

Before

UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

Petition No. 11 of 2018

In the matter of:

Petition for review of the Commission's Order dated 21.03.2018 on True up for FY 2016-17, Annual Performance Review for FY 2017-18 and Annual Revenue Requirement for FY 2018-19.

In the matter of:

Uttarakhand Power Corporation Ltd.

...Petitioner

Coram

Shri Subhash Kumar

Chairman

Date of Order: August 13, 2018

The Petition was filed by Uttarakhand Power Corporation Ltd. (herein after referred to as "UPCL") for review of Commission's Order dated 21.03.2018 on True up of FY 2016-17, APR for 2017-18 and ARR for FY 2018-19 under Section 94(1)(f) of the Electricity Act, 2003 (herein after referred to as "Act"), Regulation 54(1) of the Uttarakhand Electricity Regulatory Commission (Conduct of Business), Regulations, 2014 (herein after referred to as "UERC CBR") and under Section 114 and Order XLVII of the Code of Civil Procedure 1908.

1. Background

- 1.1 The Commission had notified Uttarakhand Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff) Regulations, 2015 (hereinafter referred to as "UERC Tariff Regulations, 2015") for the second Control Period from FY 2016-17 to FY 2018-19 specifying therein terms, conditions and norms of operation for licensees, generating companies and SLDC. The Commission had issued the Multi Year Tariff (MYT) Order dated April 5, 2016 for the Control Period FY 2016-17 to FY 2018-19. In accordance with the provisions of the UERC Tariff Regulations, 2015, the Commission had carried out Annual Performance Review for FY 2017-18 and trueing up for FY 2016-17 vide its Order dated 21.03.2018.
- 1.2 The Petitioner filed a Review Petition dated 21.05.2018 on the grounds that there were certain

errors apparent in the conclusions drawn on certain issues by the Commission in its Tariff Order dated 21.03.2018.

- 1.3 The Review Petition was admitted by the Commission on 25.05.2018 and to provide transparency to the process of tariff determination and give all the stakeholders an opportunity to submit their objections/suggestions/comments on the proposals of the Distribution Licensee, the Commission also directed UPCL to publish the salient points of its proposals in the leading newspapers. The salient points of the proposal were published by the Petitioner in the following newspapers:

Table 1.1: Publication of Notice

S. No.	Newspaper Name	Date of Publication (Notice related to Review Petition dated 21.05.2018)
1.	Amar Ujala	27.05.2018
2.	Dainik Jagran	27.05.2018
3.	Hindustan	27.05.2018
4.	Indian Express	27.05.2018
5.	Times of India	27.05.2018
6.	Hindustan Times	28.05.2018

Through above notice, the stakeholders were requested to submit their objections/suggestions/comments latest by 18.06.2018 on the Review Petition filed by UPCL (copy of the notice is enclosed as Annexure I). The Commission received in all 10 objections/suggestions/comments in writing on the Review Petition filed by UPCL.

- 1.4 The issues raised by the Petitioner in the Petition as well as in the additional submissions made, comments of the Stakeholders and Petitioner's response on the same, alongwith the analysis of the Commission are dealt in the subsequent Section.

2. Stakeholders' Objections/Suggestions, Petitioner's Responses and Commission's Views

The Commission has received suggestions and objections on UPCL's Petition for Review of Tariff Order dated 21.03.2018 on True-up for FY 2016-17, Annual Performance Review of FY 2017-18 and Determination of Annual Revenue Requirement for FY 2018-19. The Commission also held a public hearing in the matter on 24.07.2018. The Commission also obtained responses from UPCL on the comments received from the stakeholders.

Since, several issues are common and have been raised by more than one Respondent, all suggestions/responses/comments have been clubbed issue-wise and summarized below.

2.1 General

2.1.1 Stakeholder's Comments

M/s Asahi India Glass Ltd. submitted that there should be no further Tariff hike as budget planning for the financial year gets affected as power expenses allocation is one of the major head in the approved budget.

Shri Shakeel A. Siddiqui from M/s Kashi Vishwanath Textile Mill (P) Limited submitted that the Commission keeping impartial view towards UPCL and its consumers had decided the tariff for the FY 2018-19. In its relevant order the Commission had allowed the tariff hike of around 2.35% as against the proposal of UPCL of about 16.57%. Now in its review application UPCL has made an additional claim of ARR amounting to Rs. 439.27 Crore leading to an average tariff hike of 7.31% which is neither feasible nor acceptable. Shri Siddiqui further submitted that proposed tariff hike was against the principles of Electricity Act and National Tariff Policy.

Shri Pawan Agrawal from Uttarakhand Steel Manufacturer Association submitted that tariff should be determined for a period of three years and not on yearly basis. It was further submitted that revision in Tariff in between the year should not be allowed.

Shri Ashok Bansal from Kumaun Garhwal Chamber of Commerce & Industry submitted that the Petitioner's review petition is bad in practice and law as it has been filed with malafide intention against the consumers of the state to burden them with additional tariff hike through review of Commission's views and orders on the issues which the Commission had deliberated in detail in the Tariff Order for FY 2018-19 and decided with sound reasoning considering all aspects including stake holders view point. The Petitioner has in fact challenged the Tariff order for FY 2018-19 in the guise of this Review Petition.

Shri P.K. Rajput from Alps Industries Limited, Shri R.S. Yadav from India Glycols Limited, M/s BST Textile Mills Pvt. Ltd. and M/s Mahalaxmi Polypack Pvt. Ltd. submitted that any further increase in Tariff will have a very heavy negative impact on industries of Uttarakhand. It was further submitted that UPCL has done few agreements at a very high cost ranging from Rs. 5.64/Unit to Rs. 8.76/Unit, whereas the power purchase rate of some States are quite lower and, therefore, that makes the average power cost very high which adversely affects all the consumers of Uttarakhand.

Shri R.K. Tyagi from SIDCUL Manufacturers Association submitted that they are

against the Tariff hike proposed by UPCL as they are regularly facing mismanagement in the working of UPCL and supply of power due to which industries are suffering a lot. It was further submitted that common factors like timely increase in power bank, power generation should be efficiently maintained by UPCL as the industries are facing the issues with availability and quality of power supply. Further unscheduled/unplanned power roasting and tripping should be curtailed by UPCL as it adversely affects the smooth functioning of the industries.

2.1.2 **Petitioner's Reply**

In this regard, the Petitioner submitted that UPCL is a commercial organization and is required to meet its Annual Revenue Requirement out of the revenue realized from the consumers through electricity tariffs. UPCL further submitted that justification has been provided in the review petition in respect of each claim.

The Petitioner also submitted that the Commission in the impugned order computed the revenue at the tariff approved vide Order dated 29.03.2017 and compared the same with the ARR for FY 2018-19 so as to derive the revenue gap / surplus. In this way, the required tariff has been computed @ Rs. 5.06 per and the existing tariff has been computed @ Rs. 4.93 per unit which is showing a tariff hike allowed in the existing tariff @ 2.62%. The Commission while computing the revenue at existing tariff ignored the tariff approved vide its order dated 03.08.2017 on the review petition of the Petitioner. The tariff approved vide said order dated 03-08-2017 was also part of the tariff which was being recovered from the consumers for the period upto 31-03-2018. The impact of order dated 03-08-2017 was Rs. 0.18 per unit and the aggregate tariff applicable for FY 2017-18 was Rs. 5.11 per unit. As the Commission approved the average tariff @ Rs. 5.06 per unit for FY 2018-19, there is a reduction of 0.98% in the tariff applicable for FY 2017-18.

The Petitioner also submitted that Section 62(4) of the Electricity Act itself stipulates that the tariff may ordinarily be not amended more than once in a Financial Year. This proposed revision in Tariff is required due to correction in claims as approved by UERC vide Tariff Order dated 21.03.2018 and no additional demand for claims has been raised which results in revision in Tariff. Mistakes in a tariff order is not a ordinary situation and therefore revision in tariff has been proposed by UPCL which is in line with the provisions of Section 62(4) of the Electricity Act, 2003. Further, this review petition has been filed for recovery of cost which has already been incurred by UPCL and for deferment of huge amount of recovery in a single year. Thus, the review petition is also in

line with the provisions of the National Tariff Policy, 2016.

The Petitioner further submitted that this review petition has been filed by the Petitioner under the right given to it under Section 94(1)(f) of the Electricity Act, 2003 and order XLVII(1) of the Code of Civil Procedure 1908 for recovery of the cost already incurred by UPCL to provide electricity to the consumers of the State.

2.2 Distribution Loss Reduction trajectory

2.2.1 Stakeholder's Comments

M/s Asahi India Glass Ltd., Roorkee submitted that it is evident that details regarding Distribution Loss Trajectory of 14.50% are not looking viable and its computational calculations are not mentioned in detail. Likewise as suggested by UERC, reliable Energy audit must be done from competent auditing agency and audit findings must be shared with petition with closure of compliances within the stipulated time period.

Shri Shakeel A. Siddiqui from, M/s Kashi Vishwanath Textile Mill (P) Limited submitted that the distribution losses have been a matter of concern for HT consumers. In the absence of voltage wise, category wise losses, HT consumers being 52.08% energy consumers of UPCL are being punished with 14.50% losses whereas in actual there is hardly 2% distribution loss in supplying energy by UPCL to HT consumers.

Shri Ashok Bansal from Kumaun Garhwal Chamber of Commerce & Industry submitted that the Commission had discussed the proposal in detail considering the ground realities in Petitioner's working and decided not to revise the distribution loss trajectory for FY 2018-19 commenting adversely that Petitioner's inaction and continuous high level of inefficiency does not allow it to seek revision of loss trajectory approved by the Commission, which if allowed would defeat the intent of M.Y.T. frame work.

Shri P.K. Rajput from Alps Industries Limited, M/s BST Textile Mills Pvt. Ltd. and M/s Mahalaxmi Polypack Pvt. Ltd. submitted that UPCL has not been able to decrease the distribution losses as per trajectory approved by the Commission since last 3 years. It is not required to be based on any study rather the Board should take suitable action for reducing losses and theft.

Shri R.S. Yadav from India Glycols Limited submitted that it is quite eminent that for any established state, distribution losses should be on a lower side whereas, on the contrary distribution losses are comparatively high in the state of Uttarakhand. It was further submitted that the Commission has already directed UPCL that distribution losses

should be reduced from time to time, hence, any such claim from UPCL should not be considered.

2.2.2 Petitioner's Reply

In this regard, the Petitioner submitted that in the ARR and Tariff Petition for FY 2018-19, they had requested the Commission to revise the distribution loss reduction trajectory for the second control period from FY 2016-17 to FY 2018-19 based on the results of the energy audit which was conducted by the Petitioner as per the directions of the Commission but the Commission ignored / did not consider the above submission of UPCL. This is an error apparent on the face of the record and, therefore, UPCL has requested the Commission to review the impugned order dated 21.03.2018 based on the submissions of the Petitioner regarding revision in loss reduction trajectory which is based on the results of the energy audit report and and fix the distribution losses for the second Control Period as follows:

Particulars	FY 2016-17 (Actual)	FY 2017-18	FY 2018-19
Distribution Losses	16.68%	16.00%	15.50%

The Petitioner further submitted that presently, voltage wise / category wise losses are not available and, therefore, category wise tariff was calculated on the basis of average cost of supply and permissible level of cross subsidy.

2.3 Power Purchase Cost

2.3.1 Stakeholder's Comments

M/s Asahi India Glass Ltd., Roorkee submitted that Power should be procured at reasonable rates and quality and reliable power should be provided to the consumers.

Shri Shakeel A. Siddiqui from, M/s Kashi Vishwanath Textile Mill (P) Limited submitted that the issue of power purchase cost has been addressed very well by the Commission in the Tariff Order for FY 2018-19 and there has been no apparent error.

Shri Ashok Bansal from Kumaun Garhwal Chamber of Commerce & Industry submitted that the Petitioner has made a claim of Rs. 11.03 Crore alongwith carrying cost with total claim of Rs. 14.30 Crore on the plea of giving 24 hours uninterrupted power supply to all the consumers as per the mandate of Tariff Policy 2016. However, the Petitioner has not certified that it had given 24 hours uninterrupted supply to its consumers in FY 2016-17 at the time of over drawl at grid frequency below 49.90 Hz. As a matter of fact, the overdrawal at a rate beyond Rs. 4.70/Kwh at frequency below 49.90 Hz

was indiscipline drawl of power by the Petitioner and expenses for such drawal cannot be termed as legitimate in any circumstances. The claim of UPCL is liable to be rejected summarily. This is essential to discipline the Petitioner in future.

Shri R.S. Yadav from India Glycols Limited submitted that it should be noted that ABT/UI mechanism implementation is delayed from a long time by UPCL, and the conditions of Overdrawal can be managed by implementing proper UI mechanism. Moreover, it was also observed that UPCL has done few agreements for power purchase at a very high cost ranging from Rs. 5.64/unit to Rs. 8.76/unit which makes the average power purchase cost very high, that adversely affects all the consumers of Uttarakhand.

M/s Mahalaxmi Polypack Pvt. Ltd. submitted that there is a significant rise in power failure and tripping recently and especially since May, 2018 resulting into equipment failure and production losses.

2.3.2 **Petitioner's Reply**

In this regard, the Petitioner submitted that all power purchases are done by UPCL as per the specified procedures by Government / CERC / UERC. All the details of power purchases are provided to the Commission from time to time. The power purchases for FY 2016-17 has been checked by the Commission at the time of truing-up exercise.

The Petitioner further submitted that it makes necessary arrangements to meet its demand of electricity as per approvals granted by the Commission. However, sometimes the demand and supply gap rises due to some unforeseen conditions / circumstances such as any unplanned shutdown of the generating station(s) and sudden increase in demand due to weather conditions or less generation from hydro generating stations, transmission constraints etc. In such emergency conditions which are beyond the control of the Petitioner, the Petitioner is required to do emergency rostering. The Petitioner submitted that during FY 2016-17 and 2017-18 rostering has been carried out equivalent to 84.22 MU for FY 2016-17 and 31.44 MU for FY 2017-18 which is less than one - half percent.

The Petitioner also submitted that the Commission in the Tariff Order for FY 2018-19 disallowed the overdrawal of energy at a frequency below 49.90 Hz for an amount of Rs. 11.03 Cr. whereas the Petitioner has drawn this power with the object to provide continuous supply of electricity to the consumers. The Tariff Policy 2016 also provides that reliable and quality power should be supplied to the consumers and all the power purchase cost on this account should be recovered from the consumers. As this cost was incurred with a view to provide continuous supply to the consumers, review Petition has

been filed for recovery of this cost.

2.4 Non-Tariff Income

2.4.1 Stakeholder's Comments

M/s Asahi India Glass Ltd., Roorkee submitted that the Commission in its Order dated 21.03.2018 has stated that payment of any interest towards bank loan taken for early payment of power purchase bills is less than the amount of rebate availed on account of such early payment of bills and by doing proper analysis, some sort of saving has also been incorporated, so why consumers are then burdened from time to time by incorporating high energy rates. Hence, rather than putting these stringent power hike measures, UPCL needs to streamline their existing machinery for efficient delivery.

Shri Shakeel A. Siddiqui from, M/s Kashi Vishwanath Textile Mill (P) Limited submitted that the issue of non tariff income has been addressed very well by the Commission in the Tariff Order for FY 2018-19 and there has been no apparent error.

Shri Ashok Bansal from Kumaon Garhwal Chamber of Commerce & Industry submitted that the Commission had judiciously shared the gain due to timely payment with consumers and allowed legitimate amount towards this claim in the Tariff Order dated 21.03.2018. As such any further claim made by the Petitioner is liable to be rejected forthwith.

2.4.2 Petitioner's Reply

In this regard, the Petitioner submitted that it has analyzed that payment of any interest towards bank loan (overdraft) taken for early payment of power purchase bills is less than the amount of rebate availed on account of such early payment of bills. On the basis of such analysis, the Petitioner earned a rebate of Rs. 44.07 Crore by making early payment of power purchase bills and paid interest of Rs. 27.06 Crore on the bank loan/overdraft taken for payment of such power purchase bills. Thus, the petitioner saved Rs. 44.07 Crore - Rs. 27.06 Crore = Rs. 17.01 Crore during FY 2016-17 on account of this working capital management which has been passed on to the consumers in the form of reduction in tariff. Therefore, the cost incurred by UPCL i.e. Rs. 27.06 Crore should be allowed to UPCL.

2.5 Past Year Adjustments

2.5.1 Stakeholder's Comments

M/s Asahi India Glass Ltd., Roorkee submitted that deferment of past recoveries on account of cost of Royalty Power and other past year adjustments (Rs. 259.45 Crore - Rs.

51.89 Crore) has been projected to be around 207.56 Crore which is again on a very high side without proper justification. This needs to be studied carefully before projecting the cost escalation of power tariff.

Shri Shakeel A. Siddiqui from, M/s Kashi Vishwanath Textile Mill (P) Limited submitted that the issue of past year adjustments has been addressed very well by the Commission in the Tariff Order for FY 2018-19 and there has been no error apparent.

Shri Ashok Bansal from Kumaun Garhwal Chamber of Commerce & Industry submitted that as per the methodology for the computation of rate of royalty power approved by the Commission in the MYT Order dated 05.04.2016, rate of royalty power is taken equivalent to the average rate of power procured by the Petitioner from large hydro generating stations. However, the Petitioner followed its own method for booking cost of royalty power in its accounts and then making revised claims in the true up. The action and order of the Commission is in accordance with the approved methodology and suffers no defect. The defect was in the methodology of booking by Petitioner. Hence, the request of the Petitioner in review Petition for approval of recovery of Rs. 259.45 Crore in 5 yearly installments from subsequent ARRs for the sake of managing revenue deficit of the Petitioner is unwarranted and highly opposed. It is against the interest of the consumers of the state in general. Instead of putting such claims, the Petitioner should curtail its unproductive expenses and enforce financial discipline in its working.

M/s BST Textile Mills Pvt. Ltd. and M/s Mahalaxmi Polypack Pvt. Ltd. submitted that if the cost of royalty was submitted based on estimated figures, it was supposed to be compensated in subsequent year ARR filings and cannot be passed on to the consumers as an arrear of past years that needs to be recovered in current financial year.

2.5.2 Petitioner's Reply

In this regard, the Petitioner submitted that the Commission reduced the ARR for FY 2018-19 by an amount of Rs. 259.45 Crore towards past year adjustments. Due to fixation of Tariff at the level of distribution losses below the actual distribution losses in the previous years, the Petitioner does not have any surplus and is not in a position to bear the burden of Rs. 259.45 Crore in a year. Therefore, UPCL vide its review Petition requested the Commission to approve the recovery of Rs. 259.45 Crore in five equal annual installments starting from FY 2018-19 to 2022-23.

2.6 Capitalization

2.6.1 Stakeholder's Comments

Shri Shakeel A. Siddiqui from M/s Kashi Vishwanath Textile Mill (P) Limited submitted that the issue of capitalization cost has been addressed very well by the Commission in the Tariff Order for FY 2018-19 and there has been no apparent error.

Shri Ashok Bansal from Kumaun Garhwal Chamber of Commerce & Industry submitted that the Petitioner has admitted that it has so far not got the certificate of Electrical Inspector for all the balance HT assets capitalized in FY 2016-17. It is failure of the Petitioner to get inspection certificate of the installations from the Electrical Inspector although such assets would have been energized (HT lines & sub- stations) long back. How such assets have been energized without clearance and certificate of the Electrical Inspector, is a big question mark on the working of the Petitioner and a clear violation of the provisions of Indian Electricity Rules, 1956 in this matter. Even in such a situation of non-certification of assets by the Electrical Inspector, the Petitioner has put its claim for balance capitalization for FY 2016-17 for such uncertified assets including carrying cost thereon for Rs. 18.37 Crore in the review petition. The claim is devoid of any merit and liable to be rejected summarily.

2.6.2 Petitioner's Reply

In this regard, the Petitioner submitted that in ARR and Tariff Petition for FY 2018-19 it had submitted the net capitalization for FY 2016-17 amounting to Rs. 238.29 Crore on the basis of figures shown in audited accounts but due to non-submission of certificate of electrical inspector in respect of energization of HT works, the Commission considered capitalization of Rs. 142.15 Crore only for FY 2016-17. The Commission allowed depreciation and return only on the reduced amount of capitalization of Rs. 142.15 Crore. UPCL is in the process of collecting the certificates of the Electrical Inspector in respect of all the balance HT Assets capitalized during FY 2016-17 and the same shall be provided to the Commission. As the cost has already been incurred by UPCL to provide supply of electricity to the consumers, the Commission has been requested to review the issue and allow the recovery of this cost.

2.7 Limitation

2.7.1 Stakeholder's Comments

Shri Shakeel A. Siddiqui from M/s Kashi Vishwanath Textile Mill (P) Limited and Shri

Rajesh Kumar from M/s Galwalia Ispat Udyog Pvt. Ltd. submitted that by limitation the review petition is not maintainable. The Tariff Order was issued by the Commission on 21.03.2018 and as per Regulation 54(1) of the UERC (Conduct of Business) Regulations, 2014 the period of 60 days to review the order lapsed on 19.05.2018.

2.7.2 Petitioner's Reply

In this regard, the Petitioner submitted that as the Tariff Order was issued by the Uttarakhand Electricity Regulatory Commission (Commission) on 21.03.2018, this review petition as per Regulation 54(1) of the UERC (Conduct of Business) Regulations, 2014 was allowed to be filed upto 19.05.2018 and 19.05.2018 and 20.05.2018 being Saturday and Sunday and weekly holidays in the office of the Commission, this review petition was allowed to be filed upto 21.05.2018. Thus, the accompanying petition has been filed within the time limit as prescribed in the Regulations.

2.8 Commission's Views

The Commission has taken note of various suggestions/objections raised by Stakeholders on various issues and the Petitioner's replies thereon. The Commission also held a public hearing in the matter on 24.07.2018 at Commission's office. The Commission has addressed the issues raised by the stakeholders on the various issues raised by the Petitioner in its review Petition in subsequent Section. However, the Commission would also like to bring out that the mandate under the Act is to safeguard the consumer's interests as well as to allow recovery of the cost of electricity in a reasonable manner by the licensee. The Commission under the Act has powers to undertake review under section 114 and Order XLVII of the Code of Civil Procedure, 1908 (CPC).

3. Petitioner's submission, and Commission's Analysis and Ruling

3.1 Powers of the Commission and Grounds for Review

3.1.1 Before going into the merits of the Petition filed by UPCL on various issues, the Commission first looks into the powers vested in it to review its Orders for taking a view on maintainability of the Petition. In this regard, reference is drawn to Section 94(1)(f) of the Act which specifically empowers the Commission to undertake review, which can be exercised in the same manner as a Civil Court exercises such powers under section 114 and Order XLVII of the Code of Civil Procedure, 1908 (CPC). The powers available to the Commission in this connection have been defined in Section 114 and Order 47 of the CPC. Under the said provisions, review of the Order is permitted on three specific grounds only, namely:

- a. Discovery of new and important matter or evidence, which after the exercise of due diligence was not within the applicant's knowledge or could not be produced by him at the time of passing of the Order.
- b. Mistake or error apparent on the face of the record; or
- c. Any other sufficient reasons.

3.1.2 The application for review has to be considered with great caution to necessarily fulfil one of the above requirements to be maintainable under law. On the discovery of new evidence, the application should conclusively demonstrate that (1) such evidence was available and is of undoubted character; (2) that it was so material that its absence might cause miscarriage of justice; (3) that it could not be even with reasonable care and diligence brought forward at the time of proceedings/passing of Order. It is well settled principle that new evidence discovered, if any, must be one, relevant, and second, of such character that had it been given during earlier proceedings, it might possibly have altered the Judgment.

3.1.3 It is a well-settled law that a review of the Orders of the Court/Commission should be used sparingly after examining the facts placed before the Court. An erroneous view or erroneous Judgment is not a ground for review, but if the Judgment or order completely ignores a positive rule of law and the error is so patent that it admits of no doubt or dispute, such an error must be corrected in the review. A review is by no means an appeal in disguise whereby an erroneous decision is re-heard and corrected, but lies only for a patent error. A review can only lie if one of the grounds listed above is made out.

3.1.4 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.

3.2 Distribution Loss Reduction Trajectory

3.2.1 The Petitioner in the Review Petition submitted that the Commission in its Order dated 21.03.2018 had held as follows:

"As regards the distribution loss trajectory of UPCL, the Commission has already dealt with the issue in detail in its Order dated April 05, 2016 on Approval of Business Plan and Multi Year Tariff of UPCL for FY 2016-17 to FY 2018-19 and finds no reason to revisit the same again."

3.2.2 The Petitioner submitted that in pursuance of the Commission's directive, the Petitioner carried out the energy audit for FY 2015-16 through a consultant M/s Feedback Infra Pvt. Ltd and submitted the report to the Commission vide its letter dated 11.01.2018. In this

exercise of energy audit, the input energy, billed energy, billed revenue and collected revenue have been verified by the consultant. The findings of this energy audit for FY 2015-16 were as follows:

S. No.	Particulars	As per energy audit report	As per Commercial Diary
1.	Billing Efficiency	81.67%	81.99%
2.	Distribution Loss	18.33%	18.01%
3.	Collection Efficiency	106.60%	106.29%
4.	AT&C Loss	12.94%	12.85%

- 3.2.3 The Petitioner submitted that the results of the energy audit were found very near to the actual recorded by the Petitioner in its commercial diary. As against the recorded distribution losses of 18.01%, the distribution losses in the exercise of energy audit were found 18.33%. There is very minor difference of $18.33\% - 18.01\% = 0.32\%$ between the recorded distribution losses and the distribution losses as per the energy audit.
- 3.2.4 The Petitioner submitted that in the ARR and Tariff Petition for FY 2018-19 it had requested the Commission to revise the distribution loss reduction trajectory for the second control period from FY 2016-17 to FY 2018-19 based on the results of the energy audit and, accordingly, the Petitioner had claimed distribution losses for FY 2016-17, FY 2017-18 and FY 2018-19 as 16.68%, 16.00% and 15.50% respectively.
- 3.2.5 The Petitioner submitted that there is no mention in the impugned order dated 21.03.2018 about the above submission of the Petitioner regarding revision in the distribution loss reduction trajectory and, therefore, this is an apparent error on the face of the record. Accordingly, the impugned order dated 21.03.2018 needs a review based on the above submission of the Petitioner regarding revision in the distribution loss reduction trajectory based on the result of the energy audit report and fix the distribution losses for the second control period as claimed in the ARR and Tariff Petition for FY 2018-19. The Petitioner, in this regard claimed an amount of Rs. 105.18 Crore including carrying cost towards FY 2016-17 and an amount of Rs. 70.36 Crore for FY 2018-19.
- 3.2.6 The Commission has gone through the submissions of the Petitioner. The Commission for FY 2016-17 had approved the distribution losses of 15.00% based on the loss reduction trajectory approved in the MYT Order for the Control Period from FY 2016-17 to FY 2018-19. Accordingly, the Commission in the impugned Order had considered the Distribution Loss Trajectory for FY 2016-17 as 15.00% for the purposes of truing up of expenses and revenues for FY 2016-17.
- 3.2.7 As discussed in detail at Para 3.2.2, Para 4.3, Para 6.3 and Para 6.4 of the impugned Order,

the Commission had noted the submission made by the Petitioner with respect to the Distribution Loss Trajectory and energy audit and therefore, the Petitioner's contention in this regard is incorrect that the Commission did not consider its submissions.

3.2.8 Moreover, the Commission has reasoned out in detail the basis for approving the Distribution Loss Trajectory in the impugned Order. The relevant portion of the Order is reproduced hereunder:

“As regards the distribution loss trajectory of UPCL, the Commission has already dealt with the issue in detail in its Order dated April 05, 2016 on Approval of Business Plan and Multi Year Tariff of UPCL for FY 2016-17 to FY 2018-19 and finds no reason to revisit the same again. However, in this regard the Commission would like to point out towards the loss reduction initiatives proposed by UPCL. UPCL has been proposing the same initiatives over the years whose results should have started accruing by now. However, from the submissions of the Petitioner as given in the Table below it emerges that there are 7 distribution divisions of UPCL which have the distribution loss in excess of 30% which also includes EDD (U), Roorkee which has a distribution loss of 36.43% which is unacceptable considering the fact that it is a urban division covered under R-APDRP Scheme.

Table 3.1: High Distribution Loss divisions as on 31.03.2017

S. No.	Distribution Division	Loss (%)
1.	EDD, Narayanbagar	48.64%
2.	EDD, Rudraprayag	32.75%
3.	EDD (U), Roorkee	36.43%
4.	EDD, Bageshwar	31.76%
5.	EDD Vikasnagar	33.45%
6.	EDD, Uttarkashi	36.69%
7.	EDD, Dharchula	30.20%

The Commission in its Order dated March 29, 2017 had also observed that there were seven divisions which had a loss level of more than 30% in FY 2015-16. As is evident from above, there are still seven divisions where the losses are still above 30%. Further, it is to be noted that in case of Roorkee Urban Division, the losses have marginally increased from 36.28% in FY 2015-16 to 36.43% in FY 2016-17. Same is also observed in case of Vikasnagar where losses have increased from 32.66% in FY 2015-16 to 33.45% in FY 2016-17. The only inference that could be drawn here is that the Petitioner has not made any serious and focussed efforts in reducing division wise losses despite being pointed out by the Commission in its previous Orders. The Commission directs the Petitioner to submit division wise action plan to reduce the losses in the above divisions to below 20% within one month from the date of issuance of this Order.

As has been held by the Commission in its Tariff Order dated March 29, 2017, losses in other

categories of consumers (excluding HT Consumers) as on March 31, 2016 were about 30.90%. Moreover, the Commission in the said Order had also held that for past 3 years virtually there had been no reduction in losses of other category of consumers which clearly suggested that the Petitioner did not put in serious efforts in reducing the losses for other categories, thereby, failing to bring these losses within acceptable limits. Further, to reduce the distribution losses at LT level and to achieve loss level within acceptable limits, the Petitioner was required to take up the certain works, like replacement of all mechanical meters in a time-bound manner in all the divisions, removal of all ghost/fictitious/non-existent consumers from its billing database, ensuring that all the meters of the consumers are read and their bills prepared and distributed within time and also that no provisional bills namely NA/NR are issued for more than two billing cycles in accordance with the provision of Electricity Supply Code Regulation, 2007, etc. However, UPCL is yet to achieve its target in ensuring compliances.

Moreover, the Petitioner is also a signatory of the GoI Ujwal Discom Assurance Yojana (UDAY) wherein keeping in view the overall position, i.e. the actual losses of the Company, investment is to be made to improve the operational performance, consumer habits and the administrative situations. Further, the level of AT&C Losses of the Petitioner Company was fixed as follows under UDAY.

Table 3.2: AT&C Loss Target as per UDAY

Year	Level of AT&C Loss
2015-16	17%
2016-17	16%
2017-18	15%
2018-19	14.50%

Further, the Petitioner also submitted that during the meeting of State Advisory Committee held on 05.03.2018 in the office of the Commission to consider the request of the Petitioner of revisiting the distribution loss levels and targets. The Petitioner requested the Commission to specify the loss reduction trajectory in accordance with the target of distribution losses as fixed under UDAY. However, it needs to be understood that the targets fixed under UDAY Scheme are for AT&C losses and not distribution losses. The tariffs are fixed by the Commission based on the approved distribution losses in accordance with the MYT Regulations. The Commission had approved a distribution loss level of 15% for FY 2016-17, however, the distribution losses required to match up with the targets set in the UDAY scheme will be much lower than that approved by the Commission. UPCL in its Tariff Petition for FY 2018-19 has itself projected a collection efficiency of 98.75% and 99% for FY 2017-18 and FY 2018-19 respectively. Thus, to reach at the targets set under UDAY at the proposed collection efficiency, the distribution losses of UPCL for the two financial years have to be 13.92% and 13.64% respectively against the

targets set by the Commission of 14.75% and 14.50%.

Further, as already dealt by the Commission in Chapter 3 of this Order, Hon'ble ATE in its Judgment dated May 18, 2015 in Appeal no. 180 of 2013 has also held that it did not find any infirmity in fixing up of loss reduction targets by the State Commission as no instances were produced where funds for capital works for strengthening of distribution system had been denied by the State Commission in the ARR. Hence, the issue was decided against UPCL by Hon'ble ATE.

Hence, based on the above discussions and considering the ground realities, the Commission decides not to revise the loss trajectory for FY 2018-19. UPCL's inaction and continuous high level of inefficiency does not allow it to seek revision of the loss trajectory approved by the Commission, which if allowed would defeat the intent of the MYT framework. Accordingly, the Commission decides to retain the distribution loss for FY 2018-19 at 14.50% and the Petitioner is directed to abstain from seeking relaxation in this regard in every ensuing Tariff Petition once the issue has been settled by the Commission.

..."

As discussed in detail in the impugned Order UPCL had been proposing initiatives towards reduction of loss, however based on the information submitted by UPCL, it appears that no fruitful results could be gained out of the same. The only inference that could be drawn here is that the Petitioner has not made any serious and focussed efforts in reducing division wise losses despite being pointed out by the Commission in its previous Orders. Moreover, UPCL's inaction and continuous high level of inefficiency does not allow it to seek revision of the loss trajectory approved by the Commission, which if allowed would defeat the intent of the MYT framework.

- 3.2.9 It is surprising to observe that being an engineering organisation, UPCL has referred to the commercial audit carried out by M/s Feedback Infra Pvt. Ltd. as energy audit. UPCL itself has submitted that in the exercise of energy audit, the input energy, billed energy, billed revenue and collected revenue have been verified by the consultant. All this exercise has been carried out by the consultants based on the bills raised by the UPCL and not based on real time capturing of energy data and that too after the completion of the financial year. In the report the consultants have relied upon the monthly substation wise energy accounting reports of UPCL alongwith PTCUL energy records and their verification with MRI reading at input points. However, the consultants in their report had mentioned that it was not feasible to track the consumption records of all input points for FY 2015-16. However, in true sense this exercise cannot be called energy audit.

The Commission had at Para 6.3 of the impugned order dealt with the energy audit and the same is reproduced hereunder:

“The Commission in its earlier Tariff Orders had been reiterating its direction for conducting the energy audit of 11 kV feeders and submit the audit report before the Commission. Moreover, the Commission in its Tariff Order dated 29.03.2017 had directed the Petitioner to provide/maintain the system metering at each feeder, ‘T’ points, DTs and consumers in its distribution network so that effective energy auditing can be done. The Commission is of the view that proper energy accounting can throw-up several actionable issues which, when addressed, shall result in marked reduction in distribution losses in the Petitioner’s network.

The Petitioner in its instant Tariff Petition under status of compliance of directives has submitted that all the metering points at 33 kV level has been completed in all directions except Srinagar, Kotdwar, Rudraprayag, Gopeshwar and Narayanbagar divisions. Further, the Petitioner has submitted that meters on DTs in 31 Towns of R-APDRP project area have already been installed and 952 nos. of meters are proposed to be installed at existing DTs in towns other than R-APDRP towns under IPDS Scheme for which BOQ have been finalised. Guaranteed Technical Particulars (GTP) approval and material mobilization is under progress.

On this, the Commission is of the view that in order to have an effective energy accounting & auditing system, metering at each feeder, ‘T’ points, DTs and consumers in a distribution network are mandatory. Therefore, it is important to bring the entire distribution network under the ambit of robust metering system.

Therefore, the Petitioner is directed to provide/maintain the metering system at each feeder, ‘T’ points, DTs and consumers in its distribution network for effective energy auditing and accounting. The Petitioner is directed to submit compliance report in this regard by 30.09.2018, failing which appropriate action may be taken against the Petitioner in accordance with the Act/Rules/Regulations.”

Hence, as is evident from the above, 33 kV sub-stations are yet to be metered, 952 meters in DTs are pending metering. Further, instances of meter exceptions/provisional billings of consumers are also high. Thus, in the absence of adequate correction actions in this regard, any energy audit would be futile as in order to have an effective energy accounting & auditing system, metering at each feeder, ‘T’ points, DTs and consumers in a distribution network are mandatory and only then proper energy import and export can be monitored. Thus, merely getting a sales audit carried out does not serve and purpose.

3.2.10 The Commission would also like to mention here that in a similar matter, UPCL had filed

an appeal before Hon'ble ATE against the Order of this Commission which was rejected by ATE.

3.2.11 Hence, based on the above discussion it can be seen, that the Commission has already reasoned in detail for considering the Distribution Loss Trajectory approved in the impugned Order, and no new fact/evidence has been brought before the Commission in the Review Petition to rule otherwise. Moreover, since the Commission had already dealt with the said issue in the Tariff Order hence the same cannot be considered as an error apparent on the face of the record. Therefore, the Commission is of the view that the issue does not qualify for review and therefore the same is rejected.

3.3 Power Purchase Cost

3.3.1 The Petitioner in its Review Petition submitted that the Commission in its Order dated 21.03.2018 while allowing power purchase cost for FY 2016-17 has stated as follows:

"The Commission further observes, that the charges for deviation at 49.90 Hz as per Regulation 5 of CERC (Deviation Settlement Mechanism and related matters), Regulations 2014 is Rs. 4.07/kWh. The Commission to protect consumer interest and to ensure grid discipline has, therefore, curtailed any overdrawal above the rate of Rs. 4.07/kWh in FY 2016-17. The Commission has, therefore, disallowed Rs. 11.03 Crore on account of overdrawal at the rate higher than Rs. 4.07/kWh....."

3.3.2 In this regard, the Petitioner submitted that the Tariff Policy, 2016 mandates to supply adequate and uninterrupted power to all the categories of consumers. The relevant provision mentioned at para 8 of the Tariff Policy is as follows:

"The State Regulatory Commission will devise a specific trajectory so that 24 hours supply of adequate and uninterrupted power can be ensured to all categories of consumers by 2021-22 or earlier depending upon the prevailing situation in the State."

Further, Tariff Policy also mandates consideration of all the power purchase cost which is incurred at reasonable rates. The relevant provision mentioned at para 8.2.1 (1) of the Tariff Policy is as follows:

"The following aspects would need to be considered in determining tariffs:

All power purchase costs need to be considered legitimate unless it is established that the merit order principle has been violated or power has been purchased at unreasonable rates..."

3.3.3 The Petitioner further submitted that the Petitioner had made arrangement to meet its demand of electricity for FY 2016-17 as per approvals granted by the Commission.

However, sometimes the demand and supply gap rises due to some unforeseen conditions / circumstances such as any unplanned shutdown of the generating station (s) and sudden increase in demand due to weather conditions or less generation from hydro generating stations, transmission constraints etc. In such emergency conditions which are beyond the control of the Petitioner, the Petitioner is required to draw power from the grid through unscheduled interchange to meet the demand of electricity of the State consumers and to provide continuous supply to them. Though the Petitioner with a view to comply with the direction of the Commission had planned not to draw power below 49.90 Hz but in the circumstances given hereinabove this drawl at various times during the year was at a frequency lower than prescribed frequency. It is relevant to mention here that during FY 2016-17 the unmet demand was only 84.22 MU which is about one half percent of total demand.

- 3.3.4 The Petitioner in this regard requested the Commission to allow the power purchase cost disallowed in the impugned Order and claimed an amount of Rs. 14.34 Crore for FY 2016-17 including carrying cost in view on the same.
- 3.3.5 The Commission has gone through the submissions of the Petitioner. The Commission in the impugned Order with regard to charges for deviation under power purchase cost had held as under:

“The Petitioner in its reply with regard to increase in cost of UI overdrawals submitted that Over Drawl and Under Drawl is a continuous process and under ABT regime the same is integrated at every 15 minutes time interval, i.e. in 96 slots during the day. The average frequency in each time block determines the UI rate which is applicable on the Over Drawl /Under Drawl quantum of energy. The Petitioner further submitted that the net UI during the month of May, 2016 was actually under drawl of 24.69 MU and net amount paid for UI during the month was actually Rs. 1.67 Crore with credit adjustment amount of Rs. 1.19 Crore. Similarly net UI during the month of December, 2016 was actually over drawl of 17.88 MU and net amount paid for UI during the month was actually Rs. 9.18 Crore with debit adjustment amount of Rs. 3.64 Crore. UPCL further submitted that certain adjustments e.g. adjustments for equalizing total deviation charges payable and receivable, adjustments made on account of Nuclear Station being exempted from paying deviation charges are also included in the net UI charges paid during the month. The Petitioner further submitted that for reasons stated above the net UI and amount during the month cannot be the basis for calculation of per unit charges.

The Commission does not agree with the justification forwarded by the Petitioner and has observed that the Petitioner has availed professional services of M/s Quenext Decision Sciences

Pot. Ltd. w.e.f. April, 2016 to leverage real time opportunities including URS to reduce the cost of meeting the load of the end customer, merit order to integrate market and reduce imbalances and has claimed the cost of Rs. 3.05 Crore additionally in A&G expenses. In view of the same, the Commission in the interest of the consumers cannot allow to pass on the impact of overdrawal at such higher rates. The Commission in its Order dated April 11, 2015 had already directed the Petitioner to restrict the net drawal from the grid within its drawal schedules whenever the system frequency is below 49.90 Hz in order to ensure grid discipline which in the present case has not been followed.

The Commission further observes, that the charges for deviation at 49.90 Hz as per Regulation 5 of CERC (Deviation Settlement Mechanism and related matters), Regulations 2014 is Rs. 4.07/kWh. The Commission to protect consumer interest and to ensure grid discipline has, therefore, curtailed any overdrawal above the rate of Rs. 4.07/kWh in FY 2016-17. The Commission has, therefore, disallowed Rs. 11.03 Crore on account of overdrawal at the rate higher than Rs. 4.07/kWh..."

- 3.3.6 The Commission while disallowing Rs. 11.03 Crore on account of overdrawal at the rate higher than Rs. 4.07/kWh had clearly stated in the impugned Order that the justification provided by the Petitioner for the same is not acceptable keeping in mind the fact that the Petitioner has availed professional services of M/s Quenext Decision Sciences Pvt. Ltd. w.e.f. April, 2016 to leverage real time opportunities including URS to reduce the cost of meeting the load of the end customer, merit order to integrate market and reduce imbalances.
- 3.3.7 The Commission, in the impugned Order clearly expressed that in the interest of the consumers impact of overdrawal at higher rates cannot be allowed to be passed on in the ARR. Moreover, the Commission in its Order dated April 11, 2015 had already directed the Petitioner to restrict the net drawal from the grid within its drawal schedules whenever the system frequency is below 49.90 Hz in order to ensure grid discipline which in the present case has not been followed. The intent of Deviation Settlement Mechanism and related matters Regulations was to maintain grid discipline and grid security as envisaged under the Central Grid Code through the commercial mechanism for Deviation Settlement through drawal and injection of electricity by the users of the grid and the same cannot be jeopardised by overdrawals through the grid. Infact, supply of 24 by 7 power to all the consumers cannot also be a ground for resorting to overdrawals. For the same, adequate tie ups of power will be required and overdrawal cannot be a means to bridge the gap of power purchase requirement. It is all the more critical considering that the Petitioner had

engaged a professional services to leverage real time opportunities including URS to reduce the cost of meeting the load of the end customer, merit order to integrate market and reduce imbalances. Hence, keeping in view the above, the same cannot be allowed.

3.3.8 The Petitioner has further relied upon the provisions of the Tariff Policy which stipulates that all power purchase costs need to be considered legitimate unless it is established that the merit order principle has been violated or power has been purchased at unreasonable rates. As dealt in Table 3.13 of the impugned Tariff Order, the Petitioner had overdrawn electricity in the month of May, 17, October, 17 to January, 18 at the rates of Rs. 18.60/unit, Rs. 4.71/unit, Rs. 5.43/unit, Rs. 6.55/unit and Rs. 4.66/unit and in no way can these rates be justified as reasonable and, accordingly, has been disallowed.

3.3.9 Hence, based on the above discussion it can be seen, that the Commission has already reasoned in detail the disallowance of Rs. 11.03 Crore on account of overdrawal beyond 49.90 Hz by the Petitioner, and no new fact/evidence has been brought before the Commission in the Review Petition to rule otherwise. Moreover, since the Commission had already dealt with the said issue in the Tariff Order hence the same cannot be considered as an error apparent on the face of the record. Therefore, the Commission is of the view that the issue does not qualify for review and therefore the same is rejected.

3.4 Non-Tariff Income

3.4.1 The Petitioner submitted that as per Regulation 33 of the UERC (Terms and Conditions for Determination of Tariff) Regulations, 2015 the working capital is allowed on normative basis. However, the Petitioner has to manage its working capital requirement based on the commercial principles. As per the terms of the power purchase agreements, the Petitioner is entitled for a rebate of 1% in cases where bill is paid within 30 days and for a rebate of 2% in the cases where bill is paid within one week.

3.4.2 The Petitioner further submitted that it had analyzed that payment of any interest towards bank loan (overdraft) taken for early payment of power purchase bills is less than the amount of rebate availed on account of such early payment of bills. On the basis of such analysis, the Petitioner earned a rebate of Rs. 44.07 Crore by making early payment of power purchase bills and paid an interest of Rs. 27.06 Crore on the bank loan / overdraft taken for payment of such power purchase bills. Thus, the Petitioner saved Rs. 44.07 Crore - Rs. 27.06 Crore = Rs. 17.01 Crore during FY 2016-17 for this working capital management which has been passed on to the consumers in the form of reduction in tariff.

3.4.3 The Petitioner further submitted that in the ARR and Tariff Petition for FY 2018-19, the

Petitioner had requested the Commission to adjust the payment of interest on bank overdraft from the rebate availed on account of early payment of power purchase bills on the ground as mentioned in previous paragraph but the Commission in the impugned Order considered the entire amount of rebate of Rs. 44.07 Crore as non tariff income and only 1/3rd of interest on bank overdraft was allowed as expenses under the head sharing of loss with the consumers.

3.4.4 The Petitioner submitted that the view taken by the Commission in the matter in the impugned order is against the financial principles and caused loss of Rs. 27.06 Crore – Rs. 9.02 Crore = Rs. 18.04 Crore to the petitioner and this approach of the Commission is discouraging the Petitioner to save money by managing its cost of working capital, the benefit of which is passed on to the consumers. The Petitioner in this regard claimed an amount of Rs. 23.46 Crore for FY 2016-17 including carrying cost.

3.4.5 The Commission has gone through the submissions of the Petitioner. The Commission in its impugned Order dated 21.03.2018 with regard to adjustment of Overdraft interest against the revenue from rebate had held as under:

“3.3.4

...

In this regard, the Petitioner’s request to adjust it against the revenue towards rebate earned cannot be accepted as the interest on overdraft facility and revenue earned through rebate are two different elements. Further, as per the norms specified in the Regulations the Petitioner does not require any working capital if it would have carried out its operations efficiently. The requirement of overdraft arose as the Petitioner could not recover its dues from the consumers on time. However, actual interest on overdraft facility availed, which is a working capital facility has been considered as loss and sharing of the loss has been done in accordance with UERC MYT Regulations, 2015.”

“3.3.6

...

The Petitioner submitted that since UERC MYT Regulations, 2015 allows normative working capital only, any additional rebate earned by the Petitioner by making early payment should be allowed to be retained by the Petitioner. The Petitioner further submitted that it has been making consistent and earnest efforts to avoid additional burden on the consumer by following the practice of making timely payments of the power purchase invoices. Therefore, the Petitioner has requested the Commission to approve the cost of overdraft facility availed by it by adjusting the

same in the total benefit availed from the rebate. Accordingly, the Petitioner has adjusted the rebate of Rs. 44.07 Crore with the interest on overdraft of Rs. 27.06 Crore made in FY 2016-17. The Commission does not accept the contention put forward by the Petitioner. The Commission in the past has also considered the total rebate earned by the Petitioner as non-tariff income. The Petitioner in the past have pleaded to only pass on 1% of the rebate earned by it which was contrary to the Judgment dated May 18, 2015 of Hon'ble APTEL in the appeal filed by the Petitioner and, therefore, was not allowed by the Commission. In the current Petition, the Petitioner intends to adjust the cost of overdraft facility which it uses to manage its working capital requirement inherent to the operations of its business and the same cannot be passed on to the consumer as the Commission has been separately allowing IoWC as per the prevalent Regulations and for reasons discussed in Section 3.3.4. above, the Petitioner intends to seek additional expenses over and above IoWC allowed by the Commission under the guise of cost towards maintaining overdraft facility which is not as per the UERC Tariff Regulations, 2015. Therefore, the same has not been considered by the Commission.

..."

3.4.6 Further, Regulation 85 of UERC MYT Regulations, 2015 stipulates as under:

"85. Non-Tariff Income

The amount of non-tariff income relating to the Distribution Business and/or the Retail Supply Business as approved by the Commission shall be deducted from the Aggregate Revenue Requirement in calculating the revenue requirement from retail sale of electricity of the Distribution Licensee:

Provided that the Distribution Licensee shall submit full details of his forecast of non-tariff income to the Commission along with his application for determination of tariff.

The indicative list of various heads to be considered for Non-Tariff Income shall be as under:

- (a) Income from rent of land or buildings;*
- (b) Income from sale of scrap;*
- (c) Delayed Payment Surcharge;*
- (d) Rebates for timely payment of bills;***
- (e) Income from statutory investments;*
- (f) Interest on delayed or deferred payment on bills;*
- (g) Interest on advances to suppliers/contractors;..."*

(Emphasis added)

Thus, the MYT Regulations, 2015 also stipulates that non-tariff income shall also include rebates for timely payment of bills.

- 3.4.7 From a plain reading of the above it can be seen that the Commission had already dealt in detail in this regard in the said impugned Order and had clearly stated that interest on overdraft facility and revenue earned through rebate are two different elements and needs to be dealt accordingly. From the review Petition filed by the Petitioner it appears that the Petitioner is seeking to re-open the matters already concluded by the Commission without putting in any new fact/evidence before the Commission.
- 3.4.8 Hence, as evident from the above, the Commission has already elucidated its rationale for not adjusting the Overdraft interest against the revenue from rebate as claimed by UPCL. The Petitioner has, however, preferred this under review on the ground that the same is error apparent on the face of record which is incorrect. There is no error apparent on the face of the record and hence, this issue does not qualify for review and therefore, the same is rejected.

3.5 Capitalization

- 3.5.1 The Petitioner in its Review Petition has submitted that in the ARR and Tariff Petition for FY 2018-19 they had claimed the net capitalization for FY 2016-17 amounting to Rs. 238.29 Crore on the basis of figures shown in audited accounts but due to non submission of certificate of electrical inspector in respect of energization of HT works, the Commission considered capitalization of Rs. 142.15 Crore only for FY 2016-17 and allowed depreciation and return only on the reduced amount of capitalization of Rs. 142.15 Crore.
- 3.5.2 The Petitioner further submitted that it had incurred this capital expenditure for giving continuous and quality supply to the consumers of the State and in the absence of recovery of this expenditure alongwith eligible return on the same, the Petitioner was facing financial crisis. The Petitioner submitted that they are in the process of collecting the certificates of the electrical inspector in respect of all the balance HT assets capitalized during the financial year 2016-17 and the same shall be provided to the Commission by 30-09-2018. The Petitioner claimed an amount of Rs. 18.37 Crore in this regard alongwith the carrying cost on the same.
- 3.5.3 The Commission has gone through the submissions of the Petitioner. The Commission in its impugned Order dated 21.03.2018 with regard to allowance of capitalization had held as under:

“ ...

With regard to FY 2016-17, the Petitioner has claimed a net capitalisation of Rs. 238.29 Crore. The Petitioner was directed to submit the addition of fixed assets into HT and LT works and to submit the Electrical Inspector clearance for HT works. The Petitioner did not submit the required details. The Petitioner submitted the Electrical Inspector clearance certificate for only Rs. 222.38 Crore as against total additional capitalisation of Rs. 321.99 Crore in FY 2016-17.

The Commission observes that the Petitioner has capitalised assets amounting to Rs. 3.47 Crore towards Furniture & Fixtures, Vehicles and office equipment for which Electrical Inspector's Certificate is not required. The Commission has, therefore, approved additional capitalisation of Rs. 222.38 Crore and Rs. 3.47 Crore amounting to Rs. 225.85 Crore. The Commission has also considered the Decapitalisation of assets of Rs. 83.70 Crore in FY 2016-17. The Commission has not allowed a capitalisation of Rs. 96.14 Crore in the absence of clearance by Electrical Inspector as required under the Rules & also as details of segregation of assets into HT/EHT & LT works in line with the approach taken by the Commission in its previous Orders.

...”

- 3.5.4 From a plain reading of above, it can be seen that the Commission has not followed any new approach in allowing the capitalization while truing-up the ARR of FY 2016-17, rather same approach is being followed by the Commission earlier also wherein the capitalization is allowed based on the clearance of electrical inspector under the CEA Safety Regulations (erstwhile IE Rules, 1956).
- 3.5.5 The Petitioner in its review Petition also has not submitted balance electrical inspector certificate, rather requested before the Commission that the same shall be submitted by 30.09.2018, which shows a very lackadaisical approach on the part of UPCL in complying with the provisions laid down in the rules and regulations. The Commission had very explicitly stated in its Order dated 21.03.2018 that it has not allowed a capitalisation of Rs. 96.14 Crore in the absence of clearance by Electrical Inspector as required under the Rules, still UPCL is claiming the same again without production of the required clearance from the electrical inspector. Here it is pertinent to note that more than 1.3 years have elapsed since the end of FY 2016-17 and still UPCL is not able to collect all the clearances from electrical inspector for the amount capitalized by it in the Books of accounts. Infact, it is all the more surprising as to how the assets were charged by the Petitioner without any clearance from the Electrical Inspector as the CEA Regulations clearly lay down that all new HT installations are to be inspected & certified by the Electrical Inspector before getting energized. UPCL on one hand has flouted the regulations and now expects the Commission

also to be party to it by allowing the works which have not yet been cleared by the Electrical Inspector and hence the same cannot be allowed even now.

3.5.6 Hence, as evident from the above, the Commission has already elucidated its rationale for not allowing the capitalization of Rs. 96.14 Crore in FY 2016-17. The Petitioner has, however, preferred this under review on the ground that the same is error apparent on the face of record which is incorrect. There is no error apparent on the face of the record and hence, this issue does not qualify for review and therefore, the same is rejected.

3.6 Cost of Royalty Power and other past year adjustments

3.6.1 The Petitioner in its review Petition has submitted that the Commission vide its Tariff Order dated 06-05-2013 had specified the methodology for computation of rate of royalty power. According to the said methodology, the rate of royalty power is equivalent to the average rate of power procured by the Petitioner from large hydro generating stations. In the past, the rate of royalty power was approved equivalent to the average rate of power procured by the Petitioner from firm sources. The average rate of royalty power being based on estimated figures varies from the average rate of royalty power being based on the actual figures.

3.6.2 The Petitioner submitted that the cost of royalty power was being booked by the Petitioner in the financial statements as per the rate approved by the Commission in the Tariff Order for the ensuing year (based on estimated figures) whereas the cost of royalty power was being claimed during true-up exercise as per the average rate of royalty power based on the actual figures. The cost of royalty power for the period from FY 2011-12 to FY 2015-16 booked in the financial statements and approved by the Commission is Rs. 947.79 Crore & Rs. 1048.53 Crore respectively.

3.6.3 The Petitioner submitted that the Commission in the impugned order reduced the ARR of the Petitioner for FY 2018-19 by Rs. 100.74 Crore (Rs. 1048.53 Crore - Rs. 947.79 Crore) allowed in excess under the head of royalty power. Further, the Commission also reduced the ARR of the Petitioner for FY 2018-19 by Rs. 158.71 Crore towards previous years adjustments which were computed and approved in the tariff order dated 05.04.2016. Thus, the total amount of Rs. 259.45 Crore had been reduced from the ARR for FY 2018-19 and, accordingly, the reduced tariff was approved for the year.

3.6.4 The Petitioner further submitted that that due to fixation of tariff at the level of distribution losses below the actual distribution losses by the Commission in the previous years, the Petitioner does not have any surplus towards the above mentioned recoveries approved by

the Commission and, therefore, it is very difficult for the Petitioner to manage the revenue deficit of Rs. 259.45 Crore in a single year, i.e. in FY 2018-19. The Commission was, therefore, requested to review the issue and approve the recovery of Rs. 259.45 Crore in five equal annual installments starting from FY 2018-19 to FY 2022-23.

- 3.6.5 The Commission has gone through the submission made by the Petitioner. It is observed that the Petitioner in this regard has not brought any material fact/evidence before the Commission, rather in the guise of review it is seeking to revisit the already settled issue dealt in detail in the Commission's Order dated 05.04.2016 which has already attained finality and adjustment of two instalments out of the three instalments towards recovery of past adjustments have already been done in the Tariff Order for FY 2016-17 and FY 2017-18. Now the request made by UPCL to defer the balance third instalment in next five years due to its poor financial health cannot be ceded. Poor health of the Petitioner company was due to its own inefficiencies as has already been dealt in the impugned Tariff Order and the same cannot be a ground for review. In this regard, the Commission in the Order dated 21.03.2018 had held as under:

“ ...

The Commission in its MYT Order dated April 05, 2016 had approved the recovery of past year provisioned amount on account of material cost variance and write off of liabilities towards cost of power purchase. The Commission had determined the past year adjustments of Rs. 522.91 Crore with carrying cost to be returned by the Petitioner. The Commission further adjusted the true up of capital related expenses of the past years leaving behind Rs. 366.04 Crore to be refunded in three equal instalments out of which an amount of Rs. 122.01 Crore and Rs. 139.16 Crore was adjusted in the MYT Order in FY 2016-17 and APR Order dated March 29, 2017 and balance Rs. 139.16 Crore along with carrying cost amounting to Rs. 158.71 Crore have to be passed on in FY 2018-19.

...”

- 3.6.6 The Commission would like to state here that a review being very limited in nature is allowed only on the grounds of mistake or error apparent on the face of the record or any new fact/evidence that could not be brought before earlier, and there is no merit in making any fresh proposal/request in the form of review to revisit the matters that have already dealt in detail and settled in the original Order.
- 3.6.7 The Commission with respect to the claim made by the Petitioner had already taken its view in detail in the impugned Order, the relevant portion of the Order dated 21.03.2018 is

being reproduced hereunder:

“ ...

Accordingly, the Commission has, therefore, not carried out truing up of free power rate for FY 2016-17. Further, the Commission has also adjusted the excess cost of free power of Rs. 100.74 Crore allowed to it as evident from the Table above from FY 2011-12 to FY 2015-16. The Commission has, accordingly, adjusted the said amount of Rs. 100.74 Crore towards excess cost of free power allowed to UPCL from the ARR of FY 2018-19 as detailed in Chapter 4 of this Order. Further, the Petitioner is also directed to submit the details of cost of free power as booked in the accounts, cost of free power trued up by the Commission and the amount remitted to GoU by the Petitioner in this regard from FY 2001-02 to FY 2010-11 within 3 months of the date of the Order.

...”

As discussed above, the Commission had already discussed in detail in its Order dated 21.03.2018, its rationale for adjusting the excess cost of free power of Rs. 100.74 Crore allowed to UPCL from FY 2011-12 to FY 2015-16. Infact, it should have been the consumers who should have agitated the issue as the Commission adjusted this amount without allowing any carrying cost on the same. UPCL in the past years had sought excess cost towards free power payable to GoU which should be refunded back to the consumers.

3.6.8 Hence, based on the above discussion it can be seen, that the Commission has already reasoned in detail in this regard in the Order dated 21.03.2018, and no new fact/evidence has been brought before the Commission in the Review Petition to rule otherwise. Moreover, since the Commission had already dealt with the said issue in the Tariff Order hence the same cannot be considered as an error apparent on the face of the record. Therefore, the Commission is of the view that the issue does not qualify for review and therefore the same is rejected.

3.6.9 In view of the discussion above, the Commission rejects the review on all the grounds filed by the Petitioner for the reasons discussed above.

3.7 Limitation

3.7.1 Few stakeholders had raised the issue that by limitation the review petition was not maintainable as the Tariff Order was issued by the Commission on 21.03.2018 and as per Regulation 54(1) of the UERC (Conduct of Business) Regulations, 2014, the period of 60 days to review the order lapsed on 19.05.2018. In this regard, the Petitioner submitted that as the Tariff Order was issued by the Commission on 21.03.2018, this review petition as per

Regulation 54(1) of the UERC (Conduct of Business) Regulations, 2014 was allowed to be filed upto 19.05.2018 and 19.05.2018 and 20.05.2018 being weekly holidays in the office of the Commission, this review petition was allowed to be filed upto 21.05.2018.

3.7.2 In this regard, Regulation 3(3) of UERC (Conduct of Business) Regulations, 2014 specifies as under:

“Where the last working day for doing any act falls on a day on which the office of the Commission is closed and by reason thereof, the act cannot be done on that day, it may be done on the next day on which the office is open”.

Thus, the Petition does not suffer any defect on account of limitation, and in the instant case review Petition was allowed to be filed till 21st May, 2018.

However, the Petition had a defect on the ground that the same was not accompanied by the resolution of UPCL’s Board of Directors (BoD) approving the same as required under the proviso to Regulation 10(2) of UERC (Conduct of Business) Regulations, 2014. The Petitioner, while filing the Petition, had submitted that resolution of the BoD would be submitted within one week of the meeting of BoD which was, as submitted by the Petitioner, scheduled to be held in the month of June, 2018. During the hearing the Petitioner submitted that the meeting of BoD is scheduled in the month of August, 2018 and the Board’s Resolution will be submitted thereafter. UPCL subsequently submitted the Board’s resolution on 03.08.2018.

The Petitioner is, however, cautioned that in future no Petition will be accepted in the Commission’s office which is not complete as required under the UERC (Conduct of Business) Regulations, 2014.

3.7.3 The Petition No. 11 of 2018 is hereby disposed in terms of the above.

(Subhash Kumar)
Chairman

List of Stakeholders

Sr. No.	Name	Designation	Organisation	Address
1.	Sh. R.K. Tyagi	Sr. Vice Chairman	M/s SIDCUL Manufacturers Association-Uttarakhand	Plot No. 4, Sector-3, IIE, SIDCUL, Distt. Haridwar
2.	Sh. Munish Talwar	-	M/s Asahi India Glass Ltd.	Integrated Glass Plant, Village-Latherdeva Hoon, Manglaur-Jhabrera Road, P.O. Jhabrera, Tehsil Roorkee, Distt. Haridwar
3.	Sh. Shakeel A. Siddiqui	Sr. General Manager (Commercial)	M/s Kashi Vishwanath Textile Mill (P) Ltd.	5th KM, Stone, Ramnagar Road, Kashipur-244713, Distt. Udham Singh Nagar
4.	Sh. Rajesh Kumar	-	M/s Galwalia Ispat Udyog Ltd.	Narain Nagar Industrial Estate, Bazpur Road, Kashipur-244713, Distt. Udham Singh Nagar
5.	Sh. Pawan Agarwal	Vice-President	M/s Uttarakhand Steel Manufacturers Association	C/o Shree Sidhbali Industries Ltd., Kandi Road, Kotdwar, Uttarakhand
6.	Sh. Ashok Bansal	President	M/s Kumaon Garhwal Chamber of Commerce & Industry Uttarakhand	Chamber House, Industrial Estate, Bazpur Road, Kashipur, Udham Singh Nagar
7.	-	-	M/s BST Textile Mills Pvt. Ltd.	Plot 9, Sector 9, IIE, SIDCUL, Pantnagar, Rudrapur-263153, Udham Singh Nagar
8.	Sh. Dinesh Kumar	-	M/s Mahalaxmi Polypack Pvt. Ltd.	Plot No. 3A, Sector-9, IIE, SIDCUL, Pantnagar, Rudrapur-263153, Distt. Udham Singh Nagar
9.	Sh. P.K. Rajput	Executive Director	M/s Alps Industries Ltd.	57/2, Site-IV Industrial Area, Sahibabad, Ghaziabad-201010, Uttar Pradesh
10.	Sh. R.S. Yadav	Vice President (HR & Admn.)	M/s India Glycols Ltd.	A-1, Industrial Area, Bazpur Road, Kashipur-244713, Distt. Udham Singh Nagar