

Before
UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

Misc. Appl. No. 43 of 2024

In the Matter of:

Review Petition to relax/waive or vary the provisions of UERC (Release of New LT Connections, Enhancement and Reduction of Loads) Regulations, 2007 and UERC (Release of New LT Connections, Enhancement and Reduction of Loads) Regulations, 2013 and UERC (The Electricity Supply Code, Release of New connections and Related Matters) Regulations, 2020 whereby the penalty was imposed in the matter of delay in release of new LT service connections for the period of F.Y. 2008-09 to F.Y. 2018-19 and up to Feb-2020 and from Sept-2021 to April-2024.

And

In the Matter of:

Managing Director,
Uttarakhand Power Corporation Ltd.,
Victoria Cross Vijeta Gabar Singh Urja Bhawan,
Kanwali Road, Dehradun.

...Petitioner

Coram

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

Date of Order: September 18, 2024

ORDER

This Order relates to the ‘Review Petition to relax/waive or vary the provisions of UERC (Release of New LT Connections, Enhancement and Reduction of Loads) Regulations, 2007 and UERC (Release of New LT Connections, Enhancement and Reduction of Loads) Regulations, 2013 and UERC (The Electricity Supply Code, Release of New connections and Related Matters) Regulations, 2020 whereby the penalty was imposed in the matter of delay in release of new LT service connections for the period of F.Y. 2008-09 to F.Y. 2018-19 and up to Feb-2020 and from Sept-2021 to April-2024’.

Background

2. The Petitioner vide its letter No 2846/UPCL/Com/ dated 07.06.2024 had submitted its Petition for 'Review Petition to relax/waive or vary the provisions of UERC (Release of New LT Connections, Enhancement and Reduction of Loads) Regulations, 2007 and UERC (Release of New LT Connections, Enhancement and Reduction of Loads) Regulations, 2013 and UERC (The Electricity Supply Code, Release of New connections and Related Matters) Regulations, 2020 whereby the penalty was imposed in the matter of delay in release of new LT service connections for the period of F.Y. 2008-09 to F.Y. 2018-19 and up to Feb-2020 and from Sept-2021 to April-2024'.
3. The Petitioner has filed its Review Petition against the Commission's Order dated 10.04.2024 under the legal provisions of Regulation 54 r/w Regulation 59(2) of Uttarakhand Electricity Regulatory Commission (Conduct of Business) Regulations, 2014, Regulation 5(12) & 5(13) of the Principal Regulation r/w Regulation 9(3) of UERC (Release of New LT Connections, Enhancement and Reduction of Loads) (First Amendment) Regulations, 2007 r/w Regulation 5(14) , 5(15) & Regulation 9(3) of UERC (Release of New LT Connections, Enhancement and Reduction of Loads) Regulations, 2013, Regulation 8(3) r/w Regulation 3.1(17), Regulation 3.3.3 (17) & Regulation 3.3.3 (19) of UERC (The Electricity Supply Code, Release of New connections and Related Matters) Regulations, 2020 and Section 2(62), Section 43(3), Section 44 Section 57(2), Section (59), Section(103), Section (143), section (144), Section (181) of the Electricity Act 2003.
4. The Petitioner under the facts of the case in its Petition has submitted that:-
“
 - 1.0 That Hon'ble Commission made provision for the penalty in Regulation 5(12) & 5(13) of UERC (Release of New LT Connection, Enhancement and Reduction of Loads) Regulations, 2007 and Regulations 5(14) & 5(15) of UERC (Release of New LT Connection, Enhancement and Reduction of Loads) Regulations, 2013 and Regulation 3.3.3 (17) & 3.3.3 (19) of UERC (The Electricity Supply Code, Release of New connections and Related Matters) Regulations, 2020.
 - 2.0 That, petitioner had deposited an amount of Rs.10,64,480.00 against penalty for the period from April-2008 to June-2009.”

- 3.0 That, petitioner has partly deposited the penalty amount imposed by Hon'ble Commission during the year 2009, 2016, 2017, 2020, 2022 & 2024 which totals to an **amount of Rs. 3,01,88,709.00** till date.
- 4.0 That, Hon'ble Commission vide its order dated 05.07.2016 directed petitioner to deposit an outstanding amount against LT penalty corresponding to period upto Mar-2015 of Rs. 5,86,70,591.00 in 06 half yearly installments commencing from 30.04.2017.
- 5.0 That, in response to aforesaid order of Hon'ble Commission, the petitioner had filed a review petition on 06.01.2017 claiming relief on the various grounds viz. working in tough terrain and with minimal staff, due to inefficiency on account of existing manual system to comply with the requirement of the Regulations, RoW issues, land disputes etc for waiver of penalty amounting to Rs.10,38,44,875.00 against delay in release of LT connections (which also included penalty amount levied upto Mar-15 and thereafter upto July-2016).
- 6.0 That, on above review petition, Hon'ble Commission vide its order dated 09.05.2017 had not considered any submission of the petitioner and rejected the petition, holding the petition as non maintainable.
- 7.0 That, Subsequent to above order of Hon'ble Commission, the petitioner had deposited an amount of Rs. 46,18,090.00 on dated 05.09.2017 against LT penalty. Thereafter UPCL has not deposited any further amount in lieu of LT penalty against any afore mentioned orders of Hon'ble Commission.
- 8.0 That, thereafter, due to non deposition of penalty by the petitioner, Hon'ble Commission initiated suo moto proceeding for recovery of penalty amount imposed on UPCL under section 170 of Electricity Act 2003 and issued notice to the petitioner vide letter 06.12.2017 and directed the petitioner to deposit balance penalty of Rs. 9,56,78,802.00 pertaining to the period upto FY 2015-16 latest by 12.01.2018 failing which penalty may be recovered from UPCL in accordance with provision of section 170 of Electricity Act 2003.
- 9.0 That, Subsequently, notices/show cause notices were served to the petitioner by Hon'ble Commission and there replies and submissions were made by the petitioner to Hon'ble Commission, on which Hon'ble Commission issued an order dated 10.04.2019 to allow the petitioner to deposit the due Penalty amount of Rs. 18,82,28,272.00 against delay in release of new LT connections for the period from

Jul 2009 to Mar 2019 on quarterly basis starting from FY 2019-20 to be recovered in 6 years. The schedule of recovery of the amount is as given in the table below:-

10.0 That, In response to above order dated 10.04.2019 of Hon'ble Commission, the

<u>S.No.</u>	<u>Financial Year</u>	<u>Instalment</u>	<u>Amount</u>	<u>Last date of deposition</u>
1	2019-20	1 st	78,42,845.00	30.06.2019
		2 nd	78,42,845.00	30.09.2019
		3 rd	78,42,845.00	31.12.2019
		4 th	78,42,845.00	31.03.2019
2	2020-21	1 st	78,42,845.00	30.06.2020
		2 nd	78,42,845.00	30.09.2020
		3 rd	78,42,845.00	31.12.2020
		4 th	78,42,845.00	31.03.2021
3	2021-22	1 st	78,42,845.00	30.06.2021
		2 nd	78,42,845.00	30.09.2021
		3 rd	78,42,845.00	31.12.2021
		4 th	78,42,845.00	31.03.2022
4	2022-23	1 st	78,42,845.00	30.06.2022
		2 nd	78,42,845.00	30.09.2022
		3 rd	78,42,845.00	31.12.2022
		4 th	78,42,845.00	31.03.2023
5	2023-24	1 st	78,42,845.00	30.06.2023
		2 nd	78,42,845.00	30.09.2023
		3 rd	78,42,845.00	31.12.2023
		4 th	78,42,845.00	31.03.2024
6	2024-25	1 st	78,42,845.00	30.06.2024
		2 nd	78,42,845.00	30.09.2024
		3 rd	78,42,845.00	31.12.2024
		4 th	78,42,845.00	31.03.2025

petitioner had filed a review petition on 30.09.2019 for relief to waive off penalty of Rs. 20,79,30,236.00 citing various submission viz. delay in release of new connections due to procedural delay in performing work in field, limited man power and resources, RoW issues, crop in fields, land disputes etc and the petitioner also prayed to Hon'ble Commission to refund an amount of Rs. 1,22,01,524.00 already deposited against LT penalty. Moreover, in the intervening period UPCL has not deposited any penalty amount.

11.0 That, Further in the year 2020, with the onset of worldwide pandemic of Covid-19, all the world came to stand still with the operations and businesses of various organisations severely hampered. The petitioner filed a petition before Hon'ble Commission on 05.08.2020 for extension of time for compliance of directions given by Hon'ble Commission in the matter of relaxing the provisions of Supply Code Regulation whereby penalty was imposed in delay of release of new LT service

connection for the period of 2008-09 upto Aug-2019 and for suspension of SOP during Covid-19 pandemic period.

- 12.0 That, Hon'ble Commission in its order dated 10.03.2022 has decided to allow a period **from Mar 2020 to Aug 2021** as the period of **exemption** from the Service of Standards of Performance and delay in release of new connections on account of situation arisen due to Covid-19 pandemic.
- 13.0 That, Hon'ble Commission vide its Order dated 06.07.2022 had directed the petitioner to deposit the total penalty amount on account of delay in release of new LT connections **for the period from Jul 2009 to Mar 2019** in the manner and time stipulated in the Hon'ble Commission's Order dated 10.04.2019 and has also strictly restricted UPCL to approach for further time extension/ review/ relaxation/ waiver of LT Penalty for the period prior to 31.03.2019.
- 14.0 That, Hon'ble Commission vide its order dated 20.07.2022 has observed that the total LT penalty amount against delay in release of new LT connections **for the period from Apr 2019 to Feb 2020** is Rs. 1,52,78,110.00 out of which Rs. 1,20,28,650.00 has already been deposited by the petitioner vide letter dated 31.12.2020, therefore the balance penalty amount for the period is Rs. 32,49,460.00. The above balance amount was later deposited to Hon'ble Commission by the petitioner vide letter dated 15.09.2022.
- 15.0 That, due to non compliance of directions of Hon'ble Commission's orders dated 06.07.2022 and 20.07.2022 pertaining to non-payment of penalty due with respect to delay in release of new LT connections, Hon'ble Commission vide letter dated 28.07.2023 issued a show cause notice under section 146, section 149 and section 170 of Electricity Act 2003 and decided to initiate suo-moto proceeding for non-compliance on Hon'ble Commission's directions. After hearing and submissions made by the petitioner, Hon'ble Commission issued an order dated 10.04.2024 and directed the petitioner to deposit all the outstanding penalty due against delay in release of new LT connections latest by 30.06.2024.
- 16.0 That, Hon'ble Commission vide its aforesaid order dated 10.04.2024 also directs the petitioner that:-
- i) **Penalty due for the Period from Jul 2009 to Mar 2019**, shall be paid as per the mechanism of instalments devised by Hon'ble Commission. Hon'ble Commission directs that the 20 installments which are due upto 01.04.2024 amounting to **Rs.**

15,68,56,900.00 should be deposited upto 30.06.2024 and future installments should be deposited as per the installment plan provided in the aforesaid order.

ii) Penalty due for the Period from Sep 2021 to Mar 2022, UPCL shall deposit the due penalty amounting to Rs. 1,24,95,385.00 upto 30.06.2024.

iii) Penalty due for the Period from Apr 2022 to Mar 2023, UPCL shall deposit the due penalty amounting to Rs. 2,86,35,415.00 upto 30.06.2024.

iv) Penalty due for the Period from Apr 2023 to Feb 2024, UPCL shall submit the penalty amount of Rs. 3,58,25,685.00 against the reports of LT penalty submitted to the Hon'ble Commission till Feb 2024 as on the date of issuance of the order. Hon'ble Commission also directs UPCL to deposit the penalty amount till Feb 2024 upto 30.06.2024 and to submit the monthly LT penalty report for Mar 2024 alongwith the requisite amount.

v) Penalty for the period from Apr 2024 onwards, Hon'ble Commission also directs UPCL to ensure the timely submission of monthly LT penalty reports and the penalty amount. It is also pertinent to mention that Hon'ble Commission in the aforesaid order also iterates that "for any non-compliance in this regard, Director (Operations) and Director/Head of the commercial wing along with the Chief Engineers of respective zones shall personally be held responsible for the same and appropriate action in this regard would be initiated in accordance with the provisions of Act/Rules/Regulations.

vi) Non-compliance of the aforesaid directions shall attract coercive/penal action against the distribution licensee under the provisions of Section 170 of the Electricity Act, 2003."

5. Further, the Petitioner under the section 'Grounds for Relief' has mentioned that:-

"

That, for delayed LT connections beyond stipulated timelines, there are sufficient grounds to waive off the outstanding against the imposed penalty amount of Rs 15,68,56,900.00 for the period from July 2009 to March 2019, Rs 1,24,95,385.00 for the period from September 2021 to March 2022, Rs 2,86,35,415.00 for the period from April 2022 to March 2023, Rs 3,58,25,685.00 for the period from April 2023 to February 2024 and to reconsider the Order dated 10-04-2024 which are as follows:

- (i) *That the petitioner in the past have submitted multiple times before the Hon'ble Commission regarding various reasons/factors that were beyond the reasonable control of the petitioner resulting in delay in electricity connections.*
- (ii) *That the petitioner in its latest submission have informed the Hon'ble Commission that connections having a stipulated timeline of 15 days for release are being released within an average timeline of 3-4 days with a few exceptions due to uncontrollable reasons.*
- (iii) *That the petitioner in the past have also submitted that delays are prominently visible in release in cases of LT connections where HT/LT line network extension/augmentation, DTR installation/augmentation or Substation construction are required due to various reasons beyond the reasonable control of the petitioners as enumerated below.*
- (iv) *That the petitioner have submitted before several times that the consumer categories such as private Tube Well category (PTW), consumers where extension of distribution mains required, replacement/installation of Distribution transformer required, involves the construction of lines and installation/replacement of Transformers which in turn requires adequate Right of Way (ROW) for requisite work and creates bottlenecks in timely release of connections. In ascertaining the proper Right of Way, difficulties like passage through private land, insufficient width of existing roads, non-availability of space on both sides of road due to existing lines, difficulties due to various road crossings & existing line crossings of various voltage levels, sufficient ground/lateral clearances, consent of land/house owners, different Government approvals related to their land/forest, general social non-acceptance/resistance towards erection of line/transformers nearby their premises, crops in the field where lines and pole are to be erected through the farm land etc. are common hurdles and poses serious challenges before the petitioner for timely release of connections.*
- (v) *That, on analysis of the pending connection reports, it has also been observed that, in many divisions, the connections of Jal Sansthan/Jal nigam/Irrigation tube wells have been delayed beyond SOP timelines where construction of 11 KV lines and substations are required that have attributed to huge amount of the penalty to the respective divisions. On discussing the delay of the same, in most of the cases it has come to the notice that delay was attributable to non completion of works at*

consumer premises. During past, survey was also done by the senior officials of the department in some divisions to find out the reasons for delay and in majority of cases the reason attributable was ROW issue.

- (vi) That the petitioner has also brought to the kind attention of the Hon'ble Commission to the fact that various works required to be done for releasing the connection, many a times are awarded to a third party and a formal contract in that regard is made. It should be considered that there may be times when the contractor breaches the provision of the contract and the licensee finds himself helpless in executing the work within time mainly because the contractor is not performing and if the contract is terminated it has to be awarded to another contractor by following the tender process and in both cases further delay is bound to occur, there are no fixed parameters for complying so that timely completion of work can be ensured. Therefore, penalizing the petitioner without considering the circumstances would not only be unjust but would also be arbitrary and unlawful. The situation is very practical and it was humbly requested to Hon'ble Commission to reconsider sympathetically.
- (vii) It is to bring to the kind notice of Hon'ble Commission that based on the reports of RAPDRP-A, NSC module, the average time taken in release of LT connections vis-a-vis different types of SOP timelines has been tabulated below for last five financial years starting from FY 2018-19, FY 2019-20, FY 2020-21, FY 2021-22, FY 2022-23 and for FY 2023-24:

Type of SOP	SOP Timeline in Days	2023-2024		2022-2023		2021-2022		2020-2021		2019-2020		2018-2019	
		No. of released connections	Avg. Days	No. of released connections	Avg. Days	No. of released connections	Avg. Days	No. of released connections	Avg. Days	No. of released connections	Avg. Days	No. of released connections	Avg. Days
No Extension	15	90380	4	94764	3	83473	4	86464	5	88600	7	162707	17
Extension of bay at 33/11 kV substation	45	1	247	3	91								
11 kV without independent feeder	60	233	85	208	85	177	72	133	88	131	79	125	82
Extension of Distribution mains	60	6614	66	5909	60	5273	60	4764	61	4205	59	7587	83
New 11/0.4 kV substation	90	3074	113	2326	97	1954	95	1770	84	2337	81	1882	94
11 kV independent feeder	90	7	61	7	186			4	80	3	74	1	108
33 Kv including line	180	12	156	11	96	5	57	5	106	5	149	1	282
New 33/11 kV substation	180	10	215	15	131	59	125	69	91	52	134	102	136
132 kV and above including line						1	172						

From the above, it can be observed that during the last five financial years, the average time taken in release of LT connections where no extension of mains is required has substantially improved from an average of 17 days to 3-4 days.

*Moreover, the percentage of connections released within stipulated timeline in case of connections where **no extension** of lines is required is given hereunder for kind perusal of the commission:*

FY 2018-19 : 56.31% ; FY 2019-20 : 89.27% ; FY 2020-21 : 93.50% ; FY 2021-22 : 96.64% ; FY 2022-23 : 98.04% ; FY 2023-24 : 96.88%

This shows that the petitioner has intention for timely release of connections and is making sincere efforts towards it. It can be easily analyzed that, no major constraints exist in releasing connections that do not require extension of mains and are thus released within the SOP timelines barring a few exceptions. It can be observed that major delay is in release of connections where extension of LT mains, construction of 11 kV or higher lines and construction of 11/0.4 KV and higher substations are required. The practical constraints and factors exist in these cases such as RoW constraints, land disputes, crop in the field, consumer facility not ready etc.

Moreover, the petitioner's top functionaries are carrying out periodic meetings with field units and have instructed them to carryout proactive efforts to release connections within stipulated timelines. In case of default, instructions have been issued to all the Chief Engineers of the respective zones by Director (Operation) to ascertain the responsibility of concerned Officers/Officials for any lapses on their part and to recover the due penalty amount from the concerned officers/officials (Annexure A-D).

(viii) *That, it is further to submit, that imposition and procedure of recovery of the penalty as per Hon'ble Commission's Regulations are also not consistent with the provisions of the Electricity Act-2003 as submitted below:*

- (a) *That subsection 2(62) of the Electricity Act, 2003 provided that "**specified**" means specified by regulations made by the Appropriate Commission or the Authority, as the case may be, under the Electricity Act 2003.*
- (b) *That subsection 1 of Section 43 of the Electricity Act, 2003 provided that "Every distribution licensee shall, on an application by the owner or occupier of any premises, give supply of electricity to such premises within one month after receipt of the application requiring such supply:*

*Provided that where such supply requires extension of distribution mains, or commissioning of new substations, the distribution licensee shall supply the electricity to such premises immediately after such extension or commissioning or within such period as may be **specified** by the Appropriate Commission:*

Provided further that in case of a village or hamlet or area wherein no provision for supply of electricity exists, the Appropriate Commission may extend the said period as it may consider necessary for electrification of such village or hamlet or area”.

- (c) *That, Sub-section 3 of Section 43 of Electricity Act, 2003 provided that “If a distribution licensee fails to supply the electricity within the period **specified** in sub-section (1), he shall be liable to a penalty which may extend to one thousand rupees for each day of default.*

It is to humbly submit that it is not stated in this subsection that the Appropriate Commission can “specify” the penalty. Only the period under Sec. 43(1) first proviso can be specified by Regulations. Instead, penalty has to be imposed after adjudication in each case as per the provision of Section 143 “ Power to Adjudicate” and Section 144 “ Factors to be taken into account by adjudicating officer” of Electricity Act 2003.

- (d) *That Sec. 143 of the electricity act says that, “Power to adjudicate” (1) For the purpose of adjudging under this Act, the Appropriate Commission shall appoint any of its Members to be an adjudicating officer for holding an inquiry in such manner as may be prescribed by the Appropriate Government, after giving any person concerned a reasonable opportunity of being heard for the purpose of imposing any penalty. (2) While holding an inquiry, the adjudicating officer shall have power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or produce any document which in the opinion of the adjudicating officer, may be useful for or relevant to the subject-matter of the inquiry, and if, on such inquiry, he is satisfied that the person has failed to comply with the provisions of section 29 or section 33 or section 43, he may*

impose such penalty as he thinks fit in accordance with the provisions of any of those sections.

It is humbly submitted that while deciding the case, Member to be appointed as adjudicating officer, Inquiry to be conducted in each case as per applicable Rules of Government of Uttarakhand. , Opportunity of being heard w.r.t. penalty to be provided in each case, Imposition of penalty is subject to guided discretion. No fixed formula for penalty can be prescribed and applied en masse to all cases of delayed connection/non supply under Sec. 43.

- (e) *That Sec. 144 of the electricity act, "Factors to be taken into account by adjudicating officer" says that While adjudicating the quantum of penalty under section 29 or section 33 or section 43, the adjudicating officer shall have due regard to the following factors, namely:- (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default; (b) the repetitive nature of the default.*

It is humbly submitted that in each case, i.e., with respect to each specific instance where there is delay in granting LT connection, an adjudication has to be conducted. Imposition/accrual of penalty cannot be automatic.

- (f) *That, Section 44 "Exceptions from duty to supply electricity" states that "Nothing contained in section 43 shall be taken as requiring a distribution licensee to give supply of electricity to any premises if he is prevented from so doing by cyclone, floods, storms or other occurrences beyond his control". Therefore, the Act itself says that there can be no default under Sec. 43(3) if the petitioner was prevented from supplying electricity by any occurrence beyond its control. Even assuming that penalty under Sec. 43(3) can be prescribed by Regulations, Hon'ble Commission cannot make any Regulation under which no exception is made for such circumstances.*
- (g) *That, Sec. 57(1) of the electricity act "Standards of performance of licensee" says that (1) The Appropriate Commission may, after consultation with the licensees and persons likely to be affected, specify standards of performance of a licensee or a class of licensees.*

It is to submit that in contrast to Sec. 43(3), the word “specify” is expressly used. Thus, SoP can be laid down regarding timeline for releasing LT connection.

- (h) *That, Sec. 57(2) of the electricity act “Standards of performance of licensee” says that If a licensee fails to meet the standards specified under sub-section (1), without prejudice to any penalty which may be imposed or prosecution be initiated, he shall be liable to pay such compensation to the person affected as may be determined by the Appropriate Commission.*

Provided, that before determination of compensation, the concerned licensee shall be given a reasonable opportunity of being heard.

It is humbly submitted that any Regulation cannot be made by “specifying” the penalty, it can determine compensation (including by fixing a formula) for breach of SoPs.

- (i) *That Sec. 59 of the Electricity Act “Information with respect to levels of performance”, subsection (1) states that “Every licensee shall, within the period specified by the Appropriate Commission, furnish to the Commission the following information, namely:- (a) the level of performance achieved under subsection (1) of section 57; (b) the number of cases in which compensation was made under sub-section (2) of section 57 and the aggregate amount of the compensation”.*

It is to humbly submit that there is no power conferred to specify a period for submitting compiled information regarding the penalty “accrued” and paid up under Sec. 43(3). This Section only allows the Hon’ble Commission to call for compiled information regarding compensation paid for violation of the SoPs.

- (j) *That Sec. 103 subsection (1) “Establishment of Fund by State Government”, of the Electricity Act states that, (1) There shall be constituted a Fund to be called the State Electricity Regulatory Commission Fund and there shall be credited thereto – (a) any grants and loans made to the State Commission by the State Government under section 102; (b) all fees received by the State Commission under this Act; (c) all sums received by the State Commission from such other sources as may be decided upon by the State Government.*

It is humbly submitted that the penalty, if any payable under Sec. 43(3) is not to be paid into the Fund of the Hon'ble Commission unless that is expressly decided by the Government of Uttarakhand.

- (k) That, Sec. 181, "Powers of State Commission to make regulations" states (1) The State Commissions may, by notification, make regulations consistent with this Act and the rules generally to carry out the provisions of this Act. (2) In particular and without prejudice to the generality of the power contained in sub-section (1), such regulations may provide for all or any of the following matters, namely: – (a-s) [...] (t) the period to be specified by the State Commission for the purposes specified under sub-section (1) of section 43; (u) methods and principles by which charges for electricity shall be fixed under sub-section (2) of section 45; (v) reasonable security payable to the distribution licensee under sub-section (1) of section 47; (w) payment of interest on security under subsection (4) of section 47; (x) electricity supply code under section 50; (y-zo) [...] (zp) any other matter which is to be, or may be, specified. (3) All regulations made by the State Commission under this Act shall be subject to the condition of previous publication.

It is to humbly submit that Legislature has specifically looked at Sec. 43 of the Act and has not given any power to make regulation regarding the formula, etc. for calculating penalty under Sec. 43(3). Only period under Sec. 43(1), first proviso, can be specified by State Commission through Regulations.

- (l) That, it is to humbly submit before the Commission that the petitioner is continuously facing the financial stress. As per the financial statements of FY 2020-21 and FY 2021-22, the accumulated loss of the petitioner is to the tune of Rs 3851.01 Cr. and Rs. 4064.43 Cr. respectively. Moreover, it is in the kind notice of Hon'ble Commission that due to unprecedented rise in power demand in Year 2022-23 post Covid recovery and early onset of summers, the power purchase rates sky rocketed due to demand-supply gap in the open market. State gas based power plants remained in closure due to exorbitant gas prices in domestic and international markets due to Geo-political situation that arose on account of Russia-Ukraine war. The petitioner tried its level best to provide uninterrupted power supply to the

consumers of the State by procuring power from Energy Exchanges and through Short/Mid Term tenders from DEEP Portal. Thus, the high power purchase cost has created a substantial ACS-ARR gap for the FY 2022-23 and accumulated losses till FY 2022-23 has rose to approx Rs. 5288.07 Cr. that has severely dented financial condition and liquidity position of the petitioner, making it difficult to pay complete dues of GoU in lieu of ED/Green Energy Cess/Water Cess/ Royalty etc. Moreover, the petitioner does not get any kind of subsidy from State Government. Moreover, against the ARR filed by the petitioner for around 27.06 % hike in tariff for FY 2024-25, Hon'ble Commission has allowed a tariff hike of only 6.92 % which is going to further severe the cash flows and financial condition of the petitioner.

- (m) That in the facts and circumstances as aforementioned in the present case, the Regulation 5(12) & 5(13) of UERC (Release of New LT Connections, Enhancement and Reduction of Loads) Regulations, 2007 and Regulation 5(14) & 5(15) of UERC (Release of New LT Connections, Enhancement and Reduction of Loads) Regulations, 2013 and Regulation 3.3.3 (17) & 3.3.3(19) of UERC (The Electricity Supply Code, Release of New connections and Related Matters) Regulations, 2020 needs to be relaxed/waived or varied, and consequently order dated 10-04-2024 passed in the matter is required to be reconsidered and modified.
- (n) That all the reasons mentioned above are very practical and justifiable and Hon'ble Commission would be kind enough in considering the relaxation of provisions of the regulation and consequently the waiver of penalty amount prayed in the present review petition."

6. Further, the Petitioner under the section 'Relief Sought' of its Petition has submitted that:-

"

...

- (ii) Relax/waive or vary the provisions of Regulation 5(12) of UERC (Release of New LT Connections, Enhancement and Reduction of Loads) Regulations, 2007 and Regulation 5(14) & 5(15) of UERC (Release of New LT Connections, Enhancement and Reduction of Loads) Regulations, 2013, Regulation 3.3.3(17) & 3.3.3(19) of

*UERC (The Electricity Supply Code, Release of New connections and Related Matters) Regulations, 2020 and consequently reconsider/modify order dated 10-04-2024 passed in the matter. So, as to waive off the outstanding due penalty of Rs 23,38,13,385.00 for the period of July 2009 to February 2024 and to waive off the penalty amount for the month of March 2024 and refund of amount of **Rs. 3,01,88,709.00** already deposited to the Hon'ble Commission in lieu of delayed LT connection penalty."*

7. The Commission vide its letter dated 11.07.2024 issued Notice for Hearing to UPCL on admissibility in the Petition to be held on 26.07.2024. Further, the Commission vide its letter dated 24.07.2024 informed UPCL, due to unavoidable circumstances the aforesaid scheduled hearing has been postponed. Thereafter, the Commission vide its letter dated 01.08.2024 informed UPCL regarding the re-schedule date of hearing in the matter on 20.08.2024.
8. The hearing was held on the scheduled date i.e. on 20.08.2024. During the hearing, UPCL reiterated its submission made in the Petition, and the Commission reserved the judgement and issued an Order dated 20.08.2024, in this regard.

Commission's Observations, Views & Directions: -

9. Before going into the merits of the Petition filed by UPCL on various issues, the Commission first looks into the powers vested in it to review its Orders, for 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, in absence of any specific provisions, 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). Under the said provisions, review of the 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.

10. The application for review has to be considered with great caution to necessarily fulfil one of the above requirements to be maintainable under law. On the discovery of new evidence, the application should conclusively demonstrate that (1) such evidence was available and is of undoubted character; (2) that it was so material that its absence might cause miscarriage of justice; (3) that it could not be even with reasonable care and diligence brought forward at the time of proceedings/ passing of Order. It is well settled principle that new evidence discovered, if any, must be one, relevant, and second, of such character that had it been given during earlier proceedings, it might possibly have altered the Judgment.
11. 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. However, if it is a case that the Petitioner was not able to properly explain a legal position at the time of proceedings, it does not make a ground for a review. It may be pointed out here that Hon'ble Supreme Court and Hon'ble High Courts have in catena of Judgement 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 explained and laid down the scope of review 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].
12. 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.

13. It is a well-settled law that a review of the Orders of the Court/Commission should be used sparingly after examining the facts placed before the Court. An erroneous view or erroneous Judgment is not a ground for review, but if the Judgment or Order completely ignores a positive rule of law and the error is so patent that it admits of no doubt or dispute, such an error 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.
14. It would be pertinent to refer here about all the Orders issued by the Commission either on Suo-moto proceeding on non-compliance of relevant Regulations & Orders or on the Petitions and Review Petitions filed by the Petitioner in the matter of relax/waive or vary the provisions of UERC (Release of New LT Connections, Enhancement and Reduction of Loads) Regulations, 2007, UERC (Release of New LT Connections, Enhancement and Reduction of Loads) Regulations, 2013 and UERC (The Electricity Supply Code, Release of New connections and Related Matters) Regulations, 2020 whereby the penalty was imposed in the matter of delay in release of new LT service connections, earlier before the Commission. The same are:
 - (i) The Commission's Order dated 05.07.2016 on non-deposition of Penalty amount pertaining to period from July 2009 to March 2015.
 - (ii) The Commission's Order dated 09.05.2017 issued on Petition of UPCL dated 06.01.2017 pertaining to relax or vary penalty for FY 2008-09 to FY 2015-16.
 - (iii) The Commission's Order dated 17.01.2018 issued on Suo-moto proceeding dated 06.12.2017 pertaining to non-submission of reports and requisite penalty for FY 2017-18.
 - (iv) The Commission's Order dated 10.04.2019 issued in context to its earlier Orders dated 05.07.2016, 09.05.2017 and 17.01.2018.

- (v) The Commission's Order dated 07.01.2020 issued on Petition of UPCL dated 30.09.2019 pertaining to relax/waive or vary penalty for FY 2008-09 to FY 2018-19 and upto Aug 2019.
 - (vi) The Commission's Order dated 10.03.2022 issued w.r.t. Petition of UPCL dated 05.08.2020 and Suo-moto proceeding initiated for non-compliance of directions.
 - (vii) The Commission's Order dated 06.07.2022 pertaining to relax/waive or vary of penalty for FY 2008-09 to FY 2018-19 and upto Aug 2019 and Suo-moto proceeding for non-compliance of directions.
 - (viii) The Commission's Order dated 20.07.2022 in relation to the directions issued by the Commission at para 19 (c) of the Order dated 06.07.2022.
 - (ix) The Commission's Order dated 10.04.2024 issued on Suo-moto proceeding dated 28.07.2023 w.r.t. non-compliance of its Order dated 06.07.2022 and 20.07.2022.
15. With this background on legal preposition related to scope of Review Petition, the Commission has examined the issues raised and grounds of review stated by the Petitioner, in light of the principle of review discussed above on such issues is as follows:
- (1) It is observed that the submissions made by the Petitioner in its instant Petition are mere repetitive version of its submissions made in the earlier Review Petitions filed before the Commission in the same matter and which has already attained finality. The act of Petitioner is merely an attempt of deferring its liability towards compliance of the provisions of the Act and Regulations issued by the Commission. It appears that the Petitioner on the pretext seeking Review of the aforesaid Order is merely re-arguing the original matter and seeks a fresh decision in the case. There cannot be re-hearing on the issues during Review, from the perusal of the record and the settled preposition of law that the Petitioner has not been able to justify any of the provisions of 'Order XLVII (1) of the Code of Civil Procedure, 1908' pertaining to Review Principles.
16. The Commission would like to clarify that a review being very limited in nature is allowed only on the grounds of mistake or error apparent on the face of the record

or any new fact/evidence that could not be brought before earlier, and there is no merit in making any fresh proposal/request in the form of review to revisit the matters that have already dealt in detail and settled in Order.

17. The Commission has already deliberated and settled all the issues raised by the Petitioner and by passing reasoned Orders dated 06.07.2022 (Order on Review Petition), 20.07.2022 and 10.04.2024, and no new fact/evidence has been brought before the Commission in the instant Review Petition to rule otherwise, infact despite lapse of so many years of passing the original order, it is very painful to remark that UPCL even till date has not even been able to demonstrate any substantial improvement in fulfilling its statutory duties so that the Commission, if in case wanted to take any sympathetic view or deal with the matter under its inherent powers or differently, UPCL miserably failed to even give opportunity to the Commission to reward UPCL's efforts, in terms of any special consideration, which in the present circumstances is not possible.

The Commission has already directed UPCL not to approach the Commission for either time extension/review or relaxation or waiver of penalty, yet UPCL time an again is filing such frivolous Petitions, UPCL is cautioned for the final time to desist from such conduct else the Commission have to take a harsh view and even imposed cost.

18. The Commission, in view of the above, rejects the Review Petition filed by UPCL against the Commission's Order dated 10.04.2024, as not maintainable and, accordingly, Miscellaneous Application No. 43 of 2024 stands disposed off with the direction to comply with the directions issued at para (9) of the Commission's Order dated 10.04.2024.

Ordered accordingly.

(Anurag Sharma)
Member (Law)

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