

Before

UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

Misc. Application No. 34 of 2020

In the matter of:

Petition for review of the Tariff Order dated 18.04.2020 with respect to the truing up of Non-Tariff Income for the FY 2018-19.

In the matter of:

Sravanthi Energy Pvt. Ltd. ... Petitioner

AND

In the matter of:

Uttarakhand Power Corporation Ltd. ... Respondent

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Shri D.P. Gairola Member (Law)

Shri M.K. Jain Member (Technical)

Date of Order : December 03, 2020

Sravanthi Energy Pvt. Ltd. (herein after referred to as "M/s SEPL" or "the Petitioner") has filed a Petition for review of Commission's Order dated 18.04.2020 with respect to truing up of Non-Tariff Income for FY 2018-19 under Section 94 of the Electricity Act, 2003 (herein after referred to as "the Act"), Regulation 54 of the Uttarakhand Electricity Regulatory Commission (Conduct of Business), Regulations, 2014 (herein after referred to as "UERC CBR").

1 Background

1.1 The Commission had notified Uttarakhand Electricity Regulatory Commission (Terms and Conditions for Determination of Multi Year Tariff) Regulations, 2018 (hereinafter referred to as "UERC Tariff Regulations, 2018") for the third Control Period from FY 2019-20 to FY 2021-22 specifying therein terms, conditions and norms of operation for licensees, generating companies and SLDC. The Commission had issued tariff Order dated April 18, 2020 for FY 2020-21, including Annual Performance Review for FY 2019-20. In accordance with the

provisions of the UERC Tariff Regulations, 2015, the Commission had also carried out truing up for FY 2018-19 vide its aforesaid Order dated 18.04.2020.

The Petitioner filed a Review Petition dated 12.11.2020 for rectification of deduction of Non-Tariff Income from the Annual Fixed Charges determined vide Order dated 18.04.2020 for truing up of FY 2018-19. The Review Petition as per Regulation 54(1) of the UERC (Conduct of Business) Regulations, 2014 was required to be filed by 17.06.2020, i.e. within 60 days of the date of the Order, however, the Petitioner submitted that it could not file the same due to COVID pandemic conditions and movement restrictions due to lock down in the State, and requested the Commission to condone the delay in submission of the Petition.

- 1.2 The Petitioner submitted that it had claimed an amount of Rs. 7.34 crore as Non-Tariff Income for FY 2018-19 on account of interest income of Rs. 7.12 Crore and miscellaneous receipts from sale of scrap of Rs. 22 Lakh. The Petitioner submitted that interest income relates to the earnings out of investments made from unutilized funds received on account of Return on Equity (“RoE”) accumulated over a period. The Petitioner further submitted that the primary reason for such accumulation of funds is only to ensure that the Petitioner company has reserves as it does not have any Working Capital Facility from any lending institution.
- 1.3 The Petitioner submitted that considering that the reserve funds are parked to meet its payments obligations, any interest that is accrued on this account should not adversely impact its tariff. The Petitioner, accordingly, requested the Commission to review the order dated 18.04.2020 for rectification of the deductions made on account of interest income to the extent of Rs 7.12 Crore during FY 2018-19.
- 1.4 The Commission sought comments from UPCL (herein after referred to as “UPCL” or “the Respondent”) on the Petition filed by M/s SEPL, and UPCL submitted its comments in the matter vide its letter dated 01.12.2020.
- 1.5 The Respondent submitted that the reasons given by the Petitioner seeking condonation of delay in filing the Petition are not justifiable, and therefore, delay in filing of the Petition should not be condoned by the Commission. UPCL further submitted that the Petitioner has not given any legally sustainable ground for review of the order, when the Petitioner has not

even pointed out or asserted about “error apparent on record”, and therefore, the question of reviewing the order does not arise.

- 1.6 The Commission conducted a hearing on 02.12.2020, wherein the UPCL reiterated its written submissions and objected to admission of the Petition.
- 1.7 The issues raised by the Petitioner in the Petition, Respondent’s comments, alongwith the analysis of the Commission are dealt in the subsequent section.

2 Petitioner’s submission, and Commission’s Analysis and Ruling

2.1 Powers of the Commission and Grounds for Review

2.1.1 Before going into the merits of the Petition filed by M/s SEPL, 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 regard 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.

2.1.2 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.

2.1.3 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.

2.1.4 In accordance with Regulation 54(1) of UERC (Conduct of Business) Regulations, 2014, a Petition for review can be filed within 60 days of the making of any decision, direction or order by the Commission. The relevant portion of the Regulation is reproduced hereunder:

“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 an decision, direction or order, review such decisions, directions or orders and pass such appropriate orders as the commission thinks fit.”

2.1.5 The Commission, before going into merits of the Petition, firstly would like to examine the Petitioner’s request regarding the condonation of delay in filing of the Petition. In this regard, the Commission analysed the submissions made by M/s SEPL and observed that as per the UERC (Conduct of Business Regulations), 2014, the Petitioner was required to file the current Review Petition latest by 17.06.2020, however, due to Covid-19 pandemic conditions and lock down movement restrictions in the State, M/s SEPL was unable to file the current Review Petition on due time.

2.1.6 The Commission analysed the submission made by the Petitioner with respect to the delay in filing of the Petition and observed that the Petitioner has not given any reasons for such inordinate delay in filing of the Review Petition, and has merely stated that it could not file the Petition because of ongoing Covid-19 pandemic situation. In this regard, the Commission is of the view that on the first hand, M/s SEPL should have endeavoured to file the Review Petition within the stipulated time as per Regulations, i.e. 17.06.2020, and in the worst case should have filed the same immediately after the lockdown was lifted in the phased manner starting from end of May 2020, in view of the directions issued by the Central Government and suitably followed by the State Governments. However, it took

M/s SEPL further six months from the month when the lockdown was first lifted in a phased manner, and that too without any reasoned justification for the same which also reflects towards the non-seriousness of the Petitioner.

2.1.7 In view of the above discussion, the Commission is of the view that the delay in filing of Review Petition by M/s SEPL for review of Commission's Order dated 18.04.2020, cannot be condoned as no justified/reasonable grounds warranting such delay has been brought to notice of the Commission. It is worth mentioning here that the Tariff proceedings for ensuing Financial Year, i.e. FY 2021-22 is scheduled to commence from the month of December, 2020, and therefore, there is no merit in revising the tariffs at this juncture, if so required on account of review. However, M/s SEPL, is given the liberty to raise the issues claimed in the upcoming tariff proceedings.

2.1.8 The Commission, in view of the above, rejects the Review Petition filed by M/s SEPL against the Commission's Order dated 18.04.2020, as not maintainable, and, accordingly, Miscellaneous Application No. 34 of 2020 stands disposed off.

2.1.9 Ordered Accordingly.

(M.K. Jain)
Member (Technical)

(D.P. Gairola)
Member (Law)