

Before
UTTARAKHAND ELECTRICITY REGULATORY COMMISSION
Petition No. 39 of 2024

In the matter of:

**Application seeking review of the UERC's Tariff Order on True-up for FY 2022-23,
Annual Performance Review for FY 2023-24 and Annual Fixed Charges for FY 2024-25.**

And

In the matter of:

UJVN Ltd., Dehradun
'UJJAWAL', Maharani Bagh,
GMS Road, Dehradun.

...Petitioner

&

In the Matter of:

(1) Uttarakhand Power Corporation Ltd. (UPCL),
Victoria Cross Vijeta Gabar Singh Urja Bhawan,
Kanwali Road, Dehradun

(2) Himachal Pradesh State Electricity Board Ltd. (HPSEBL),
Kumar House Vidyut Bhawan,
Shimla-171004.

...Respondents

CORAM

Shri M.L Prasad	Member (Technical) / Chairman (I/c)
Shri Anurag Sharma	Member (Law)

Date of Order: October 10, 2024

ORDER

This Order relates to the Review Petition filed by UJVN Ltd. (hereinafter referred to as "UJVN Ltd." or "the Petitioner") for review of the Commission's Tariff Order dated **28.03.2024** on 'True-up for FY 2022-23, Annual Performance Review for FY 2023-24 and Annual Fixed Charges for FY 2024-25' under Section 94(1)(f) of the Electricity Act, 2003 (herein after referred to as "the Act"), Regulation 54(1) of the Uttarakhand Electricity Regulatory Commission (Conduct of Business), Regulations, 2014 (herein after referred to

as “UERC CBR”), Regulations, 2014 (Conduct of Business Regulations), Section 114 and Order XLVII (1) of the Code of Civil Procedure 1908.

1 Background

- 1.1. The Commission had notified Uttarakhand Electricity Regulatory Commission (Terms and Conditions for Determination of Multi Year Tariff) Regulations, 2021 (hereinafter referred to as “UERC Tariff Regulations, 2021”) for the Fourth Control Period from FY 2022-23 to FY 2024-25 specifying therein terms, conditions, and norms of operation for licensees, generating companies and SLDC. The Commission had issued Tariff Order dated March 28, 2024, for Annual Fixed Charges for FY 2024-25 including truing up of for FY 2022-23 & Annual Performance Review for FY 2023-24.
- 1.2. The Petitioner has broadly filed its instant Review Petition seeking the following:
 - i) Correct the arithmetic mistakes in calculation of net cash availability.
 - ii) Correct/rectify the calculation of non-tariff income.
 - iii) Correct/rectify the calculation while computing ‘interest from FDR’s to be disallowed’.
 - iv) Correct/rectify the methodology of computing common expenses.
 - v) Correct/rectify the calculation of RoE on additional capitalization.
- 1.3. The Petitioner under ‘Ground of relief’ has basically submitted that there are several arithmetic errors resulting in incorrect computation of net cash availability. Further, the Petitioner has submitted that due to arithmetic errors and exclusion of previous investments has led to double recovery of interest from the Petitioner. The Petitioner raised its concern regarding the retrospective recovery of interest from the Petitioner. With regard to the apportionment methodology of common expenses, the Petitioner has submitted that it was not given an opportunity of hearing in the matter. With regard to the issue pertaining to return on equity, the Petitioner also submitted that the phrase ‘change in law’ was introduced in the proviso to Regulation 26 only in MYT Regulations 2021 and, therefore, can only be applied prospectively. Furthermore, the Petitioner has submitted that several errors in the Impugned Order have resulted in severe impact on the computation of non-tariff income, common expenses and annual fixed cost and consequently the tariff itself. The Petitioner has

concentrated its instant review Petition on the grounds of error apparent on face of record.

1.4. Further, the Petitioner has requested for the following reliefs: -

1. Correct the arithmetic mistakes in calculation of net cash availability.
2. Correct/rectify the calculation while computing 'interest from FDR's to be disallowed'
3. Consider opening balance of FD's on account of head office, each year from FY2016-17 onwards and any subsequent investment in FD's by it for computation of interest earned from FD's made out of RoE and exclude such interest from non-tariff income on actual basis.
4. Accept the allocation of apportionment methodology submitted by the petitioner in a ratio of 95:05 (based on installed capacity) for its 11 LHPs and SHPs including the 120 MW Vyasi project and consider the same methodology for future as well.
5. Allow the RoE @ 15.5%/16.5% towards all additional capitalization till the application of MYT Regulations 2021 i.e., 01.04.23.

1.5. The Commission issued Notice for Hearing on admissibility on 23.07.2024 and heard the Petitioner, who furnished its written arguments before the Commission stating that:

“

1. *The present review has been filed since the Impugned Order dated 28.03.2024 suffers from several errors apparent on the face of record and the petitioner is grossly prejudiced by certain findings in the Impugned Order which are self-contradictory and against the provisions of law. Therefore, the present review has been filed for sufficient reason under Order XLVII (1) of the CPC read with Regulation 54 (1) of the UERC (Conduct of Business) Regulations, 2014.*
2. *For the convenience of the Hon'ble Commission, the errors that require reconsideration are being summarized as below:*

A. *Arithmetical Errors while computing Net Cash Availability*

3. *While passing the Impugned Order, the net cash availability has been taken by adding column A+B and the total of A+B+C instead of adding A+B+C. The said arithmetic error has changed the net cash availability of the petitioner from INR 116.76 Lacs in FY 2016-17 to a mere INR 8.04 Lacs.*
4. *Similarly, the arithmetical error has resulted in a negative cash flow of INR 189.20 Lacs for the petitioner in FY 2021 whereas as per the sum of A+B+C the petitioner had a positive cash flow of INR 76.30 Lacs. Therefore, the Impugned Order suffers from errors apparent on the face of record and requires reconsideration. The correct computation of net cash availability has been provided in tabular from @ pg 8 & 9 of the review petition.*

B. Incorrect Computation of Non-Tariff Income

5. *While passing the Impugned Order, the Hon'ble Commission has grossly misapplied the proviso to Regulation 46 of the MYT Regulations, 2021. The MYT Regulations do not provide any distinction pertaining to positive cash flow or negative cash flow in Regulation 46. The said criteria has been introduced in the Impugned Order without any reasoning or rationale nexus. As such, the Impugned Order fails to provide any reasons or explanation for drawing a distinction between positive and negative cash flow.*
6. *The prejudice of the petitioner is further compounded by the fact that the net cash availability has also been incorrectly computed.*
7. *Given the inaccurate and incorrect computation of net cash availability, the recovery of interest and the inclusion of interest earned from the existing fixed deposits of the petitioner is prima facie contrary to Section 61 (d) and (e) of the Electricity Act, 2003 ("Act") which requires the Hon'ble Commission to determine tariff so as to ensure the recovery of the cost of electricity in reasonable manner and rewarding efficiency in performance.*
8. *While passing the Impugned Order, the Hon'ble Commission has not considered the existing fixed deposits made out of investments from return on equity ("RoE"). Such an interpretation was possible only in the scenario where Regulation 46 of the MYT Regulations, 2021 explicitly mentions that previous investments made from RoE will be disallowed. In the absence of such explicit language or statutory backing, the*

interpretation contained in the Impugned Order is grossly contrary to Section 61 (d) of the Act as it incorrectly includes within the computation of non-tariff income, the interest earned from the fixed deposits made out of investments from RoE of previous years.

9. *It has been settled by the Hon'ble Appellate Tribunal for Electricity ("APTEL") in **Adani Transmission (India) Limited v. Maharashtra Electricity Regulation Commission, World Trade Centre, 2019 SCC OnLine APTEL 30**, para 6.15 that if an interpretation of the regulations results in lower tariff than what is legitimately due, then such an interpretation runs contrary to the principle of 'recovery of the cost of electricity in a reasonable manner' laid down in Section 61 (d) of the Act.*
10. *Further, the Hon'ble APTEL @ para 6. 19 has held that the Hon'ble Commission cannot interpret the Regulations in a manner bereft of any statutory backing. If the Regulation is silent, the Hon'ble Commission ought to have followed the correct principle based on correct logic and interpretation. Having an open-end in the Regulation does not mean that the Hon'ble Commission can apply any Regulation.*
11. *Ironically, in the Impugned Order, pro-rata interest has been allowed for such period where the petitioner had positive cash flows. Such interest has been allowed on incremental deposits. The very fact that the Impugned Order refers to incremental deposits means that the petitioner had existing deposits. However, by completely ignoring the existence of such deposits and linking them to positive or negative cash flow, the Impugned Order treats the investment of INR 304.57 Lacs in FY 2016-17 as zero. Such an interpretation is squarely against the mandate of Section 61 (e) of the Act which requires the Hon'ble Commission to ensure that tariff is determined on the principles rewarding efficiency in performance.*
12. *In **North Delhi Power Limited v. Delhi Electricity Regulatory Commission, 2010 SCC OnLine APTEL 74** @ para 39 & 42, the Hon'ble APTEL has held that the Hon'ble Commission cannot erode the benefit derived by a company by considering interest income as part of non-tariff income. The benefit is to be retained by the company as these earnings are primarily related to investment of surplus funds arising due to the efficiency in working capital management.*

13. *As stated previously, the Impugned Order incorrectly computes the net cash availability. Therefore, in FY 2016-17 alone, the petitioner had INR 116.76 Lacs and the same would have been treated as positive cash flow as per the principles adopted in the Impugned Order. Therefore, the Impugned Order suffers from gross errors which require reconsideration.*

C. Legitimate Expectations

14. *It is necessary to draw the attention of the Hon'ble Commission to the fact that after the inclusion of the proviso to Regulation 46 of the MYT Regulations, 2021, in FY 2016-17, 2017-18, and partially in FY 2021-22 the said income from fixed deposits made out of investments from RoE were excluded from the computation of non-tariff income. Further, the said issue was kept on hold by the Hon'ble Commission from FY 2018-19 to FY 2020-21. Therefore, the petitioner had legitimate expectations that the Hon'ble Commission would follow its practice of excluding interest earned from fixed deposits in the computation of non-tariff income. However, the Hon'ble Commission has recanted from its earlier stance without any reasoning or nexus.*
15. *The Hon'ble APTEL in **North Delhi Power Limited v. Delhi Electricity Regulatory Commission**, 2010 SCC OnLine APTEL 74 @ para 37, has given a similar finding in the case of earlier orders where the Hon'ble Commission had taken a particular stand with respect to interest income. Therefore, after accepting the view that the interest income was to be excluded from non-tariff income, the Hon'ble Commission ought to have allowed the interest on FDRs.*
16. *On a plain reading of the proviso to Regulation 46 of the MYT Regulations, 2021, it is abundantly clear that the criteria of yearly basis and positive or negative cash flows is neither contemplated nor explicitly provided. Therefore, the interpretation in the Impugned Order is without any statutory backing and cannot run contrary to the provisions of Section 61 of the Act.*

D. Recovery of Excess Interest

17. *As per the Impugned Order, INR 53.54 Crores is to be recovered from the petitioner towards recoveries made till FY 2021-22. The said recovery is based on the principle of positive and negative cash flow and pro-rated interest earned on positive cash flows. Without prejudice to the entire premise of the said principle being contrary to Section*

61 of the Act and Regulation 46 of the MYT Regulations, 2021, the amount of INR 53.54 Crores is incorrect and suffers from arithmetical error. As it is evident from **pg 13-17** of the review petition in **table 1, 2 & 3**, the interest from fixed deposits is broadly kept by the petitioner under two account heads. While at the time of filing of the tariff petition, the petitioner had excluded the interest from fixed deposits prepared on account head 62.223 at Head Office from non-tariff income. The petitioner had included the interest on account head 62.720 in non-tariff income. However, the amount to be recovered includes interest under both heads leading to double recovery of interest from the petitioner. Therefore, the Impugned Order suffers from another arithmetical mistake and inaccurate calculation of ' interest from FDRs to be disallowed'.

E. Incorrect Computation of Common Expenses

18. The Impugned Order has been passed on the basis of apportionment of expenses as per operation and maintenance expense ("**O&M expense**"), whereas the petitioner when asked by the Hon'ble Commission had proposed an apportionment methodology on the basis of the installed capacity of the hydropower plants. It is pertinent to mention that no opportunity of hearing or explanation was given to the petitioner while deciding the said methodology.
19. More importantly, without any reason, explanation, or rationale nexus, the Hon'ble Commission has decided to change the proposed ratio from **95:05 to 86:14 (or 11 LHPs and SHPs)**. The attention of the Hon'ble Commission is drawn to the fact that the said decision results in 14% expenses on SHPs instead of 5%.
20. Furthermore, the unreasoned shift in the methodology without any opportunity of hearing leads to substantial recurring financial prejudice for the petitioner as O&M expenses are variable, whereas apportionment on the basis of installed capacity is always certain and absolute. Therefore, the methodology adopted by the Hon'ble Commission is neither backed by statute, nor logic. More importantly, the said issue has been decided in complete violation of the principles of natural justice without any deference to the principle enshrined in Section 61 (d) of the Act.

F. Retrospective Application while computing RoE on Additional Capitalization

21. *The Impugned Order has calculated the RoE on the basis of Regulation 26 of MYT Regulations, 2021 and incorrectly adopted the WAROI after the cut-off date i.e., post 31.03.2008 till 31.03.2022. The Impugned Order completely ignores the fact that the petitioner had infused additional capitalization to bring the existing power plants into working condition and for their upgradation. Section 61 (b) of the Act provides that the generation, transmission, distribution and supply of electricity are conducted on commercial principles. Similarly, Section 61 (c) of the Act refers to economical use of the resources, good performance and optimum investments. Further, Section 61 (g) of the Act which was **added in 2007** provides that the tariff progressively reflects the cost of supply of electricity. Keeping these in mind, the petitioner made additional capitalization in the existing power plants considering the return on infused equity at the normal rate of **15.5%/16.5%**.*
22. *It is pertinent to mention that the RoE infused by the petitioner since 2001 has been calculated and allowed as additional capitalization. However, in the Impugned Order, RoE has been permitted at the rate of 16.5% till the cut-off date only giving a retrospective interpretation to Regulation 26 of the MYT Regulations, 2021.*
23. *The attention of the Hon'ble Commission is drawn to the fact that the **proviso pertaining to change in law** was introduced only in MYT Regulations, 2021. Prior to the said introduction, in UERC Tariff Regulations 2004, 2011, 2015, and 2018 there was no distinction in the RoE for capitalization made as per original scope and additional capitalization. It was only in MYT Regulations 2021 that differential treatment of equity capital was introduced based on original scope and beyond original scope. By applying the said proviso to the cut-off date, the Impugned Order has retrospectively differentiated between original scope and beyond original scope without any basis or evidence. Furthermore, the said interpretation is contrary to the settled position of law upheld by the Hon'ble APTEL in several cases that all Regulations have to be applied prospectively (**NRSS-XXIX Transmission Limited v. CERC, 2022 SCC OnLine APTEL 39**, para 52 & 53).*
24. *In **Fatehgarh Bhadla Transmission Co. Ltd. v. CERC, 2023 SCC OnLine APTEL 16**, the Hon'ble APTEL has categorically held at para 153 & 156 that any change that is applied retrospectively impairs the vested rights of the company. Further, in **Lanco Amarkantak Pvt. Ltd. v. Haryana Electricity Regulatory***

Commission, 2019 SCC OnLine APTEL 37, para 71, the Hon'ble APTEL in a similar case where there was no specific provision for claiming interest between provisional and final tariff held that the amendment fortifies the need for Regulation but cannot be made applicable to the transactions already happened.

25. *In Power Grid Corporation of India Ltd. v. Madhya Pradesh Power Trading Co. Ltd., 2011 SCC OnLine CERC 4, the Hon'ble Commission has held in respect of cut-off dates that applying a Regulation to existing projects will result in retrospective application of the Regulations and unsettle the settled position. **Such an interpretation will unsettle the settled tariff of many projects.***
 26. *Based on the above, calculation of RoE on additional capitalization made prior to FY 2022-23 should not be considered under the proviso to Regulation 26 of the MYT Regulations, 2021. The said view is also consistent with the order dated 31.03.2022 where the Hon'ble Commission while determining the average fixed cost for the 4th control period (FY 2022-23 to FY 2024-25) has approved the return on equity at 15.5%/16.5% including equity capital of additional capitalization made for the period FY 2001-02 to FY 2021-22. The same treatment ought to have been provided to the petitioner. However, by considering the additional capitalization for the period FY 2001-02 to FY 2021-22 under the aforesaid proviso, the annual fixed cost of the LHPs of the petitioner is substantially and gravely prejudiced. Therefore, the said interpretation is completely contrary to Section 61 (d) and (e) of the Act and all additional capitalization made prior to the date of enforcement of the MYT Regulations, 2021 i.e., 01.04.2022 should be excluded.*
 27. *For the reasons stated above, the Impugned Order deserves to be reviewed by this Hon'ble Commission to rectify the patent arithmetical errors as well as incorrect computations that have crept in while passing the Impugned Order."*
- 1.6. Thereafter, in continuation to the Order dated 23.07.2024, the Commission in its Order dated 30.07.2024 decided to admit the Petition and make UPCL and HPSEB Ltd. as Respondents in the matter and sought comments from the stakeholders.
 - 1.7. While, no comments were received from Respondent 2, i.e. HPSEB Ltd, Respondent 1, i.e. UPCL vide its submission dated 12.08.2024 made following submissions before the Commission.

"... Among the various issues, one specific challenge pertains to the calculation of non-tariff income. However, it must be emphasized that the grounds for alleging an error apparent on the face of the record with respect to non-tariff income do not, in fact, constitute a genuine error. The Commission's earlier determination on this issue was comprehensive and well founded, and the petitioner's contention fails to demonstrate any manifest illegality or patent error. The relevant findings and conclusions of the Commission on this matter are reproduced below:

"The Commission has gone through the submissions of the Petitioner and observes that in several years the Petitioner has negative cash flows on overall basis despite which it has been able to make significant deposits in its FD account during the year. It is also observed that the exception with regard to interest earned from investments made out of Return on Equity corresponding to the regulated business of the Generating Company shall not be included in Non-Tariff Income was introduced by the Commission from the Second Control Period starting FY 2016-17. The Commission has therefore, for accounting the interest amount that Petitioner can retain has considered interest on incremental deposits made as fixed deposit from FY 2016-17 provided that the company was having positive cash flow during the year..."

2 Commission's observations, views & decisions

- 2.1. Based on the submissions made in the Petition, submissions made during the hearing, written arguments furnished during hearing and comments received from the respondents, the Commission before going into the merits of the Petition filed by UJVN Ltd. on various issues, the Commission first looks into the powers vested in it w.r.t. review of Orders, for the purpose of 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 as has been held earlier in the Order passed by the Commission in review Petition, the same 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 (Civil Procedure Code 1908). The powers available to the Commission in this regard, is to be exercised within the scope of provisions of Section 114 and Order 47 of the CPC. Under the said provisions, review of any Order is permitted on three specific grounds only, namely:

- (i) 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.
 - (ii) Mistake or error apparent on the face of the record; or
 - (iii) Any other sufficient reasons.
- 2.2. The application for review has to be considered with great caution and has to necessarily fulfil one of the above requirements to be maintainable under law. On the aspects of discovery of new and important matter or evidence, it is necessary that the application should conclusively demonstrate that (1) such evidence was available and is of undoubted character; (2) that it was so material that its absence might cause miscarriage of justice; (3) that it could not be even with reasonable care and diligence brought forward at the time of proceedings/passing of Order. It is well settled principle that new evidence discovered, if any, must be one, relevant, and second, of such character that had it been given during earlier proceedings, it might possibly have altered the judgment.
- 2.3. With regard to mistake or error apparent on the face of the record, the error should be apparent enough to be noticed and presented before the Court during review proceedings to take cognizance which requires to be reheard and corrected. However, if it is a case that the Petitioner was not able to properly explain a legal position at the time of proceedings also does not make a ground for review.
- 2.4. As regard the third ground of review under order XLVII of the CPC namely "for any other sufficient reason", it is a well settled principle that the expression "any other sufficient reason" will have a meaning analogous to grounds specified immediately before. This position of order XLVII cannot be used to nullify the specific requirements stipulated in the earlier portions of the same provision. In this connection the decision of the Hon'ble Supreme Court, again in the case of Lily Thomas etc. vs. Union of India and others spells out the position unambiguously. In view of this well settled position the scope of the third condition of order XLVII of the CPC that is, "any other sufficient reason", cannot be extended to include all other reasons irrespective of whether they are in conformity with the specific requirements stipulated under order XLVII itself or not.

- 2.5. It may be pointed out here that Hon'ble Supreme Court and Hon'ble High Courts in catena of judgments have held that review jurisdiction is not a substitute for an appeal and cannot be exercised for reconsideration of issues already decided by a Court in its original Order. The error and mistake for correction in review proceeding should be apparent on the face of the record and the same should be self-evident. Hon'ble Supreme Court in the case of Lily Thomas & Ors Vs Union of India & Ors [(2000) 6 SCC 224] has categorically decided this question leaving no room for further doubts. This position was also reiterated by the Hon'ble Supreme Court in the case of State of Haryana Vs. Mohinder Singh [2002 (9) SCC 629].
- 2.6. It is a well-settled law that power to review an Order 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 may 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 against a patent error. A review can only lie if one of the grounds listed above is made out.
- 2.7. With this background on legal provisions related to Review Petition, the Commission has examined the issues raised by the Petitioner to assess whether all or any of the issues raised by the Petitioner qualify for review.

We have mentioned herein below our specific observations, on each of the grounds on which review has been desired by the Petitioner: -

(1) Error in calculation of Net Cash Availability

- (a) The Petitioner has submitted that the net cash availability should be computed based on the total sum of cash generated from operating activity before tax, net cash used in investing activities and net cash used in financial activities. The Petitioner has further contended that the methodology adopted by the Commission for computation of pro-rata interest based on net cash availability lacks rationale or justification.
- (b) The Commission has gone through the submissions made by the Petitioner and found that the issue needs to be re-examined in detail. Further, the impact

of the same is limited to only 3 years i.e. FY 2016-17, FY 2020-21 and FY 2022-23. **However, as multiple years are involved, the Petitioner is at liberty to submit a revised submission during the next tariff Petition i.e., Truing-up of FY 2023-24 based on which the Commission shall take an appropriate view w.r.t. valuation of Net Cash Availability.**

(2) Error in calculation of Non-Tariff Income

- (a) The Petitioner in the Review Petition has submitted that the Commission has not considered the investments made from RoE prior to FY 2016-17. The petitioner has further submitted that there is an error apparent on the face of the record as interest on incremental deposit has been retrospectively recovered from the Petitioner.
- (b) In this regard it is relevant that the cumulative net cash flows for the Petitioner from FY 2016-17 to FY 2022-23 have been negative. Which indicates that the Petitioner did not have RoE available for investment in fixed deposits since the beginning of the second control period. The Commission, on the request of UJVN Ltd. had taken a considerate view and on the basis of data from second control period has proportionately allowed the Petitioner to retain some of the interest on fixed deposits in those years where there was a positive net cash flow on standalone basis. To allow the interest to be retained on this philosophy and to recover the excess interest was a principle decision that the Commission has taken in its previous orders and has been re-iterated in its Order dated 28.03.2024. **However, the same shall be revisited to the extent w.r.t. the issues admitted at Para 2.7 (1) and 2.7 (3) in the instant Order.**

(3) Incorrect calculation of 'interest from FDRs to be disallowed'

- (a) The Petitioner has submitted that it has already deducted FD interest amount from FY 2016-17 to FY 2022-23 in the respective true-up filings. Further, the Commission has included the aforesaid deducted amount in the calculated 'Interest from FDR to be disallowed', which has resulted in double recovery of FD interest from the Petitioner.

(b) The Commission has gone through the submissions of the Petitioner. Upon analysis, it appears that some of the interest that the Petitioner in the past has voluntarily passed on as part of NTI may have been deducted twice and hence the issue requires detailed examination before any impact is allowed. The past tariff disallowances are required to be verified & authenticated with the previous calculations and therefore the Commission grants liberty to the Petitioner to claim the same along with the next MYT Petition.

(4) Incorrect Adoption of Methodology for Computing Common Expenses by the Hon'ble Commission

(a) The Petitioner in the Review Petition has submitted that, in compliance to the direction of the Commission regarding apportionment methodology for the common expenses, the Petitioner has proposed an apportionment methodology on the basis of the installed capacity of the hydro power plants at a ratio of 95:05 based on the installed capacity of 11 LHPs and SHPs. However, the Commission has changed the proposed apportionment methodology on the basis of actual O&M expenses incurred between 11 LHPs and SHPs to 86:14.

(b) With regard to the above contention made by the Petitioner, it is observed that the Petitioner was given ample opportunity to propose a revised allocation methodology vide Directions of Tariff Order dated 30.03.2023. The Commission did not find the proposal submitted by the Petitioner valid and hence devised and approved a new allocation methodology in the Tariff Order dated March 28, 2024. The Commission in the Order dated 28.03.2024 has explicitly stated as follows:

"the Commission had gone through the submissions of the Petitioner and on examination of the actual O&M expenses, it was observed that the ratio of direct O&M expenses of 11 LHPs and SHPs for FY 2022-23 worked out to be in the ratio of around 86:14 and therefore, the Commission revised the methodology followed for apportionment of Common Expenses for truing-up of FY 2022-23 and approved the allocation for indirect expenses in the ratio of 86:14 among 11 LHPs (9 Old LHPs, MB-II and Vyasi) and SHPs, respectively. However, the allocation ratio before the

commissioning of Vyasi LHP i.e. 25.05.2022 has been kept the same i.e., 85:10:05 on pro-rata basis. Methodology has been stated by the Commission in its Order, therefore, no merit for review."

- (c) The Commission is therefore of the view, that the Petitioner has already been provided ample opportunity to propose its methodology, moreover the Commission has provided the rationale behind approving the revised methodology and therefore the same cannot be regarded as ground for review. Further, the Petitioner has failed to establish by valid ground for review and has merely made submission which amount to an appeal under the guise of Review. **As there is no error apparent on the face of record and there is no new evidence which can be considered and hence this issue does not qualify for review.**

(5) Incorrect Calculation of RoE on Additional Capitalisation

- (a) The Petition in the Review Petition has submitted that the Commission has considered Weighted Average Rate of Interest (WAROI) for computing RoE on additional capitalisation post cut-off date of the generating station as per Regulation 26 of MYT Regulation 2021, which is an incorrect approach, as the additional capitalisation has been incurred to bring the existing power plants into working condition and for their upgradation. The Petitioner further submitted that RoE computed on additional capitalisation prior to FY 2022-23 should not be considered under the proviso of Regulation 26 of MYT Regulations 2021 as the same came in force from 01.04.2022.
- (b) The proviso of the Regulation 26 of the MYT Regulations, 2021 stipulates as follows:
- "...Provided that return on equity in respect of additional capitalization after cut-off date beyond the original scope excluding additional capitalization due to Change in Law, shall be computed at the weighted average rate of interest on actual loan portfolio of the distribution company or the generating station or the transmission system;"*
- (c) In accordance with the above Regulation, the Commission has computed RoE on additional capitalisation for FY 2022-23 as per Regulation 26 of the MYT Regulation 2021. The Commission has not revised RoE for previous control

period or any year for which true up has been carried out and therefore **the Petitioner's contention that the Commission has done retrospective adjustment is incorrect and misleading, therefore, the issue does not qualify for review.**

- 2.8. In view of above discussion, the Commission is of the view that on the issues discussed at para 2.7(4) & 2.7(5) above are devoid of merits as far as the scope of review of an Order issued by the Commission is concerned, however, the issues at 2.7(1), 2.7(2) & 2.7(3) namely 'impact of net cash availability', 'calculation of non-tariff income' and 'double recovery of FD interest' respectively as stated above do have some grounds for consideration, however, relooking into the same and assessing the desired correction would require verifying and authenticating with the previous Tariff calculations, which does not appear appropriate to be delt in the present review Petition, further considering that Petitioner is obligated to file a Tariff and True up Petition by 30th November 2024, the Commission, therefore, deems it appropriate to permit the Petitioner to raise the above specified 03 issues and establish the claim in the Tariff & True up Petition to be filed.
- 2.9. Therefore, the instant Review Petition filed by UJVN Ltd. for review of the Tariff Order dated 28.03.2023 is hereby disposed off accordingly.

(Anurag Sharma)
Member (Law)

(M.L Prasad)
Member (Technical) /Chairman (I/c)