

Before

UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

Petition No. 10 of 2018

In the Matter of:

Review Petition on the Commission's Order dated 21.03.2018 on "True-Up of FY 2016-17, ARR for FY 2017-18 and AFC for FY 2018-19 for UJVN Ltd."

And

In the Matter of:

UJVN Ltd.,
"UJJWAL", Maharani Bagh, GMS Road,
Dehradun

...Petitioner

Coram

Shri Subhash Kumar Chairman

Date of Hearing July 24, 2018

Date of Order: August 13, 2018

ORDER

This Order relates to the Review Petition filed by UJVN Ltd. (hereinafter referred to as "UJVN Ltd." or "the Petitioner") under Section 94 (1) (f) of the Electricity Act 2003 that allows the Appropriate Commission to review its own decisions, directions and orders and Regulation 54 (1) & 54 (2) (Chapter X - Miscellaneous) of Uttarakhand Electricity Regulatory Commission (Conduct of Business) Regulations, 2014 for review of the Commission's Tariff Order dated 21.03.2018 issued in the matter of "True-Up of FY 2016-17, ARR for FY 2017-18 and AFC for FY 2018-19 for UJVN Ltd."

Background & Petitioner's Submissions

2. The Petitioner vide its letter No. 272/UJVNL/01/MD/GM(Comm.) dated 18.05.2018 filed a Review Petition on the Commission's Tariff Order dated 21.03.2018 on "True-Up of FY 2016-17, ARR for FY 2017-18 and AFC for FY 2018-19 for UJVN Ltd."

3. The Petitioner in its Review Petition has submitted that:-

“ ...

7 ...in the “APR Order dated 21.03.2018”, there are certain errors apparent and the Petitioner has apprehension over the way certain issues have been dealt with by the Hon’ble Commission hence Petitioner had approaching this Hon’ble Commission for review of the certain issues of “APR Order dated 21.03.2018”.

8 ... this Review Petition for kind consideration of the Hon’ble Commission under the following provisions:

Electricity Act 2003

The Section 94 (1) (f) of the Electricity Act 2003 allows the Appropriate Commission to review its own decisions, directions and orders. The relevant clause is reproduced below for reference:

“94. Powers of Appropriate Commission (1) The Appropriate Commission shall, for the purposes of any inquiry or proceedings under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) in respect of the following matters, namely:--

...

(f) reviewing its decisions, directions and orders;

...”

Regulation 54 of the UERC (Conduct of Business) Regulations, 2014 allows the Hon’ble Commission to review its own decisions, direction and orders. The relevant clause is reproduced as under:

“The Commission may on its own or on the application of any of the persons or parties concerned, within 60 days of the making of any decision, direction or order, review such decisions, directions or orders and pass such appropriate orders as the Commission thinks fit.”

....

10 This Review Petition is being filed on the issues as given here below:

10.1 Additional Capitalization for 9 old LHP’s:

10.1.1. ... that that the Petitioner had prayed for approval of 127.03 Crore for 9 LHP’s for additional capitalization for true up of FY 2016-17. However, out of 127.03 Crores the Hon’ble Commission has not considered capital expenses amounting to Rs. 14.42 Crore as additional capitalization and considered the same under R&M expenses (para 3.1.2.3 of the impugned order).

10.1.2. ... the said amount of Rs. 14.42 Crore was booked as capital expenses in the audited accounts of the Petitioner for FY 2016-17.

10.1.3. Hon’ble Commission has shifted an of amount Rs. 14.42 Crore to R&M on the grounds that the works related to major overhaul belongs to the R&M. This shifting of Rs. 14.42 Crore to R&M has negatively impacted UJVN Ltd. by 2/3rd of shifted amount on account of sharing of loss & gain.

10.1.4. Hon'ble UERC has shifted Capital maintenance expenditures of various power stations from Additional Capitalization to R&M, the Hon'ble UERC has also shifted expenditures made on Residential Buildings for Renovation and Modernization of various type of residences and expenditure incurred on Tools and Tackles at various hydro power stations of UJVN Ltd.

This is humbly submitted that Hon'ble UERC has allowed similar works in Additional Capitalization as these works are not done annually and need to be carried out after 4-5 years or more than this. Hon'ble Commission is requested to please consider these items as additional capitalization.

10.1.5. From shifting of Capital Expenditure amounting to Rs14.42 Crore from Additional Capitalization to R&M, UJVN Ltd shall suffer a loss of Rs. 9.61Crore in FY 2016-17 and in future also UJVN Ltd will suffer huge losses as plants are old requiring more and more Repair and Maintenance.

10.1.6. By incurring such capital expenditures, the safety and reliability of power stations has enhanced and the life of the machines has also extended.

10.1.7. Such capital expenditure increases life of the project and sustained generation could be achieved.

10.1.8. These expenditures are huge and cannot be absorbed in the R&M expenses as Expenditure allowed by Hon'ble UERC for R&M works is limited and leaves no space for capital expenditures to be absorbed in R&M expenses.

10.1.9. The Hon'ble UERC has not given any prior intimation for change in the philosophy for future and for proposed changes. No opportunity of being heard was given to the company to present the view of company.

10.1.10. The change in philosophy by Hon'ble UERC of shifting Capital Expenditure in normal R&M expenses will affect performance of UJVN Ltd manifold as expenses for Operation and Maintenance allowed for the of power stations is less than actual. Further innovation in the machines will not be possible by following this policy, the generation level will decrease, requiring more power purchase from outside agencies at higher rates.

10.1.11. Further, by adoption of same philosophy by the Hon'ble Commission in future claim will be detrimental for the proper maintenance of the power plants as the R&M approved by the Hon'ble Commission for future years (e.g. FY 2018-19) is based on earlier approach not considering the impact of major overhaul works of power plants which were earlier undertaken by additional capitalization.

10.1.12. Moreover, most of the power stations of the Petitioner are in operation for more than 35 years and due to aging and wear tear of the Plant and Machinery of these power stations, the actual expenses required on Repair and Maintenance are on higher side as compare to new hydro power plants. The major overhaul of plant and machinery is necessary for power plants after certain time period of operation depending upon the silt quantum in river, geographical location of power station etc. In major overhauling the expenses are higher as compared to routine/ annual maintenance because in major overhauling the repair and maintenance of those parts are undertaken which deteriorate after certain period of operation. Therefore not undertaking major maintenance in wants of

fund would lead to frequent breakdown of plant and machinery thus may result in generation loss and reduced availability of plant.

- 10.1.13. *...that the petitioner does not find any clause in the UERC Tariff Regulations, 2015 which stipulates that the works related to Major overhaul will be not considered as capital works. Therefore the treatment of works related as Major Overhaul by the Hon'ble Commission as R&M is not justified.*
- 10.1.14. *...the view taken by the Hon'ble Commission to treat Major overhaul as R&M is not correct and therefore it is an error apparent on face of record.*
- 10.1.15. *...to consider the expenses amounting to Rs 14.42 Crore as additional capitalization for FY 2016-17 and allow the expenses incurred against major overhaul works as capital expenditure in future also.*

10.2 Operation & Maintenance (O&M) for 9 old LHP's:

- 10.2.1. *O&M Expenses comprise of Employee Cost, Administrative & General Expenses and Repair & Maintenance (R&M) Expenses. The Hon'ble Commission has approved O&M expenses which are on lower side as compared to the actual claim made by UJVN Ltd and O&M expenses already approved by the Hon'ble commission in MYT order dated 05.04.2016.*
- 10.2.2. *The Hon'ble commission has determined Employee expenses, R&M expenses & A&G expenses for FY 2016-17 and for future years on the basis of approved expenses of FY 2015-16, considering FY 2015-16 as base year which is not in accordance to regulation 48(2) (a) & 48(2) (d) of UERC Tariff Regulations, 2015. As per Regulations 48(2) (a) & 48(2) (d) of UERC Tariff Regulations, 2015 the base year for second control period is FY 2014-15 for which O&M expenses shall be determined by taking into account the actual O&M expenses for last 05 years till base year based on the audited balance sheets.*
- 10.2.3. *In view of above it is clearly evident that the Hon'ble commission has backtracked its own principles of calculation of normative expenses by not applying Regulations 48 (2)(a) & 48(2)(d) of UERC Tariff Regulations, 2015. This has resulted huge difference in allowed amount in MYT and True up. It is an apparent error on face of record.*
- 10.2.4. ***The Petitioner humbly pray to the Hon'ble Commission to determine and allow the normative O&M expenses for FY 2016-17 and onwards as per the Regulations 48 (2)(a) & 48(2)(d) of UERC Tariff Regulations, 2015.***

10.3 A&G Expenses

- 10.3.1 *The Hon'ble Commission has approved Rs. 18.32 Crore for A&G expenses against the UJVNL's actual claim of Rs. 38.31 crore for FY 2016-17 for 10 LHPs. Here it is pertinent to mention that out of Rs. 38.31 Crore UJVNL's has made actual expenses of Rs. 12.75 Crore on insurance premium of 10 LHP's , Rs. 0.76 Crore on regulatory fee and remaining 24.80 was on other heads. In view of actual insurance premium & regulatory fees paid by UJVN Ltd., the approved normative by the Hon'ble Commission is too low.*
- 10.3.2 *For 09 old LHP's the Hon'ble Commission has approved Rs. 13.03 Crore for A&G expenses against the UJVNL's actual claim of Rs. 33.10 crore for FY 2016-17(para 3.1.2.7.4). Here it is pertinent to mention that out of Rs. 33.10*

Crore UJVNL's has made actual expenses of Rs. 11.42 Crore on insurance premium of 09 LHP's, Rs. 0.60 Crore on regulatory fee and remaining Rs. 21.08 Crore was on other heads. In view of actual insurance premium & regulatory fees paid by UJVN Ltd., the approved normative by the Hon'ble Commission is too low.

10.3.3 In view of above it is evident that only actual expenditures on insurance premiums and regulatory fee amounting to Rs.12.02 Crore were made by petitioner from the approved A&G expenses of Rs 13.03 for FY 2016-17. Most of the remaining actual expenses on A&G for 09 LHPs were made to be absorbed by the petitioner. This fact is not in consonance with the Sec.61 (b) of the Electricity Act 2003 which states as follows-

61. The Appropriate Commission shall, subject to the provisions of this Act, specify the terms and conditions for the determination of tariff, and in doing so, shall be guided by the following, namely:-

.....

(b) the generation, transmission, distribution and supply of electricity are conducted on commercial principles.

10.3.4 Further, it is also to submit that the expenditure on insurance is of mandatory in nature in view of Regulation 22(2)(f) of UERC Tariff Regulations, 2015 which specifies as follows-

"22(2)(f) In case of hydro generating stations, any additional expenditure which has become necessary on account of damage caused by natural calamities (but not due to flooding of power house attributable to the negligence of the generating company), including due to geological surprises, after adjusting for proceeds from any insurance scheme, and expenditure incurred due to any additional work which has become necessary for successful and efficient operation;

Provided that the additional capitalization on this account would only be allowed if appropriate and adequate insurance cover was available at the time of occurrence of natural calamities referred to above; "

10.3.5 By the means of approved A&G expenses by the Hon'ble UERC for True up of FY 2016-17 and for future years it would be difficult for the petitioner to fulfil the requirement of its A&G expenses, which may lead to discontinuance of insurance cover of its power stations in want of funds.

10.3.6 **Therefore, the petitioner requests the Hon'ble UERC to kindly allow actual insurance charges and regulatory fee separately for FY 2016-17 and onwards, in line with the directions issued for regulatory fee expenses as mentioned in para 4.3.7.3 of the order dated 21.03.2018.**

10.4 R&M Expenses

10.4.1. Most of the power stations of UJVN Ltd. are in operation for more than 35 years and due to aging and wear tear of the Plant and Machinery of these power station, the actual expenses required on Repair and Maintenance are on higher side as compare to new hydro power plants.

- 10.4.2. From the order passed by the Hon'ble Commission it is clear that major overhauling/capital maintenance expenses of the machines shall be considered as R&M expenses in future also. In view of treatment of Major Overhauling expenses as R&M in current order the approved normative R&M expenses by the Hon'ble Commission is insufficient to meet the actual requirement of the Repair and Maintenance of the power plants for true up year 2016-17 & future years also. Insufficient allocation of R&M expenditure by the Hon'ble UERC may adversely impact efficient and safe operation of power plants.
- 10.4.3. In view of above it is respectfully requested that the Hon'ble commission may either consider the expenses incurred on major overhauling of the machines as of capital nature or alternatively enhance the R&M expenses suitably to cater the requirement of major overhauling works, so that the health of the power stations of the petitioner may not deteriorate over a period of operation and the reliable and low cost electricity is available to the state.
- 10.4.4. Further it is to submit that as per regulation 48 (2) (d) of UERC Tariff Regulations, 2015 the R&M Expenses for nth year of the control period are determined by following formula'-

$$R\&M_n = K * (GFA_{n-1}) * (1+WPI \text{ inflation})$$

The Hon'ble Commission had approved the R&M expenses for FY 2018-19 based on above formula taking the closing GFA of 2016-17 for projection for determination of R&M expenses for FY 2018-19.

- 10.4.5. With regard to approval of R&M expenses for future years of control period (2017-18 & 2018-19) it is to submit that by applying the said formula the R&M expenses will never increase if the capital cost (GFA) of the plant remains same for entire control period. This is on the basis of the fact that K factor is fixed for the control period and WPI inflation remains same as for previous year. In spite of WPI inflation the approval of R&M will remain same as previous years. The impact of the same can be understood by the following approvals of the Hon'ble Commission-

Power Station	Approved R&M for FY 2016-17	Additional Capitalization for FY 2016-17	WPI inflation for considered by the Hon'ble Commission	Approved R&M for FY 2018-19
Ramganga	1.53	0.92	1.07%	1.54
MB-I	11.65	1.77	1.07%	11.71

For above mentioned power plants namely Ramganga and MB-I there is a small addition of capital in FY 2016-17. In spite of WPI inflation and one year in between FY 2016-17 & FY 2018-19 which is FY 2017-18 the increase in R&M is negligible.

By the virtue of formula of R&M for future years the petitioner would like to submit following example considering that in case there is no capital addition made during the control period FY 2016-17 to FY 2018-19 to Ramganga and MB-I HEPs :-

Plant	Opening GFA for FY 2016-17 (in Cr.)	Approved K factor for the control period	WPI inflation 2016-17	WPI inflation 2017-18	WPI inflation 2018-19	R&M Approval for 2016-17 would be (in Cr)	R&M Approval for 2017-18 would be (in Cr.)	R&M Approval for 2018-19 would be (Cr.)
Ramganga	55.73	2.70%	1.83%	1.07%	1.07%	1.532	1.520	1.520
MB-I	145.90	7.84%	1.83%	1.07%	1.07%	11.648	11.561	11.561

In view of above table it is clear that in spite of positive WPI inflation the approval of R&M as worked out above has decreased for FY 2017-18 & 2018-19 as compare to FY 2016-17 and it is same for FY 2017-18 & 2018-19. This is unreasonable way to determine the R&M expenses for any commercial entity.

10.4.6. *In light of above fact, Stagnation in R&M expenses approval despite positive WPI inflation is not justified for any commercial organization. Further, this is not consistent with section 61(b) of the Electricity Act 2003. The*

10.4.7. *The fact brought out here above may kindly be considered 'other sufficient reason' for review of the R&M expenses.*

10.4.8. *In view of above it is respectfully requested that the formula for Approval of R&M expenses may kindly be modified suitably to accommodate impact of year by year WPI inflation in R&M expenses during the control period by exercising the power to amend the regulation as per regulation 105 of UERC Tariff Regulations, 2015."*

4. The Petition was admitted by the Commission on dated 25.05.2018 and thereafter, the Commission directed the Petitioner to publish a public notice for seeking comments from the Stakeholders on the aforesaid Petition latest by 18.06.2018. However, no comments on the same has been received from the Stakeholders.
5. Giving the final opportunity to the Stakeholders for furnishing their comments in the matter, the Commission decided to fix a public hearing on 24.07.2018. On the scheduled date of hearing, the Petitioner reiterated its submissions made in the Petition. Further, a submission has also been received from one of the Stakeholders present during the hearing stating that austerity measures should be taken to cut cost of generation.

Commission's Observations, Views & Directions

6. The issue-wise contentions of the Petitioner 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 (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.

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.

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.

7. On further examination of the issues raised in the Review Petition, following has been observed:-

(A) Additional Capitalization for 9 old LHP's:-

(1) With regard to Additional Capitalization, it is observed that the same should be claimed under the defined ambit of Regulation 22 of UERC Tariff Regulations, 2015. However, the Petitioner is adopting a practice of fully utilizing the bracket of normative R&M expenses and any spill over is routed for claiming under Additional Capitalization, which is certainly not as per provisions of the Regulations. Moreover, the Commission finds no good reason to consider expenses of R&M nature viz. expenses on account of major overhauling under Additional Capitalization which allows the Petitioner to claim RoE on the invested amount on perpetual basis. The Commission is of the view that the basic intent of keeping norms for R&M is to restrict the undue recurring burden on the consumers as well as to ensure reasonable recovery of expenses incurred under Repair & Maintenance (alongwith carrying cost, if any) as R&M expenses are considered as revenue expenditure in the Tariff Order for the respective year and these expenses are not spread over the life of the project. Hence, it is imperative to keep norms for the R&M expenses which could be claimed for a Hydro Power Plant for a particular Financial Year. Further, the reasons cited by the Petitioner for claiming expenses of R&M nature under Additional Capitalization not only defies the intent & spirit of the provisions of Tariff Regulations but is also an act of unduly inflating the consumer tariff on perpetual basis. With regard to the Petitioner's contention that the Commission has not given any prior intimation for change in the philosophy for future and proposed changes, it is observed that between 17.01.2018 to 23.01.2018 detailed discussions were conducted with Petitioner on the plant-wise additional capitalization and R&M claims in its Tariff Petition for FY 2018-19. Thereafter, each plant specific queries were issued to the Petitioner for furnishing justification in support of its claims. In compliance to the same, the Petitioner had submitted its justification which itself illustrated that works claimed under Additional Capitalisation were works which were done for Repair & Maintenance/

Major overhaul. Moreover, it is observed that the philosophy adopted by the Commission is as per the MYT Regulations which allows the Commission to conduct prudence check on the petitioner's claims and based on the findings take prudent decisions in the interest of the consumers of the State. In the instant case, based on the discussions/meetings with the Petitioner it was found that the Petitioner was wrongly claiming the Major Overhaul/Repair & Maintenance expenses as additional capitalisation expenses and therefore, the Commission in accordance with the Regulations decided to shift these expenses in their correct head of expenses i.e. R&M. Hence, the aforesaid contention of the Petitioner is not justified.

- (2) As far as the contention of the Petitioner with respect to safety & reliability of the power plants is concerned, it is observed that the Commission has adequately considered such aspects while framing the normative R&M expenses for the plants. Moreover, the Tariff Regulations also provides for the provisions of Renovation & Modernization of old power plants through which the Additional Capitalization can be done in such plants. Infact, the Commission has already accorded approval for several RMU projects proposed by the Petitioner. However, the progress of the RMU works is itself very dismal at Petitioner's end for which Petitioner is itself responsible. Any commercial organization is expected to expeditiously take up Additional Capital works approved by the Commission. Also the Petitioner should judiciously make a prospective plan of R&M for UJVN Ltd. as a whole based on the MYT control period and keeping in view the normative R&M expenses allowed for that control period so that the actual expenses are not deducted under sharing of gain & loss as per MYT Regulations.

Furthermore, the Commission has always been allowing the prudent expenditure under various heads within the ambit of Act & Regulations. Therefore, the contention of the Petitioner is totally baseless.

- (3) The contention of the Petitioner for consideration of Major Overhaul as Additional Capitalisation is inappropriate, as major overhaul in general is an expense which is a major expense incurred on Repair & Maintenance of an asset and therefore, the very nature of the expense cannot be claimed as an

expense under Additional Capitalisation and attract RoE merely on the ground of its being a major investment. An expense qualifies as an additional capital expense when it satisfies the provisions of the Regulation 22 of UERC Tariff Regulations, 2015. The Commission is of the view that a major overhaul occurring after 4 to 5 years is not an additional capital expense as the expense cannot be depreciated over the projects life as that expense reoccurs after some years and again attracts RoE for perpetuity.

- (4) The view of the Commission, while scrutinizing the Additional Capitalisation claims of the Petitioner, was to ensure that the nature of expense is independent of the values of expenses being incurred and thus the expenses should be booked under the respective head of ARR under which it should actually fall. Thus, the plea for review put forward by the Petitioner is not tenable as the same is against the intent of the Regulations. Further, the Commission has issued the Order considering all aspects provided in the prevailing Regulations and does not find any error, as claimed by the Petitioner, in the impugned judgment. Moreover, through the various findings of law it has been observed that an error must be one which strikes one on merely looking at the record and which would not require any long-drawn process of reasoning. In this regard, Hon'ble Supreme Court in the matter of *Persian Devi vs Sumitri Devi (1997) 8 SCC 715* has held that,

“...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...”

(B) Operation & Maintenance (O&M) Expenses:-

- (1) The contention of the Petitioner that the Commission has backtracked its own principles of calculation of normative expenses by not applying Regulations 48 (2) (a) & 48(2) (d) of UERC Tariff Regulations, 2015 is incorrect as Regulation 48 (2) (a) specifies that:-

“ ...

(a) For generating Stations in operation for more than five years preceding the Base Year

The operation and maintenance expenses for the first year of the control period will be approved by the Commission taking in to account the actual O&M expenses for last five years till base year, based on the audited balance sheets, excluding abnormal operation and maintenance expenses, if any, subject to prudence check and any other factors considered appropriate by the Commission. [Emphasis added]"

- (2) From the above, as far as Regulation 48 (2) (a) is concerned the same is “*subject to prudence check and any other factors considered appropriate by the Commission*”. While carrying out truing-up of FY 2016-17 during the proceeding, the Commission was aware of the fact that it already had trued-up figures of FY 2015-16, hence, according to the logic of Prudence Check for expenditure, it is more appropriate to consider the latest trued-up figure rather than the estimated figures of Base year FY 2014-15. Moreover, the Regulation specifies that the Commission has the discretion to consider any other factors which it deems appropriate in the interest of the consumers of the State. Therefore, the contention of the Petitioner that the Commission has fallen back on its own principles of calculation of normative expenses is incorrect as the calculation of the normative O&M expenses is as per provisions of UERC Tariff Regulations, 2015. Thus, the contention that it is an error apparent on the face of record is incorrect.

(C) Administrative & General (A&G) Expenses:-

- (1) The A&G expenses have been calculated in accordance with the provisions of Regulation 48 (2) of UERC Tariff Regulations, 2015. Moreover, the reason for decrease is primarily due to decrease in WPI escalation factor which directly corresponds to the inflation, thus, reducing the expenses on account of A&G expenses. Hence, the contention of the Petitioner is not sustainable.
- (2) It is known that insurance premiums for hydro power plants varies on factors like location, size, company’s background, extent of risk coverage etc, and the insurance premiums decrease with the life of the project/asset as the same is subject to depreciation with the passage of time. In this regard, the Commission has observed that for FY 2016-17, the Petitioner had claimed an insurance expense of ₹11.41 Cr. for 9 LHPs i.e Chilla- ₹1.72 Cr., MB-I- ₹1.08 Cr., Ramganga- ₹2.37 Cr., Khatima- ₹0.49 Cr., Chibro- ₹2.87 Cr., Khodri-

₹1.49 Cr., Dhakrani- ₹0.40 Cr., Dhalipur- ₹0.61 Cr. & Kulhal- ₹0.36 Cr. and ₹1.33 Cr. for MB-II. Moreover, the closing GFA for FY 2016-17 for 9 LHPs & MB-II was ₹780.63 Cr. & ₹2200.01 Cr. respectively. Which depicts that for a new power plant i.e. MB-II with a installed capacity of 304 MW located in a vulnerable geographical terrain with high level of risk is having a insurance premium of ₹1.33 Cr, whereas, insurance premium of old plants of lower capacity & lower closing GFA and located comparatively in less vulnerable terrain viz. Khodri & Ramganga are having higher premium.

In this regard, the Commission is of the view that the Petitioner being a regulated commercial entity should keep in mind the Cost Plus philosophy and prudently evaluate the insurance premiums for each LHP and should leverage the benefits of competition in the insurance sector for the benefit of its organization rather making such flimsy and unwarranted statements like *"in future years UJVN ltd. may discontinue insurance cover of its power stations in want of funds"* from a commercial organisation which is a going concern.

- (3) The Commission has appropriately made provisions for sharing of gain & losses in MYT Regulations so that any deviation of actual expense over the normative expenses would be appropriately compensated through these provisions in MYT Regulations. Hence, the contention of Petitioner that it has incurred huge losses is not correct. Moreover, this contention of the Petitioner is in the nature of appeal and not review. In this regard, Hon'ble APTEL in its judgment dated 30.03.2015, has held that:-

"...According to the well settled principle of law, the Review Petition cannot be an Appeal in disguise. Issues which have been considered and findings rendered cannot be the subject matter of review and re-hearing as held by the Hon'ble Supreme Court in the case of Parison Devi v Sumitri Devi, (1997) 8 SCC 715 and N. Anantha Reddy v. Anshu Kathuria "

(D) Repair & Maintenance (R&M) Expenses:-

- (1) As detailed in the above point 7 (A) 'Additional Capitalization for 9 old LHP's', it is imperative to keep norms for the R&M expenses and allow the additional capitalization under the defined ambit of Regulation 22 of UERC

Tariff Regulations, 2015 in order to restrict the burden on the consumers of the State.

- (2) With regard to the contention of the Petitioner, wherein the Petitioner has put forth an option before the Commission to *“either consider the expenses incurred on major overhauling of the machines as of capital nature or alternatively enhance the R&M expenses suitably to cater the requirement of major overhauling works”*, it is observed that the Petitioner in the wake of filing a Review Petition is trying to propose alternative Regulations vis-à-vis specified provisions in respect of Add. Cap. and R&M expenses before the Commission thereby challenging the very sanctity of the Regulations framed by the Commission. Admittedly in the guise of Review Petition, the Petitioner cannot reopen all the grounds including challenging the existing Regulations and seek re-hearing of the matter by putting forward other alternatives for determination of Tariff which are not provided in the prevailing Regulations rather a review Petition is to be tested under specific provisions of Order XLVII (1) of the Code of Civil Procedure, 1908.
- (3) Further, with regard to the request of the Petitioner that *“the formula for Approval of R&M expenses may kindly be modified suitably to accommodate impact of year by year WPI inflation in R&M expenses during the control period by exercising the power to amend the Regulation as per Regulation 105 of UERC Tariff Regulations, 2015”*, it is observed that the Petitioner is trying to seek amendment in prevailing Regulations in disguise of filing a Tariff Review Petition. Thus, the Commission is of the view that this act of the Petitioner is totally uncalled for, as there are specific provisions in the Regulations for seeking amendment in Regulations. Therefore, the Petitioner just cannot seek an amendment in the Regulations on the pretext of filing a Review Petition on the Tariff Order issued by the Commission.
- (4) The Commission has clearly provided the ambit for consideration of an expense for capital expenditure in Regulation 21, 22 & 23 of the MYT Regulations, 2015, wherein ambit for inclusion of an expense into CAPEX i.e. Capital Cost, Additional Capitalisation and Renovation & Modernisation have been provided. As far as Repair & Maintenance expenses is concerned,

the same are an integral part of O&M expenses which have been provided in Regulation 30 of the MYT Regulations, 2015. Moreover, the escalation formula for R&M expenses have been clearly provided in Regulation 48 of the aforesaid Regulations. The same formula of R&M expenses was prevailing in the UERC Tariff Regulations, 2011 and thereafter is in UERC Tariff Regulations, 2015. Infact the 'K' factor in the formula for R&M expenses is a factor derived from average R&M expenses (including expenses on account of major overhaul/repairs) in past years. Therefore, the mechanism for compensating the generating company on account of major investment incurred on major overhaul/repair is inbuilt in the 'K' factor itself.

- (5) Further, the Commission is of the view that a Regulated entity should follow consistent approach for major overhauls, keeping in view that these expenses are not abnormally high for a particular year. This can be achieved by making medium to long term plan for Repair & Maintenance of its LHPs in a selective and sequential manner for a particular year so that cost towards R&M expenses in each year does not exceed the normative expenses provided in the Regulation under the said head for that year. Hence, any mismanagement/ inappropriate planning resulting in exorbitant expenditure on R&M expenses cannot be recovered through any set of Regulations, no matter how many iterations on alternative Regulations are worked out before framing Regulations.
8. Hence, it appears that the Petitioner is seeking review of the Order merely rearguing the original matter and seeks a fresh decision on the case. None of the specific grounds, as discussed in Para 6 above, on which review can be considered are clearly brought out in the Petition. Whereas, the Commission had issued a speaking Order delving into each aspect of the ARR. Therefore, 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.
9. In light of the above, the Commission is of the view that none of the pleadings of the Petitioner qualifies for Review of Commission's Tariff Order dated 21.03.2018

issued in the matter of “True-Up of FY 2016-17, ARR for FY 2017-18 and AFC for FY 2018-19 for UJVN Ltd.” as per the relevant Codes of CPC. Hence, the instant Review Petition brought before the Commission is rejected and disposed off.

Ordered accordingly.

(Subhash Kumar)
Chairman