

BEFORE
UTTARAKHAND ELECTRICITY REGULATORY COMMISSION
Petition No. 52 of 2025

In the matter of:

Application seeking review of the UERC's Tariff Order dated 11.04.2025 on Approval of Business Plan and Multi Year Tariff for Fifth Control Period (FY 2025-26 to FY 2027-28), Annual Performance Review for FY 2024-25, and True-up for FY 2023-24 for UJVN Ltd.

And

In the matter of:

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

...Petitioner

And

In the Matter of:

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

&

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

...Respondents

Coram

Shri M. L. Prasad
Shri Anurag Sharma

Chairman
Member (Law)

Date of Order: October 28, 2025

ORDER

This Order relates to the Review Petition filed by UJVN Ltd. (hereinafter referred to as "UJVN Ltd." or "the Petitioner") for review of the Commission's Tariff Order dated 11.04.2025 on 'Approval of Business Plan and Multi Year Tariff for Fifth Control Period (FY 2025-26 to FY 2027-28), Annual Performance Review for FY 2024-25 and True-up for FY 2023-24 for UJVN Ltd.' under Section 94(1)(f) of the Electricity Act, 2003 (herein after referred to as "the Act") read with Section 114 & Order XLVII (1) of the Code of Civil Procedure 1908 and Regulation 54(1) of the Uttarakhand Electricity Regulatory Commission (Conduct of Business), Regulations, 2014 (herein after referred to as "UERC CBR").

Background

2. The Commission had notified Uttarakhand Electricity Regulatory Commission (Terms and Conditions for Determination of Multi Year Tariff) Regulations, 2024 (hereinafter referred to as “UERC Tariff Regulations, 2024”) for the Fifth Control Period from FY 2025-26 to FY 2027-28 specifying therein terms, conditions, and norms of operation for licensees, generating companies and SLDC.
3. Earlier, on 29.11.2024 the Petitioner had filed its Petitions for ‘Approval of Business Plan and Multi Year Tariff for Fifth Control Period (FY 2025-26 to FY 2027-28), Annual Performance Review for FY 2024-25 and True-up for FY 2023-24 for UJVN Ltd.’ (herein referred to as “Tariff Petitions”) under Section 62 and 86 of the Electricity Act, 2003 (“Act”) for determination of tariff in accordance with the UERC Tariff Regulations, 2024.
4. The Commission disposed the said Petitions vide its Tariff Order dated April 11, 2025, whereby the Commission had approved the Business Plan and Multi Year Tariff for the Fifth Control Period (FY 2025-26 to FY 2027-28), Annual Performance Review for FY 2024-25, and True-up for FY 2023-24 for 11 LHPs of UJVN Ltd. (hereinafter referred to as “Tariff Order”) based on the submissions in Tariff Petitions as well as the subsequent submissions in the matter made by the Petitioner.
5. Aggrieved by the Commission’s aforesaid Tariff Order dated 11.04.2025, the Petitioner through its submission dated 13.06.2025 filed instant Review Petition before the Commission.
6. The Petitioner has broadly filed its instant Review Petition seeking review of the following:
 - (1) Disallowance of the carrying cost on the regulatory asset while allowing RoE on PDF amount in MB-II HEP.
 - (2) Disallowance of Additional Capitalization and R&M expenses.
 - (3) Disallowance of incentive in case of PAFY exceeding the approved NAPAF of 85% for MB-I HEP.

- (4) Error in calculation of allowable Energy Charge and total allowable (Energy Charge + Capacity Charge).
 - (5) Legitimate expectations of inclusion of the amount of Local Area Development Fund for Vyasi HEP.
 - (6) Typographical error in the Impugned Order.
7. The Petitioner under 'Ground of relief' has made the following submissions:
- (1) The Commission has disallowed carrying cost while allowing the claim towards RoE on PDF as regulatory asset for previous years, according to the APTEL Order dated 19.07.2024.
 - (2) The Commission has erroneously directed the liquidation of RoE on the PDF amount over three years without granting carrying cost, ignoring the value of money over time and thus undermining the financial viability of the Petitioner's operations.
 - (3) The Commission has failed to consider the LADF Notification dated 13.09.2023 as a "change in law," denying the Petitioner its statutory right to seek appropriate tariff adjustment in light of additional financial obligations imposed by the Government of Uttarakhand.
 - (4) The Commission has disregarded the fundamental principle that all additional statutory levies imposed on the generator post-tariff approval must be treated as "change in law" and compensated through tariff adjustments to ensure financial neutrality for the Petitioner.
 - (5) The Commission failed to appreciate that the LADF contribution imposed by the Government of Uttarakhand from 13.09.2023 onwards affects the Petitioner's revenue realization and hence requires a corresponding adjustment in the ECR.
 - (6) The Commission has disallowed the additional capitalization and R&M expenses incurred by the Petitioner on MB-I despite consistent approval of these expenses in previous years, violating the Petitioner's legitimate expectation and principles of regulatory certainty.

- (7) The Commission has disallowed the additional capitalization incurred by the Petitioner on Dhakrani LHP and Khatima LHP without providing any justification or rationale, despite consistent approval of these expenses in previous years, violating the Petitioner's legitimate expectation and principles of regulatory certainty.
- (8) The Commission's Tariff Order has failed to apply the doctrine of legitimate expectation, given that the Petitioner consistently incurred R&M expenses for MB-I HEP with the Commission's approval in earlier years, leading the Petitioner to reasonably expect the same treatment in the present control period.
- (9) The Commission has failed to appreciate that the NAPAF of 85% approved under the MYT Regulations, 2024 entitles the Petitioner to an incentive upon achieving actual PAFY above the approved NAPAF, and its disallowance of such incentive is contrary to Regulation 50(2) of the MYT Regulations, 2024.
- (10) The Commission's Tariff Order is internally inconsistent, as it has allowed the rent of the 31.5 MVA power transformer for FY 2022-23 for MB-I HEP but arbitrarily disallowed it for FY 2023-24 without any change in project status or regulatory framework.
- (11) The Commission has erred while disallowing the additional capitalization claimed by the Petitioner for essential works related to MB-I LHP, Dhakrani LHP and Khatima LHP, rendering the Tariff Order arbitrary and unsustainable.
- (12) The Tariff Order contains arithmetic/calculation errors.
- (13) The errors present in the Tariff Order have caused severe prejudice to the Petitioner.
- (14) The Tariff Order suffers from several errors which are apparent on the face of the record.
- (15) The Tariff Order has been passed in violation of principles of natural justice.

- (16) The Tariff Order grossly misapplies the MYT Regulations, 2021, MYT Regulations, 2024, and Electricity (Amendment) Rules, 2024.
- (17) The cumulative impact of the above errors has caused grave financial prejudice to the Petitioner and constitutes an error apparent on the face of the record, necessitating review and reconsideration of the Order in the interests of justice.
8. Besides above, the Petitioner under 'Relief Sought' has requested the Commission to Review its Tariff Order dated 11.04.2025 and pass any such other order or direction as the Commission may deem fit and proper in the interest of justice.
9. The Commission decided to hold hearing on admissibility of the Petition on 05.08.2025 and accordingly issued a Notice for Hearing on admissibility of the Petition to UJVN Ltd. and Respondents namely Uttarakhand Power Corporation Ltd. (herein referred to as "UPCL") and Himachal Pradesh State Electricity Board Ltd. (HPSEBL) vide letter dated 10.07.2025, wherein, the Commission sought responses/comments (if any) from the Respondents by **28.07.2025**.

Incompliance to the aforesaid Notice for Hearing, Respondent No. (1) namely UPCL vide its letter dated 26.07.2025 submitted its responses/comments, however, no responses/comments were received from HPSEBL. On the stipulated date of hearing i.e. **05.08.2025**, the Petitioner & UPCL (Respondent No. 1) were present, wherein, both re-iterated their submissions made in the Review Petition and subsequent submission. The Commission heard the Parties and thereafter, issued a daily Order dated 05.08.2025 in the matter and decided to reserve its Order. The submissions of Respondent No. (1) namely UPCL have been mentioned at appropriate paras of 'Commission's Observations, Views & Decisions' while dealing with the specific issues.

10. Further, the Petitioner vide its submission dated 22.08.2025 submitted Application for taking on record the judgement of the Hon'ble Supreme Court dated 06.08.2025 in BSES Rajdhani Power Ltd. Vs Union of India & Ors. 2025 SCC online SC 1637 as follows:

“

...

3. Subsequent to the admission of the Review Petition, on the next date i.e., 06.08.2025, pronounced a landmark judgment in **BSES Rajdhani Power Ltd. v. Union of India, 2025 SCC OnLine SC 1637, (“BSES Rajdhani”)** where the Hon’ble Court has categorically settled the legal position with respect to the creation, continuation and liquidation of regulatory assets, and more specifically, the allowance of carrying cost. A copy of the judgement is being marked and filed as **Annexure No. 1** to the present application.
4. The Hon’ble Supreme Court in Para no. 12 of the BSES Rajdhani has categorically held the following:
 - (iii) The regulatory asset should not exceed a reasonable percentage, which percentage can be arrived on the basis of Rule 23 of the Electricity Rules that prescribes 3% of the ARR as the guiding principle;
 - (iv) If a regulatory asset is created, it must be **liquidated within a period of 3 years, taking Rule 23 as the guiding principle;**
 - (v) The existing regulatory asset must be liquidated in a maximum of 4 years starting from 01.04.2024, taking Rule 23 as the guiding principle;
 - (vi) Regulatory Commissions must provide the trajectory and roadmap for liquidation of the existing regulatory asset, **which will include a provision for dealing with carrying costs.** Regulatory Commissions must also undertake strict and intensive audit of the circumstances in which the distribution companies have continued without recovery of the regulatory asset;
 - (vii) Regulatory Commissions shall in general follow the principles governing creation, continuation and liquidation of the regulatory asset, as laid down in paragraph 70, and also abide by the directions of the APTEL summarised in paragraph 69.8;
5. The aforesaid findings and directions of the Hon’ble Supreme Court have a direct and substantial bearing on the issues raised by the Petitioner in the present Review

Petition, particularly on the ground that the Impugned Order liquidates the RoE on PDF investment in three years without allowing carrying cost.

6. *It is most respectfully submitted that the present Review Petition is directly covered by direction laid down in the recent judgment of the Hon'ble Supreme Court, which has **categorically held that carrying cost is an integral and mandatory component in the liquidation of regulatory assets.***
7. *It is expedient in the interest of justice to place on record the judgment by the Hon'ble Supreme Court for just and proper adjudication of the present matter. Hence, the same may kindly be taken on record."* **[Emphasis added]**
11. In above submission dated 22.08.2025, UJVN Ltd. prayed the Commission for:
 - "a. *Take on record the certified copy of the judgment dated 06.08.2025 passed by the Hon'ble Supreme Court in BSES Rajdhani Power Ltd. & Anr. v. Union of India & Ors. 2025 SCC OnLine SC 1637;*
 - b. *Consider the findings and directions contained in the judgment while adjudicating the present Review Petition;*

..."

Commission's Observations, Views & Decisions

12. Before considering the grounds of review given in the Petition, it is necessary to delineate the scope of the Commission's power of review. For the purpose it is relevant to refer to statutory provisions regarding power of review, Section 94(1)(f) of the Electricity Act, 2003 as reproduced hereunder:

"...

Section 94. (Powers of Appropriate Commission): --- (1) The Appropriate Commission shall, for the purposes of any inquiry or proceedings under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 in respect of the following matters, namely: -

...

(f) reviewing its decisions, directions and orders;

..."

The aforesaid section empowers the Commission to undertake review of its decisions in the same manner as a Civil Court deals with the power of review under Section 114 read with Order XLVII of the Code of Civil Procedure, 1908, the relevant provisions of Section 114 of the Code of Civil Procedure, 1908 of the section is reproduced, it provides as under:

“

...

Section 114 – Review

Subject as aforesaid, any person considering himself aggrieved –

- (a) by a decree or order from which an appeal is allowed by this Code, but from which no appeal has been preferred,*
- (b) by a decree or order from which no appeal is allowed by this Code, or*
- (c) by a decision on a reference from a Court of Small Causes, may apply for a review of judgment to the Court which passed the decree or made the order, and the Court may make such order thereon as it thinks fit.*

...”

Further, Order XLVII of the Code of Civil Procedure, 1908, specifies the three grounds for the purpose of considering review, the said Order provides:

“...

Order XLVII – Review

R. 1. Application for review of judgment-*(1) Any person considering himself aggrieved –*

- (a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred*
- (b) by a decree or order from which no appeal is allowed, or*
- (c) by a decision on a reference from a Court of Small Causes,*
and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for

any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

- (2) *A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review.*

..."

Therefore from above provisions, it is evident that, a review of an order is primarily tested on the veracity of the following grounds:

- (i) *Discovery of new and important matter or evidence* which, despite due diligence, was not within the knowledge of the applicant or could not be produced at the time of the order.
- (ii) *Mistake or error apparent on the face of the record.*
- (iii) *Any other sufficient reason* interpreted to mean reasons analogous to (i) and (ii).

And the import of these grounds can be better understood through authoritative judicial exposition by higher courts in India. In this regard, it is relevant to refer to certain judicial pronouncements by the higher courts on these grounds in the following paras:

1. Discovery of New Evidence

It is relevant to refer to the order of the Hon'ble Supreme Court in the case of *State of West Bengal and Others v. Kamal Sengupta and Another*, [(2008) 8 SCC 612] wherein it was held that:

"...

At this stage it is apposite to observe that where a review is sought on the ground of discovery of new matter or evidence, such matter or evidence must be relevant and must be of such a character that if the same had been produced, it might have altered the judgment. In other words, mere discovery of new or

important matter or evidence is not sufficient ground for review ex debito justitiae. Not only this, the party seeking review has also to show that such additional matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the Court earlier.

..."

Therefore, from the above it is evident that it is incumbent upon the party seeking review to establish/demonstrate that the additional matter or evidence was not within its knowledge earlier and, despite the exercise of due diligence, could not have been produced at the time when the order was passed. Failure to meet these strict tests disentitles a party from seeking review.

In this regard, for review on the ground of discovery of new evidence, the applicant must conclusively establish:

- (1). The evidence was genuinely not within knowledge despite due diligence.
- (2). The evidence is of such materiality that its absence would cause miscarriage of justice.
- (3). The evidence, if considered, could potentially alter the judgment.

2. Error Apparent and Miscarriage of Justice

In *Col. Avatar Singh Sekhon v. Union of India* [(1980) Supp SCC 562], the Court emphasised that review cannot be undertaken unless the error is manifest on the face of the order and such error undermines its soundness or results in miscarriage of justice. The relevant para of the said order is reproduced hereunder:

"...

A review is not a routine procedure. An earlier order cannot be reviewed unless the Court is satisfied that material error manifest on the face of the order undermines its soundness or results in miscarriage of justice. A review of a judgment is a serious step and resort to it is proper only where a glaring

omission or patent mistake or like grave error has crept in earlier by judicial fallibility. In the instant case the relief of review is not justified.

..."

Further, in the Order of *Parsion Devi v. Sumitra Devi* [(1997) 8 SCC 715], wherein it was further observed that a review is not an appeal in disguise, relevant para of the said order is reproduced hereunder:

"...

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

..."

Similarly, in *Lily Thomas v. Union of India* [(2000) 6 SCC 224], the Court clarified that the error contemplated must be "self-evident" and not one that requires a process of reasoning, the Hon'ble Supreme Court had observed that, "...Error contemplated under the rule must be such which is apparent on the face of the record and not an error which has to be fished out and searched. It must be an error of inadvertence..."

In this reference, relevant part of para 43 of the aforesaid order is reproduced hereunder:

"...

Error apparent on the face of the proceedings is an error which is based on clear ignorance or disregard of the provisions of law. In T.C. Basappa v. T. Nagappa this Court held that such error is an error which is a patent error and not a mere wrong decision.

..."

Similarly, in the matter of *Jain Studios Ltd. v. Shin Satellite Public Co. Ltd.* (2006) 5 SCC 501, the Hon'ble Supreme Court has held that:

"...

So far as the grievance of the applicant on merits is concerned, the learned counsel for the opponent is right in submitting that virtually the applicant seeks the same relief which had been sought at the time of arguing the main matter and had been negatived. Once such a prayer had been refused, no review petition would lie which would convert rehearing of the original matter. It is settled law that the power of review cannot be confused with appellate power which enables a superior Court to correct all errors committed by a subordinate Court. It is not rehearing of an original matter. A repetition of old and overruled argument is not enough to reopen concluded adjudications. The power of review can be exercised with extreme care, caution and circumspection and only in exceptional cases.

..."

In the case of *State of West Bengal and Others v. Kamal Sengupta and Another*, (*Supra*) the Hon'ble Supreme Court had held that:

"...

The term "mistake or error apparent" by its very connotation signifies an error which is evident per se from the record of the case and does not require detailed examination, scrutiny and elucidation either of the facts or the legal position. If an error is not self-evident and detection thereof requires long debate and process of reasoning, it cannot be treated as an error apparent on the face of the record for the purpose of Order 47 Rule 1 CPC or Section 22(3)(f) of the Act. To put it differently an order or decision or judgment cannot be corrected merely because it is erroneous in law or on the ground that a different view could have been taken by the Court/Tribunal on a point of fact or law. In any case, while exercising the power of review, the concerned Court/Tribunal cannot sit in appeal over its judgment/decision.

..."

3. Any Other Sufficient Reason

The phrase “any other sufficient reason” under Order XLVII CPC has been judicially interpreted to mean reasons analogous to discovery of new evidence or error apparent. It cannot be expanded to include every conceivable reason. (*Lily Thomas, supra*).

In *Ajit Kumar Rath vs. State of Orissa and Others* [1999 (9) SCC 596], the Hon’ble Supreme Court has held that:

“...

A review cannot be claimed or asked for merely for a fresh hearing or arguments or correction of an erroneous view taken earlier, that is to say, the power of review can be exercised only for correction of a patent error of law or fact which stares in the face without any elaborate argument being needed for establishing it. It may be pointed out that the expression "any other sufficient reason" used in Order 47 Rule 1 means a reason sufficiently analogous to those specified in the rule. Any other attempt, except an attempt to correct an apparent error or an attempt not based on any ground set out in Order 47, would amount to an abuse of the liberty given to the Tribunal under the Act to review its judgment.

..."

It is relevant to refer to the judgement of the Hon’ble Supreme Court. In *Kamlesh Verma v. Mayawati & Ors.* [(2013) 8 SCC 320], the Hon’ble Court referring to various judgments culled out the grounds when the review will be maintainable and when it will be not. Relevant para of the said judgment is reproduced hereunder:

“...

20. Thus, in view of the above, the following grounds of review are maintainable as stipulated by the statute:

20.1. When the review will be maintainable:

- (i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;

- (ii) *Mistake or error apparent on the face of the record;*
- (iii) *Any other sufficient reason.*

The words "any other sufficient reason" has been interpreted in Chajju Ram vs. Neki¹⁷, and approved by this Court in Moran Mar Basselios Catholicos vs. Most Rev. Mar Poullose Athanasius & Ors.¹⁸ to mean "a reason sufficient on grounds at least analogous to those specified in the rule". The same principles have been reiterated in Union of India v. Sandur Manganese & Iron Ores Ltd. & Ors. 25 ,.

20.2. *When the review will not be maintainable: -*

- (i) *A repetition of old and overruled argument is not enough to reopen concluded adjudications.*
- (ii) *Minor mistakes of inconsequential import.*
- (iii) *Review proceedings cannot be equated with the original hearing of the case.*
- (iv) *Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.*
- (v) *A review is by no means an appeal in disguise whereby an erroneous decision is re-heard and corrected but lies only for patent error.*
- (vi) *The mere possibility of two views on the subject cannot be a ground for review.*
- (vii) *The error apparent on the face of the record should not be an error which has to be fished out and searched.*
- (viii) *The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.*
- (ix) *Review is not maintainable when the same relief sought at the time of arguing the main matter had been negatived.*

Moreover, error referred to by Petitioner for seeking review is far from being the 'error' that invokes reviewing jurisdiction. Therefore, the Review Petition cannot be entertained and is rejected as non-maintainable. In view of the same there is no error apparent on the face of record and hence issue do not qualify for review.

..."

As evident from the above, a review against any Order/Judgment lies only to correct a patent error apparent on the face of the record; it cannot be treated as an appeal or a rehearing, and the expressions 'any other sufficient reason' must be analogous to the specified grounds.

13. With this background on legal provisions related to Review Petition, the Commission has examined the issues raised by the Petitioner to assess whether all or any of the issues raised by the Petitioner qualify for review.
14. **The Commission hereby sets out its specific observations/views on each of the issues and related grounds for such review are as detailed below:**

- (1) **Disallowance of the carrying cost on the regulatory asset while allowing RoE on PDF amount in MB-II HEP**

Petitioner's Submissions

- (a) The Petitioner has submitted that the Hon'ble Appellate Tribunal for Electricity ("Hon'ble APTEL"), vide its judgment dated 19.07.2024 in Appeal Nos. 215 of 2016, 283 of 2016, and 139 of 2018, had allowed Return on Equity (RoE) from the Power Development Fund (PDF) as follows:

"37. We hold and clarify that RoE has to be computed on any investment made by the State Government in a power project as equity/share capital (not as loan or grant), irrespective of the source from which the investment has been drawn. Accordingly, the Commission has erred in denying RoE to the appellant on the sum of Rs. 341.39 crores invested by the State Government in its power project as share capital from the Power Development Fund. The Commission shall now do the needful at the earliest, preferably within two months from the date of this order."

- (b) Pursuant to the above judgment, in compliance to the direction of the Commission the Petitioner submitted its claim of INR 920.37 crores, along with the future carrying cost, towards RoE on the PDF amount for previous years to the Commission, vide letter dated 07.02.2025.
- (c) At page no. 106 of the Tariff Order, the Commission has allowed the Petitioner's claim towards RoE on the PDF amount to the extent of INR 746.10 crores out of the INR 804.41 crores claimed for period 2007-08 to FY 2022-23.
- (d) In view of the substantial amount involved, the Commission, by invoking Regulation 35 of the Tariff Regulations, 2021, has decided to liquidate the said amount over a period of three years, without levy of any carrying cost.
- (e) The Petitioner contended that Regulation 35 of the MYT Regulations, 2021, clearly provides for allowance of carrying cost on the regulatory asset, and stipulates that its recovery shall be in line with the Tariff Policy, 2016. It was further submitted that Regulation 35 cannot be applied in a piecemeal manner in the present case, since it expressly refers to Clause 8.2.2 of the Tariff Policy.
- (f) Additionally, the Petitioner considered it imperative to highlight that the head note of Clause 8.2.2 of the Tariff Policy which envisages the circumstances of its application in the following manner:

"... in case of natural calamity or force majeure condition and subject to the following..."
- (g) The Petitioner submitted that in the present case, the Commission, without providing any finding with respect to the impact attributable to a natural calamity or force majeure condition, erred in invoking Regulation 35 of the MYT Regulations, 2021. It further submitted that a bare perusal of Regulation 35 of the MYT Regulations, 2021 reveals that it is inextricably linked with Clause 8.2.2 of the Tariff Policy, which categorically defines the circumstances of its application.
- (h) The Petitioner stated that the Commission has, however, proceeded to liquidate the asset in three years in accordance with the proviso to Rule

23 of the Electricity (Amendment) Rules, 2024, (“Rule”) but has not applied the said proviso which explicitly allows the carrying cost. Instead, the Commission has treated the RoE on the PDF amount as an interest-free sum. Rule 23 of the Electricity (Amendment) Rules, 2024 states:

“23. Gap between approved Annual Revenue Requirement and estimated annual revenue from approved tariff.

...

Provided further that such gap along with the carrying costs at the base rate of Late Payment Surcharge as specified in the Electricity (Late Payment Surcharge and Related Matters) Rules, 2022, as amended from time to time, shall be liquidated in a maximum of three equal yearly installments from the next financial year.

...”

- (i) The Petitioner submitted that while the Commission has, in accordance with Rule 23, liquidated the asset in three yearly instalments, it has failed to allow the same, along with carrying cost and the Commission has selectively relied upon Regulation 35 and Rule 23, cherry-picking portions of the said provisions to the detriment of the Petitioner. Consequently, this has resulted in significant financial losses to the Petitioner of around Rs. 80.81 Crore.

Amount in Crores					
Sl. No.	Particulars	FY 2024-25 (from APTEL Order dated 19.07.2024)	FY 2025-26 (1st Installment)	FY 2026-27 (2nd Installment)	FY 2027-28 (3rd Installment)
1.	Number of days	256	365	365	366
2.	Opening (Surplus)/Gap	746.18	817.62	579.47	307.99
3.	Installment	0	329.54	329.54	329.54
4.	Carrying Cost	71.44	91.40	58.06	21.56
5.	Interest Rate (MCLR+5%)	13.65%	14.00%	14.00%	14.00%
6.	Installment Allowed for FY 2025-26 in the Tariff Order dated 11.04.2025	INR 248.73 Crores			
7.	Installment to be allowed including	INR 329.54 Crores			

Sl. No.	Particulars	FY 2024-25 (from APTEL Order dated 19.07.2024)	FY 2025-26 (1st Installment)	FY 2026-27 (2nd Installment)	FY 2027-28 (3rd Installment)
	carrying cost from APTEL Order				
8.	Difference to be allowed	INR 80.81 Crores			

- (j) The Petitioner further submitted that the Commission has erred in directing the liquidation of the amount over a period of three years without allowing any carrying cost, despite there being an express provision for the same. The Commission has failed to appreciate the value of money over time associated with the allowance, by not granting the carrying cost over the three-year period. It is not the case that the amount of INR 746.18 crores attributable to the RoE includes the carrying cost for the upcoming three years. On the contrary, the amount of INR 746.18 crores is exclusive of the carrying cost, and by the time it is fully realized, its actual value would be significantly eroded, especially by inflation. More importantly, if the entire sum would have been paid to the Petitioner, the Petitioner would have earned interest on the said sum. In the present case, the Petitioner is being deprived of the interest even through the Regulations and Rules referred to by the Commission explicitly permit the grant of carrying cost. This approach runs contrary to the intent of the judgment passed by the Hon'ble APTEL and therefore warrants reconsideration by the Commission.
- (k) The Petitioner also submitted that the carrying cost is not merely a compensatory component but an essential financial mechanism to ensure that the Petitioner is kept financially neutral while awaiting the deferred recovery of legitimate regulatory claims. The omission of the carrying cost therefore results in a financial prejudice to the Petitioner and undermines the principle of regulatory certainty and fairness envisaged under the Tariff Policy and relevant Regulations.
- (l) The Petitioner concluded that the Commission's decision to withhold the carrying cost contradicts its own regulatory framework, which

explicitly provides for the allowance of carrying costs in cases of deferred recovery of regulatory assets. The regulatory asset mechanism is designed to ensure that any revenue gap arising due to substantial and abnormal variations is neutralized through appropriate measures including carrying costs. By selectively applying Regulation 35 of the MYT Regulations, 2021, and omitting the carrying cost component, the Commission has deviated from the statutory mandate and the intent of the Hon'ble APTEL's judgment that recognized the Petitioner's entitlement to RoE on equity investments from the PDF. This selective interpretation of the regulation results in inequitable treatment of the Petitioner vis-a-vis its statutory rights.

- (m) The Petitioner also submitted a miscellaneous application on 61 of 2025 to take the certified copy of the judgment dated 06.08.2025 passed by the Hon'ble Supreme Court in BSES Rajdhani Power Ltd. & Anr. v. Union of India & Ors. 2025 SCC OnLine SC 1637; on record and following section of the Judgment were quoted by the Petitioner:

“...

- (iii) *The regulatory asset should not exceed a reasonable percentage, which percentage can be arrived on the basis of Rule 23 of the Electricity Rules that prescribes 3% of the ARR as the guiding principle;*
- (iv) *If a regulatory asset is created, it must be liquidated within a period of 3 years, taking Rule 23 as the guiding principle;*
- (v) *The existing regulatory asset must be liquidated in a maximum of 4 years starting from 01.04.2024, taking Rule 23 as the guiding principle;*
- (vi) *Regulatory Commissions must provide the trajectory and roadmap for liquidation of the existing regulatory asset, which will include a provision for dealing with carrying costs. Regulatory Commissions must also undertake strict and intensive audit of the circumstances in which the distribution companies have continued without recovery of the regulatory asset;*

(vii) Regulatory Commissions shall in general follow the principles governing creation, continuation and liquidation of the regulatory asset, as laid down in paragraph 70, and also abide by the directions of the APTEL summarised in paragraph 69.8;”

- (n) The Petitioner submitted that the aforesaid findings and directions of the Hon'ble Supreme Court have a direct and substantial bearing on the issues raised by the Petitioner in the present Review Petition, particularly on the ground that the Tariff Order liquidates the RoE on PDF investment in three years without allowing carrying cost.

Respondents' Submissions

- (a) UPCL submitted that, the Petitioner itself submitted during the State Advisory Committee Meeting held on 19.03.2025 that UJVN Ltd. has voluntarily forgone an amount of around Rs. 2800 Crore towards carrying cost on past impact of RoE on Power Development Funds, so as to not burden the consumers of the State. Therefore, UJVN Ltd. is retracting from its own statement and has filed a Review Petition to claim the carrying cost on the past impact of RoE on PDF, so the Review Petition is not admissible on this ground as the same has already been dealt with the Commission in the Tariff Order and has already been settled.
- (b) UPCL also submitted that as the Petitioner had not claimed the carrying cost instead only claimed an amount of Rs. 804.41 Crore towards RoE on PDF from CoD to FY 2022-23 for MB-II, which means that there is no discovery of any new fact. Hence the plea does not lie in the purview of Review Petition.
- (c) UPCL further submitted that the Commission has already considered the huge impact of the amount to be passed on the State's consumers, hence after considering the same as Regulatory Asset in accordance with the Regulation 35 of Tariff Regulation, 2021, the Commission has allowed the liquidation of the amount in three years viz-a-viz the provision given in the clause 8.2.2 of the Tariff Policy that provides for recovery of the amount within a period not exceeding seven years. The Commission has thoughtfully and reasonably kept the recovery period to 3 years in spite of stretching it to the maximum

permissible time limit of 7 years on account of the fact that UJVN Ltd has voluntarily forgone the carrying cost in favour of consumers of the State.

- (d) UPCL presented the fact that the Commission has itself mentioned in the Tariff Order that the said matter is sub-judice before Hon'ble Supreme Court, therefore the amount allowed is subject to the decision of the Hon'ble Supreme Court. Thus, any further change in the matter will not be reasonable and appropriate.
- (e) UPCL concluded that the claim made by UJVN Ltd. pertains to very long period that involves huge amount and the same has already been decided by the Commission in the issued Tariff Order after hearing/considering Stakeholders comments including UJVN Ltd.'s submission regarding forgiving carrying cost by it, on the amount claimed towards RoE on PDF for the period from CoD to FY 2022-23. Therefore, it is not appropriate and just to consider the same for review.

Commission's Analysis

- (a) The Commission has perused the submissions of the Petitioner and Respondent. In this context, the Commission would like to highlight that the Petitioner while claiming the year-wise impact had not factored in the impact on account of disallowance of reduced NAPAF and actual generation. Accordingly, the Commission at page 106 of its Tariff Order dated 11.04.2025 had computed the total past impact of RoE on PDF from CoD to FY 2022-23 for MB-II HEP as Rs. 746.18 Crore against the Petitioner's claim of Rs. 804.41 Crore. The relevant extract of the same is reproduced below:-

“...

the Commission observed that the Petitioner while claiming the year wise impact did not factor in the impact on account of disallowance of reduced NAPAF and actual generation. The Petitioner also did not factor in the impact of increase in IWC due to increase in RoE. The Commission has computed RoE on PDF from COD to FY 2022-23 as per the respective Tariff Regulations, which was applicable for the respective financial years and has also considered the impact on Interest on Working Capital. The total past impact works out to

Rs. 746.18 Crore as against Rs. 804.41 Crore claimed by the Petitioner till FY 2022-23. The year wise claim of the Petitioner vis-à-vis that allowed by the Commission is as shown in the Table below:-

Table 0.1: Impact of RoE on PDF from COD to FY 2022-23 for MB-II

Year	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21	FY 2021-22	FY 2022-23	Total
<i>Computed by the Petitioner</i>	45.75	46.19	46.53	47.44	47.52	53.44	54.46	54.46	54.46	57.98	57.98	57.98	57.98	57.98	57.98	58.61	804.41
<i>Allowed</i>	46.68	47.12	47.43	48.46	48.69	35.40	39.44	46.88	46.88	53.46	49.81	51.13	56.18	56.70	59.15	57.47	746.18

The Commission has allowed the aforesaid amounts in compliance to Hon'ble APTEL's Judgement dated 19.07.2024, however, as the matter is sub-judice, the same will remain subject to the decision of the Hon'ble Supreme Court passed in the matter."

From the above, it is amply clear that the total past impact of RoE on amount invested from PDF from CoD to FY 2022-23 for MB-II HEP amounted to Rs. 746.18 Crore.

- (b) The Commission observes that the Petitioner in its Letter dated 07.02.2025 while submitting its claim up to FY 2024-25 had not sought any carrying cost from the date of notification of Hon'ble APTEL Order till FY 2024-25, nor it had made any such submission seeking carrying cost from the date of Hon'ble APTEL Order. In fact as per the Petitioner's submission dated 07.02.2025 vide which extract of Minutes of BoD meeting dated 03.02.2025 was furnished which resolved as follows:

"RESOLVED that the approval of the Board be and is hereby accorded to submit the Principal amount of RoE (interest free) estimated to Rs. 920.37 Crores from 2007-08 to 2024-25 on the equity of Rs 351.39 Crores invested by Government of Uttarakhand (GoU) from Power Development Fund (PDF) in MB-II Project to the Hon'ble UERC along with future carrying cost."
[Emphasis added]

- (c) In view of the above, the Commission did not allow any carrying cost on amount invested through PDF for the purpose of RoE computation

from CoD to FY 2022-23. The Commission while liquidating the amount in its Tariff Order has ruled as under.

“The Commission has decided to liquidate the asset in three years as the same is also in line with the Electricity (Amendment) Rules, 2024 dated 10.01.2024 as:

...Provided further that such gap along with the carrying costs at the base rate of Late Payment Surcharge as specified in the Electricity (Late Payment Surcharge and Related Matters) Rules, 2022, as amended from time to time shall be liquidated in maximum three numbers of equal yearly instalments from the next financial year: ...”

- (d) In context to allowance of carrying cost, the Regulation 35 ‘Regulatory Asset’ of UERC (Terms and Conditions for Determination of Multi Year Tariff) Regulations, 2024 provides that:-

“In case of abnormal variation in income or expenses resulting in substantial revenue gap, full recovery of which in a single year is not feasible, the Commission may allow creation of Regulatory Asset as per guidelines provided in clause 8.2.2 of the Tariff Policy and suitably provide for its recovery through tariff or as a surcharge within a period not exceeding seven years. Amortisation of the regulatory asset so created shall be dealt in accordance with the Tariff Policy, provided that the Commission may allow a carrying cost on Regulatory Asset as such rates as the Commission may deem fit.”

The above provision of the Regulations makes it abundantly clear that allowance of carrying cost on the regulatory assets is at the discretion of the Commission, so are also the rates as the Commission may deem fit.

- (e) In the present case, while issuing the order dated 11.04.2025 in respect of UJVN Ltd., the Commission in view of the factual circumstances and in order to balance out the interests of the Generator and interests of the consumers, the Commission in its wisdom did not consider it proper and just, to award the carrying cost. The Commission observes

that the review Petition filed by UJVN Ltd. on the ground that the Commission erred/committed mistakes in not allowing carrying cost does not qualify for review under the relevant provisions. The matter raised is neither a new issue nor does it constitute new evidence. The Commission passed the Order dated 11.04.2025 after due considerations and deliberations. It is well settled that a review Petition cannot be treated as an appeal in disguise. Hence, the remedy sought does not qualify/fall under the grounds of review and the Commission is not the appropriate authority for seeking such remedy at this juncture.

(2) Disallowance of Additional Capitalization and R&M expenses

Petitioner's Submissions

- (a) The Petitioner submitted that the Commission, while passing the Tariff Order, has disallowed the additional capitalization and R&M expense incurred by the Petitioner for the following power projects:
 - (i) *MB-I LHP: claimed INR 3.26 Crores as additional capitalization for the refurbishment of 25 MVA 220/33 kV Power Transformer and R&M expense to the tune of INR 0.83 Crores for the rent of 31.5 MVA Power Transformer.*
 - (ii) *Dhakrani LHP: claimed additional capitalization to the tune of INR 0.71 Crores for the expenditure pertaining to the work of isolators and breakers.*
 - (iii) *Khatima LHP: claimed additional capitalization to the tune of INR 0.28 Crores towards the work of SF6 circuit breakers.*
- (b) The Petitioner further in its Petition has submitted that "... the Hon'ble Commission, at pages 83 and 84 of the Impugned Order, has disallowed the said additional capitalizations and R&M expenses on the ground that the transmission assets fall under the purview of PTCUL and that the maintenance being carried out by the petitioner is against the provisions of the Act. The Hon'ble Commission has failed to lay out a plan or the manner in which the assets should be transferred to PTCUL and has instead directed the

Petitioner and PTCUL to submit a comprehensive plant wise plan by 30.06.2025 for transferring the assets in a time bound manner latest by 30.09.2025.”

- (c) The Petitioner stated that the expenses are incurred to maintain the said assets as the same are installed in the Petitioner’s switchyard. In case, the Petitioner also stops the maintenance of the said assets, the same will create a problem for the general public due to non-supply of electricity. The Petitioner also submitted that the disallowance by the Commission has been made without providing any justification or rationale.
- (d) The Petitioner also submitted that at page 83 of the Tariff Order, the Commission has observed that the Petitioner, in the FY 2022-23, had claimed an amount of INR 0.98 crores towards the rent of a 31.5 MVA Power Transformer at the MB-I project. The Commission further noted that since the true-up for FY 2022-23 had already been completed, it was not revisiting the already allowed amount of INR 0.98 crores. This clearly demonstrates that the Commission has consistently allowed the additional capitalizations and R&M expenses in previous years but has disallowed them in the true-up for FY 2023-24. Hence, this inconsistency calls for reconsideration by the Commission.
- (e) The Petitioner further highlighted that the status of all three projects has remained unchanged since the previous year, and the Petitioner has continued to incur R&M expenses as before. The Commission has failed to appreciate that, given its consistent allowance of these expenses in previous years, the Petitioner had a legitimate expectation that the same regulatory treatment would continue. Denying these expenses now, without any change in circumstances or rationale, warrants reconsideration.
- (f) The Petitioner submitted that it finds itself in a precarious situation with such sudden disallowance by the Commission, as all three projects are situated on land owned by the Petitioner. Therefore, the

transfer of these plants cannot be effected by PTCUL or the Petitioner of their own volition, it would also require approvals and permissions from the State Government.

- (g) The Petitioner concurred that the Commission has rightly provided a deadline to prepare a comprehensive plan for the transfer of assets by 30.09.2025. But also explained that, until 30.09.2025, the Petitioner would necessarily continue to incur R&M expenses for the three plants as the same could not be left unattended. Hence, requested the Commission to reconsider adopting a mere pragmatic approach by allowing these expenses with a time-bound restriction, rather than abruptly discontinuing them.
- (h) Additionally, the Petitioner submitted that the Commission's decision overlooks the unique situation that the three projects are built on land owned by the Petitioner, and any transfer or maintenance arrangements involving PTCUL would require necessary approvals, a process that remains incomplete. Until such time that the transfer is formalized, the Petitioner is both legally and operationally obligated to maintain the assets. By denying the R&M expenses prematurely, the Commission has effectively penalized the Petitioner for factors beyond its control. The Petitioner finds this situation inequitable and detrimental to the continuity of power generation from these assets, necessitating a review of the disallowance.

Respondents' *Submissions*

- (a) UPCL submitted that identified assets ideally should fall under the ambit of PTCUL, the transmission licensee of Uttarakhand but are being maintained by UJVN Ltd. presently and this matter has already been dealt with by the Commission, so it should not be considered for review.
- (b) UPCL stated that the Secretary (Power), GoU vide its letter dated 06.06.2022 has already directed PTCUL to undertake 25 MVA (220/33kV) Power Transformer. Similarly, in the line of directions

given by Secretary (Power), GoU, the Commission has also directed UJVN Ltd. and PTCUL to identify and categorize and then hand-over the assets to PTCUL which fall under the purview of transmission licensee, but the same is still pending. UPCL is in line with the Commission's view on the matter that these assets should be maintained by PTCUL not UJVN Ltd. and hence the expense against the additional capitalisation of such assets should not be allowed to the Petitioner.

- (c) UPCL also submitted that the Commission has repeatedly directed both UJVN Ltd. and PTCUL to identify and prepare details of such assets which ideally should fall under the ambit of transmission licensee but till date no such bifurcation has been done by both. The Commission has also directed both UJVN Ltd. and PTCUL to make a comprehensive Plant-wise plan by 30.06.2025 for transferring the assets by 30.09.2025. UPCL submitted that it seeks update on progress made by UJVN Ltd as the same is financially affecting UPCL and its consumers. Also, the progress made by UJVN Ltd. will show the intent of the Petitioner to abide by the directions of the Commission.

Commission's Analysis

- (a) The Commission has perused the submissions of the Petitioner and Respondent. The Commission reiterates that these expenses have been disallowed, as maintenance of transmission assets does not fall within the purview of a generating company, being specific to a transmission licensee. While disallowing such expenses, the Commission in its Order has ruled as follows"

"The Commission has observed that certain historical transmission assets continue to be maintained by UJVN Ltd., despite not having been formally transferred to PTCUL till date.

In the aforesaid context of assets which should ideally fall under the ambit of PTCUL and are being maintained by UJVN Ltd. are prima-facie against the spirit of the Electricity Act, 2003, wherein, the generation has been de-licensed

and provision of separate licenses for transmission and distribution have been provided for enabling and enforcing accountability within the Power Sector of the Country. Therefore, UJVN Ltd. and PTCUL should make a comprehensive Plant-wise plan by 30.06.2025 for transferring the assets in a time bound manner latest by 30.09.2025.”[Emphasis added]

- (b) From the above, it is evident that the Commission, having observed that the present arrangement is not in accordance with the provisions of the Electricity Act, 2003, has taken a principled decision to disallow such expenses. Moreover, the Commission has given opportunity to the Petitioner and PTCUL to make a comprehensive plant-wise plan for transferring the assets in a time bound manner.
- (c) With regard to the Petitioner’s contention that it finds itself in a precarious situation with such sudden disallowance by the Commission. In this context, it is prudent to highlight that the Commission believes that the segregation of assets amongst the constituents of the power sector is vital for proper regulatory accounting and transparency and accordingly the Commission has been raising this issue of proper allocation/segregation of assets amongst the various constituents of the Power Sector viz. Generating companies, transmission licensee and distribution licensee for more than a Decade. In fact, the Commission in its tariff order dated 11.04.2025 at page 83 had categorically mentioned regarding Secretary (Power), GoU letter dated 06.06.2022 in which transmission licensee was directed to take over the transmission assets installed at MB-I HEP. However, even after passage of more than 03 years upto the tariff order dated 11.04.2025, the assets were neither taken over by the transmission licensee nor any serious attempts were made by the Petitioner for handing over such assets to the transmission licensee.
- (d) Moreover, it is observed that the Petitioner, in its Review Petition, has not disputed that the said expenses pertain to maintenance of transmission assets. The Commission passed the Order dated

11.04.2025 after due considerations and deliberations. It is well settled that a review Petition cannot be treated as an appeal in disguise. Hence, the remedy sought does not qualify/fall under the grounds of review. The Commission, therefore, finds no merit in the Review Petition and accordingly rejects the same.

(3) Disallowance of incentive in case of PAFY exceeding the approved NAPAF of 85% for MB-I HEP

Petitioner's Submissions

- (a) The Petitioner submitted that the Commission, while passing the Tariff Order, has approved the Normative Annual Plant Availability Factor ("NAPAF") for MB-I for the fifth control period at 85% in accordance with Regulation 47(1)(c) of the MYT Regulations, 2024. Regulation 47(1)(c) stipulates that the NAPAF for pondage-based stations affected by silt shall be 85%, and accordingly, the Commission has approved the same in line with the Regulations. However, the Commission has further stated that the Petitioner shall be entitled to an incentive only when the Plant Availability Factor ("PAF") achieved in a year exceeds 89%.
- (b) The Petitioner has alleged that the Commission has committed an error by disallowing the incentive when the PAF exceeds the approved NAPAF of 85%, discouraging the Petitioner from achieving higher availability and such a decision fails to acknowledge that higher plant availability not only enhances grid reliability but also results in increased generation, which ultimately benefits consumers and the system as a whole. Additionally, for the purpose of computing capacity charges under Regulation 50(2) of the MYT Regulations, 2024, the formula for capacity charges explicitly includes the incentive component, recognizing its essential role in promoting efficient operations.
- (c) Further, the Petitioner submitted that the Commission has approved the NAPAF as per the MYT Regulations, 2024. However, the

Commission has erroneously allowed the incentive on the basis of projected or expected PAF, instead of NAPAF, modifying the regulatory framework. Consequently, the Commission has denied the incentive for achieving a higher PAF above the approved NAPAF, which effectively results in an impermissible modification of the formula for computation of capacity charges under Regulation 50(2) of the MYT Regulations, 2024.

- (d) The Petitioner, being aggrieved, has submitted that the disallowance of the incentive by the Commission when the Petitioner achieves availability above the approved NAPAF causes immense prejudice and financial loss to the Petitioner. Higher plant availability directly results in increased electricity generation, contributing to the stability and adequacy of electricity supply to the consumers. The Commission's disallowance not only discourages operational efficiency but also deprives the Petitioner of its rightful financial reward under the regulatory framework.
- (e) The Petitioner submitted that by linking the incentive only to projected PAF instead of actual PAF achieved, the Commission has diluted the statutory entitlement of the Petitioner, undermining the principle of performance-based regulation and this oversight not only violates the express provisions of the MYT Regulations, 2024 but also disregards the Petitioner's legitimate expectation of being compensated for operational efficiency and enhanced plant availability, as recognized consistently in past regulatory periods.
- (f) Furthermore, the Petitioner submitted that it is necessary to state that the incentives are designed to promote and reward higher efficiency and reliability, ensuring that regulated entities are motivated to maximize plant performance for the benefit of consumers and the grid. By disallowing incentives even when the Petitioner has achieved PAFY above the approved NAPAF, the Commission has effectively discouraged operational excellence and disincentivized the Petitioner

from investing in plant maintenance and improvements. This regulatory inconsistency not only undermines Petitioner's confidence but also threatens the overall objectives of the sector to provide reliable and affordable electricity. The Petitioner has thus sought review of the same.

Respondents' Submissions

- (a) UPCL stated that the Commission observed that after RMU of MB-I, the plant has achieved a higher PAFY of 92.59% in FY 2023-24. Moreover, UJVN Ltd. has also sought NAPAF of 89% for FY 2025-26. This concludes that the Petitioner also assumed that the PAFY of the plant shall improve and is ready to recover AFC on the basis of 89% NAPAF.
- (b) UPCL also stated that, as per Regulation 47(1)(c) of UERC Tariff Regulations 2024, NAPAF for pondage based stations which are affected by silt is 85%. Therefore, upon considering the claim of the Petitioner and the above Regulation, Commission thoughtfully allowed the NAPAF of MB-I as 85% and allowed the incentive on account of the higher PAFY only after it exceed 89%, as already projected by the Petitioner. Petitioner also submitted that it is worthwhile to mention that the AFC against capacity charges for MB-I will be recovered on achieving 85% NAPAF which somehow is in the financial benefit of the Petitioner.
- (c) UPCL concluded that, the claim of the Petitioner that the disallowance of the incentive above NAPAF and up to 89% causes immense financial loss to the Petitioner is totally absurd as the Petitioner itself has claimed the NAPAF of 89% in the original Petition.

Commission's Analysis

- (a) The Commission has perused the submissions of the Petitioner and the Respondent.

- (b) It is observed that the Petitioner in the Business Plan Petition while proposing NAPAF has made the following submission:

“ ...

h. Tilothe HEP: - The Tilothe Power Station is a very old HEP & requires more maintenance. Hence it has to be shut down for longer periods to carry out maintenance. The Petitioner requests the Hon'ble Commission to kindly consider and approve the NAPAF of MB-I HEP for the FY 2024-25, 2025-26, 2026-27 & 2027-28.”

“ ...

Based on the above, the Petitioner submits the following trajectory of PAF for the approval of Hon'ble Commission:

Table 2: Proposed PAF Trajectory (%)

Sl. No.	Plant Name	FY 2025-26 (Projected)	FY 2026-27 (Projected)	FY 2027-28 (Projected)
1	Chibro	65.10%	65.10%	65.08%
2	Khodri	60.07%	60.07%	60.05%
3	Dhakrani	47.86%	66.64%	67.18%
4	Dhalipur	70.44%	70.33%	70.29%
5	Kulhal	64.94%	64.95%	64.93%
6	Tilothe	89.14%	89.14%	89.07%
7	Chilla	54.11%	51.10%	50.07%
8	Khatima	60.72%	59.62%	57.77%
9	Ramganga	19.24%	19.24%	19.31%
10	MB-II	79.55%	79.55%	79.62%
11	Vyasi	74.42%	74.42%	74.35%

...”

- (c) Further, it is observed that, in the Multi Year Tariff Petition for MB-I, the Petitioner while proposing NAPAF made the following submission:

“6.1 Norms of operation

6.1.1 The norms specified by the Hon'ble Commission as applicable for the MB-I power station are as follows:

i Normative Plant Availability Factor (NAPAF):

The Petitioner has proposed the NAPAF (Weighted average) as follows for the upcoming control period:

Table 2: Proposed NAPAF for FY 2025-26, 2026-27 and 2027-28

	FY 2025-26	FY 2026-27	FY 2027-28
<i>April</i>	72.29%	72.29%	72.29%
<i>May</i>	76.86%	76.86%	76.86%
<i>June</i>	101.83%	101.83%	101.83%
<i>July</i>	100.65%	100.65%	100.65%
<i>August</i>	104.19%	104.19%	104.19%
<i>September</i>	103.70%	103.70%	103.70%
<i>October</i>	102.96%	102.96%	102.96%
<i>November</i>	101.46%	101.46%	101.46%
<i>December</i>	93.81%	93.81%	93.81%
<i>January</i>	92.23%	92.23%	92.23%
<i>February</i>	64.69%	64.69%	64.69%
<i>March</i>	53.37%	53.37%	53.37%
Weighted Average	89.14%	89.14%	89.07%

...

The Petitioner prays before the Hon'ble Commission to approve the norms of operation as submitted above." [Emphasis added]

- (d) The Commission observes that, in the Business Plan Petition, the Petitioner had proposed the trajectory of PAFY for approval, and in respect of MB-I, stated that it would be able to achieve PAFY of 89.14%, 89.14% and 89.07% for FY 2025-26, FY 2026-27 and FY 2027-28, respectively. Further, in the Multi Year Tariff Petition for MB-I, the Petitioner reiterated the same as NAPAF figures, i.e., 89.14%, 89.14% and 89.07% for FY 2025-26, FY 2026-27 and FY 2027-28, and accordingly sought approval of the Commission on the same.
- (e) The Commission however, in accordance with the Regulations adopted a balanced approach towards both Petitioner and Consumers of the State by approving NAPAF of 85% for recovery of capacity charges while the incentives on over achievement of performance parameter i.e. NAPAF was allowed for PAFY exceeding 89%. As the matter has been comprehensively addressed in the Tariff Order dated 11.04.2025, hence, the Commission finds that there is no merit in the request for review.

(4) Error in calculation of allowable Energy Charge and total allowable (Energy Charge + Capacity Charge)

Petitioner's Submissions

- (a) The Petitioner has submitted that the Commission in table 4.69 at page 132 of the tariff Order has calculated the 'Allowable EC' as INR 214.54 Crores. However, there is a calculation error, and the Allowable EC amounts to INR 215.64 Crores, resulting in an excess recovery of INR 1.10 Crores from the Petitioner.
- (b) The Petitioner also submitted that due to incorrect calculation of 'Allowable EC', the same has also resulted in a calculation error under the head 'Total allowable (EC+CC)'. The Commission has calculated the amount as INR 441.55 Crores, but the same amounts to INR 442.64 Crores. Therefore, the Petitioner finds that there exist calculation errors as well as errors apparent on the face of the record, which merit rectification.

Respondents' Submissions

- (a) UPCL submitted that, as the Petitioner has already brought in the attention of the Commission to rectify the calculation error in Allowable EC amount and that of Allowable (EC+CC) amount, UPCL has no objection on the issue raised by UJVN Ltd.

Commission's Analysis

- (a) The Commission, after due examination of the submissions made by the Petitioner, observes that a typographical error has occurred in the "Per Unit Rate approved (Rs./kWh)" as reflected in Table 4.69 of the Tariff Order dated 11.04.2025 in respect of MB-I Generating Station. Consequently, the corresponding figures under "Allowable EC (Rs. Crore)" and "Total Allowable (EC+CC)" were incorrectly mentioned. However, inspite of the said typographical errors, it is observed and clarified that no error exists in the computation of 'Truing-up impact Gap/(Surplus)' for any of the 9 generating stations as well as in the

‘Total’. Therefore, practically there is no impact on the ‘net Truing-up for FY 2023-24 for UPCL’. Accordingly, the Commission hereby substitutes Table 4.69 at page 132 under Clause 4.1.2.11 of the Tariff Order dated 11.04.2025 with the revised Table as set out hereinbelow:

Table 4.69: Summary of net truing-up for FY 2023-24 for UPCL (Rs. Crore)

Generating Stations	Net AFC to be recovered from UPCL (Rs. Crore)	Capacity Charges (Rs. Crore)	NAPAF (%)	Actual/Re-stated PAFY (%)	Capacity charges allowable (Rs. Crore)	Capacity charges after sharing	Actual Billed Energy (MU)	Per Unit rate approved (Rs./kWh)	Allowable EC (Rs. Crore)	Secondary energy (MU)	Sec Energy Rate (Rs./kWh)	Total Sec. Energy charges (Rs. Crore)	Total allowable (EC+CC) (Rs. Crore)	Total Billed to UPCL	Truing-up-impact Gap/(Surplus)
Dhakrani	22.09	11.05	66.17%	65.64%	10.96	10.99	83.07	0.98	8.17	-	0.88	-	19.15	17.38	1.78
Dhalipur	33.50	16.75	61.07%	61.07%	16.75	16.75	113.14	1.23	13.92	-	0.90	-	30.67	27.16	3.51
Chibro	68.27	34.14	65.06%	65.81%	34.53	34.40	568.05	0.63	34.14	12.30	0.61	0.76	69.29	74.29	(5.00)
Khodri	39.65	19.82	57.23%	61.18%	21.19	20.73	271.33	0.80	19.82	15.17	0.77	1.17	41.73	44.58	(2.84)
Kulhal	22.49	11.24	65.00%	67.59%	11.69	11.54	101.09	0.95	9.61	-	0.86	-	21.15	21.02	0.12
Ramganga	56.74	28.37	16.00%	20.06%	29.96	29.43	316.46	0.92	28.37	-	0.74	-	57.80	57.54	0.26
Chilla	86.49	43.24	74.00%	61.79%	36.11	38.49	697.33	0.78	43.24	-	0.60	-	81.73	76.71	5.02
MB-I	79.14	39.57	79.00%	92.59%	46.38	44.11	460.06	0.84	38.47	-	0.84	-	82.58	87.50	(4.92)
Khatima	43.81	21.91	69.30%	53.81%	17.01	18.64	200.16	0.94	18.80	-	0.90	-	37.44	37.04	0.40
Total	452.18	226.09			224.57	225.08	2,810.70		214.54	27.47		1.93	441.55	443.22	(1.67)

(5) Legitimate expectations of inclusion of the amount of Local Area Development Fund for Vyasi HEP

Petitioner's Submissions

- (a) *The Petitioner submitted that the Government of Uttarakhand, Department of Energy and Alternative Energy, through its notification dated 13.09.2023, bearing notification number I/04/16/2006TC 8 (E-40074)/1448 ("LADF Notification"), introduced the concept of the Local Area Development Fund ("LADF") under the National Hydropower Policy, 2008.*
- (b) *Further the Petitioner mentioned that Clause 3 of the LADF Notification prescribes the structure of the LADF. Clause 3.1.2, in particular, stipulates that in addition to the 12% free power (royalty) given by the project developer to the host State, 1% of the total energy produced from the project and the revenue received from the sale of free power will also be contributed to the LADF.*
- (c) *Also, that Clause 3.4 of the LADF Notification provides that the tariff of free electricity has to be determined annually by the Commission. Accordingly, the*

value of the additional 1% free power, along with the 12% free power from any project, will be settled as per the tariff determined by the Commission. Therefore, the revenue to be deposited in the LADF by the project developer every year will be calculated based on the annual tariff determined by the Commission.

- (d) *The Petitioner submitted that the said LADF Notification amounts to “Change in Law” according to Regulation 3(15)(a) of the MYT Regulations, 2024 which states as follows:*

“(15) Change in law means occurrence of any of the following events having implication for the generating station or the transmission system or distribution system or SLDC’s operations covered by these Regulations:

- (a) *Enactment, bringing into effect, adoption, promulgation, amendment, modification or repeal of any law; or
....”*

- (e) *The Petitioner also submitted that in light of the LADF Notification, the Petitioner, vide its letter dated 29.07.2024, requested the Commission to revise the tariff of Vyasi HEP to accommodate the impact of the LADF contribution. The Petitioner stated that another issue was also brought to the notice of the Commission that UPCL has been making deductions from September 2023 onwards in the bills of Vyasi HEP against the LADF component. The Petitioner shared the copy of the letter dated 29.07.2024 with the present Review Petition.*

- (f) *Subsequently, the Petitioner mentioned that the Government of Uttarakhand, vide its letter dated 07.11.2024, bearing letter number 3005/I-I/2024-04/16/2016 TC-08 e-file: 40074, informed the Commission about the LADF Notification and its applicability from 13.09.2023. The Government of Uttarakhand also requested the Commission to redetermine the tariff for those projects where the project developer is contributing towards the LADF. The Petitioner shared a copy of the letter dated 07.11.2024 with the present Review Petition.*

- (g) *The Petitioner stated that while computing the Energy Charge Rate (“ECR”), the Commission has not included the component of LADF being paid by the Petitioner, impacting the calculation of the ECR.*
- (h) *The Petitioner concluded that, since the LADF Notification constitutes a component of ‘change in law’ and the Commission had prior knowledge of its applicability, the petitioner had a legitimate expectation that the LADF amount would be included in the ECR calculation for Vyasi HEP. The same may kindly be reconsidered by the Commission. The Commission has not considered the LADF Notification as a “change in law” within the meaning of the relevant regulatory framework. The LADF obligation, introduced by the Government of Uttarakhand on 13.09.2023, was a subsequent statutory requirement imposed on the Petitioner that directly impacted its financial obligations. The imposition of the LADF contribution clearly qualifies as a “change in law”. The Petitioner implied that the Commission ought to have accounted for the LADF contribution in the tariff determination process, ensuring that the Petitioner is not unfairly prejudiced by a regulatory oversight.*
- (i) *Further, the Petitioner submitted that the Petitioner had a legitimate expectation that the Commission would account for the LADF Notification as a component of the ECR especially considering that the Petitioner had promptly brought the LADF Notification to the Commission’s attention. The consistent regulatory practice of considering statutory levies as part of tariff determination, coupled with the Petitioner’s timely submissions, gave rise to a legitimate expectation that the Commission would acknowledge and incorporate this “change in law.” The Petitioner requested reconsideration and review by the Commission in the interest of justice.*

Respondents’ Submissions

- (a) *UPCL submitted that the Commission may decide on this matter prudently as per the applicable Tariff Principles.*

Commission's Analysis

- (a) The Commission, after considering the submissions of the Petitioner and the Respondent, is of the view that the issue raised by the Petitioner has not been dealt with in the Tariff Order.
- (b) During the hearing held on 05.08.2025 in the present matter, Respondent No. (1) namely UPCL confirmed that no deduction on account of LADF has been made from the Petitioner's Vyasi Hydro Electric Plant pursuant to the aforesaid Order, which statement was also affirmed by the Petitioner.
- (c) The Commission finds no merit in the request for review.

(6) Typographical error in the Impugned Order

Petitioner's Submissions

- (a) The Petitioner in its Review Petition has submitted that at page no. 106 of the Impugned Order, the date of the Petitioner's letter while submitting its claim towards RoE on equity invested out of PDF till FY 2022-23 is incorrectly mentioned as 20.02.2025. The Petitioner stated that the claim was submitted vide letter dated 07.02.2025.

Commission's Analysis

- (a) The Commission has examined the submissions made by the Petitioner with respect to the alleged typographical errors in the Tariff Order. It is observed that the said error has no material impact on the determination of capital cost or tariff. However, in the interest of maintaining consistency and record accuracy, the correction be duly incorporated. The said Paragraph of Tariff Order dated 11.04.2025 may be read as follows:

"In line with the direction of the Hon'ble APTEL, the Commission sought the Petitioner's claim. The Petitioner vide its letter dated 07.02.2025 claimed an amount of Rs. 804.41 Crore towards past impact of RoE on Equity invested out of PDF till FY 2022-23"

15. In view of the above discussions, the Commission is of the considered opinion that the issues raised in paragraphs 14(1), 14(2), 14(3) and 14(5) are devoid of merit and do not fall within the limited scope of review permissible under law and do not warrant any interference with the Tariff Order. However, to the limited extent, the issues dealt in paragraph 14(4) and 14(6) of this order, have been duly examined, and the necessary correction has been made.
16. Therefore, the instant Review Petition filed by UJVN Ltd. for review of the Tariff Order dated 11.04.2025 is hereby disposed off accordingly.

(Anurag Sharma)
Member (Law)

(M. L. Prasad)
Chairman