Before

UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

Petition No. 08 of 2026

In the matter of:

Petition seeking review of the Order dated 17.10.2025 passed by the Commission in the Suo-moto proceedings in the matter of implementation of the Hon'ble APTEL's Judgment dated 30.05.2025 in Appeal No. 259 of 2017, filed under Section 94(1)(f) of the Electricity Act 2003; Section 114 and Order XLVII Rule 1 of the Code of Civil Procedure 1908; and Regulations 54 read with and 59 of the Uttarakhand Electricity Regulatory Commission (Conduct of Business) Regulations, 2014.

In the matter of:

Uttarakhand Power Corporation Ltd. … Petitioner

AND

M/s Gama Infraprop Pvt. Ltd. … Respondent

CORAM

Shri M.L. Prasad	**Chairman**
Shri Anurag Sharma	**Member (Law)**
Shri Prabhat Kishor Dimri	**Member (Technical)**

Date of Hearing: January 27, 2026

Date of Order : July 21, 2026

Uttarakhand Power Corporation Ltd. (hereinafter referred to as "UPCL" or "the Petitioner" or "Distribution licensee") filed a Petition for review of Commission's Suo-moto Order dated 17.10.2025 in Petition no. 64 of 2025 (Suo-moto) (hereinafter referred to as "Impugned Order") passed in the Suo-moto proceedings in the matter of implementation of the Hon'ble APTEL's Judgment dated 30.05.2025 in Appeal No. 259 of 2017, under Section 94(1)(f) of the Electricity Act, 2003 (herein after referred to as "the Act") read with Section 144, Order XLVII of the Code of Civil Procedure 1908 and Regulation 54 read with Regulation 59 of the Uttarakhand Electricity Regulatory Commission (Conduct of Business), Regulations, 2014 (hereinafter referred to as "UERC CBR").

1. Background

1.1 M/s Gama Infraprop Pvt. Ltd. (hereinafter referred to as "Generator" or "M/s GIPL" or "Respondent") is a 214 MW gas based Combined Cycle Power Plant (CCPP) located in Mahuakheraganj, Kashipur, District Udhamsingh Nagar Uttarakhand. This 214 MW gas based CCPP comprises of two gas turbine generators (GTG), each having a gross output of about 71 MW at site conditions, two heat recovery steam generators (HRSG) and one common steam turbine generator (STG) of about 72 MW capacity. The heat content of the exhaust gas from each of the gas turbine would be recovered from the associated dual pressure non reheat horizontal heat recovery steam generators (HRSG). The steam generated would then be expanded in a condensing type non-reheat steam turbine which drives an electric generator. M/s GIPL had filed a Petition for determination of tariff for supply of power from its project to UPCL from CoD, i.e. 16.03.2016 to 31.03.2016 and for the second Control Period from FY 2016-17 to FY 2018-19.

Subsequently, the Commission vide its Tariff Order dated 16.05.2017 had approved the Business Plan and Multi Year Tariff for M/s GIPL for the contracted capacity from 16.03.2016 to 31.03.2016 and for the second Control Period from FY 2016-17 to FY 2018-19.

1.2 Against the Commission's Order dated 16.05.2017, M/s GIPL had approached the Hon'ble APTEL through its Appeal No. 259 of 2017 on the following issues:

a) Error in disallowing the Interest During Construction ("IDC") to the tune of Rs. 200.63 Crore for April, 2012 till March, 2015 for the entire Power Plant and Rs. 150.06 Crore for the first unit of the Power Plant consisting of one gas turbine generator and the steam turbine generator ("First Unit") which achieved COD on 16.03.2016;

b) Error in allocating the capital costs, including hard costs, IDC, and pre-operative expenses in terms of tied capacity only instead of actual utilization of the plant assets;

c) Error in not allowing actual pre-operative expenses and preliminary expenses to the tune of Rs. 29.96 crore for the entire Power Plant and Rs. 22.04 crore for the First Unit against the claim of the Appellant; and

d) Error in allowing the hard costs only up to Rs. 658.95 Crore as against the claim of Rs. 689.92 Crore, thereby disallowing the Appellant's claim to the tune of Rs. 30.96 Crore.

1.3 In the above-mentioned Appeal, the Hon'ble APTEL vide its Judgement dated 30.05.2025 remanded back the Impugned Order dated 16.05.2017 of the Commission with the direction to pass a consequential order within two months from the date of Judgement, strictly in conformity with the findings and observations as follows:

a) The disallowance of Interest During Construction (IDC) for the period from April 2012 to March 2015 was unjustified; accordingly, the IDC is allowed from April 2012 to the COD of the entire plant, i.e. including Unit 1 and Unit 2.

b) The capital cost apportionment undertaken by the State Commission on a 50:50 basis between the contracted and uncontracted capacities fails to reflect the utilisation of plant and infrastructure for the operation of Unit 1. The Appellant's proposed methodology, based on the usage and deployment of the assets, is accepted. The Commission shall reassess the apportionment following this direction as concluded in the foregoing paragraphs, considering the capital cost of the equipment used for the purpose of generating electricity from Unit 1.

c) Preliminary and pre-operative expenses incurred by the Appellant, which were linked to the prolonged gestation of the project due to gas shortage, were prudent and supported by audit certification. Accordingly, the full amount as admissible is allowed corresponding to unit 1.

d) From the material on record, it is evident that the Appellant furnished substantial documentation in support of Rs. 14.8 Crore out of the disallowed Rs. 30.96 Crore. For the remaining Rs. 16.16 Crore, we find it appropriate to grant liberty to the Appellant to submit relevant documents in support of these claims, and accordingly, the State Commission is directed to allow such claims after a prudence check.

e) The Appellant is also entitled to carrying cost on the differential amounts as allowed. The Commission is directed to compute this based on the applicable prevailing norms.

1.4 The Commission had pointwise dealt with the following issues considering the judgement of the Hon'ble APTEL, submissions of the generator and the distribution licensee:

A) Disallowance of Interest During Construction (IDC),

B) Disallowance of preliminary and preoperative expenses.

C) Disallowance of hard cost.

D) Apportionment of capital cost between Units.

E) Return on Equity and Debt-Equity Ratio.

F) Carrying Cost.

1.5 The Commission vide its Impugned Order dated 17.10.2025 had redetermined tariff from the date of commissioning of the plant, i.e. 16.03.2016 in compliance with the observations and directions contained in the Hon'ble APTEL's Judgment, reconsidered the IDC along with the corresponding preliminary and pre-operative expenses which had earlier been disallowed. Further, in terms of the observations of the Hon'ble APTEL, the Commission also re-examined the additional hard cost amounting to Rs. 16.16 Crore. For the purpose of prudence check, the Commission examined the summary of invoices, sample invoices and relied upon the final completion cost of the project duly certified by the statutory auditor. Furthermore, in consonance with the observations of the Hon'ble APTEL read with the Hon'ble Supreme Court's Order dated 26.09.2025 passed in Civil Appeal Diary No. 42118/2025, the Commission apportioned the capital cost of the entire plant, as existing on 16.03.2016, between Unit-I and Unit-II in the ratio of 50:50.

1.8 Based on the above discussions, the capital cost approved in Tariff Order dated 16.05.2017, claimed by the generator and approved by the Commission through Impugned Order after implementing the directions/finding/conclusion of Hon'ble APTEL in judgement dated 30.05.2025 is as follows:

Particulars	**Capital Cost allowed in Order dated 16.05.2017**	**Admissible Capital Cost in Impugned Order**
Freehold Land	6.76	8.54
Building premises/ Civil Works	28.29	35.86
Plant & Machinery	352.56	447.14
Furniture and fixture	0.21	0.24
Office equipments and Others	0.06	0.07
Computers	0.02	0.02
Vehicles	0.25	0.16
Total Capital Cost	**388.96**	**492.03**

Accordingly, the Commission, vide the Impugned Order dated 17.10.2025, re-determined the ARR of M/s GIPL based on the revised approved capital cost as on CoD in compliance with the observations and directions contained in the Hon'ble APTEL's Judgment dated 30.05.2025. While undertaking such consequential re-determination, the Commission duly considered the submissions made by the Generator as well as the Distribution Licensee and determined the tariff from the date of commissioning of the plant based on the approved capital cost of Rs. 492.03 Crore, in accordance with the applicable provisions of the prevailing UERC Tariff Regulations.

2. Petitioner's Submission

2.1. The Distribution licensee has filed a review Petition on the Impugned Order dated 17.10.2025 under provisions of Section 94(1)(f) of the Electricity Act, 2003 read with Section 144, Order XLVII of the Code of Civil Procedure 1908 seeking review of the said Order insofar as the following costs, allowed to the Respondent, are vitiated by error apparent on the face of record:

a. The impugned Order was passed in violation of the principles of natural justice, as the Petitioner was not given adequate opportunity to respond to the Respondent's submissions and data filed for implementation of the Hon'ble APTEL judgment dated 30.05.2025.

b. The Commission proceeded with the tariff re-determination without inviting substantive comments from the Petitioner on the Respondent's Letter dated 19.08.2025.

c. The correspondence exchanged between the parties related only to the Petitioner's request for deferral of proceedings pending disposal of its Civil Appeal before the Hon'ble Supreme Court, and the Petitioner was not informed that such request stood rejected.

d. The Petitioner was deprived of an effective opportunity to make submissions on the merits of the Respondent's claims before passing of the Impugned Order.

e. The Commission allowed an additional hard cost of Rs. 16.16 Crores as part of the Annualized Fixed Cost without compliance with the principles of natural justice.

f. The Respondent had not furnished supporting invoices or documentary proof of expenditure along with its letter dated 19.08.2025, preventing verification and prudence check of the claims.

g. The Commission re-determined IDC, pre-operative expenses, preliminary expenses, and additional hard costs without granting opportunity to the Petitioner and without conducting a proper prudence check.

2.2. The Petitioner submitted that the Commission vide its letter dated 06.08.2025 had directed the Respondent to submit a detailed summary of its capital expenditure and tariff calculation towards implanting the Hon'ble APTEL's Judgement dated 30.05.2025. Subsequently, the Respondent vide its letter dated 19.08.2025 submitted the summary of its capital cost amounting to Rs. 16.16 Crore and tariff calculations.

2.3. The Petitioner submitted that the Commission sent a letter dated 25.08.2025 to the Petitioner for comments on the Respondent's claim towards implementation of the Hon'ble APTEL judgement. The Petitioner vide its letter dated 02.09.2025 requested the Commission for deferral of the proceedings on the ground that the Petitioner had approached the Hon'ble Supreme Court by way of an appeal under Section 125 of the Act against the Hon'ble APTEL's Judgement dated 30.052025.

2.4. The Petitioner submitted that the Commission vide its letter dated 19.09.2025 directed the Petitioner to justify its demand for deferral of the proceedings. Subsequently, the Supreme Court vide its Order dated 26.09.2025 ordered that the additional 17% liability fixed on the appellant, i.e. UPCL shall remain stayed. However, the liability to pay 50% as directed by the Commission shall continue to be borne by UPCL. The Petitioner submitted that it replied to the Commission vide its letter dated 29.09.2025 and enclosed the copy of aforesaid Order dated 26.09.2025.

2.5. The Petitioner submitted that the Commission without conducting any hearing or inviting any further submissions from UPCL, passed the Impugned Order dated 17.10.2025. The Petitioner submitted that under the said Order, the Commission has re-determined the approved capital cost of Unit-1 of the plant as Rs. 492.03 Crore as against the capital cost of Rs. 388.96 Crore approved in Order dated 16.05.2017. The increase is the result of adding

IDC, pre-operative & preliminary expenses for the period from April 2012 to March 2015 and disallowed hard cost relatable to Unit-1 of the plant. Further, the Commission had also directed the Petitioner to pay carrying cost on the arrears pertaining to the differential amount.

2.6. UPCL submitted that the Impugned Order was passed without complying with the principle of natural justice which required the Commission to grant the Petitioner an opportunity to specifically respond to the data submitted by the Generator towards implantation of the Hon'ble APTEL's Judgement dated 30.05.2025. The Commission manifestly erred in proceeding to pass the Impugned Order without inviting substantive comments from the Petitioner.

2.7. The Petitioner submitted that the correspondence exchanged between UPCL and the Commission vide letters dated 25.08.2025, 02.09.2025, 19.09.2025, and 29.09.2025 primarily pertained to the Petitioner's request seeking deferment of the proceedings initiated for implementation of the Hon'ble APTEL's Judgment dated 30.05.2025 till the adjudication and disposal of the Civil Appeal preferred by the Petitioner before the Hon'ble Supreme Court challenging the aforesaid Judgment of the Hon'ble APTEL.

2.8. The Petitioner submitted that the Commission failed to put UPCL on notice that it was rejecting the Petitioner's request for deferral and that it was proceeding to pass a consequential Order for redetermination of tariff. The Petitioner also submitted that the Commission ought to have specifically notified the Petitioner of its view that the Hon'ble Supreme Court's Order dated 26.09.2025 and the pendency of the Petitioner's Civil Appeal before the Hon'ble Supreme Court were not sufficient reasons to defer proceedings in terms of request of UPCL before proceeding to pass a tariff redetermination order.

2.9. The Petitioner submitted that UPCL was deprived of a valuable opportunity to make submission on the merits of the request of the Respondent for implanting the Judgement dated 30.05.2025 of the Hon'ble APTEL due to omission on part of the Commission. The Petitioner also submitted that the Commission has allowed substantial increase to the tune of Rs. 16.16 Crore in the hard costs allowed to the Generator as part of the AFC of its plant and the same is vitiated by non-compliance with the principles of natural justice.

2.10. The Petitioner submitted that the Generator alongwith its letter dated 19.08.2025 had only annexed a tabular chart containing vendor names and description of works carried out by them which was not supported by any actual invoices or documents showing debt of money from the Generator's accounts and in such circumstances, the Petitioner could not have verified the expenses claimed by the Generator or assisted the Commission with prudence check of the same.

2.11. The Petitioner submitted that Impugned Order warrants review as the Commission has determined the IDC and redetermined the pre-operative and preliminary expenses without giving opportunity to the Petitioner and without conducting prudence check regarding the same. The Petitioner also submitted that the Impugned Order warrants review insofar as the Commission has allowed the additional hard cost of Rs. 16.16 Crore to the Generator without submission of relevant documents as stipulated by the Hon'ble APTEL and without conducting prudence check regarding the same.

2.12. The Commission admitted the Review Petition and scheduled the matter for hearing on merits on 16.01.2026. A copy of the Review Petition was also forwarded to the Respondent with directions to file its comments thereto, with a copy to the Petitioner. The Petitioner was also directed to file its rejoinder/counter reply, if any, within one week from the date of receipt of the reply filed by the Respondent.

Subsequently, on the request of the Respondent, the Commission rescheduled the hearing on 27.01.2026. Meanwhile, the Respondent submitted its comments on the review Petition filed by UPCL which have been dealt in the subsequent paragraphs of this Order.

3. Respondent's Submission

3.1. The Respondent through its submission dated 20.01.2026 referring to Order 47 Rule 1 of the CPC, submitted that scope of review is extremely limited and a review can be filed only upon discovery of new fact or if there is a mistake or error apparent on the face of record or any other sufficient reasons which are analogous to the provisions contemplated under Order 47 Rule 1.

3.2. The Respondent submitted that the issue relating to division of the power plant into tied and untied capacity has already been adjudicated upon by the Commission and the said matter is presently sub judice before the Hon'ble Supreme Court. The Respondent further submitted that the Petitioner itself has acknowledged that the Commission, vide its letter dated 25.08.2025, had specifically sought comments from UPCL on the submissions made by the Generator in relation to implementation of the Hon'ble APTEL's Judgment dated 30.05.2025. However, instead of furnishing its comments on merits, the Petitioner sought deferment of the proceedings on the ground that it had preferred an appeal before the Hon'ble Supreme Court under Section 125 of the Electricity Act, 2003 challenging the aforesaid Judgment of the Hon'ble APTEL.

3.3. The Respondent further submitted that the Commission, vide subsequent letter dated 19.09.2025, had once again directed the Petitioner to furnish its comments, thereby clearly demonstrating that adequate and sufficient opportunity had been afforded to UPCL to place its submissions on record. It was further contended that the Commission was under an obligation to pass the consequential tariff order within the timeline stipulated in the Hon'ble APTEL's Judgment dated 30.05.2025 and the consequential Impugned Order dated 17.10.2025 was passed after four months allowing ample duration for procedural participation for UPCL. Therefore, the allegation of denial of opportunity raised by the Petitioner is untenable and contrary to the record.

3.4. The Respondent submitted that the Petitioner was granted a fair opportunity in the process, however, it now seeks to mischaracterise the procedural history to challenge the implementation of the Hon'ble APTEL's Judgement. It is further submitted that the Commission acted in accordance with the mandate of the Hon'ble APTEL which required compliance within two months. Therefore, there is no error in the Impugned Order as the Commission followed due process while ensuring the timely implementation of superior judicial directions.

3.5. With regard to UPCL's submission that the Commission failed to put the Petitioner on notice that it was rejecting the Petitioner's request for deferral and that it was proceeding to pass an Order for re-determination of tariff, the Respondent submitted that the exchange of correspondence dated 25.08.2025, 02.09.2025, 19.09.2025 and 29.09.2025 clearly establishes that the Petitioner was fully aware of the ongoing proceedings for the implementation of the Hon'ble APTEL's Judgement. It was incumbent upon the Petitioner to provide substantive comments on the merits of the tariff re-determination as directed rather than assuming a deferral would be granted. The Petitioner's failure to address the merits of the case, despite being on notice, cannot be characterised as a procedural error by the Commission.

3.6. With regard to UPCL's submission that the Commission ought to have specifically notified the Petitioner that Hon'ble Supreme Court Order dated 26.09.2025 and pendency of the Petitioner's Civil Appeal were not sufficient reasons for deferral, the Respondent submitted that the Commission is under no obligation to provide a preliminary ruling or specific notification regarding its internal assessment or the party's request for deferral before proceedings to pass a final order. Further, Hon'ble Supreme Court partially stayed the additional 17% liability which confirms that the proceedings for tariff determination and existing liability were not entirely halted.

3.7. The Respondent submitted that it is responsibility of the Petitioner to understand the legal implications of the court orders and the regulatory process. The pendency of an appeal, without an express and total stay on proceedings, does not automatically divest the Commission of its jurisdiction or duty to implement superior judicial orders. Further, the Petitioner was already on notice regarding the implementation proceedings. The Commission's decision to proceed despite the deferral request is a substantive exercise of its regulatory authority and does not constitute a breach of natural justice or a ground for review. Consequentially, the claim that the Commission "ought to have notified" the Petitioner of its views on the deferral request before passing the final order is baseless and does not satisfy the criteria for a review of the Impugned Order.

3.8. The Respondent submitted that the Petitioner's failure to submit merits-based comments, instead choosing to focus solely on requests for deferral, does not constitute an omission by the Commission. A party cannot claim a breach of natural justice when it deliberately chooses not to exercise the opportunity provided. Since the opportunity to be heard was duly extended and the Petitioner was fully aware of the Judgment and the mandate of the Hon'ble APTEL, the claim of being deprived of a opportunity for making submissions is baseless and does not meet the legal threshold for a review.

3.9. With regard to UPCL's submission of allowing Rs. 16.16 Crore capital cost as on CoD without hearing the Petitioner, the Respondent submitted that the inclusion of the hard costs was done strict adherence to judicial directions and procedural transparency. In compliance of the Commission's direction, the Respondent submitted comprehensive summary of Rs. 16.16 Crore alongwith tariff calculation. These documents were forwarded to UPCL for its review and comments. However, despite being provided with the specific data and opportunity to offer comments, UPCL chose not to submit any substantive response regarding the prudence check or the quantification of these costs.

3.10. With regard to UPCL's submission that it could not assist the Commission with prudence check of the submission made by the Generator, the Respondent submitted that primary statutory mandate and expertise for conducting a detailed prudence check of capital expenditure and associated invoices rests solely with the Commission. Having failed to utilise the opportunity provided during the proceedings of implementation of Hon'ble APTEL's Judgement, the Petitioner cannot claim a breach of natural justice in a review Petition.

3.11. With regard to UPCL's contention regarding re-determination of IDC and pre-operative expenses is factually incorrect and legally unsustainable under the limited scope of review jurisdiction. The re-determination of IDC, preliminary and pre-operative expenses was carried out strictly as per the methodology and directions prescribed by the Hon'ble APTEL in its Judgement dated 30.05.2025. The Hon'ble APTEL had directed a prudence check specifically for the hard cost of Rs. 16.16 crore. In accordance with this mandate, the Commission sought the necessary data from the Respondent, which was submitted in a timely and transparent manner. The Respondent reiterated that the Respondent's comments were duly sent to the Petitioner for comments. However, instead of providing substantive reply, the Petitioner chose to seek repeated extensions, effectively opting not to participate in the process within the timeframe mandated by the Hon'ble APTEL which required compliance within two months.

3.12. The Respondent submitted that the Petitioner's challenge regarding the allowance of additional hard cost of Rs. 16.16 Crore is a meritless attempt to re-ignite a factual finding already concluded by the Commission. In strict adherence to the Hon'ble APTEL's Judgement dated 30.05.2025, the Commission directed M/s GIPL to provide all relevant documentation concerning the hard cost of Rs. 16.16 Crore which was submitted by it.

3.13. The Impugned Order was passed only after the Commission, acting in its regulatory capacity, scrutinised the data submitted to ensure it met the standards of transparency and necessity mandated by the Act and applicable Tariff Regulations. The Petitioner is questioning the internal evaluation process of the Commission. It is a settled principle of law that “Review” is not a “Re-hearing”. Disagreement with the Commission’s satisfaction regarding the submitted documents does not constitute an “error apparent on the fact of the record”. By claiming that the Commission allowed these costs without relevant documents, the Petitioner is casting unfounded aspersions on the Commission’s discharge of its statutory duties.

4. Post hearing submissions of the parties

4.1. The Petitioner and the Respondent were heard on 27.01.2026 on the merits of the Petition. During the course of the hearing, the Petitioner reiterated its written submissions and also made certain additional submissions which were not part of the Petition. Accordingly, the Commission, vide its Order dated 27.01.2026, directed the Petitioner to file the relevant submissions in writing before the Commission, with an advance copy to the Respondent, latest by 13.02.2026. The Respondent was further directed to submit its response within 10 working days from the date of receipt of the same from the Petitioner.

4.2. Subsequently, the Petitioner, vide its submission dated 13.02.2026, stated that at the hearing held on 27.01.2026, in order to demonstrate the prejudice caused by the denial of natural justice, reference was made to (i) certain duplicate bills and invoices relied upon by the Respondent in support of its claim for additional capital costs, and (ii) a calculation error that appears to have inadvertently occurred in the Commission’s computation of the recoverable amount as recorded in paragraph 3.32 of the Impugned Order.

4.3. The Petitioner submitted that, insofar as the issue of duplicate bills and invoices is concerned, during the initial tariff proceedings conducted in the year 2017, the Respondent had been afforded an opportunity to substantiate its claim towards additional capital expenditure amounting to Rs. 30.96 Crore by furnishing a summary of invoices pertaining to expenses below Rs. 2.50 Lakh.

During the proceedings in Appeal No. 259 of 2017 before the Hon'ble APTEL, the Respondent was afforded a further opportunity to furnish the relevant financial particulars. Pursuant thereto, the Respondent submitted: (i) a summary of invoices amounting to Rs. 8.16 Crore; and (ii) Purchase Orders/Work Orders aggregating to Rs. 6.64 Crore before the Hon'ble APTEL.

The Hon'ble APTEL, vide its Judgment dated 30.05.2025, allowed the aforesaid claim of Rs. 14.80 Crore and further directed the Respondent to approach the Commission during the remand proceedings with relevant details/information in respect of the balance amount of Rs. 16.16 Crore.

Further, the Hon'ble APTEL directed the Commission to undertake a prudence check in respect of the said claims. In compliance thereof, the Commission, vide letter dated 06.08.2025, directed the Respondent to submit a detailed summary of its capital expenditure along with the tariff calculations. In response thereto, the Respondent, vide its reply dated 19.08.2025, submitted a summary of invoices.

The Petitioner submitted that a comparison of the summary of invoices furnished by the Respondent before the Hon'ble APTEL for the amount of Rs. 14.80 Crore and the summary of invoices subsequently furnished before the Commission towards the additional capital cost of Rs. 16.16 Crore reveals the existence of multiple duplicate invoice numbers in both sets of submissions.

4.4. The Petitioner submitted that if the Petitioner was granted a sufficient opportunity, the Petitioner would have tallied the entire set of invoices/summaries of invoices submitted by the Respondent to assist the Commission in applying prudence check. The same would ensure that no undue benefit is passed on to the generator at the cost of the consumers of the State.

4.5. The Petitioner submitted that the Commission has re-determined the surplus/gap in terms of the observations of the Judgment dated 30.05.2025 passed by the Hon'ble APTEL. The Petitioner also submitted that the incorrect surplus/gap figures in the Impugned Order dated 17.10.2025 constitute mistakes apparent on the face of the record particularly the surplus/gap mentioned for FY 2018-19, and, therefore, warrants review, even if the

Commission concludes that the Petitioner's denial of natural justice claim is not made out. The details of the AFC and surplus/gap as mentioned in the respective True-up Orders and Re-determined surplus/gap as mentioned in the impugned Order and, accordingly, the "Arrear to be recovered" is demonstrated as follows:

Details of AFC approved & (Surplus)/Gap approved as mention in respective True-up Order									
Financial Year	**2015-16**	**2016-17**	**2017-18**	**2018-19**	**2019-20**	**2020-21**	**2021-22**	**2022-23**	**2023-24**
Approved AFC as per respective Tariff Orders of the Commission (A)	-	-	95.30	98.33	98.81	100.38	98.17	92.13	90.45
(Surplus)/Gap allowed in respective Tariff Order by the Commission (B)	-	-	-2.20	1.38	-0.25	-3.37	-5.60	-8.52	-5.72
Details of Revised Surplus/Gap approved as mentioned in the Commission's Order dated 17.10.2025									
Revised (Surplus)/Gap as mentioned in the Commission's Order dt. 17.10.2025 (C)	-	-	18.26	14.60	18.80	14.91	11.93	8.10	10.82
To be recovered from UPCL (D=C-B)	**-**	**-**	**20.46**	**13.22**	**19.05**	**18.28**	**17.53**	**16.62**	**16.54**

The Petitioner submitted that the Impugned Order dated 17.10.2025 warrants review and correction accordingly. The total amount to be recovered from the Petitioner would, accordingly, require adjustment.

4.6. As discussed in the preceding paragraphs of this Order, during the course of hearing, the Commission had directed the Respondent to file its counter reply to the comments/submissions made by the Petitioner within 10 working days. However, the Respondent, vide its letter dated 23.02.2025, sought an extension of two weeks on the ground that the invoices pertained to the year 2011 and additional time was required to collect the relevant information from the project site. Thereafter, the Respondent again requested further extension of time up to 04.04.2026. Subsequently, the Respondent filed its counter reply on 03.04.2026.

4.7. The Respondent, with regard to duplicate invoices, vide its reply dated 03.04.2026 submitted that the bills are not similar as they pertain to different dates, different amount and different nature of work so in no way bills are duplicate. The invoices were considered by M/s GIPL as received from EPC Contractor. The Respondent also furnished copies of all invoices alleged by the Petitioner to be duplicate in nature. Further, with regard to the Petitioner's claim of a calculation error in the Impugned Order dated 17.05.2025, the Respondent submitted that it has verified that the final amount is same as determined by the Commission.

The Respondent submitted that as both the grounds raised by the Petitioner, allegations of duplicate invoices and calculation error, lack factual merit and fail to meet the criteria for a review under Section 94(1)(f) of the Electricity Act, 2003. Therefore, the Review Petition be rejected.

4.8. The Commission vide its letter dated 08.02.2026 forwarded the copy of Respondent's submission to the Petitioner alongwith the copy of invoices for counter reply. In response thereto, the Petitioner vide its submission dated 28.04.2026 filed its reply before the Commission.

4.9. The Petitioner submitted that on closer analysis of the invoices reveals serious lapses on part of the Respondent in complying with the statutory obligations under the Central Sales Tax Act, 1956 and the Service Tax Rules, 1994 which required the EPC contractor to maintain separate sets of invoices, serially numbered, for the supply and service portions of the contract, which warranted further prudence check by the Commission before allowing the additional capitalisation as claimed by the Respondent.

The Petitioner submitted that as per the provisions of the Service Tax Rules, 1994 and Central Sales Tax (Delhi) Rules, 2005 which were in force at that relevant time and were applicable to the EPC contractor whose premises are situated in New Delhi, EPC contractor was required to provide unique serialised numbers for each supply invoice.

The Petitioner submitted that the numbering of invoices was inconsistent and unsystematic. Thus, further prudence check by the Commission may be carried out before granting the claimed additional capitalisation of Rs. 16.16 Crore to the Respondent.

4.10. With regard to tariff calculation error, the Petitioner submitted that since the Commission had allowed a surplus of Rs. 1.38 Crore for FY 2018-19 in its true-up Order for the relevant year which is incorrectly reflected as a gap of Rs. 5.23 Crore in the Impugned Order. Similarly, the gap of Rs. 8.51 Crore indicated for FY 2022-23 is reflected as Rs. 8.52 Crore in the Impugned Order. The Petitioner also submitted that the Respondent's submission that the amount recoverable form the Petitioner would remain at Rs. 128.32 Crore despite the inconsistency, is arithmetically impossible. The Petitioner reiterated its request for review of the impugned Order to this extent notwithstanding the Respondent's submission.

5. Commission's Analysis and Findings

5.1. Powers of the Commission and Grounds for Review

5.1.1. Limitation – A Threshold Issue

Limitation (delay), being a threshold issue in the instant matter, is being taken up first, prior to examination of the substantive grounds raised in support of the review petition.

As per the mandate of Regulation 54 of UERC CBR, a review petition is required to be filed within 60 days from the date of issuance of the order sought to be reviewed.

The Impugned Order was issued on 17.10.2025 and hence, the limitation period for filing a review petition expired on 16.12.2025. The present review Petition has been filed before the Commission on 15.12.2025, i.e. within the period specified under the above mentioned Regulation.

5.1.2. Statutory Power of Review

Before considering the merits of the Petition, it is necessary to delineate the scope of the Commission's power of review.

Section **94(1)(f)** of the Electricity Act, 2003 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.

Order 47 of the Code of Civil Procedure, 1908, specifies the following three grounds for the purpose of considering review:

(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).

The import of these grounds can be better understood through authoritative judicial exposition by higher courts in India. The Commission shall proceed to examine these grounds in light of the judicial pronouncements by the higher courts in detail in the succeeding part of this order.

5.1.3. **Discovery of New Evidence**

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.

In this regard, it is relevant to refer to the Judgment 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:

> *"14. 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 justiciae. 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.

We shall now proceed further to examine the scope of the second ground; '*error apparent on the face of the record*'.

5.1.4. **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.

In *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****".*

The principle was further affirmed by the Hon'ble Supreme Court in *Lily Thomas v. Union of India* [(2000) 6 SCC 224], wherein referring to *Parsion Devi v. Sumitra Devi (Supra)* 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…..***
>
> *…..*
>
> *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* (2008 (8) SCC 612) and Another, (Supra) the Hon'ble Supreme Court had held that:

> *"15. 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****."*

Let us now deliberate upon the third ground of review.

5.1.5. **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."

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 'any other sufficient reason' must be analogous to the specified grounds.

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 Poulose 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."

5.1.6. Further, the Hon'ble Supreme Court recently vide judgement dated 08.09.2025 in the matter of *Malleeswari Vs K. Suguna and another (2025 INSC 1080, SLP (C) No. 12787 of 2025)* while dealing with the scope and power of review referred to the various judgements such as (i)*Meera Bhanja v. Nirmala Kumari Choudhary, (1995) 1 SCC 170* wherein it was held that the review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 of CPC., (ii) *Aribam Tuleshwar Sharma v. Aribam Pishak Sharma, (1979) 4 SCC 389* wherein it was held that review is not to be confused with appellate powers, which may enable an appellate court to correct all manner of errors committed by the subordinate court., (iii) *Parsion Devi v. Sumitri Devi, (1997) 8 SCC 715* wherein it was held that in exercise of the jurisdiction under Order 47 Rule 1 of 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., (iv) *Lily Thomas v. Union of India, (2000) 6 SCC 224* wherein it was held that the power of review can be exercised for the correction of a mistake, but not to substitute a view. Such powers can be exercised within the limits specified in the statute governing the exercise of power. (v) *Inderchand Jain v. Motilal, (2009) 14 SCC 663* wherein it was held that the review court does not sit in appeal over its own order. A rehearing of the matter is impermissible. It constitutes an exception to the general rule that once a judgment is signed or pronounced, it should not be altered and (vi) *Shivdev Singh v. State of Punjab, AIR*

(1963) SC 1909 wherein it was held that it is invoked only to prevent a miscarriage of justice or to correct grave and palpable errors.

The Hon'ble Supreme Court in the said judgement has provided distinction between power of review and appellate power and restated the power and scope of review jurisdiction, summing up ground of review. The relevant Para 17 of the said judgement is reproduced hereinbelow:

"17. Having noticed the distinction between the power of review and appellate power, we restate the power and scope of review jurisdiction. Review grounds are summed up as follows:

17.1 The ground of discovery of new and important matter or evidence is a ground available if it is demonstrated that, despite the exercise of due diligence, this evidence was not within their knowledge or could not be produced by the party at the time, the original decree or order was passed.

17.2 Mistake or error apparent on the face of the record may be invoked if there is something more than a mere error, and it must be the one which is manifest on the face of the record.8 Such an error is a patent error and not a mere wrong decision.9 An error which has to be established by a long-drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. (Satyanarayan Laxminarayan Hegde v. Mallikarjun Bhavanappa Tirumale, AIR (1960) SC 137.)

17.3 Lastly, the phrase 'for any other sufficient reason' means a reason that is sufficient on grounds at least analogous to those specified in the other two categories. (Chhajju Ram v. Neki, 1922 SCC OnLine PC 11 and approved in Moran Mar Basselios Catholicos v. Mar Poulose Athanasius, AIR (1954) SC 526.)

5.1.7. In light of the above settled legal position, the Commission proceeds to examine whether the grounds raised by the Petitioner fall within the ambit of review.

5.2. Issues for Review raised in the Petition

5.2.1. Impugned Order passed without complying with the principle of natural justice.

<u>Petitioner's Submissions</u>

5.2.1.1. The Petitioner has submitted that the Impugned Order warrants review on the ground that it was passed in violation of the principles of natural justice, as the Petitioner was not provided a proper opportunity to respond to the data and submissions furnished by the Respondent for implementation of the Hon'ble APTEL's Judgment dated 30.05.2025. It has been contended that the correspondence exchanged between the Petitioner and the Commission primarily related to the Petitioner's request for deferment of proceedings pending disposal of its Civil Appeal before the Hon'ble Supreme Court, and the Petitioner was neither informed about rejection of such request nor given notice that the Commission intended to proceed with tariff re-determination. The Petitioner has further submitted that it was thereby deprived of the opportunity to make submissions on the merits of the Respondent's claims.

Commission's Analysis and Ruling

5.2.1.2. As elaborated in the Impugned Order dated 17.10.2025, it is evident that the Commission had provided adequate and reasonable opportunity to UPCL for submission of its comments in the matter. It is pertinent to note that UPCL was itself a party in Appeal No. 259 of 2017 and IA No. 718 of 2024 and was fully aware that, in terms of the Hon'ble APTEL's Judgment dated 30.05.2025, the consequential tariff order was required to be passed within a period of two months from the date of the said Judgment.

The Petitioner itself has acknowledged that the Commission, vide letter dated 25.08.2025, directed the Petitioner to submit its comments, latest by 02.09.2025, on the tariff calculations and summary of invoices furnished by the Respondent. However, instead of submitting its comments on merits, the Petitioner sought liberty to file a detailed reply on the submissions of the Generator on the ground that it had preferred a Civil Appeal before the Hon'ble Supreme Court against the Hon'ble APTEL's Judgment dated 30.05.2025. The Petitioner had further requested deferment of the consequential proceedings till adjudication of the said Civil Appeal.

Thereafter, the Commission, vide its letter dated 19.09.2025, specifically mentioning that the Hon'ble APTEL had directed the Commission to comply with the observations contained in the Judgment and to pass the consequential Order, again directed the Petitioner to clarify whether any stay had been granted by the Hon'ble Supreme Court on implementation of the aforesaid Judgment. The Petitioner was also directed to specify the legal provision under which the consequential proceedings initiated pursuant to the Hon'ble APTEL's directions could be deferred.

In response thereto, the Petitioner, vide letter dated 29.09.2025, forwarded a copy of the Order dated 26.09.2025 passed by the Hon'ble Supreme Court and submitted that the additional 17% liability fixed upon UPCL had been stayed, while the liability to pay 50%, as directed by the Commission, was to continue to be borne by UPCL. The Petitioner further requested the Commission to take note of the aforesaid Order and take necessary action in the matter. The relevant extract of the Petitioner's letter dated 29.09.2025 has already been reproduced hereinbelow.

> *"In this context, it is to inform that the Civil Appeal bearing no. 42118/2025 filed by UPCL before Hon'ble Supreme Court, New Delhi has come up for hearing on 26.09.2025 whereby following is ordered by the Hon'ble Supreme Court (Copy enclosed):-*
>
> > *"In the meantime, the additional 17% liability fixed on the appellant shall remain stayed. However, the liability to pay 50% as directed by the Uttarakhand Electricity Regulatory Commission, shall continue to be borne by the appellant."*
>
> ***Therefore, Hon'ble Commission is humbly requested to kindly take cognizance of the aforesaid order for their kind perusal and further necessary action**."*

Accordingly, upon consideration of the aforesaid submission of the Petitioner and in absence of any stay on passing of the consequential tariff order, the Commission proceeded to determine the consequential tariff on the basis of the material and information available on record.

It is further pertinent to note that at no stage had the Commission restrained or precluded the Petitioner from submitting its comments on the submissions and documents furnished by the Generator. In case any further information or clarification was required, it was always open to the Petitioner to seek the same. However, except requesting the Commission to take cognizance of the Hon'ble Supreme Court's interim Order for necessary action, no substantive comments or objections on the tariff calculations or supporting documents were filed by the Petitioner.

The Hon'ble APTEL had directed the Commission vide its Judgment dated 30.05.2025 to issue consequential Orders within 2 months of the date of Judgment. The Petitioner was well aware of the same and instead of assisting the Commission in timely issuance of the consequential orders kept requesting the Commission to defer the matter till the final decision by the Hon'ble Supreme Court. Infact, the Commission had filed an application before the Hon'ble APTEL seeking additional time upto 31.10.2025 for compliance of the Judgement dated 30.05.2025. The Hon'ble APTEL vide its Order dated 15.10.2025 in IA no. 1384 of 2025 allowed time extension of one week (by 21.10.2025) from the date of the Order. Sufficient opportunity was already afforded to the Petitioner for filing its reply in the matter, however, the Petitioner recognising that till the Judgment of the Hon'ble APTEL is not stayed in entirety by the Hon'ble Supreme Court, still sought deferment of the proceedings till final judgment of the Hon'ble APTEL.

Accordingly, it is evident that the Impugned Order was passed after duly complying with the principles of natural justice and after providing sufficient opportunity to the Petitioner to place its submissions on record. Therefore, the contention of the Petitioner that it was denied opportunity to respond to the data and submissions furnished by the Generator towards implementation of the Hon'ble APTEL's Judgment dated 30.05.2025 is devoid of merit and is, therefore, not tenable.

5.2.2. **Allowance of capital cost of Rs. 16.16 Crore, IDC and Pre-operative/preliminary expenses**

<u>Petitioner's Submissions</u>

5.2.2.1. The Petitioner has contended that the Commission allowed substantial additional hard costs amounting to Rs. 16.16 crore, along with re-determination of IDC and pre-operative/preliminary expenses, without providing the Petitioner an opportunity for scrutiny and without conducting adequate prudence check. It has been submitted that the Respondent had only furnished a tabular statement containing vendor details and description of works, unsupported by invoices or documentary proof of expenditure, thereby preventing verification of the claims. Accordingly, the Petitioner has sought review of the impugned Order on the grounds of absence of supporting documents, lack of prudence check, and non-compliance with the directions of the Hon'ble APTEL.

5.2.2.2. The Petitioner has submitted that the summary of invoices amounting to Rs. 14.80 Crore furnished by the Respondent before the Hon'ble APTEL and the summary of invoices amounting to Rs. 16.16 Crore submitted by the Respondent towards additional capital cost contain multiple duplicate invoice numbers. It has been contended that such duplication raises concerns regarding the authenticity and verification of the expenditure claimed by the Respondent.

5.2.2.3. The Petitioner has further contended that, in terms of the provisions of the Service Tax Rules, 1994 and the Central Sales Tax (Delhi) Rules, 2005 applicable at the relevant time, the EPC contractor was required to maintain separate and uniquely serialised invoices for the supply and service portions of the contract. According to the Petitioner, the invoice numbering pattern adopted by the EPC contractor appears inconsistent and unsystematic, thereby necessitating a detailed prudence check by the Commission prior to allowing the additional capitalisation of Rs. 16.16 Crore claimed by the Respondent.

<u>Commission's Analysis and Ruling</u>

5.2.2.4. The Commission has examined the submissions made by the Petitioner wherein it has been contended that substantial additional hard costs amounting to Rs. 16.16 crore, along with re-determination of IDC and pre-operative/preliminary expenses, were allowed without affording the Petitioner adequate opportunity for scrutiny and without undertaking a proper prudence check.

With regard to comments of the Petitioner w.r.t. IDC and pre-operative/preliminary expenses, the Commission observes that the Hon'ble APTEL, vide Judgment dated 30.05.2025, had categorically allowed the time overrun in execution of the project. Consequently, the IDC and pre-operative/preliminary expenses, which had earlier been disallowed on account of the said time overrun, became admissible in terms of the findings and directions contained in the aforesaid Judgment. The consequential tariff determination undertaken by the Commission was, therefore, in compliance with and in furtherance of the binding directions of the Hon'ble APTEL. Accordingly, the contention of the Petitioner that the Commission erroneously re-determined the aforesaid components is misconceived and devoid of merit and cannot be considered as an error apparent on record.

5.2.2.5. The Commission further observes that the allegation of the Petitioner regarding absence of supporting documents is factually untenable. It is pertinent to note that during the original tariff determination proceedings, the Commission had adopted a consistent methodology whereby the Generator was directed to furnish summary statements for invoices below Rs. 2.50 Lakh. The same methodology was followed during implementation of the Hon'ble APTEL's Judgment, and, accordingly, the Generator was directed to submit invoice summaries corresponding to the additional capitalisation claim of Rs. 16.16 Crore. As discussed in preceding paragraphs of this Order, despite being granted an opportunity to examine the submissions, thereafter the Petitioner, neither sought any specific clarifications nor any additional supporting documents, but rather sought deferment/stay of the proceedings on account of pendency of its Civil Appeal before the Hon'ble Supreme Court. Therefore, the Petitioner now cannot contend that it was deprived of an opportunity to verify the claims or that the expenditure could not be scrutinized for want of supporting documents.

5.2.2.6. At the outset, the Commission notes that the additional capital expenditure was not allowed merely on the basis of tabular summaries of invoices, as alleged by the Petitioner. The Commission had duly examined the material placed on record, including audited books of accounts and Auditor's/Chartered Accountant's certificates furnished by the Respondent at the time of original proceedings in Petition no. 03 of 2016 and Petition no. 40 of 2016. The audited financial statements and certificates issued by statutory auditors/Chartered Accountant are the recognized evidentiary documents and constitute valid financial records for the purpose of verification of capital expenditure incurred by a generating company.

5.2.2.7. With regard to the contention relating to duplicate or matching invoice numbers and alleged inconsistencies in invoice serialisation and non-compliance of Central Sales Tax Act & Service Tax Act, it is to be noted that the prudence check was undertaken by the Commission pertaining to the admissibility, nature, and capitalisation of the expenditure under the applicable tariff framework. The invoices were analysed and it was observed that the amounts as well as the nature of works were different. Only invoice numbers were same which appears to be a mistake on the part of EPC, hence, for tariff purpose what is to be considered is the expenses incurred and paid for by the Generator. If there are any violations of other statute or law by assigning similar invoice numbers, then the issue does not falls within the domain of the Commission and the issue relating to compliance by the EPC contractor with the provisions of taxation statutes falls within the domain of the competent statutory authorities under the respective laws. Further, the present proceedings are not intended to adjudicate alleged procedural or accounting irregularities under the provisions of the Central Sales Tax Act, 1956, the Service Tax Rules, 1994, or the Central Sales Tax (Delhi) Rules, 2005. Mere existence of similar or matching invoice numbers cannot by itself form a valid basis for disallowance of expenditure duly reflected in the audited accounts and certified by statutory auditors.

5.2.2.8. The Commission further notes that the Respondent had furnished invoice summaries, vendor details, nature of works executed, and supporting financial certifications in compliance with the directions of the Hon'ble APTEL. In case the Petitioner required any further clarification or document for verification of the claims, it was always open to the Petitioner to seek the same during the proceedings. However, no specific objection substantiated by documentary evidence was raised before the Commission at the relevant stage to establish that the capitalisation claimed by the Respondent was inadmissible or contrary to the applicable Regulations. Therefore, the issue cannot be alleged at this juncture.

5.2.2.9. Infact, Hon'ble APTEL in its Judgment dated 30.05.2025 in Appeal No. 259 of 2017 & IA No. 718 of 2024 has held as under:

"187. Furthermore, the Appellant's submission that a portion of the disallowance was due to a lack of itemized documentation needs to be considered in the context of practical realities. Not all minor expenditure under this head will be supported by invoices exceeding material thresholds, and such expenditure may still be valid and prudently incurred. ***The auditor-certified figures provide sufficient assurance of their authenticity…***

199. ***Importantly, the expenditures were capitalised and subjected to a statutory audit, which lends credibility to the Appellant's claim. The auditors' certification, coupled with the absence of any indication of overstatement or duplication****, ought to have been given due consideration by the Commission."*

(Emphasis added)

5.2.2.10. The impugned Order was passed after due prudence check and examination of the expenditure as actually incurred based on the audited accounts, chartered accountant certificate, and records available on file, in compliance with the directions of the Hon'ble APTEL. The expenditures have been incurred by the Respondent as certified by its statutory auditor and the invoices alleged to be duplicate pertains to different nature of expenditure which were essential for commissioning of the plant. Hence, the allegations raised by the Petitioner regarding invoice numbering patterns and purported duplication are general and relate to different nature of expenditure incurred and do not disclose any error apparent on the face of the record warranting the review of the Impugned Order. Accordingly, the submissions made by the Petitioner on this issue being devoid of merit are not acceptable.

5.2.2.11. Notwithstanding the above findings, the Commission observes that proper maintenance and verification of invoices and statutory records is an essential requirement for ensuring transparency and accuracy in project accounting and capitalisation of expenditure. Therefore, while the Commission does not find sufficient grounds to interfere with the Impugned Order on the basis of the contentions raised by the Petitioner, the Respondent is hereby cautioned to exercise due diligence in future while processing and accounting project-related expenditures. The Respondent shall ensure proper verification and validation of invoices, including GST registration details, serial numbering, vendor particulars, and other statutory compliances, prior to release of payments, so as to avoid discrepancies, duplication concerns, or procedural anomalies of the nature alleged in the present proceedings. The Respondent is further directed to maintain proper documentary records and internal checks for future regulatory scrutiny.

5.2.3. **Error in re-determination of Annual Fixed Charges as per Hon'ble APTEL's Judgement dated 30.05.2025**

<u>Petitioner's Submissions</u>

5.2.3.1. The Petitioner has submitted that the Commission, while re-determining the surplus/gap in terms of the observations and directions contained in the Hon'ble APTEL's Judgment dated 30.05.2025, has inadvertently reflected incorrect surplus/gap figures in the Impugned Order dated 17.10.2025. According to the Petitioner, the figures reflected in the Impugned Order are inconsistent with the surplus/gap approved in the respective True-up/Tariff Orders issued by the Commission for the relevant financial years. The Petitioner has particularly pointed out discrepancies in the figures relating to FY 2018-19 & FY 2022-23 and submitted that such inconsistencies constitute errors apparent on the face of the record warranting review and correction of the impugned Order. It has further been contended that, consequent upon correction of the surplus/gap figures, the amount determined as "arrear to be recovered" from the Petitioner would also require corresponding adjustment.

5.2.3.2. Further, the Petitioner has specifically submitted that the Commission, vide Tariff Order dated 18.04.2020, had approved a surplus of Rs. 1.38 Crore for FY 2018-19, whereas the Impugned Order incorrectly reflects the same as a gap of Rs. 5.23 Crore. Similarly, the Petitioner has pointed out that the gap of Rs. 8.51 Crore approved vide Tariff Order dated 28.03.2024 has been reflected as Rs. 8.52 Crore in the impugned Order. On the basis of the aforesaid discrepancies, the Petitioner has contended that the Respondent's submission that the total recoverable amount from the Petitioner would nevertheless remain unchanged at Rs. 128.32 Crore is arithmetically untenable. Accordingly, the Petitioner has sought review and rectification of the impugned Order to the aforesaid extent.

Commission's Analysis and Ruling

5.2.3.3. In response to the contentions raise by the Petitioner, the Commission examined the Tariff Order dated 18.04.2020 and 28.03.2024 whereby the Commission had carried out the truing-up for FY 2018-19 and FY 2022-23 respectively.

5.2.3.4. The Commission observed that vide the aforesaid Tariff Orders, a gap of Rs. 1.38 Crore for FY 2018-19 and surplus of Rs. 8.52 Crore for FY 2022-23 had been approved by the Commission. The relevant extract of the aforesaid Tariff Orders are reproduced herein below:

Tariff Order dated 18.04.2020

"2.1.2.11 Annual Fixed Charges (AFC) for FY 2018-19

Based on the above analysis, the Commission has worked out the approved figures of AFC for FY 2018-19. The summary of the same is as follows:

Table 2.7: Annual Fixed Charges for FY 2018-19 approved by the Commission (Rs. Crore)

Particulars	Approved in Tariff Order dated 21.03.2018	Claimed	Allowable
Depreciation	20.28	20.28	20.28
Interest on Loan & Financial Cost	28.03	35.92	35.39
Return on Equity	11.66	11.66	11.66
O&M Expenses after sharing	36.98	29.47	29.46
Interest on Working Capital	0.00	0.00	0.00
Less: Non-Tariff Income	0.00	0.76	0.76
Sub-Total (A)	**96.95**	**96.57**	**96.04**
Interest charged by GAIL due to delay by UPCL **(B)**	0.00	1.07	1.02
Prior period adjustments (C)	**0.00**	**1.27**	**1.27**
-Bank Review Charges	*0.00*	*0.45*	*0.45*
-Reversal of Provision for interest income	*0.00*	*0.82*	*0.82*
Total (A+B+C)	**96.95**	**98.91**	**98.33**

Accordingly, trued-up AFC for FY 2018-19 works out to Rs. 98.33 Crore against Rs. 96.95 Crore approved for FY 2018-19 by the Commission. The Petitioner submitted that there was a surplus of Rs. 15.28 Crore based on the actual revenue from sale of power, claimed AFC & Energy charges. Further, the Petitioner requested for sharing of the same in accordance with the prevailing Regulations. It is to be noted that the sharing of O&M expenses has already been done by the Commission under Para 2.1.2.7 of this Order in accordance with the prevailing regulations. Further, true up of Energy charges has been carried out by the Commission in subsequent Paras of this Order. Furthermore, the trued-

up AFC for FY 2018-19 works out to Rs. 98.33 Crore against the approved AFC of Rs. 96.95 Crore. Accordingly, the Commission has approved ***a gap of Rs. 1.38 Crore for FY 2018-19*** *which works to Rs. 1.68 Crore with carrying cost to be recovered in FY 2020-21."*

Tariff Order dated 28.03.2024

"3.1.2.10 Annual Fixed Charges (AFC) for FY 2022-23

Based on the above analysis, the Commission has worked out the approved figures of AFC for FY 2022-23. The summary of the same is as follows:

Table 3.7: Annual Fixed Charges for FY 2022-23 approved by the Commission (Rs. Crore)

Particulars	Tariff Order dated 31.03.2022	Claimed in Petition	Approved/ Trued up
Depreciation	20.38	20.42	20.40
Interest on Loan & Financial Cost	25.37	24.97	24.50
Return on Equity	11.75	11.79	11.78
O&M Expenses	46.98	23.62	39.07
Interest on Working Capital	0.00	0.00	0.00
Less: Non-Tariff Income	(0.64)	(0.39)	(0.41)
Sub-Total	**103.85**	**80.41**	**95.33**
True up for FY 2020-21 with carrying cost	(3.20)		(3.20)
Total	**100.65**	**80.41**	**92.13**

Accordingly, trued-up AFC for FY 2022-23 works out to Rs. 92.13 Crore against Rs. 100.65 Crore approved by the Commission vide its Tariff Order dated 31.03.2022. The Commission has worked out ***a surplus of Rs. 8.52 Crore for FY 2022-23*** *which works to Rs. 10.58 Crore with carrying cost to be recovered in FY 2024-25."*

5.2.3.5. It is pertinent to mention that the Petitioner, vide its submissions dated 28.04.2026, had contended that the Commission had approved a surplus of Rs. 1.38 Crore for FY 2018-19 and a gap of Rs. 8.51 Crore for FY 2022-23 in the respective Tariff Orders. However, upon perusal of the relevant Tariff Orders referred to by the Petitioner, it is observed that the Commission had in fact approved a gap of Rs. 1.38 Crore for FY 2018-19 and a surplus of Rs. 8.52 Crore for FY 2022-23. Accordingly, it appears that the aforesaid discrepancies in the submissions of the Petitioner are attributable to typographical/inadvertent errors. Therefore, the Commission has examined and dealt with the matter in the subsequent paragraphs of this Order considering the approved gap of Rs. 1.38 Crore for FY 2018-19 and surplus of Rs. 8.52 Crore for FY

2022-23 as reflected in the respective Tariff Orders.

5.2.3.6. The Commission has carefully examined the submissions made by the Petitioner with regard to the alleged discrepancy in determination of surplus/gap for FY 2018-19. Upon analysis of the records and data pertaining to the said financial year, the Commission observes that, while carrying out the consequential re-determination pursuant to implementation of the Hon'ble APTEL's Judgment dated 30.05.2025, there was a typographical error whereby other adjustments like interest charged by GAIL due to delay by UPCL, prior period adjustments (Bank Review Charges and reversal of provision for interest income) was considered as Rs. 0.47 Crore instead of Rs. 2.29 Crore as trued up by the Commission for FY 2018-19 vide Tariff Order dated 18.04.2020. Accordingly, after taking into consideration the correct amount of Other adjustments and applying the applicable Tariff Regulations in consonance with the findings of the Hon'ble APTEL, the Annual Fixed Cost (AFC) for FY 2018-19 works out to Rs. 118.16 Crore.

The Commission further observes that the ARR approved for FY 2018-19 vide Order dated 21.03.2018 was Rs. 96.95 Crore. Accordingly, the differential amount between the re-determined AFC and approved ARR works out to Rs. 21.21 Crore. Further, considering the gap of Rs. 1.38 Crore already approved by the Commission for FY 2018-19 vide Tariff Order dated 18.04.2020, the net recoverable amount from UPCL works out to Rs. 19.83 Crore as approved in Impugned Order dated 17.10.2025.

Further, there was a typographical error whereby surplus was considered amounting to Rs. 8.51 Crore instead of Rs. 8.52 Crore approved by the Commission for FY 2022-23. However, even after considering the surplus of Rs. 8.52 Crore, the net amount to be recovered from UPCL remains the same for FY 2022-23.

5.2.3.7. In view of the foregoing analysis, the Commission is of the considered view that the contention raised by the Petitioner regarding discrepancy in determination of surplus/gap is sustainable only to the limited extent of inadvertent error of Other adjustments for FY 2018-19 and inadvertent mention of Rs. 8.51 Crore instead of Rs. 8.52 Crore for FY 2022-23. The Commission observes that, after considering the correct amount of Other adjustments for FY 2018-19, the net recoverable amount from UPCL continues to remain Rs. 19.83 Crore as determined in the Impugned Order dated 17.10.2025. Further, correction of the figure for FY 2022-23 from Rs. 8.51 Crore to Rs. 8.52 Crore does not result in any change in the net recoverable amount from UPCL for the said year.

5.2.3.8. Accordingly, except for the aforesaid limited corrections, i.e. other adjustment of Rs. 0.47 Crore which shall be read as Rs. 2.29 Crore, the Commission does not find any material error apparent on the face of the record warranting review or interference with the impugned Order and since there has also been no consequential impact due to the mistake. The remaining submissions of the Petitioner on this issue are, therefore, rejected being devoid of merit. Accordingly, Petition No. 08 of 2026 stands disposed off.

5.3. Ordered Accordingly.

(Prabhat Kishor Dimri) Member (Technical)	(Anurag Sharma) Member (Law)	(M.L. Prasad) Chairman