had sought the LILO connectivity from the under construction line of UPCL between Kapkote and Karmi sub-stations. The Petitioner submitted that UPCL had actually acted as a saviour to the generator and allowed the evacuation of generation from Sarju-II SHP at least one year in advance then it could be

possible through the scheduled evacuation line to be constructed by the generator. The Petitioner further submitted that the generator started the electrical clearance formalities after more than three months from the date of energization of Kapkote-Karmi line. The Petitioner accordingly submitted that the IDC allowed for the period of 10 months from August, 2015 to May, 2016 should not be allowed to the generator as it is a controllable factor and only the generator is responsible for it hence there is an error apparent on record and needs to be corrected and consequently order needs to be modified.

3.23 The Commission denies the Petitioner's contention in this regard as the same is baseless and without any legal backing. The impugned Order dated 21.08.2018 has in detail considered the issue of allowance of delay in construction of evacuation line at para 3.3.20 (vii) of the impugned Order, the relevant portion of which is reproduced hereunder:

"With regard to LILO connectivity on Kapkote-Karmi line, the Commission analysed the submission made by the Petitioner and the Respondent and observed that the Petitioner was continuously writing to UPCL for grant of connectivity on Kapkote-Karmi line since June, 2015 vide its letter dated 23.06.2015, 11.07.2015, 10.09.2015, 15.11.2015, 22.12.2015, 12.01.2016 & 19.01.2016, however UPCL did not respond to the same on even a single occasion. Further, vide its letter dated 21.08.2018, the Respondent has informed that the Kapkote-Karmi line was energized only on 18.11.2015.

The Petitioner had submitted that it was ready for commissioning on 01.08.2015, however, it could not commission the project since UPCL failed to provide the interconnection to the Petitioner's project in accordance with the Commission's directions in the Orders dated 02.07.2015 and 11.09.2015 to allow LILO connectivity as ad-interim arrangement. The connectivity was subsequently granted and the meter at the interconnection point was installed by UPCL only on 28.05.2016 and thereby enabling commissioning of the project on the said date. In this regard, the Respondent submitted that the delay was on the part of the Petitioner and the permission for LILO connectivity was an exception and did not absolve the Petitioner of its contractual obligations. The Respondent further submitted that even after considering the relaxation given by the Commission vide Order dated 02.07.2015 the project cannot be considered as completed till the construction of LILO infrastructure and its adequate clearance from Electrical inspector. UPCL also stated that the Petitioner had completed the formalities regarding Electrical Inspector clearance only in February,

2016 and the clearance was obtained only in March, 2016, accordingly, the claim of the Petitioner that delay was on part of UPCL is not justified. It was also submitted that the Petitioner was communicating with UPCL for grant of connectivity even when the Petitioner was not ready with their LILO evacuation facility. In this regard, the Commission is of the view that there is no denial that by way of LILO connectivity, the Petitioner cannot be absolved of its contractual obligations & the same view was also held by the Commission in its Order dated 11.09.2015. However, to avoid bottling up of generation, the Commission had allowed connectivity as an ad-interim arrangement vide its Order dated 02.07.2015 to the Petitioner so as to enable it to commission the Sarju-II SHP. In this regard, the Commission would like to state that UPCL was directed by the Commission vide its Order dated 02.07.2015 and 11.09.2015 to allow LILO connectivity to the Petitioner as an ad-interim arrangement, however, UPCL never informed the Petitioner that it was ready to allow such LILO connectivity to it. Had UPCL informed the same, and then the Petitioner would have delayed the commissioning the fault would have been on the part of the Petitioner. Moreover, Kapkote-Karmi line on which the LILO connectivity was to be allowed was not energized at that time. Furthermore, the contention of the UPCL that the Petitioner applied for Electrical Inspector clearance only in February, 2016 instead of applying for the same in July 2015 itself does not hold good, since the Kapkote-Karmi line got energized only on 18.11.2015, therefore, it does not make much difference even if the Petitioner would have got the clearance from Electrical Inspector prior to that period since the commissioning of the project was not possible without energization of Kapkote-Karmi line. Further, the Petitioner was continuously writing to UPCL for grant of inter-connectivity since June 2015 and UPCL did not respond to any of the letters of the Petitioner, rather vide its letter dated 24.07.2015 UPCL informed the Petitioner that for Sarju II SHP the evacuation was proposed on new parallel line (panther conductor) between Kapkote to Bageshwar which was to be constructed. Moreover, even after the Commission's Order dated 02.07.2015 and 11.09.2015 to grant inter-connectivity to the Petitioner's Sarju II SHP, UPCL did not take any steps in this regard and neither informed the Petitioner nor the Commission that Kapkote-Karmi line was yet to be energized and allowing LILO connectivity would not be possible. Hence, the reason for delay in getting the project commissioned beyond August, 2015 has been established as not attributable to the Petitioner and, accordingly, the Commission has treated this delay as uncontrollable."

3.24 The Commission had vide Orders dated 02.07.2015 and 11.09.2015 directed UPCL to grant LILO connectivity to the generator's Sarju II SHP as an ad-interim arrangement to avoid bottling up of the generation. However, UPCL never conveyed modalities/

procedure to the generator for giving such LILO connectivity to it in compliance to the aforesaid Orders of the Commission. Had UPCL informed the same, and then the Respondent would have delayed the commissioning of its hydro project then the fault would have been on the part of the Respondent. Moreover, the aforesaid Orders were not challenged by UPCL and had been accepted, therefore, it was obligatory on UPCL to grant such LILO connectivity in accordance with the Orders of the Commission.

3.25 Further, as discussed in impugned Order dated 21.08.2018, the generator since June, 2015 vide its letter dated 23.06.2015, 11.07.2015, 10.09.2015, 15.11.2015, 22.12.2015, 12.01.2016 & 19.01.2016 was continuously writing to UPCL for grant of connectivity on Kapkote-Karmi line, however, UPCL did not respond to the same on even a single occasion. Further, the contention of UPCL that the Respondent applied for Electrical Inspector clearance only in February, 2016 instead of applying for the same in July, 2015 itself does not hold good, since the Kapkote-Karmi line got energized only on 18.11.2015, therefore, it does not make much difference even if the Respondent would have got the clearance from Electrical Inspector prior to that period since the commissioning of the project was not possible without energization of Kapkote-Karmi line.

3.26 In view of above discussion, it can be seen that the Commission has already dealt in detail in this regard in its impugned Order and the contentions raised by the Petitioner at this stage are merely reiteration of the facts on which the Commission had already expressed its views. The Commission does not consider appropriate to deviate from its earlier view in the impugned Order that the reasons for delay in getting the project commissioned beyond August, 2015 as not attributable to the Respondent and, accordingly, rejects the Petitioner's contention to disallow the IDC for the period of 10 months from August, 2015 to May, 2016. It appears, that the Petitioner is seeking to reopen the already concluded issues, which as discussed before, cannot be brought up in a review Petition as there are no grounds of review that are being fulfilled. Furthermore, it is not open for the Petitioner to now raise the issues of evacuation line once the Commission had already granted connectivity through ad-interim LILO connection to the generator for commissioning its project. The Petitioner can no longer seek to justify that the delay beyond August, 2015 and upto May, 2016 is attributable to the Respondent

on account of evacuation line and not attributable to it for not being able to provide such LILO connection on Kapkote-Karmi line as directed by the Commission to ensure timely commissioning of the project as above.

3.27 Accordingly, the Commission rejects the review/reconsideration on the issue of delay in construction of evacuation line as raised by the Petitioner of being frivolous and without any legal backing.

3.28 Therefore, in light of the provisions in the statutes, the facts of the case, the submissions of the Petitioner & the Respondent 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. The Commission disallows the Review on all grounds raised in the Petition.

4. Therefore, the Commission disposes off the Petition as rejected.

5. Ordered accordingly.

(Subhash Kumar)
Chairman