

Before
UTTARAKHAND ELECTRICITY REGULATORY COMMISSION
Petition No. 59 of 2024 (Suo-moto)

In the Matter of:

Hon'ble APTEL's Judgement dated 19.07.2024 on Appeal no. 215 of 2016, Appeal No. 283 of 2016 & Appeal No. 139 of 2018 w.r.t. 'Denial of 50% of the excess IDC and 50% of Price Variation component of capital cost for MB-II project'.

And

In the Matter of:

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

...Respondent (1)

&

In the Matter of:

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

...Respondent (2)

Coram

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

Date of Hearing: September 26, 2024

Date of Order: November 20, 2024

ORDER

This Order relates to the Judgement dated 19.07.2024 passed by the Hon'ble APTEL in the matter of Appeal No. 215 of 2016, Appeal No. 283 of 2016 & Appeal No. 139 of 2018 filed by UJVN Ltd. The Hon'ble APTEL in its aforesaid Judgement had clubbed together the aforesaid Appeals and issued a composite Judgement dealing with the common issues pertaining to (1) Return on Equity invested by the State Government in its power project as share capital from Power Development Fund. (2) Denial of 50% of the excess IDC and 50% of Price Variation component of capital cost for MB-II HEP.

This Order is confined to the issue mentioned at (2) above i.e., pertaining to 'Denial of 50% of the excess IDC and 50% of Price Variation component of capital cost for MB-II HEP'.

Background

2. Earlier, UJVN Ltd. filed an appeal against the decision of the Commission issued in the UJVN Ltd.'s Tariff Order dated **11.04.2015** and subsequent review Order dated **22.01.2016** pertaining to 'True-up of FY 2013-14, Annual Performance Review (APR) for FY 2014-15 and Annual Fixed Charges for FY 2015-16' before the Hon'ble APTEL through its **Appeal No. 215/2016**.
3. Further, UJVN Ltd. filed an appeal against the decision of the Commission issued in UJVN Ltd.'s Tariff Order dated **05.04.2016** pertaining to 'True-up of FY 2014-15, Annual Performance Review (APR) for FY 2015-16 and Multi Year Tariff (MYT) for second control period i.e. 2016-17 to 2018-19' before the Hon'ble APTEL through its **Appeal No. 283/2016**.
4. Furthermore, UJVN Ltd. filed an appeal against the decision of the Commission issued in UJVN Ltd.'s Tariff Order dated **29.03.2017** pertaining to 'True-up of FY 2015-16, Annual Performance Review (APR) for FY 2016-17 and Annual Fixed Charges for FY 2017-18' before the Hon'ble APTEL through its **Appeal No. 139/2018**.
5. The Hon'ble APTEL while issuing the said Order dated **19.07.2024** had taken cognizance of the learned counsel of UJVN Ltd. that the Commission has overlooked UJVN Ltd.'s letters dated **25.02.2015** and **30.03.2015** and has based its Order merely on the report submitted by the Consultant appointed by it and had emphasized that the impugned Orders are vitiated by lack of application of mind on the part of the Commission. Consequently, the Hon'ble APTEL had held that *'...the Commission has based its findings on the aspect under consideration in the Order dated 11.04.2015 as well as in the Order dated 22.01.2016 on the review Petition merely on the report of the Expert Consultant appointed by it. It has not made any endeavor to examine the case of the Appellant independently to ascertain whether the consultant had actually perused the material produced by the Appellant. The approach of the Commission is not acceptable. The Commission is the final adjudicatory authority and not the consultant*

appointed by it. The consultant was appointed by the Commission to examine the contention of the Appellant and to give his opinion. It was for the Commission to scrutinize the opinion of the consultant in the light of the material produced by the Appellant and to assess on its own independently as to whether the delay occurred in commissioning of the project of the Appellant was due to controllable or non-controllable factors. We do not find any reference or discussion on the above noted two letters dated 25.02.2015 and 30.03.2015 sent by the Appellant to the Commission thereby explaining the reasons of delay in commissioning of the project.'

Accordingly, the Hon'ble APTEL had remanded the matter back to the Commission for a fresh consideration on the claim of UJVN Ltd. regarding excess IDC and Price Variation component of capital cost for MB-II power project for the period last 06 months before the date of its commissioning. Further, Hon'ble APTEL directed to pass a fresh Order upon hearing the parties again.

6. The certified copy of APTEL's judgment dated 19.07.2024 was received to the Commission on **27.08.2024**.
7. In compliance to the aforesaid Order of the Hon'ble APTEL, the Commission decided to hold a hearing on **10.09.2024** in the matter. However, due to unavoidable circumstances the hearing was rescheduled to **17.09.2024**. Meanwhile, UJVN Ltd. vide its letter dated **09.09.2024** requested the Commission to provide a copy of the report dated 12.03.2015 of Expert Consultant and stating that "*... it appears from a perusal of the Impugned Order, the Review Order and the submissions made on behalf of Ld. Commission in its counter affidavit that there was a report given by the Expert Consultant on basis of which the Commission denied 50% excess IDC and Price Variation to M/s UJVN Ltd. However, the same has not been provided to UJVN Ltd. denying it a reasonable opportunity to be heard in violation of the observations made by the Hon'ble APTEL in the case of Polyplex Corporation Ltd v UERC Appeal. Number 41-43 of 2010.*

Therefore, it is requested that the subsequent report of the Expert Consultant be provided to M/s UJVNL so as to effectively assist the Commission to the correctness of the report and to arrive at a just and proper conclusion".

8. Accepting the request of UJVN Ltd., the Commission through its letter dated **11.09.2024** provided the reports of Expert Consultant dated 15.01.2014 & 12.03.2015 pertaining to 'Capital cost of MB-II HEP'.

9. On the scheduled date of hearing, UJVN Ltd. made its written submission before the Commission as detailed at point 1 to 14 mentioned below:-

“

1. *The matter pertains to the consideration of the denial of 50% excess IDC for 6 months and Price Variation component of capital cost for MB-II project in compliance with the Order dated 19.07.2024 in Apl. No. 215 of 2016 of the Hon'ble APTEL.*
2. *It is humbly submitted that only the interim report of Senior Consultant dated 15.01.2014 had been supplied to M/s UJVNL vide its letter dated 23.01.2015 and thereafter no other report of the consultant was supplied nor the alleged final report as notice in the Impugned Order on the basis of which the Impugned Tariff Order dated 11.04.2015 was passed. It may also be pointed out that the Respondent No.1 herein was never informed or supplied with this final report and was not aware of existence of any such report.*
3. *In the Review Order dated 22.01.2016, this Ld. Commission had observed that:*

“b. With regard to examination of the delay of last six months in the Project on account of "uncontrollable factors", the Commission had appointed Expert Consultant for the evaluation of the same, who had reviewed all submissions of the Petitioner in this regard and had submitted a report which was examined by the Commission and accordingly the Commission came to the conclusion that the delay in the project except for delay of the last 6 months was on account of factors beyond the control of the Petitioner. Since, it could not be established that the last 6 months delay was on account of controllable factors or due to uncontrollable factors, consequently, the Commission allowed the 50% of the excess IDC and 50% of Price Variation while approving the Capital cost for the delay of last 6 months in accordance with the principle laid down by Hon'ble APTEL in its judgment in Appeal No. 72 of 2010. ”
4. *In Appeal No. 215 of 2016 filed by Respondent No.1 herein against the Tariff Order dated 11.04.2015 and the abovementioned Review Order, a specific ground had been taken that the Ld. Commission ought to have given a comparative analysis of the Representation submitted by the Respondent No. 1 herein, demonstrating the uncontrollable factors leading to the delay of the project, and the Report prepared by*

the Expert Consultant appointed by the Ld. Commission, on the basis of which it reached to a conclusion that the factors of delay of last six months are not determinable.

5. *In the counter affidavit filed on behalf of the Ld. Commission in the said appeal the following was submitted:*

“Reply: The contention of the Appellant is not tenable as the abovementioned letters dated 25.02.2015 & 30.03.2015, communicated to the Commission were reviewed by the Expert Consultant appointed by the Commission who had submitted his report to the Commission and the same was examined by the Commission in accordance with the principles laid down by the Hon’ble APTEL in its Order dated 27.04.2011 in Appeal No. 72 of 2010 ...”

6. *In the rejoinder before the Hon’ble APTEL filed by Respondent No. 1, it was pointed out that no report apart from consultant report dated 15.01.2014 has been supplied.*
7. *On 19.07.2024, the Hon'ble APTEL allowed the Apl. No. 215 of 2016 and remanded the matter pertaining to the denial of 50% excess IDC and Price Variation to the Ld. UERC for consideration of response dated 25.02.2015 and 30.03.2015. It also directed the Ld. UERC to comply with its orders within two months.*
8. *On 21.08.2024, the Ld. UERC informed Respondent No. 1 herein that it would conduct a hearing with regards to the denial of 50% excess IDC and Price Variation on 10.09.2024. After the matter was fixed for hearing on 09.09.2024, Respondent No. 1 requested that the subsequent report of the Expert Consultant (i.e. report after 15.01.2014) be supplied to it.*
9. *Meanwhile, vide communication dated 10.09.2024 it was informed to Respondent No. 1 that the hearing dated 10.09.2024 was postponed by the Ld. UERC due to unavoidable circumstances and was scheduled for 17.09.2024.*
10. *On 13.09.2024, Respondent No. 1 received the letter dated 11.09.2024 supplying the final report dated 12.03.2015 of the consultant, which report has never been supplied earlier to the answering respondent.*
11. *On a perusal of the said report dated 12.03.2015, it became evident that the Expert Consultant had not considered the documents provided by Respondent No.1. Nor examination of the subsequent reply of dated 30.03.2015 has taken place.*

Furthermore, most of the issues raised by the Expert Consultant had in fact been addressed in the reply dated 30.03.2015 and the document which pertained to the reference numbers given in the reply dated 25.02.2015 had been supplied with the same. The annexures contained a detailed reason for delay of each activity, thus successfully proving that the delay had, in fact, been occasion due to uncontrollable factors. Therefore, the report dated 12.03.2015 is should not be accepted for the portion of denial of 50% IDC and Price Variation for 6 months.

12. *Additionally, the issue raised by the Expert Consultant in Para 1 (ii) (iii) (and subsequent paras) had never been enquired from Respondent No. 1, which had thus, never been given an opportunity to effectively address the issue.*
 13. *It is also submitted that given the fact that the letter dated 11.09.2024 was supplied to Respondent No. 1 herein only on 13.09.2024. The office of Respondent No. 1 were closed for next four days including on 17.09.2024 due to it being the weekend and government holidays. Therefore, a substantive response to the Report dated 12.03.2015 could not be formulated to the report dated 12.03.2015.*
 14. *Through the present Application, Respondent No.1 herein/Applicant humbly prays that a 15 days' time be granted to it to provide a detailed and complete, ..."*
10. On the scheduled date of hearing i.e., 17.09.2024, the Commission heard the Respondents and issued a daily Order as follows: -

"The Counsel for Respondent No. 1 moved an application seeking 15 days time for formulating a complete response to the report of Expert Consultant dated 12.03.2015. Respondent No. 2 opposed the same and requested an opportunity to file objection against the same.

Since the matter has been remanded back for fresh consideration on certain aspects and this exercise is to be done within 02 months from the date of the Judgment of the Hon'ble APTEL, i.e. by 19.09.2024, granting time for filing reply and counter reply by parties would exceed the time stipulated in the said Order. On this, the Counsel for Respondent No. 1 stated that they would seek extension of time from Hon'ble APTEL. In light of the submission, Respondent No. 2 to file objections against the present application within 07 days with an advance copy to Respondent No. 1. The matter is now fixed for disposal/hearing of application on 26.09.2024 at 11:30 AM in the Commission's office.

Meanwhile, Respondent No. 1 shall seek extension of time from Hon'ble APTEL and submit Certified copy of the Order before the Commission, at the earliest."

11. In compliance to the Commission's Order dated **17.09.2024**, Respondent No. 2 namely UPCL vide its submission dated **20.09.2024** furnished its objections as follows: -

"

1. *That, this response is submitted on behalf of Respondent No.2 concerning the application filed by Respondent No.1, UJVN, seeking an extension of time in relation to the remand matter directed by the Hon'ble APTEL in its order dated 19.07.2024. The remand specifically pertains to the claim of UJVN regarding the excess Interest during Construction (IDC) and Price Variation component of capital cost for the MB-II power project for the last six months before the date of its commissioning.*
2. *That, during the hearing before the Hon'ble Commission on 17.09.2024, UJVNL requested for additional time to furnish a detailed response to the expert report dated 12.03.2015, which was received by them on 13.09.2024.*
3. *That, it is relevant to note that the Hon'ble APTEL, in its order dated 19.07.2024, observed that the Hon'ble Commission had not referenced the letters dated 25.02.2015 and 30.03.2015 submitted by UJVNL, which outline the reasons for the delay in the project's commissioning and emphasized on the need for the Hon'ble Commission to adjudicate that whether the delays in commissioning of the project were due to controllable or uncontrollable factors.*
4. *That, the order from the Hon'ble APTEL is explicit -in its direction to the Hon'ble Commission to reconsider the aforementioned letters to ascertain the nature of the delays provided therein. It is crucial that the Hon'ble Commission's adjudication is confined to this specific issue, as outlined in the Hon'ble APTEL's order.*
5. *That while Respondent No. 2 does not oppose the application for an extension of time filed by Respondent No.1, we reiterate our earlier submissions made at the time of hearing that, given the remand's limited scope, all parties should focus strictly on the specific questions raised therein. Furthermore, in the event that Respondent No.1 seeks additional time or files further applications with the Hon'ble APTEL, we request that we be duly informed and provided with copies of such submissions."*

12. Further, Respondent No. 1 namely UJVN Ltd. vide its submission dated **25.09.2024** furnished its objections as follows:

“

The scheduled completion date of MB-II HEP was 31-01-2006 and actual project completion date was 15-03-2008. Total delay was 25.50 months, this 25.50 months delay is totally due to uncontrollable reasons and should be allow for consideration of tariff.

The Hon'ble UERC has the view that the completion time of various activities could be minimised by deploying extra manpower and machinery to minimise the cycle time. Keeping in view of this Hon'ble UERC has considered the pragmatic project completion date as 25-09-2007 and only partially allowed the last 06 months delay for consideration of IDC and price escalation.

The justifications for time over-run were explained in very detail with the submission during petition. The extra time involved in all packages of Barrage, HRT, Surge shaft, Penstocks and Power House work were mainly due to geological reasons, change in methodology of work and the reasons beyond the control of UJVNL. It is again submitted that time duration of cycles cannot be minimised after a certain cycle period. These extra time involved in work were further substantiated with increase in quantity of work and cost. UJVNL has submitted sufficient documentary evidence in support of time over run for all 04 major contracts related to Barrage, HRT, Surge Shaft, Penstock and Power house. These documents are:-

- 1. Quantities variation statement.*
- 2. Cost variation statement.*
- 3. Activity wise reasons for delay against planned in contract and as per actual.*
- 4. Evidence of poor geological conditions.*
- 5. Evident of change in methodologies as per requirement.*
- 6. Evidence in hindrance of work by local project affected villagers.*

It is further submitted that after completion of the HRT work, the HRT was inspected by the expert team on 07&08 Nov 2007. Thereafter the charging of HRT by closing the barrage gates was initiated. The charging of HRT was done according to standard procedures. After charging all the leakage points were inspected and grouted again to arrest the seepage. After availability of water from HRT testing of all hydro mechanical equipments at barrage and

in power house were started. The charging of HRT, arresting of leakage at various locations by grouting and testing of HM equipments and E&M equipments taken approximately total 06 months time to start the generation. The testing and commissioning of HM and E&M equipments were completed in minimum time by doing the work day and night in continuous 03 shifts.

In Hydro Projects of hilly region the time requirement is directly related to adverse geological condition. UJVNL has submitted sufficient documentary evidence of adverse geological condition encountered during the work. Based on submission the extra time of 25.50 months taken to complete the worked start generation, is justified "

It further submitted that the consultant of Hon'ble UERC in its final report dated 12-03-2015 has specifically recommended in point No-8 that, on the basis of reasons/facts submitted by UJVNL the IDC may admitted towards capital cost.

In view of above, it is requested that Hon'ble UERC may kindly allow the total expenditure against IDC and price escalation incurred in last 06 months upto COD."

Further, Respondent No. 1 namely UJVNL Ltd. vide its aforesaid submission made following civil contract-wise points as detailed hereunder: -

S. No.	Name of Contractor	Reply of UJVNL Ltd.
1	Construction of Barrage, Intake, Sedimentation chamber, Forebay, Flushing conduits etc. and HRT (upto 4.5 Km) from Joshiyara end; Contractor:- M/s Continental Construction L ta. (CCL)	I. Reasons for delay explained in 7a,7b,7c, 2c, 3, 4b, 4c, 5 is against construction of barrage, intake, sedimentation chamber, Forebay, Flushing conduits etc. and HRT (upto 4.5 Km) from Joshiyara end, executed by M/s CCL Company. The documentary evidence in support of these reasons were submitted earlier. The same is attached again with quantification of delay and its justification. II. The extra quantity of work has been mentioned and accordingly justification of extra time required for execution of additional quantity has been worked out based on different factors such as resumption of work after long gap of 12 years, space constraint in HRT and geological surprises encountered during execution of the work. The negative quantities were in very few items and they does not have any significant effect. III. The variation statement for BOQ items and extra items for 04 major contracts were submitted with petition. The copy of these variation statements is attached again.
2	Construction of Head Race Tunnel from Dhanrigad	I. Reasons for: delay explained in sl. no. 3(a), 3 (b), 3 (c) is against Construction of Head Race Tunnel

S. No.	Name of Contractor	Reply of UJVN Ltd.
	Intermediate Adit (from 4.5 km. to 12 km) of MB-I HEP, Contractor:- M/s Hydel Construction Company (P) Ltd. (Hydel)	from Dhanrigad Intermediate Adit (from 4.5 km to 12 km) of MB-I HEP, executed by M/s Hydel construction Company (P) Ltd. The documentary evidence in support of these reasons was submitted earlier. The same is attached again with quantification of delay and its justification. II. The extra quantity of work has been mentioned and accordingly justification of extra time required for execution of additional quantity has been worked out based on different factors such as resumption of work after long gap of 12 years, space constraint in HRT and geological surprises encountered during execution of the work. The negative quantities were in very few items and they does not have any significant effect. III. The variation statement for BOQ items and extra items for 04 major contracts were submitted with petition. The copy of these variation statements is attached again.
3	Construction of Balance Civil Work of HRT from Dharasu Adit (from 12 km to 16km), Surge shaft & excavation of Penstock etc. Contractor: National Projects Construction Corporation Ltd. (NPCC)	I. Reasons for delay explained in sl. no. 2(a), 2(b), 2(c) is against Construction of Balance Civil Work of HRT from Dharasu Adit (from 12 km to 16 km), Surge shaft & excavation of Penstock etc, executed by National Projects Construction Corporation Ltd. (NPCC). The documentary evidence in support of these reasons were submitted earlier. The same is attached again with quantification of delay and its justification. II. The extra quantity of work has been mentioned and accordingly justification of extra time required for execution of additional quantity has been worked out based on different factors such as resumption of work after long gap of 12 years, space constraint in HRT and geological surprises encountered during execution of the work. The negative quantities were in very few items and they does not have any significant effect. III. The variation statement for BOQ items and extra items for 04 major contracts were submitted with petition. The copy of these variation statements is attached again.
4	Construction of Dharasu Power House and appurtenant works. Contractor: M/s Shring Construction Company (Shring).	I. The documentary evidence in support of these reasons were submitted earlier. The same is attached again with quantification of delay and its justification. II. The extra quantity of work has been mentioned and accordingly justification of extra time required for execution of additional quantity has been worked out based on different factors such as resumption of work after long gap of 12 years, space constraint in HRT and geological surprises encountered during execution of the work. The negative

S. No.	Name of Contractor	Reply of UJVN Ltd.
		quantities were in very few items and they does not have any significant effect. III. The variation statement for BOQ items and extra items for 04 major contracts were submitted with petition. The copy of these variation statements is attached again.
5		I. The justification for extra time were explained in very detail with the submission during petition. The extra time involved in all packages of Barrage, HRT, Surge shaft, Penstocks and Power House work were mainly due to geological reasons, change in methodology of work and the reasons beyond the control of UJVN Ltd. It is again submitted that time duration of cycles cannot be minimised after a certain cycle period. These extra time involved in work were further substantiated with increase in quantity of work and cost. In Hydro Projects of hilly region the time requirement is related to adverse geological condition. UJVN Ltd. has submitted sufficient evidence of adverse geological condition encountered during the work. Based on submission the extra time taken to complete the work and start generation is justified. II. In support of time extension followings were submitted- 1. Quantities variation statement. 2. Cost variation statement. 3. Activity wise reasons for delay as planned and as per actual. 4. Evidence of poor geological conditions. 5. Evidence of change in methodology as per requirement. 6. Evidence in hindrance of work by local project affected villagers. UJVN Ltd. had submitted all the information and reasons in support of extra time required to complete the work and start the generation. Further, quantification of delay and its justification is being attached. III. UJVN Ltd. has already submitted delay analysis substantiated with documentary evidence. The time over run upto date of commissioning is totally due to uncontrollable reason and should be allow for consideration of tariff. Delay analysis directly based on BOQ item wise was not possible, and so not quantified directly in connection with BOQ items. The delay analyses submitted were based on activity wise, substantiated with aggregate relevant BOQ items and their cost variation. It can be considered sufficient justification for allow time over upto COD. Further, the same is attached again with quantification of delay and its justification, the quantified justification is being attached.

13. Thereafter, hearing in the matter was held on **26.09.2024** and the Commission issued an Order dated 26.09.2024 holding that:

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Respondent No. 1 UJVN Ltd. submitted that it was unable to submit its application for time extension before Hon'ble APTEL as directed by the Commission in its earlier Order dated 17.09.2024.

The Commission took note of this and decided to continue the proceeding in the matter and asked Respondent No. 1 to make its submissions both on its application and in the matter. Respondent No. 1 submitted that it has made an application/submission (in hard & soft copy) on 25.09.2024 to the Commission on the Expert Consultant's report dated 25.02.2015. The Commission heard the parties on the above application/ submission and also on the aspect, on which the matter was remanded back by Hon'ble APTEL.

Respondent No. 2 re-iterated its submission, which has been made in its written submission dated 20.09.2024 and also stated that the present matter has been remanded back by the Hon'ble APTEL, as per its Judgement dated 19.07.2024 with the observation that scope of remand is confined to the specific issues submitted in UJVN Ltd.'s two letters dated 25.02.2015 and 30.03.2015. Therefore, any new submission of the Respondent No. 1 should not be considered as considering the same would amount to initiation of fresh proceeding, which is neither the intention of the Hon'ble APTEL nor can be the scope of remand.

UPCL, further submitted with regard to UJVN Ltd.'s contention that it has not received the Consultant's report dated 12.03.2015 before finalization of the Commission's decision on the Capital Cost of MB-II including Interest During Construction (IDC) and Price Variation (PV), that the matter could not be continued for perpetuity (never ending process) as ample opportunities had been given by the Commission to the Respondent No. 1 and moreover UJVN Ltd. while submitting letter dated 25.02.2015 never asked for opportunity to make further submission.

During the hearing, Respondent No. 1 stated that the submission made by it in the letter dated 30.03.2015 and through a recent letter dated 25.09.2024 are basically same, as were submitted earlier and no new evidence/documents have been submitted and UJVN Ltd. has only co-related the various activities more meaningfully so as to link the associated activities responsible for delay in systematic manner.

*The Commission enquired from the Respondent No. 1 whether any opportunity during the process of scrutiny was given by the Consultant to it for substantiating its claim regarding IDC and PV, to which the Respondent No. 1 replied that during the analysis/scrutiny of the Capital Cost, three to four chances were given to it."***[Emphasis Added]**

Commission's Observations, Views & Directions: -

14. In compliance with the Hon'ble APTEL's Order dated 19.07.2024, the Commission heard the claims of UJVN Ltd. afresh and examined its submissions again. However, before delving into the aspects of determining the applicability of UJVN Ltd.'s claim regarding excess IDC and Price Variation component of capital cost of MB-II HEP for the period of last 06 months before the date of its commissioning, it would be prudent to discuss upon the **Sequence of Events** of the matter which would put light, not only on the events but also would be able to establish that sufficient discussions were held at the Commission's end for arriving to the conclusion that why 50% of the excess IDC and 50% of Price Variation component of capital cost for MB-II HEP were disallowed:-

- (1) Initially the Commission in its Order dated **28.11.2008** had considered the Capital cost of MB-II including IDC as **Rs. 1741.72 Cr.** and thereafter in its subsequent Tariff Order had considered the same. UJVN Ltd. filed a review Petition dated **21.06.2013** requesting the Commission to approve the Capital Cost of **Rs. 1958.13 Cr.** as on CoD.
- (2) Thereafter, the Commission appointed an Expert Consultant for scrutiny of capital cost of MB-II HEP w.r.t. time & cost overrun on **26.06.2013**. The Expert Consultant submitted its series of deficiencies in this regard which were sent to UJVN Ltd. and based on the response received, the Expert Consultant furnished his preliminary report on **15.01.2014** before the Commission. In the said preliminary report, the Expert Consultant was of the opinion that allowable IDC should be **Rs. 227.25 Crore** and further **Rs. 15.88 Crore** should be reduced as impact of reduction of Price Variation. Accordingly, the Expert Consultant in his aforesaid preliminary report considered that the capital cost upto CoD should be considered as **Rs. 1851.97 Crore**. The Commission, considering the preliminary report of

Expert Consultant decided to preliminarily consider revised Capital Cost as **Rs. 1831.72 Crore** in its Tariff Order dated **10.04.2014**.

- (3) The Expert Consultant conducted site visit of MB-II HEP and subsequently based on the inferences drawn by the Expert Consultant observations/deficiencies were communicated to UJVN Ltd. vide Commission's letter dated **16.07.2014**.
- (4) UJVN Ltd. submitted its response through various letters dated **21.07.2014**, **30.07.2014**, **16.08.2014** & **07.11.2014**. Based on the same, the Expert Consultant submitted its report which was communicated to UJVN Ltd. vide Commission's letter dated **18.12.2014**.
- (5) Thereafter, UJVN Ltd. requested for Expert Consultant report dated **15.01.2014** which was provided to it vide Commission's letter dated 23.01.2015.
- (6) UJVN Ltd. vide its submission dated **25.02.2015** submitted its reply/comments on the above preliminary report dated **15.01.2014**. Based on the aforesaid submission, Expert Consultant submitted its report dated **12.03.2015**. The Expert Consultant in his report dated **12.03.2015**, with regard to the Price Variation, had observed that substantial delays have been considered for Price Variation in all the four contracts which were based on the non-quantifiable engineering/geological reasons which cause and encompass variations in the quantities and extra items. In absence of any quantitative support and analysis, any further period for Price Variation admissibility is not justified.

Further, the Expert Consultant with regard to IDC had discussion with the concerned officers of UJVN Ltd. which was illustrated in the said report dated 12.03.2015. Furthermore, the Expert Consultant at Para 6 of his report had categorically mentioned that non-availability of quantified time extension analysis in the time extension cases was acknowledged by UJVN Ltd.

- (7) UJVN Ltd. made a categorical statement which was mentioned in the report of Expert Consultant dated **12.03.2015** confirming that quantitative analysis

of time extension was not possible in absence of the relevant complete information. The relevant extract of the Expert Consultant report is reproduced below:-

“7. Director (Project) discussed the subject with me on 05/03/2015. He too acknowledged **absence of quantitative analysis for time extension**. He, however, stated that though UJVN Ltd. came into existence in 2001, the Civil Works of MB-II HEP were executed completely by Uttaranchal Irrigation Deptt. and that all Time Extension cases were initiated, processed and approved by Irrigation Deptt.; **hence the absence of quantitative analysis; role of UJVN in respect of Civil Works contracts was limited to release of funds in accordance with the contractors bills as processed by the Irrigation Deptt.**

It was further explained that due to vast difference in working cultures of Govt. Department and Public Sector Undertaking, there were gaps in communications and documentation practices.

*He expressed that the transition stage of Uttarakhand State and **resulting duality of command/communication were, to a very large extent, responsible for management delays in execution which affected IDC considerably and requested that this be allowed.***

8. Keeping in mind the facts and explanations as above, it is considered that Price Variation for periods more than those already admitted not be admitted. **However, in view of the prevailing circumstances/organizational structures and working practices, which were beyond control of UJVN Ltd., IDC may be admitted towards Capital Cost.** The period for which IDC was not admitted in my Report on Capital Cost, for MB-II is 5 months 22 days; the corresponding IDC amount is Rs. 60.32 Crore.”[**Emphasis added**]

(8) On the aforesaid report of Expert Consultant dated **12.03.2015**, an **inhouse report dated 20.03.2015** was prepared and put-up before the Commission. The relevant extract of the inhouse report dated **20.03.2015** are reproduced below:-

“...It has been observed that the Consultant in its report has recommended the payment of total claims against IDC, while, certain part of Price Variation was not allowed. Further, the Consultant has not considered an amount of ₹ 5.04 Crore claimed by UJVN Ltd. on account of interest paid to GoU against a loan of ₹ 10.00 Crore received from GoU, which was settled before the CoD. This amount should be considered while approving the Capital Cost of MB-II Project. Similarly, the Consultant has recommended an amount of Rs. 72.53 Crore towards refund of Interest subsidy against an amount of Rs. 66.64 Crore claimed by UJVN Ltd. In this regard the excess amount of Rs. 5.89 Crore recommended by the Consultant may not be allowed and the amount on this head be restricted to the claim of UJVN Ltd.

The Consultant has further recommended to allow IDC pertaining to 5 months 22 days, however, the Consultant has not considered Price Variation of Rs. 15.88 Crore pertaining to the delay. The same should also be considered as the Consultant has recommended to allow IDC.

Moreover, after analyzing all the submissions & responses of UJVN Ltd. and Consultant's report it would not be prudent to state that the entire delay was on account of uncontrollable reasons. It cannot be ascertained that the entire delay was on account of uncontrollable reasons.”

- (9) Accordingly, taking example of similar matter in the judgment passed by Hon'ble APTEL dated **27.04.2011** in the matter of 'MSPGCL Vs MERC in the matter of Parli Thermal Power Station' where there was uncertainty in deciding the reasons for delays. The Commission observed that UJVN Ltd. could not establish the entire delay was for reasons beyond its control, thus 50% of the excessive cost incurred in overheads & IDC due to time overrun was disallowed.

- (10) UJVN Ltd. vide its submission dated **30.03.2015** made an additional submission before the Commission stating that:-

“... in addition to the submission made earlier the following points are also brought to kind notice:

- (1) *Construction of civil works was undertaken by Irrigation Department and commissioning of the project was achieved in March 2008. The civil works*

& contracts were handed over to UJVN limited in Aug-Oct 2008 i.e. after commissioning.

- (2) All the records & time extensions upto date of handing over were not available from Irrigation Department. However to the best of ability, UJVN Limited has prepared the case and replies desired by the Honorable Commission.*
- (3) BoD of UJVN Limited has approved the revised cost as Rs 1958.13 Crores upto date of commercial operation i.e. 15.03.2008.*
- (4) Further, UJVN Limited Board has also approved time extension of various packages vide Minutes of meeting dated 26.09.2014.(copy enclosed as Annexure-7)*
- (5) Government of Uttarakhand has approved the capital cost of Maneri Bhali-II project as Rs. 2323.33 Crores in August 2008 on the recommendation of high level committee whereas the capital expenditure incurred on the project till COD i.e. 15.032008 is Rs. 1958.13 Crores only.*
- (6) The project tariff is also quite reasonable as compared to similar projects commissioned during the same period elsewhere in the country.*

Hence it is requested that the actual expenditure incurred on the project may kindly be approved as the capital cost of Maneri Bhali – II HEP.”

- (11) The aforesaid submission of UJVN Ltd. dated **30.03.2015** was put-up before the Commission on **06.04.2015**. Considering the fact that no compelling justification/reasoning was submitted in UJVN Ltd.’s submission dated 30.03.2015 which could clearly establish that the reasons for delay were controllable or uncontrollable. Moreover, the same could not clearly establish complete quantified data for delay in execution of the project. Therefore, the Commission decided that 50% of IDC (Rs. 60.32 Crore) and 50% of Price Variation pertaining to a period of 5 months 22 days should only be considered as part of the Capital Cost as it would be a balanced approach of neither imposing an extra burden onto the consumers of the State nor it would put a harsh impact on the commercial interests of the generating company.

(12) Based on the aforesaid decision of the Commission, the finalized capital cost of MB-II HEP of **Rs. 1889.22 Crore** was allowed in the Tariff Order dated **11.04.2015** for UJVN Ltd.

(13) Aggrieved by the decision of the Commission in aforesaid Tariff Order dated **11.04.2015**, UJVN Ltd. exercised its legal opportunity seeking review of the Commission's aforesaid Tariff Order which was rejected by Order dated **22.01.2016**, wherein, the Commission had specifically observed that: -

“

(a) *With regard to the contention of the Petitioner that its submissions dated 25.02.2015 and 30.03.2015 have not been considered by the Commission while issuing the tariff Order dated 11.04.2015 is not correct, as all the submissions made by the Petitioner in this regard prior to issuance of the Tariff Order dated 11.04.2015 have been taken into consideration.*

(b) *With regard to examination of the delay of last six months in the Project on account of “uncontrollable factors”, the Commission had appointed an expert consultant for the evaluation of the same, who had reviewed all submissions of the Petitioner in this regard and had submitted a report which was examined by the Commission and accordingly the Commission came to the conclusion that the delay in the project except for delay of the last 6 months was on account of factors beyond the control of the Petitioner. Since, it could not be established that the last 6 months delay was on account of controllable factors or due to uncontrollable factors, consequently, the Commission allowed the 50% of the excess IDC and 50% of price variation while approving the Capital cost for the delay of last 6 months in accordance with the principle laid down by Hon'ble APTEL in its judgment in Appeal No. 72 of 2010...”*

15. On examination of the aforesaid Sequence of Events, it is observed that few important aspects have not been clearly put forward before the Hon'ble APTEL due to which a notion prevailed that ‘...the Commission has based its findings on the aspect under consideration in the Order dated 11.04.2015 as well as in the Order dated 22.01.2016 on the review Petition **merely on the report of the Expert Consultant appointed by it. It has not made any endeavor to examine the case of the Appellant independently**

to ascertain whether the consultant had actually perused the material produced by the Appellant. The approach of the Commission is not acceptable. The Commission is the final adjudicatory authority and not the consultant appointed by it. The consultant was appointed by the Commission to examine the contention of the Appellant and to give his opinion. It was for the Commission to scrutinize the opinion of the consultant in the light of the material produced by the Appellant and to assess on its own independently as to whether the delay occurred in commissioning of the project of the Appellant was due to controllable or non-controllable factors. We do not find any reference or discussion on the above noted two letters dated 25.02.2015 and 30.03.2015 sent by the Appellant to the Commission thereby explaining the reasons of delay in commissioning of the project.'

However, from perusal of the records, it appears that earlier Order passed by the Commission was after due deliberation and analysis of the records and going by proper reasoning, the record in fact shows that the report of the Expert Consultant in this regard was not accepted as such, which can be seen from the fact that the Expert Consultant proposed to allow Rs. 60.32 Crores against IDC considering the circumstances beyond control of UJVN Ltd., whereas the Commission after inhouse analysis allowed only 50% of the said amount in accordance with the Judgment passed by Hon'ble APTEL in the matter of MSPGCL Vs MERC (Parli Thermal Power Station).

From the record of the case, as it can be seen that ample opportunity was given to UJVN Ltd. in the matter and the Commission had examined the issues put before it and passed a reasoned Order by not merely accepting or relying upon the report of the Expert Consultant. The Commission's view that such delay resulting in cost escalation which cannot be precisely found/quantified on account of controllable or uncontrollable factors cannot be allowed in entirety, as pass through in the consumer Tariff does not appear to be justified in light of the available evidence and there are no new facts or evidence to take a different view. The Commission opined that it would not be prudent that reasons such as difference in working culture, gaps in communication and documentation practices of a commercial organization be considered for allowing excess burden of Tariff on the consumers.

16. In fact, the aforesaid observation of the Commission is very well narrated in the report of Expert Consultant dated 12.03.2015, wherein, it is mentioned that Director (Project) of UJVN Ltd. accepted that quantified data is not available and the reasons for delay in commissioning of MB-II HEP cannot be precisely identified.
17. Although UJVN Ltd. has attempted to furnish its version of claims that the delay of 25.5 months (including last 5 months 22 days from the date of CoD) was on account of uncontrollable factors primarily the geographical surprises, increase in quantity etc. The Commission on examination of the submission dated **25.09.2024** has observed that it has made its utmost attempt to furnish the reasons/clarifications for the delay, however, the same still do not put forward the complete quantified data for delay with reasons for the same. In fact, Director (Project), UJVN Ltd. during the hearing dated **26.09.2024** before the Commission accepted that no new fact/data/information is being submitted by them instead they are making an attempt to put the things in more systematic manner for lucid understanding of the Commission.
18. The Hon'ble APTEL by its Order dated **19.07.2024** had remanded back the matter before the Commission for fresh consideration on the claim of Appellant regarding excess IDC and Price Variation component of capital cost for MB-II Power Project for the period last 06 months before the date of its commissioning. Accordingly, the Commission took a fresh considerate/careful look and UJVN Ltd. was given another opportunity to make its submissions in the matter. In this context, UJVN Ltd. made its submission dated **25.09.2024** before the Commission. On examination of the same, observations on the civil works (package-wise) are detailed and highlighted hereunder:

A. Name of work:- Construction of Barrage, Intake, Sedimentation chamber, Forebay, Flushing conduits etc. and HRT (upto 4.5 Km) from Joshiyara end.

Name of Company: - M/s. Continental Construction Ltd. (CCL)

Sl. No.	Location and Month	Delay in Months	In house Observations on the reasons for delay as submitted by UJVN Ltd.
	Excavation		

Sl. No.	Location and Month	Delay in Months	In house Observations on the reasons for delay as submitted by UJVN Ltd.
1	Aug 2002 to Oct 2002	3.00	The documents submitted in support for substantiating the delay caused due to slushy and dirty condition of tunnel and heavy ingress of water can not be substantiated. Infact, at point no. 2 'heavy ingress of water in tunnel' of letter no. 273 dated 03.11.2004 provided at page no. 30 of the document is not considering the time extension in this account. Delay cannot be substantiated in absence of supporting documents.
2	Face I, Ch. 935m (01.12.2002 to 20.02.2003)	2.73	The time extension against the delay of 82 days w.r.t. cavity at chainage 935 has been allowed by the irrigation department. Delay substantiated with supporting documents.
3	Face I, Ch.3364m to Ch. 3379 m (31.10.2003 to 07.11.2003) & (30.03.2004 to 13.04.2004)	0.23	The time extension against the delay of 7 days w.r.t. cavity at chainage 3364.5 to 3379 has been allowed by the irrigation department. Delay substantiated with supporting documents.
4	Face I, Ch. 3830m to Ch.3840 m	0.10	The time extension against the delay of 3 days w.r.t. heavy loose fall 3830 to 3840 has been allowed by the irrigation department. Delay substantiated with supporting documents.
5	Face I, Ch. 3952m	0.23	The time extension against the delay of 7 days w.r.t. damage of tam rock machine at chainage 3952 has been allowed by the irrigation department. Delay substantiated with supporting documents.
6	Face I	5.26	The time extension against the delay of 158 days w.r.t. invert has been allowed by the irrigation department. Delay substantiated with supporting documents.
7	Face I, Ch. 4430m to Ch.4450 m	0.13	The time extension against the delay of 4 days w.r.t. tunnel widening due to geological reasons has been allowed by the irrigation department. Delay substantiated with supporting documents.
8	Face I, Ch. 4438m to Ch.4450 m	0.27	The time extension against the delay of 8 days w.r.t. extra excavation in mud-mat level has been allowed by the irrigation department. Delay substantiated with supporting documents.
9	Face I	1.00	The time extension against the delay of 30 days w.r.t. excessive discharge in kansen naala has been allowed by the irrigation department. Delay substantiated with supporting documents.
10	Face I	2.00	The delay of 2 months pertaining to crushing plant appears to be in parallel to the delay of 5.26 months indicated at Sl. No. 6 above for invert excavation. Further, no specific quantified duration has been shown at page 41 of the submission produced in support of the claim for delay. Delay cannot be substantiated in absence of supporting documents.
11	Face I	6.00	No specific quantified duration has been shown at page 43, 44 & 45 of the submission which could substantiate the time duration of 6 months required for consolidation grouting.

Sl. No.	Location and Month	Delay in Months	In house Observations on the reasons for delay as submitted by UJVN Ltd.
			Delay cannot be substantiated in absence of supporting documents.
12	Modification in stop log gates	4.00	The delay of 4 months required for modification of stop log gates is not liable to be considered as the said activity do not fall in the critical path. Delay not allowable as it is not in critical path.
13	Testing and commissioning of HM Equipments and other miscellaneous works	3.50	The delay of 3.5 months for testing and commissioning has not been substantiated with the supporting documents. Delay cannot be substantiated in absence of supporting documents.
	Total delay in Excavation of tunnel.	28.45	

Based on the Inhouse observations on the reasons for delay submitted by UJVN Ltd., the delays mentioned at Sl. No. 1, 10, 11, 13 could not be substantiated. The delay at Sl. No. 12 do not fall in critical path.

Moreover, the duration of 59 days w.r.t. additional work transferred to M/s Hydel Construction Company Ltd. has been reduced from the project duration of M/s Continental Construction Ltd. as per submission at page no. 24 of submission dated 25.09.2024. Thus, the same is not allowable to UJVN Ltd. when Uttarakhand Irrigation Department had itself rejected the claim of the contractor for the same.

B. Name of work:- Construction of Head Race Tunnel from Dhanarigad Intermediate Adit (from 4.5 km to 12 km) of MB-I HEP

Name of Company: - M/s Hydel Construction Co. Pvt. Ltd.

Sl. No.	Location and Month	Delay in Months	In house Observations on the reasons for delay as submitted by UJVN Ltd.
Excavation			
1	Aug 2002 to Oct 2002	3.00	The documents submitted in support for substantiating the delay caused due to inadequate condition at the commencement of the project has not been substantiated with supporting documents. Delay cannot be substantiated in absence of supporting documents.
2	Face II, RD 912 Mtr.	3.00	Delay of 90 days is substantiated from the submission at page no. 22 of submission dated 25.09.2024. Delay substantiated with supporting documents.
3	Face-II, Y-Junction	5.00	Delay of 150 days is substantiated from the submission at page no. 64 of submission dated 25.09.2024. Delay substantiated with supporting documents.

Sl. No.	Location and Month	Delay in Months	In house Observations on the reasons for delay as submitted by UJVN Ltd.
4	Face II, additional excavation of face I	2.16	Delay of 72 days is substantiated from the submission at page no. 64 of submission dated 25.09.2024. Delay substantiated with supporting documents.
5	Face-II	6.00	No specific quantified duration has been shown at page 91 & 96 of the submission which could substantiate the time duration of 6 months required for crushing plant. Delay cannot be quantified in absence of supporting documents.
	Total delay in Face-II	19.16	
Lining & Grouting			
1	Aug 2002 to Oct 2002	3.00	The documents submitted in support for substantiating the delay caused due to inadequate condition at the commencement of the project has not been substantiated with supporting documents. Delay cannot be quantified in absence of supporting documents.
2	Face-III, RD 570 to 630 Mtr.	2.50	Delay of 75 days is substantiated from the submission at page no. 85 of submission dated 25.09.2024. Delay substantiated with supporting documents.
3	Face-III, RD 2155 to 2172 Mtr	0.83	Delay of 25 days is substantiated from the submission at page no. 86 of submission dated 25.09.2024. Delay substantiated with supporting documents.
4	Face-III, RD 3075 m to RD 3089	4.33	Delay of 130 days is substantiated from the submission at page no. 86 of submission dated 25.09.2024. Delay substantiated with supporting documents.
5	Face-III	1.00	Delay due to dewatering of accumulated charged water at Face-III has not been substantiated with the supporting documents. Delay cannot be quantified in absence of supporting documents.
6	Face- III	6.00	No specific quantified duration has been shown at page 91 & 96 of the submission which could substantiate the time duration of 6 months required for crushing plant. Delay cannot be quantified in absence of supporting documents.
7	Face-III Lining work in RBM zone (by pass reach RD 490 to RD 720)	10.50	The delay of 10.5 months due to poor geology and works executed at bypass reach RD 490 to RD 720 cannot be quantified from the submissions at Page No. 67, 105 & 107-120. Infact, on examination the letter at page 86 of the submission dated 25.09.2024 it has been observed that the time extension of 180 days for extra work of excavation of bypass in RBM zone has been disallowed by the irrigation department as the work of bypass tunnel was to be conducted in parallel to main tunnel. Delay cannot be quantified in absence of supporting documents. Infact, delay of 6 months has been categorically disallowed by the irrigation department.
	Total delay in Face-III	28.16	

Based on the Inhouse observations on the reasons for delay submitted by UJVN Ltd., the delays mentioned at Sl. No. 1, 5 w.r.t. excavation & Sl. No. 1, 5, 6 & 7 w.r.t. lining & grouting could not be substantiated. The delay at Sl. No. 7 also includes a period of 6 months which has not been allowed by the irrigation department to the concerned contractor.

C. Name of work: - Construction of Balance Civil Work of HRT from Dharasu Adit (from 12 km to 16 km), Surge shaft & excavation of. Penstock etc.

Name of Company: - National Projects Construction Corporation Ltd. (NPCC)

Sl. No.	Location and Month	Delay in Months	In house Observations on the reasons for delay as submitted by UJVN Ltd.
Excavation			
1	Aug 2002 to Oct2002	3.00	The documents submitted in support for substantiating the delay caused due to inadequate condition at the commencement of the project has not been substantiated with supporting documents. Delay cannot be substantiated in absence of supporting documents.
2	Face IV, RD 380m to 515m	1.50	The delay of only 07 days is indicated for works at RD 380m to 515m for conversion of old circular sections to horseshoe shape at page 129 of the submission. Moreover, the cumulative delay of 2.5 months for works at RD 380m to 515m, RD 2612 to RD 2696 and RD 1500 to RD 1978 has been mentioned at page no. 129. Delay shown in supporting documents is one week instead of 1.5 months.
3	Face IV, RD 1500m to 1978m	1.50	The delay of 1.5 months is indicated at page 129 of the submission for the said works for conversion of old circular sections to horseshoe shape, lowering of invert, cutting and re-welding etc. Moreover, the cumulative delay of 2.5 months for works at RD 380m to 515m, RD 2612 to RD 2696 and RD 1500 to RD 1978 has been mentioned at page no. 129. Supporting documents enclosed.
4	Face IV, RD 2483m to 2494 m in the mid of Aug 2003 to mid of Sep 2003	1.00	The delay of 1 month is indicated at page no. 127 of the submission. Supporting documents enclosed.
5	Face IV, RD 2539m to 2548m in the Nov 2003	0.50	The delay of 0.5 month is indicated at page no. 127 of the submission. Supporting documents enclosed.
6	Face IV, RD 2612m to 2696m in the Nov 2003	1.00	The delay of only 25 days is indicated for works at RD 2612m to 2696m for conversion of old circular sections to horseshoe shape at page 129 of the submission. Moreover, the cumulative delay of 2.5 months for works at RD 380m to 515m, RD 2612 to RD 2696 and RD 1500 to RD 1978 has been mentioned at page no. 129. Delay shown in supporting documents is 25 days instead of 1 months.

Sl. No.	Location and Month	Delay in Months	In house Observations on the reasons for delay as submitted by UJVN Ltd.
7	Face IV, RD 2636m to 3683 m in the May 2004 to June 2004.	2.00	The delay of 50 days is indicated at page no. 127 of the submission. Supporting documents enclosed.
8	Hindrance at muck dumping point	3.00	The delay of 03 months has not been allowed by irrigation department as categorically written at page no. 127 of the submission against Hindrance at muck dumping point. Delay not allowed by irrigation department.
	Total delay in Excavation of tunnel.	13.50	
Lining			
1	Delay to start lining from Face IV	7.00	The delay of 7 month is indicated at page no. 128 of the submission. Supporting documents enclosed.
2	Delay in lining due to squeezing /weak zone near Gamri gad area.	7.50	Quantified delay can not be ascertained from the submissions provided at page no. 146 to 148 of the submission. Delay duration cannot be quantified in absence of supporting documents.
3	Sudden stoppage of crusher plant.	1.50	No specific quantified duration has been provided to substantiate the time duration of 0.5 months required for crushing plant. Delay duration cannot be quantified in absence of supporting documents.
		16.00	
	Total delay in lining + Excavation	29.00	
1	Excavation of Surge Shaft	30.00	In order to substantiate the duration of delay, UJVN Ltd. has enclosed a letter of M/s NPCC at page no. 171 of the submission. However, delay of 30 months w.r.t. surge shaft can not be clearly ascertained as claimed by UJVN Ltd. Moreover, no letter/submission of irrigation department has been furnished which can substantiate the duration of delay. Delay duration cannot be quantified in absence of supporting documents.

Based on the Inhouse observations on the reasons for delay submitted by UJVN Ltd., the delays mentioned at Sl. No. 1 w.r.t. excavation & Sl. No. 2, 3 w.r.t. lining could not be substantiated. The duration of delay at Sl. No. 2, 6 do not match with the supporting document.

Delay of 03 months w.r.t. muck dumping point was not allowed by irrigation department to the concerned contractor.

Duration of delay of 30 months w.r.t. surge shaft cannot be ascertained from the supporting documents.

D. Name of work: - Construction of Dharasu Power House and appurtenant works.

Name of Company: - M/s Shring Construction Company (Shring).

Sl. No.	Location and Month	Delay in Months	In house Observations on the delay as submitted by UJVN Ltd. in its submission 25.09.2024
1	Aug 2002 to Oct 2002	3.00	No documents submitted in support for substantiating the delay caused due to inadequate condition at the commencement of the project. Delay cannot be substantiated in absence of supporting documents.
2	Power house complex	10.00	No documents submitted in support for substantiating the delay caused due to weak geological condition and inadequate provision in supplementary agreement and due to heavy rain fall. Delay cannot be substantiated in absence of supporting documents.
3	Power house complex	10.00	The documents submitted in support of the same states that a delay of 9 months from 01.10.2007 to 30.09.2007 is only allowed to complete the balance works. Rather the document provided at page 191 to 193 indicate that there were certain issues w.r.t. contractor not deploying full resources besides other reasons which were beyond control of the contractor. Supporting documents for delay of only 9 months appears to be allowable.
4	Power house complex	7.00	Supporting documents for substantiating the delay of 7 months due to extra works for dewatering pumps, slush cleaning, drainage hole, earth filling, dressing work, approach road have not been furnished. Moreover, on examination of the project bar chart for M/s Shring Construction Co. it is observed that major works were completed by the end of April, 2007 and miscellaneous works were left which were not critical elements. Delay cannot be substantiated in absence of supporting documents.
		30.00	

Based on the Inhouse observations on the reasons for delay submitted by UJVN Ltd., the delays mentioned at Sl. No. 1, 2 & 4 have not been provided with supporting documents. Therefore, the durations of the delays could not be quantified.

19. From the submissions dated **25.09.2024** of UJVN Ltd and Inhouse observations/findings as mentioned above, the Commission has observed that UJVN Ltd. attempted to justify the delay as uncontrollable and placed its

submission before the Commission in this regard, whereas UJVN Ltd. was required to provide complete quantified data to substantiate the delay of last 06 months due to uncontrollable reasons, however, UJVN Ltd. failed to establish the same. In this context, it is further observed that all the information which was furnished before the Commission earlier has only been resubmitted in a chronological/systematic manner, and is basically just a repetition of its earlier submissions before the Commission and no new material has been placed, as has been admitted by UJVN Ltd. itself.

20. In fact, it has also been observed that several non-critical activities having no relation with critical path of the project have been included in the timeline of delay which clearly portray that the total delay was inflated on this account.

Moreover, in several cases the delay was majorly due to controllable reasons. Further, the specific quantified duration of delay could not be inferred from the data submitted in submission dated 25.09.2024.

However, giving the benefit of doubt and taking considerate view towards the Intra State Generating Station, the Commission had earlier taken stance of allowing 50% of IDC and 50% of Price Variation as a balanced approach in accordance with the Hon'ble APTEL's judgments dated 27.04.2011 in the matter of 'Parli Thermal Power Station' and therefore, the decision taken by the Commission in the matter does not require any change or modification.

21. The rationale behind keeping the aforesaid approach was to safeguard the interests of Intra State Generating Station in absence of quantified information w.r.t. delay in execution of various activities involved in construction. Simultaneously, the Commission also had a prime responsibility of safeguarding the interests of the consumers of the States so that no imprudent costs are loaded on the electricity consumers Tariff.

During the current proceedings, the Commission has found that Respondent No. 1 namely UJVN Ltd. has simply made its efforts to put information before the Commission which was already provided to the Expert Consultant and no additional relevant information has been put forward by it which could compel the

Commission to deviate from its earlier stance as taken in its Tariff Order dated 11.04.2015 & review Order dated 22.01.2016.

22. In light of the above, UJVN Ltd. was unable to substantiate its claims with regard to IDC & Price Variation and therefore, the decision taken by the Commission does not require any change or modification, hence, the matter is accordingly disposed off.

(Anurag Sharma)
Member (Law)

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