

BEFORE  
**UTTARAKHAND ELECTRICITY REGULATORY COMMISSION**  
Petition No. 48 of 2025

**In the matter of:**

**Application seeking review of the UERC's Tariff Order dated 24.03.2025 on Approval of Capital Cost, True-up for FY 2022-23, and Annual Fixed Charges for FY 2024-25 for Vyasi Hydro Power Project (2x60 MW).**

AND

**In the matter of:**

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

...Petitioner

**Coram**

<b>Shri M. L. Prasad</b>	<b>Chairman</b>
<b>Shri Anurag Sharma</b>	<b>Member (Law)</b>

**Date of Order: July 15, 2025**

**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 **24.03.2025** on 'Approval on Capital Cost, True-up for FY 2022-23 and Annual Fixed Charges for FY 2024-25 for Vyasi HEP' under Section 94(1)(f) of the Electricity Act, 2003 (herein after referred to as "the Act") read with Section 114 & Order XLVII (1) of the Code of Civil Procedure 1908 and Regulation 54(1) of the Uttarakhand Electricity Regulatory Commission (Conduct of Business), Regulations, 2014 (herein after referred to as "UERC CBR")

**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.

---

- 1.2 On 30.11.2023 the Petitioner had filed a Petition under Section 62 and 86 of the Electricity Act, 2003 (“Act”) for determination of tariff in accordance with the Uttarakhand Electricity Regulatory Commission (Terms and Conditions for Determination of Multi Year Tariff) Regulations, 2021 (“MYT Regulations 2021”) for approval of Project Cost & Annual Fixed Charges for FY 2022-23, FY 2023-24 & FY 2024-25 for Vyasi Hydro Electric Project (2x60 MW) (herein referred to as “Tariff Petition”).
- 1.3 The Commission disposed the said Petition vide its Tariff Order dated March 24, 2025, whereby the Commission had approved the Capital Cost of Vyasi LHP and had also carried out True-up for FY 2022-23 and determined Annual Fixed Charges for FY 2024-25 (hereinafter referred to as “Tariff Order”) based on the Tariff Petition as well as the subsequent submissions made by the Petitioner during proceedings.
- 1.4 Aggrieved by the Commission’s aforesaid Tariff Order dated 24.03.2025, the Petitioner through its submission dated 22.05.2025 filed instant Review Petition before the Commission.
- 1.5 The Petitioner has broadly filed its instant Review Petition seeking review of the following:
- (a) Incorrect fixation of the Zero date.
  - (b) Incorrect computation of Delay by the Commission.
  - (c) Non-determination of Delays on account of Controllable and Uncontrollable factors for Time Overrun.
  - (d) Misapplication and Misinterpretation of the Judgment passed by the Hon’ble APTEL.
  - (e) Impact of incorrect determination of time overrun on the IDC & IEDC, Cost Overrun, and Hard Cost.
  - (f) Impact of the Capital Cost of the True-up for FY 2022-23 and Net AFC for FY 2024-25.
  - (g) Typographical errors in the Tariff Order.
- 1.6 The Petitioner under ‘Ground of relief’ has made the following submissions:-

- (a) Erroneous reliance by the Commission on the initially approved zero date i.e., 31.12.2011, by the CEA, ignoring the fact that without the forest clearance, which was obtained on 14.10.2013, the construction of the Project cannot commence.
- (b) Incorrect computation of the period of delay by the Commission.
- (c) The Commission did not consider the delay due to geological and technical issues as duly approved.
- (d) The Commission did not consider the additional work to be done to reset the site after the monsoon period caused substantial delay and cost overrun.
- (e) The Commission did not consider the forceful stoppage of work due to the hindrances caused by the villagers and their overlapping with the additional work for the excavation below the riverbed.
- (f) The Commission did not consider the design changes made in the DPR which were approved by the Technical Experts and the CEA.
- (g) The Commission did not provide any determination of which delays were on account of controllable factors and which were on account of uncontrollable factors.
- (h) The Commission, after observing the delay of 135 days in Reservoir Filling and HRT Filling, has not added the said period while computing delay.
- (i) The Commission ignored and did not consider the documentary evidence provided by the Petitioner.
- (j) The Commission did not give an adequate rationale for denying the delay and merely observed that the Petitioner failed to provide adequate documentary evidence.
- (k) The Commission did not consider the impact of the first, second and third waves of COVID-19 on the stoppage of work and reduced efficiency on the site.
- (l) The Commission misinterpreted and misapplied the Hon'ble APTEL's Judgment, for condoning 50% of the incorrectly computed delay.

- (m) The Commission has arbitrarily used its discretion and condoned 50% of the delay without any basis or prudent methodology.
- (n) The Commission did not consider the project cost as revised in 2019 and 2021 due to the impact of COVID-19, and the same was approved by the BoD of the Petitioner as well as the Govt. of Uttarakhand.
- (o) Incorrect computation of delay has severely impacted the IDC and IEDC, and the Commission has disallowed the same in violation of Regulation 21 of the UERC Tariff Regulations, 2021.
- (p) Incorrect computation of the delay has severely impacted the cost overrun and the PV. Thus, it impacts the total capital cost.
- (q) Incorrect computation of the capital cost has impacted the True-up for FY 2022-23 and Net AFC for FY 2024-25.
- (r) Errors present in the Tariff Order have caused severe prejudice to the Petitioner.
- (s) The Tariff Order suffers from several errors which are apparent on the face of the record.
- (t) The Tariff Order has been passed in violation of the principles of natural justice.
- (u) The Tariff Order grossly misapplies the MYT Regulations, 2021.

1.7 Besides above, the Petitioner has requested for the following reliefs: -

- (a) Take the review petition on record.
- (b) Review the Tariff Order dated 24.03.2025.
- (c) Pass any such other order or direction as the Commission may deem fit and proper in the interest of justice.

1.8 The Commission issued a Notice for Hearing on admissibility of the Petition to UJVN Ltd. on 06.06.2025 and heard the Petitioner on 17.06.2025, who re-iterated its submissions made in the Review Petition. Thereafter, the Commission issued daily Order dated 17.06.2025 in the matter and reserved its Order.

## **2. Commission's Observations, Views & Decisions**

2.1 Before considering the submissions of the Petitioner made in the Petition or replies, as the case may be and also submissions advanced during the course of hearing, it would be prudent to first look into the powers vested in it w.r.t. reviewing 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 Electricity Act, 2003 which specifically empowers the Commission to undertake review and as has been held earlier in the past Orders passed by the Commission in various Review Petition, the power of review can be exercised in the same manner as a Civil Court exercises such powers under section 114 read with Order XLVII of the Code of Civil Procedure, 1908 (Civil Procedure Code 1908). Therefore, the powers available to the Commission in this regard is to be exercised within the scope of the said provisions. Under which, review of any Order is permitted on three specific grounds only, namely:

- (1) 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.
- (2) Mistake or error apparent on the face of the record; or
- (3) Any other sufficient reasons.

2.2 The application for review has to be considered with great caution and has to fulfil necessary 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 the Order.

It is a 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 a mistake or error apparent on the face of the record, an error is error apparent when it is self evident and is not established by lengthy and complicated argument. An error that require long drawn process of argument cannot be said to be as error apparent on face of record, it is not required to be detected by the process of reasoning. A mistake if apparent can be corrected but in guise of exercising the power of review taken earlier cannot be substituted.
- 2.4 With regard to 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 the 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, 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 conform with the specific requirements stipulated under order XLVII itself or not.
- 2.5 It may be pointed out here that the Hon’ble Supreme Court and the Hon’ble High Courts in a 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 the 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 the 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 obvious 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 reheard and corrected, but lies only against an obvious error. A review can only sustain 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.

2.8 **The Commission hereby sets out its specific observations/views on each of the issues and related grounds for such review and is as detailed below:**

2.8(1) **Incorrect fixation of Zero date**

*Petitioner's Submissions*

(1) The Petitioner in its Review Petition has submitted that the Commission has committed an obvious error apparent on the face of the record in computing the project delay for the Vyasi HEP by erroneously adopting 31.12.2011 as the zero date. Further, submitted that the said date bears no rational nexus to the actual commencement of project activities and is contrary to both factual records and statutory norms. The Petitioner has contended that as per the Forest (Conservation) Act, 1980, no work could commence prior to the grant of Stage-II Forest Clearance, which was accorded only on 14.10.2013. Further, the Petitioner submitted that it was only after this approval and the subsequent issuance of the forest land lease letter by GoU on 19.11.2013, that any physical activity could have commenced.

(2) The Petitioner in its submissions has claimed that despite filing a complete sequence of events substantiated by documentary evidence through various communications, including letters dated 16.10.2024 and 05.02.2025 giving point wise reply to the Commission's queries which included demarcation of land post-DPR approval, joint inspections, digital forest maps showing component-wise coordinated and the tree enumeration. The Petitioner has submitted that the timeline clearly established that until forest clearance was granted on 14.10.2013, no work could have legally commenced.

(3) The Petitioner has further submitted that GoU letter dated 23.06.2008 had specifically instructed the Petitioner to take up the Vyasi Hydro Electric Project

as a standalone phase, separate from the original combined Lakhwar-Vyasi Project earlier allotted to the Irrigation Department. This transition and the forest clearance regime formed the basis for determining project commencement. Therefore, the Commission's omission to consider this evidence despite its availability and explicit filing, renders its finding on the zero date factually incorrect. The Petitioner also submitted that the Commission's observation that inspections could have preceded DPR approval is contrary to established administrative practice, wherein DPR finalization is a necessary precursor to site demarcation.

- (4) The Petitioner has also submitted that any premature submission without an approved DPR would have required modifications at a later stage, causing duplicity and further delays. Further, submitted that the Commission's failure to appreciate that these steps are statutory and time-bound, and that they began immediately after DPR approval, shows a fundamental misunderstanding of the process. The work on the project site only began after the forest land was formally leased on 19.11.2013. Thus, the only legally sustainable zero date is 15.10.2013 or later, and not 31.12.2011.
- (5) The Petitioner has further submitted that out of the 2702 days of delay computed by the Commission, at least 751 days (from 31.12.2011 to 21.01.2014) are jurisdictionally irrelevant, as no activity could have lawfully commenced during this period. The Commission's blanket disallowance of 50% of the delay period, including uncontrollable delays arising from force majeure events (such as COVID-19 lockdowns, public protests, floods, and supply chain disruptions), is arbitrary and contrary to the principle laid down by the Hon'ble APTEL, which mandates proper segregation of controllable and uncontrollable delays, and allowance of IDC for the actual commissioning period, barring demonstrably attributable delay. The Petitioner asserted that by failing to undertake this exercise, and by disallowing IDC and cost escalations arising out of delays beyond the Petitioner's control, the Commission has not only deviated from judicial precedent but has also caused significant financial prejudice. The resultant under-recovery artificially suppresses the tariff and undermines the

project's viability and bankability. The Petitioner has accordingly submitted that there is error apparent on the face of the record and has prayed that the entire delay analysis, IDC/IEDC treatment, and disallowance methodology be reconsidered in the interest of regulatory equity and adherence to law.

### *Commission's View*

- (1) The Commission has gone through the submissions made by the Petitioner. It is observed that the Commission in its Tariff Order at page no. 46 has explicitly dealt with the issue and has ruled as follows.

*"The Commission with regards to the delay in initiation of land handover, observes that the Petitioner has stated that an approved DPR is required for the Land case proposal. It is also observed that the land case proposal was submitted on 21.05.2012, which is 7 months from the date of transfer of land in favour of UJVN Ltd. The Commission is of the view that no specific provisions or statute has been provided by the Petitioner which prohibits the Petitioner to start joint inspection of land in absence of an approved DPR. Had the Petitioner initiated joint inspection earlier, it could have saved at least 5-7 months of time which was taken by the Petitioner to prepare the land case proposal post transfer of land in favour of UJVN Ltd."*

- (2) Despite being given multiple opportunities, the Petitioner in its submissions had grossly failed to provide any basis to shift the zero date that was approved by CEA. The Petitioner also failed to explain the reasons for the delay in the initiation of land handover, even though from 23.06.2008 it was clear that the project was to be developed by UJVN Ltd.
- (3) It is further observed that the Commission in its Order has dealt with the entire timeline post-handover of the project i.e., from 23.06.2008 till the Zero date, after considering all the submissions made by the Petitioner. The prayer of the Petitioner requires reconsideration of matter, which has already being decided after due deliberation such submission can be only raised in appeal and not in review as has been held by the Hon'ble Supreme Court i.e. the review cannot be an appeal in disguise. Therefore, their being not valid ground, the same is reliable to rejected.

- (4) **As there is no error apparent on the face of the record and there is no new evidence which can be considered and hence this issue does not qualify for review.**

## 2.8(2) **Incorrect computation of Delay by the Commission**

### *Petitioner's Submissions*

- (1) In the Review Petition, the Petitioner claims to have submitted a detailed and reasoned delay mapping of nine (9) project activities as discussed by the Commission in the Tariff Order dated 24.03.2025, the activities are as follows:

*(a) Concreting works up to Riverbed level and then up to Crest Level*

- The Petitioner submitted that the Commission's finding that the delays were controllable is erroneous and overlooks the detailed technical justifications, documentary evidence, and structured delay analysis placed on record.
- The Petitioner asserted that 135 days delay due to an increase in spillway bays and corresponding structural work was, in fact justified.
- The Petitioner also submitted that an additional 144 days attributed to civil activities (e.g., shuttering, grouting) were wrongly dismissed as an afterthought by the Commission.
- The Petitioner submitted that the delay due to construction of the 90lb rail line was outside DPR scope and was essential and approved, but not considered by the Commission.
- In view of the above, the Petitioner has sought reconsideration of the above delays as uncontrollable based on the documentary proof submitted and prudent industry practice.

*(b) Excavation below riverbed & foundation grading*

- The Petitioner submitted that delay due to adverse site conditions (flooding, siltation, RBM) was misclassified as controllable by the

Commission. Also, Geological surprises and increased excavation depth were necessary but overlooked by the Commission.

- Petitioner has argued that the Commission has ignored the impact of local agitation and monsoons on worksite flooding.
- The Petitioner has claimed that despite placing a detailed sequence of facts and supporting exhibits on record, the Commission has disregarded the entire timeline and simply labelled the reasons as lacking logic without any technical counter or assessment.
- The Petitioner further submitted that the entire delay during the Excavation below the Riverbed and Foundation Grading activity was due to unforeseeable geological conditions, village-level obstructions, and monsoon-induced flooding events clearly falling under uncontrollable delays as per the MYT Regulations.

(c) *Powerhouse excavation up to deepest foundation*

- The Petitioner has submitted that the Commission's outright rejection of the Petitioner's justification for delay in completion of the powerhouse excavation up to the deepest foundation is factually incorrect and legally untenable, and ignores voluminous technical documentation and delay analysis submitted by the Petitioner. Further, submitted that the delay was not due to administrative inefficiency but stemmed directly from drastic increases in excavation quantity caused by changes in powerhouse design as recommended by the Technical Advisory Committee ("TAC"), combined with geological conditions and site constraints, all of which were beyond the Petitioner's control.
- The Petitioner submitted that the excavation quantity increased drastically from 66,000 cum to 3,38,870 cum due to design modifications recommended by the Technical Advisory Committee (TAC). These changes were essential for geological stability and structural safety. However, the Commission did not

account for the resultant increase in time required to execute the significantly expanded scope of work.

- Further, submitted that despite encountering challenging geological strata, limited working fronts, and steep terrain, the Petitioner managed to complete the enlarged scope of excavation in 37.8 months instead of the proportionately required 61.6 months, thereby saving nearly 24 months. Nonetheless, the Commission classified the actual delay of 25.8 months as controllable, ignoring the evident efforts made to optimize timelines under adverse conditions.
- The Petitioner contested that the Commission has considered the zero date from the date of award of the EPC contract, whereas the Petitioner argued that the actual mobilization and access to the site, particularly in a constrained hill terrain, began later, and this factual ground reality was overlooked.
- The Petitioner has argued that the Commission's approach failed to consider detailed technical submissions, progress reports, and contractor records substantiating the uncontrollable nature of the delay. The lack of acknowledgement of these site-specific and engineering-driven constraints led to an unjust disallowance of IDC and partial capital cost, affecting the financial viability of the project.

*(d) Powerhouse concreting*

- The Petitioner asserted that the delay was primarily due to a substantial increase in concreting volume, which rose from the originally planned 36,950 cum to 74,436 cum, along with the inclusion of six additional intermediate floors in the service bay. These design changes were driven by structural and operational requirements, yet the Commission did not adequately acknowledge their impact on project timelines

- The Petitioner challenged the Commission’s rejection of delays caused by the COVID-19 pandemic and severe monsoon conditions, both of which were force majeure events that significantly disrupted labour availability, material supply chains, and working conditions at site, particularly in a hilly and remote terrain.
- Despite providing comprehensive documentary evidence, including revised drawings, site progress records, and delay mapping, the Petitioner contended that the Commission treated the entire delay of approximately 29 months in powerhouse concreting as controllable, which was neither technically justified nor in line with regulatory prudence.
- As a result of the above classification, the Commission disallowed the Interest During Construction (IDC) attributable to this period, which led to a reduction in the approved capital cost. The Petitioner argued that this not only disregards the realities of the project execution but also adversely impacts tariff computation and overall financial sustainability of the project.
- The Petitioner has prayed that the Commission revise its findings, treat the delay as uncontrollable, and allow corresponding cost and IDC/IEDC components in the project’s capital cost for the purpose of tariff computation.

*(e) Powerhouse roofing*

- The Petitioner has submitted that the Commission has failed to appreciate the documented reasons and engineering challenges associated with the delay in the “Powerhouse Roofing” activity and has incorrectly assumed that the delay was controllable.
- The Petitioner further highlighted that the quantity of structural steel required for roofing increased substantially from 70 MT to 319.5 MT, due to design modifications, which proportionally

extended the execution timeline. Although the Petitioner completed the roofing ahead of revised schedules considering the increased scope, the Commission failed to acknowledge the uncontrollable factors, wrongly treating the entire delay period as controllable, resulting in the disallowance of IDC and tariff impact.

- The Petitioner also submitted that the total delay of 319 days in completing Powerhouse Roofing was caused by increased scope, COVID-19 disruption, and engineering constraints, all beyond the Petitioner's control. The Petitioner has re-iterated its *Reply No. 19. iii with Annexures 19.i.2 and 19.iii.1*, and has alleged that the Hon'ble Commission has failed to consider the same, committing an error apparent on the face of the record.

**(f) R&R Issues**

- The Petitioner submitted that delays arising from local agitations by affected villagers, including a 16-day stoppage during foundation work and a 135-day disruption during reservoir filling, were force majeure events beyond its control. These socio-political disturbances were independent of project execution, but the Commission failed to treat them as uncontrollable, leading to unjust disallowance of Interest During Construction (IDC) and a corresponding reduction in approved capital cost and tariff.

**(g) Quarry and crusher (statutory permission)**

- The Petitioner submitted that the delay in commissioning a crusher plant was due to prolonged statutory approvals involving multiple authorities (Forest, Mining, and Pollution Control), which took approximately 19 months despite continuous follow-up. The crusher was essential as the required 80 mm aggregate was not available in the market, making the delay unavoidable and uncontrollable. The Commission's non-recognition of these regulatory bottlenecks led to an unjust IDC disallowance and under-recovery in the approved capital cost.

*(h) Erection of ORG*

- The Petitioner submitted that the 273-day delay in the erection of ORG was caused by uncontrollable factors such as COVID-19 disruptions, monsoonal inaccessibility, and local agitation by Lohari villagers. Despite detailed justification, the Commission arbitrarily condoned only 50% of the delay, resulting in partial disallowance of IDC and an unjust reduction in the capital cost.

*(i) Erection and Commissioning of Unit 1 & Unit 2*

- The Petitioner stated that the delay was primarily due to non-availability of water (until March 2022) and delay in transmission line readiness, both of which were beyond its control.
- Further, submitted that the agitations during reservoir filling and the delayed clearance by the Electrical Inspector (granted on 13.04.2022) further hindered timely commissioning, despite all readiness from the Petitioner's side.
- The Petitioner submitted that the Commission's treatment of the entire delay as controllable, despite clear evidence of force majeure and external factors, led to IDC disallowance and an adverse impact on capital cost and tariff.

- (2) The Petitioner also submitted that the Commission, in the Tariff Order, has committed an error apparent on the face of the record by computing the delay in commissioning of the project from 31.12.2011 (as per the originally approved DPR) up to the actual commissioning date of 24.05.2022, without considering the revised COD duly approved by the Petitioner's Board of Directors in its 101<sup>st</sup> meeting. The Petitioner submitted that the revised COD of 30.09.2021 was formally approved by its Board in light of the unprecedented and widespread disruptions caused by the COVID-19 pandemic, as well as the statutory restrictions imposed by the Government of India under the Disaster Management Act, 2005. In this regard, reliance was placed on the following statutory directives:

- (a) MHA Order No. 40-3/2020-DM-I(A) dated 24.03.2020
  - (b) MHA Order No. 40-3/2020-DM-I(A) dated 14.04.2020
  - (c) Ministry of Power Order No. 1-137/2018-Mit-II(FTS-10548) dated 14.04.2020
  - (d) MHA Order No. 40-3/2020-DM-I(A) dated 01.05.2020
- (3) The Petitioner further submitted that the revised COD has been ratified by the Central Electricity Authority (CEA), and in view of the force majeure conditions, constitutes a valid and legally sustainable milestone for purposes of delay computation and admissibility of Interest During Construction (IDC).
- (4) Further, submitted that the Commission's lack of due consideration of the revised COD has resulted in the following errors:
- (a) Overestimation of the total delay period;
  - (b) Misclassification of uncontrollable delays as attributable to the Petitioner;
  - (c) Reduced admissible IDC and capital cost; and
  - (d) Erroneous computation of Annual Fixed Charges (AFC), resulting in financial under-recovery.

### *Commission's Analysis*

- (1) The Commission has perused the submissions made by the Petitioner. The Commission, in Section 3.4.1 of the Tariff Order dated 24.03.2025, has already carried out detailed scrutiny of the submissions made by the Petitioner to evaluate the claims of delay. In the course of this scrutiny, the Petitioner filed multiple responses, including those dated 21.08.2024, 25.10.2024, 05.02.2025, 08.02.2025, 24.02.2025, and 07.03.2025. However, despite these opportunities, the Petitioner was unable to furnish adequate documentation to clearly substantiate its claims during the proceedings, which have been explicitly pointed out in the Tariff Order dated 24.03.2025.
- (2) Accordingly, the Commission, in the Tariff Order, after assessing the delays in light of controllable and uncontrollable factors and in the interest of consumers

of the State, had reduced or disallowed durations where the supporting evidence was found to be insufficient or lacking.

- (3) In the present Review Petition, **the Petitioner has failed to present any new facts and has merely reiterated its earlier arguments in a different form, seeking reconsideration of the delay, which amounts to an appeal under the guise of review. As there is no error apparent on the face of the record, and there is no new evidence which can be considered and hence this issue does not qualify for review.**

### 2.8(3) **Non-determination of Delays on account of Controllable and Uncontrollable factors for Time Overrun**

#### *Petitioner's Submissions*

- (1) The Petitioner submitted that the Commission, in the Tariff Order, has observed that of the total project cost increase of Rs. 980.56 Crore, Rs. 443.24 Crore is attributable to establishment cost and IDC due to delays, while the balance Rs. 537.31 Crore pertains to increase in hard cost increases, part of which (competitive bid rates and price variation) are delay-related.
- (2) The Petitioner submitted that the Commission has computed the delay from the Scheduled COD as per CEA approval dated 25.10.2011 to the Actual COD, without appropriately classifying the nature of delays. Further, the Petitioner submitted that the Commission has committed an error apparent on the face of the record as it has failed to distinguish between controllable delays, uncontrollable delays, force majeure events, workable days, and non-workable periods, instead applying a uniform treatment across all categories.
- (3) The Petitioner has argued that the Commission's approach for calculating delays is unjustified as it overlooks the non-workable periods (e.g., flooding, site inaccessibility) and force majeure events (e.g., COVID-19 lockdowns) are statutorily distinct and should not have been conflated. Further, delays due to statutory approvals or geological surprises are inherently uncontrollable and cannot be mischaracterized as attributable and ought not to have been mischaracterized as controllable solely because they occurred during otherwise "workable" periods.

- (4) The Petitioner has further submitted that while making its conclusive observations, the Commission has: (a) chosen to ignore the specific justifications which highlight delays on account of uncontrollable factors and (b) refrained from making any observations where the quantum of delay is substantial.
- (5) The Petitioner has argued that the Commission, after acknowledging certain delays and seeking explanation and documentation for the balance delays, has arbitrarily and irrationally rejected the entire cause of delay and imposed the liability on the Petitioner for not providing sufficient documentary evidence.

### *Commission's Analysis*

- (1) The Commission has gone through the submissions of the Petitioner and observes that the Commission has already carried out a detailed activity-wise analysis of delays in the Tariff Order dated 24.03.2025. The Commission, after analysing the details submitted by the Petitioner, has explicitly pointed out the shortcomings in the justification submitted, even after providing ample opportunities to the Petitioner.
- (2) Further, the Petitioner in the Review Petition has sought reconsideration of the delay analysis carried out by the Commission and has merely reiterated the incomplete and unsubstantiated submissions made during the original proceedings, without bringing forth any new or additional material necessitating a review. The Petitioner has failed to establish any valid ground for review and has merely made a submission for reconsideration which amounts to an appeal under the guise of Review.
- (3) Accordingly, **since the issue has already been duly considered and comprehensively addressed in the Tariff Order, the Commission finds no merit in the grounds urged for review.**

### **2.8(4) Misapplication and Misinterpretation of the Judgment passed by the Hon'ble APTEL**

#### *Petitioner's Submission*

- (1) The Petitioner submitted that the Commission, in the Tariff Order, has placed reliance on the judgment in Maharashtra State Power Generation Co. Ltd. v.

MERC, 2011 SCC OnLine APTEL 65, to justify the delay attribution and condonation methodology. However, the factual circumstances of the said judgment are distinguishable from the present case, as the former involved a single-package execution by one contractor with no invocation or consideration of force majeure conditions by any party.

- (2) The Petitioner has highlighted that the Vyasi HEP, which was executed under a multi-package framework involving civil, hydro-mechanical, and electro-mechanical components awarded to separate contractors with interdependent timelines. The project was significantly impacted by various uncontrollable and force majeure events, including local law-and-order disturbances, monsoonal flooding, regulatory delays, and COVID-19 lockdowns. The Petitioner has claimed that all the delays were duly pleaded and substantiated by the Petitioner with reference to official recognitions and government circulars, however, asserted that the Commission selectively relied on the said judgment without undertaking a case-specific adjudication of the pleaded force majeure events and their impact.
- (3) The Petitioner also submitted that in Table 3.10 of the Tariff Order, the Commission proceeded to apply a blanket 50% condonation of delay, without undertaking the requisite categorization of delay factors as laid down in the cited judgment, namely: (i) delays attributable to the generating company, (ii) delays beyond its control, and (iii) delays not falling under any of the above (i or ii)
- (4) The Petitioner further submitted that the Commission's reliance on DPR timelines and contractual clauses to assess delay disregards the APTEL's guidance that benchmarks must be prudently defined, independent of contractual schedules, which may not reflect good industry practices.
- (5) The Petitioner furthermore submitted that the Commission, in the Tariff Order, failed to determine the actual period of project commissioning based on the specific documentary evidence repeatedly submitted by the Petitioner for reassessment of IDC. Consequently, the disallowance of excess IDC is erroneous and constitutes an error apparent on the face of the record.

- (6) The Petitioner concluded its submission under “Misapplication and Misinterpretation of the Judgment passed by the Hon’ble APTEL” that the 50% condonation of delay is without any rationale, is not based on any prudent methodology used for a cost-delay analysis, documentary evidence, rules, regulations, guidelines or any other reliable source of information.

### *Commission’s Analysis*

- (1) The Commission has perused the submissions of the Petitioner and observes that, contrary to the erroneous assertions of the Petitioner, the findings in the Tariff Order are consistent with the factual record and applicable regulatory framework. The Commission in the Tariff Order dated 24.03.2025 has already reasoned the grounds and circumstances under which the Hon’ble APTEL Judgment was applied. The analysis is covered in Section 3.4.1 of the Order and has been aptly summarised in Table 3.10 of the Tariff Order.
- (2) The Petitioner, in the present Review Petition, has failed to place on record any new facts, material evidence, or objective analysis that would enable a clear and categorical distinction between the causes of delay and resorted to frequent changes in delay justification. The submissions of the Petitioner in the Review Petition merely reiterate earlier contentions without providing any additional substantiation or refined classification that would warrant a reconsideration of the Commission’s findings in the Impugned Order. **Hence, as the matter has been comprehensively addressed in the aforementioned Tariff Order, there is no merit in the request for review.**

### **2.8(5) Impact of incorrect determination of time overrun on the IDC & IEDC, Cost Overrun, and Hard Cost:**

#### *Petitioner’s Submission*

- (1) With regards to Interest During Construction (IDC), the Petitioner submitted that the Commission, while dealing with IDC, has referred to Regulation 21(9)(b) of the UERC Tariff Regulations, 2021, which permits allowance of IDC arising from delay in achieving SCOD, provided the delay is due to uncontrollable factors and not attributable to the generating company.

However, in Table 3.11 of the Impugned Order, the Commission disallowed Rs. 197.78 Crore of IDC and financing charges, without providing any detailed justification or calculation methodology. The Commission stated only that it had “crashed the phasing of funds as per the approved IDC schedule,” thereby disregarding the impact of delays beyond the Petitioner’s control. Such treatment constitutes an error apparent on the face of the record.

- (2) With regards to Incidental Expenditure During Construction (IEDC), the Petitioner submitted that Regulations 21(10)(a) and 21(10)(b) of the UERC Tariff Regulations, 2021 require IEDC to be computed from zero date up to SCOD, and permit its allowance if delays are due to uncontrollable factors. However, as per Table 3.12 of the Impugned Order, IEDC has been allowed in proportion to the approved schedule (2446 days) versus actual completion duration (3797 days), without recognizing the uncontrollable delays. The approach followed by the Commission disregards statutory provisions and constitutes a clear error.
- (3) With regards to Impact on Hard Cost and Price Variation (PV), the Petitioner submitted that the Commission, while acknowledging significant increases in the awarded costs due to quantity and price variation, GST impact, etc., conducted a contract-wise assessment. In Table 3.24 of the Impugned Order, it proportionately disallowed Rs. 36.96 Crore out of Rs. 102.7 Crore (approx. 36%) of PV, based on delay attribution. However, the disallowance of 1351 days of delay, on which the proportional reduction was based, lacks justification as per the earlier submissions. Consequently, the PV disallowance is erroneous and constitutes an error apparent on the face of the record, resulting in significant financial prejudice to the Petitioner.
- (4) With regards to Impact on Cost Overrun, the Petitioner submitted that in Table 3.16 of the Tariff Order, the Commission has compared the estimated costs in the DPR with awarded and actual costs at COD, categorising them under Main Contracts, Other Work Contracts, and Procurement Contracts. Based on this, it determined cost overruns of Rs. 575.02 Crore (vis-à-vis TEC)

and Rs. 435.51 Crore (vis-à-vis awarded cost). However, the methodology fails to account for the revised project costs approved post-DPR.

- (5) With regards to Revision in Project Cost After DPR Approval, the Petitioner submitted that the Commission has overlooked that, post-CEA's DPR approval in 2011, the Petitioner's Board of Directors revised the project cost on two occasions – Rs. 1581.01 Crore on 27.09.2019 and Rs. 1777.30 Crore on 23.06.2021, followed by final cost approval of Rs. 2047.01 Crore by the Government of Uttarakhand on 25.09.2023. The cost overrun calculation, based solely on the original DPR cost of Rs. 936.23 Crore, is therefore misplaced and factually incorrect.

### *Commission's Analysis*

- (1) With regard to computational methodology for computing IDC, the Commission in Section 3.4.2 of its Order has explained the methodology and has stated as follows:

*"The Commission has gone through the submissions made by the Petitioner and has taken the phasing of funds, interest rate based on which IDC has been worked out by the Petitioner and has crashed the phasing of funds as per the approved IDC schedule."*

**In view of the above, the Petitioner's submissions that the Commission has not provided the computation methodology are erroneous and hence warrant no review.**

- (2) With regard to IEDC, the Commission in the preceding paragraphs has already ruled that there is no ground to review the delay analysis was carried out; hence, the delay considered for the computation of IEDC does not merit any reconsideration. The Commission has carried out the calculations based on the records and submissions made available during the scrutiny of the Petition, and the same have been undertaken in a prudent and objective manner, as detailed in the Tariff Order dated 24.03.2025.

As already matter has been deliberated upon and decided, rehearing of the same does not fall under a valid ground for revising an Order.

**Since the Petitioner has failed to submit any new facts or evidence, therefore, the Commission finds no merit in the request for review.**

- (3) With regards to Impact on Cost Overrun and Revision in Project Cost After DPR Approval, the Commission is of the view that as none of the issues qualify for review, **the Commission finds no cause or necessity to revisit the matter in the present Review proceedings.**

#### **2.8(6) Impact of the Capital Cost of the True-up for FY 2022-23 and Net AFC for FY 2024-25**

##### *Petitioner's Submissions*

The Petitioner has submitted that the capital cost is a key part of calculating the final tariff (Net AFC). If it is calculated incorrectly, the entire cost adjustment process becomes flawed. Further, submitted that the project schedule used in the Tariff Order, starting from 31.12.2011, is incorrect. Also, allowing only 50% of the delay, despite it being unavoidable and beyond the Petitioner's control, was done by wrongly applying a court judgment. This mistake is clear on the face of the record and is a valid reason to review the Order.

##### *Commission's Analysis*

**Since the review on account of the above issues, i.e., 2.8(1) to 2.8(6), raised by the Petitioner has been rejected, the Commission finds no ground for recomputing the impact and revising the capital cost.**

#### **2.8(7) Typographical errors in the Tariff Order**

##### *Petitioner's Submission*

The Petitioner has submitted that the Tariff Order dated 24.03.2025 suffers from two apparent errors warranting review. First, at Page no. 68 of the Impugned Order, the date of the letter of the Commission dated 03.10.2024, is incorrectly mentioned as 03.10.2022, and the date of the reply of the Petitioner dated 25.10.2024, is incorrectly mentioned as 25.10.2022. Second, at Page no. 70 of the Impugned Order, the date of the Petitioner's reply dated 21.08.2024, is incorrectly mentioned as 21.08.2022, and the date of the Petitioner's reply dated 16.10.2024, is incorrectly mentioned as 16.10.2022.

### *Commission's Analysis*

The Commission has examined the submissions made by the Petitioner with respect to the alleged typographical errors in the Tariff Order. However, it is observed that the said error has no material impact on the determination of capital cost or tariff. However, in the interest of maintaining consistency and record accuracy, the correction has been duly incorporated through a Corrigendum dated 07.07.2025.

In view of the foregoing discussion, the Commission is of the considered opinion that the issues raised in paragraphs 2.8(1) to 2.8(6) are devoid of merit and do not fall within the limited scope of review permissible under law and do not warrant any interference with the Impugned Order. However, the issue raised at paragraph 2.8(7), pertaining to a typographical error, has been duly examined, and the necessary correction has been made through a corrigendum.

2.9 Therefore, the instant Review Petition filed by UJVN Ltd. for review of the Tariff Order dated 23.04.2025 is hereby disposed off accordingly.

**Anurag Sharma**  
**Member (Law)**

**M.L Prasad**  
**Chairman**