

**Before**  
**UTTARAKHAND ELECTRICITY REGULATORY COMMISSION**  
**Misc. Appl. No. 57 of 2015**

**In the matter of:**

Review filed by UJVN Ltd. on Commission's Order dated 13.03.2015 issued in the matter of prior approval of "Capital Investment for Renovation & Modernization of 3x10 MW Kulhal HEP".

**And**

**In the matter of:**

UJVN Ltd., Dehradun ....Petitioner

**And**

Uttarakhand Power Corporation Ltd. (UPCL), Dehradun ....Respondent 1

Himachal Pradesh State Electricity Board Ltd. (HPSEB Ltd.)

Vidyut Bhawan, Kumar House, Shimla (H.P.) ....Respondent 2

**CORAM**

**Shri Subhash Kumar                      Chairman**

**Shri K.P. Singh                              Member**

**Date of Hearing: February 09, 2016**

**Date of Order: February 11, 2016**

**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 Order dated 13.03.2015 issued in the matter of prior approval of "Capital Investment for Renovation & Modernization of 3x10 MW Kulhal HEP".

## Background

2. UJVN Ltd. vide its letter No. 11/UJVNL/04/D(F)/Comm. dated 09.09.2015 submitted a Petition for Review of the Commission's Order dated 13.03.2015 issued in the matter of prior approval of Capital Investment for Renovation & Modernization of 3x10 MW Kulhal HEP of UJVN Ltd. Earlier, in the aforesaid Order it has been held that:

“

*6.6 ...since the Plant is capable of operating at rated capacity and has been generating up to the approved design energy for past 3 years, shows that the Plant does not encounter frequent breakdowns and with reasonable repair and maintenance expenditure on the Plant, UJVN Ltd. has been successful in extracting desired output from the Plant. Therefore, the Commission feels that as of now the proposed Renovation & Modernization works are not economically prudent, which would rather put unwarranted brakes on the continuing operations of the Plant generating normally. In the absence of any generation loss with respect to design energy or the Plant requiring any abnormally high repair and maintenance expenditure for its optimal operation such R&M activity is not justified as of now and operation of this Plant can be continued with repair and maintenance as and when required.*

*As regards obsolescence of protection equipment suitable proposal be mooted for their replacement and those would be considered by the Commission.”*

3. The Petitioner in its Review Petition dated 09.09.2015 has requested the Commission for condonation of delay for submission of the Review Petition and has submitted the reasons for delay as decision to file review has to pass through several channels, unexpected shuffling in the organization & revisiting of the DPR.
4. The Petitioner has submitted that the plant has outlived its life of 35 years. Further, it has also been submitted by the Petitioner that it had initiated the bidding process for the Renovation, Modernisation & Upgradation (RMU) works of Kulhal HEP and subsequent to this the LOI to the lowest bidder was issued thorough a transparent bidding process. The Petitioner has also submitted that RMU in Kulhal is justified in view of the prevailing market condition and delay in taking up RMU activity may cost higher as compared to the present lowest tender cost giving rise to audit objection.
5. The Petitioner in its Review Petition has reiterated its submission as in main Petition/submission with regard to gap between throat ring and runner, generator insulation, governor, excitation systems, generator and turbine auxiliaries and has submitted that in case the work is done in piece meals, then the cost of RMU shall be substantially high.

6. The Petitioner, vide its letter no. 5959 dated 13.10.2015 made an additional submission wherein, most of submissions of the Review Petition were reiterated. Besides this, the Petitioner in its additional submission has submitted that:-

“

3. ... observation of CEA is with respect to those Plants who have not achieved their service life and this Guideline has been framed to meet an exigency that even if a Project has not outlived its projected life, still it can go for R&M if the performance of the Project is not up-to-the mark or if such Project is not working for its full capacity for want of R&M. However, this Guideline cannot be invoked to prevent R&M in a case where Plants have already worked for the service life or worked beyond projected life. “

7. The Petitioner in its additional submission pointed out that the observations made by the Commission with regard to the ‘quantity’ of 152.87 MU is mentioned as design energy at para 6.5 of the Order dated 13.03.2015 and contended that the same is saleable primary energy after RMU of the Plant. Moreover, the Petitioner has submitted that in case only works related to protection and safety are carried out then the estimated cost of such protection and safety work would be approx. Rs 32.59 Crore. Further, the Petitioner has apprehended that in case RMU activity is not done the plant may come to a complete standstill and to a situation of complete breakdown leading to irreparable loss.

8. On preliminary examination, the Commission decided to hold a hearing for maintainability of the Petition and fixed a date of hearing on 17.11.2015 and accordingly notice for hearing in the matter of admissibility was issued to UJVN Ltd. vide letter dated 02.11.2015. Meanwhile, a letter dated 16.11.2015 was received from one of the beneficiary of Kulhal HEP namely UPCL requesting the Commission that it should be made respondent in the proceedings.

9. The Commission heard the Petitioner on the scheduled date and during the course of hearing, the Commission enquired from the Petitioner to justify the grounds of the review/reconsideration in respect of the provisions of Code of Civil Procedure (CPC), 1908 (5 of 1908).

10. The Petitioner reiterated its submission before the Commission submitted vide letter No. 11 dated 09.09.2015 justifying the grounds of review and emphasizing that the review of the Order has been sought on the grounds under ‘other sufficient reasons’.

11. Thereafter, the Commission issued an Order dated 17.11.2015 wherein, following direction had been given:

“ ...

*Notices be sent alongwith copy of the Petitions to the beneficiaries namely UPCL & HPSEB Ltd. for submitting their comments in the matter. Both the beneficiaries should submit their comments within one month from the date of the Order.”*

12. In compliance to the direction issued in the Order dated 17.11.2015, notices dated 19.11.2015 were issued to the beneficiaries i.e., UPCL & HPSEB Ltd. for submitting their comments. In response to this, both UPCL & HPSEB Ltd. submitted their comments vide letter dated 16.12.2015 & letter dated 15.12.2015 respectively. UPCL submitted that the present Review Petition is not maintainable as the same does not qualify the grounds of review, and should not be admitted, while the other beneficiary i.e. HPSEB Ltd. submitted to agree with the decision of the Commission in the matter.

13. The comments received from the beneficiaries were forwarded to the Petitioner and a date of hearing for admissibility was fixed on 09.02.2016. Accordingly, notices were issued to the Petitioner and the Respondents.

14. On the scheduled date of hearing i.e. 09.02.2016, the Commission heard the Petitioner and Respondents in the matter. During the course of hearing, the Petitioner submitted that the Commission considering the health of the Generator should not make a strict interpretation of the provisions for Review as given in Order XLVII (1) of the Code of Civil Procedure, 1908 as the same is narrow and confined. The Petitioner further reiterated its earlier submissions requesting the Commission to consider the issues raised by it in the petition and the subsequent submissions. Furthermore, the Respondent No. 1 rebutted the contention of the Petitioner and reiterated its earlier submissions while the Respondent No. 2 submitted that any decision by the Commission in the matter shall be acceptable to it.

#### **Commission's Observations, Views & Decision**

15. In the matter of condonation of Delay, the Petitioner has requested to condone the delay stating following reasons:

- (1) Passing of review petition through several channels,
- (2) Unexpected shuffling in the higher authorities

(3) Revisiting the DPR

It is observed that the above reasons tendered by the Petitioner do not fit in the legal grounds to substantiate the claims of the Petitioner with regard to condonation of the delay. Infact, the reasoning of the Petitioner at point no. (1) & (2) above is a matter of its internal functioning and cannot be served as a reason for delay in filing of the Review Petition. However, cautioning the Petitioner that it should not come up with such lame excuses in future, the Commission decided to condone the delay in the matter and heard the same for maintainability.

16. The issue-wise contentions of UJVN Ltd. filed in the Review Petition were examined w.r.t. the provisions of Order XLVII (1) of the Code of Civil Procedure, 1908 and it has been observed that in accordance with the Order XLVII (1) of the Code of Civil Procedure, 1908 an Order issued by the Commission may be reviewed if:

- (1) There is 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 at the time when the Order was passed or order made.
- (2) There is any error or mistake apparent on the face of the record.
- (3) Or there is any other sufficient reason.

Hence, the Commission is of the view that the application for review has to be considered with great caution to ensure that it fulfill one of the above requirements to be maintainable under law. On the discovery of new evidence, the application should conclusively demonstrate that:

- (i) Such evidence was available and was of undoubted character;
- (ii) It was so material that its absence might cause miscarriage of justice.

Therefore, from above it is well settled that the review proceedings have to be confined to the scope and ambit of Order XLVII Rule 1 of the Civil Procedure Code.

17. Further, on examination of the Review Petition and subsequent submissions with respect to the above provisions of the law, it has been observed that:

- (1) The Petitioner has contended that the ‘quantity’ of 152.87 MU is not the design energy but the saleable energy after RMU of the plant. In this regard, it is observed that the Commission in its Order dated 13.03.2015 at para 6.1 had observed that:

*“...it is noted that the generation data of the Plant for last 08 years (Table-1), depicts that the performance of Plant is consistent as far as generation is concerned except FY 2009-10, which was the drought year. When compared to the original design energy of 164 MU and design energy approved by the Commission of 153.91 MU. The generation data of the preceding three Financial Years shows that actual generation of the Plant exceeded the design energy approved by the Commission in each year and was also close to the original design energy. Moreover, the generation from the Plant since FY 2005-06 has been consistently close to the design energy approved by the Commission.*

**Table-1**  
**Generation of Kulhal HEP**

FY	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14
<b>Generation in MU</b>	160.94	148.68	149.76	143.68	112.62	142.62	157.83	158.15	178.52

”

From the above, it is observed that the generation in last 3 years (FY 2011-12 to FY 2013-14) from Kulhal HEP was either close or more than its original design energy i.e. 164 MUs. Moreover, the Generation in last 3 years was even more than the design energy approved by the Commission i.e. 153.91 MUs. Therefore, the rationale of the Commission in disallowing the RMU of Kulhal HEP remains undeterred as the plant is capable of generating up to the approved design energy as evident from the generation data of past 3 years. Therefore, minor statements of inconsequential import do not sustain the grounds of seeking review of an Order.

- (2) The apprehension of the Petitioner submitted in its additional submission dated 13.10.2015 that in case approval of RMU is not given at this stage, may lead to a situation where the plant may come to a standstill and to a situation of complete breakdown, leading to irreparable loss and injury. In this connection, it would be pertinent to point out that the Commission in its Order dated 13.03.2015 had already held that *“...operation of the Plant can be continued with repair and maintenance as and when required.”* therefore, from such statement of the Petitioner,

it appears that the Petitioner has completely layoff its hands and left the Plant to work on its own destiny. Moreover, for smooth operation of the plant, the Petitioner has complete responsibility of conducting proper periodic/preventive/annual maintenance of the Kulhal HEP.

UJVN Ltd. being an Engineering Organization is solely responsible for operation & maintenance and safety of State owned Hydro-electric Plants, therefore, reiteration of the statement about the situation of complete breakdown and leading to irreparable loss and injury so as to emphasize to carry out the comprehensive RMU of the Plant is not justified.

- (3) With regard to the contention of Petitioner pertaining to the estimated cost of protection and safety work of Rs. 32.59 Crore, it is observed that the Commission in its Order dated 13.03.2015 had held that “...operation of the Plant can be continued with repair and maintenance as and when required. As regards, obsolescence of protection equipment suitable proposal be mooted for their replacement and those would be considered by the Commission”. Therefore, an opportunity has already been given to the Petitioner for mooted the proposal of protection works and it cannot by any way be considered as a basis for seeking review in the matter as the same has been derived as a consequence of the Order dated 13.03.2015.
- (4) With regard to the contention of the petitioner on guidelines of CEA referred above at para 6 of this Order, the Commission is of the view that the issue had already been dealt with and discussed at length in para 6.4 of the Order dated 13.03.2015. Therefore, submitting its own interpretation by the Petitioner on the referred para of the CEA guidelines cannot become the basis for review under the relevant provisions of CPC.
- (5) It appears that the Petitioner is seeking review of the Order merely rearguing the original matter and seeks a fresh decision on the case as none of the specific grounds on which review can be considered are clearly brought out by it in its Petition. Whereas, principally the Order by the Commission is final and any deviation from such principle is justified only when circumstances of a substantial and compelling character make it necessary to do so leading to requirement for review of an Order.

- (6) Moreover, it is beyond dispute that a Review proceeding cannot be equated with the original hearing of the case. The finality of the judgment delivered by the Commission will not be reconsidered except where a glaring omission or patent mistake or like grave error has crept in earlier by fallibility.
- (7) In the present case, the above ground mentioned at 16 (1) & 16 (2) does not hold valid as neither the Petitioner has mentioned any new & important matter of evidence nor the Order made was on account of some mistake or any error apparent on the face of the record.
- (8) As far as review ground at above point 16 (3) is concerned, the Commission is of the view that the '*other sufficient reasons*' stated in the provisions are supplementary to the grounds stated at 16 (1) & 16 (2) above, which take color there from and cannot be considered independently.
18. In light of the above, the Commission observed that the grounds brought before for review are not sustainable and hence holds that the Review Petition is not maintainable and accordingly decides to reject it.

Ordered accordingly.

**(K.P. Singh)**  
**Member**

**(Subhash Kumar)**  
**Chairman**