

**Before**

# **UTTARAKHAND ELECTRICITY REGULATORY COMMISSION**

**Misc. Application No. 29 of 2020**

**In the matter of:**

Petition for review of the Commission's Order dated 18.04.2020 on True up for FY 2018-19, Annual Performance Review for FY 2019-20 and Annual Revenue Requirement for FY 2020-21.

**In the matter of:**

Uttarakhand Power Corporation Ltd.

... Petitioner

**CORAM**

**Shri D.P. Gairola      Member (Law)**

**Shri M.K. Jain        Member (Technical)**

**Date of Order : November 11, 2020**

Uttarakhand Power Corporation Ltd. (herein after referred to as "UPCL" or "the Petitioner") has filed a Petition for review of Commission's Order dated 18.04.2020 on True up of FY 2018-19, APR for FY 2019-20 and ARR for FY 2020-21 under Section 94(1)(f) of the Electricity Act, 2003 (herein after referred to as "the 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 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 the 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 12.10.2020 on the grounds that there were certain errors apparent on the conclusions drawn on certain issues by the Commission in its Tariff Order dated 18.04.2020. 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. Further, as per Regulation 10 of the said Regulations, resolution of the Board of Directors is required to be annexed with the Review Petition. As the meeting of the Board of Directors of the Petitioner company could not be scheduled during 18.04.2020 to 19.07.2020, the Petitioner submitted that this Review Petition could not be filed within due date, i.e. by 17.06.2020. The Petitioner requested the Commission to condone the delay in submission of the Petition.

- 1.2 The Petitioner through the current Review Petition has made an additional claim of ARR as summarized in the table below:

S. No.	Particulars	Amount (Rs. Cr.)
1.	Power Purchase Cost for FY 2018-19	129.58
2.	A&G Expenses for FY 2018-19	11.93
3.	R&M Expenses for FY 2018-19	7.55
4.	A&G Expenses for FY 2020-21	6.44
5.	R&M Expenses for FY 2020-21	25.15
<b>Total</b>		<b>180.65</b>

- 1.3 The Commission in order 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, 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: Publication of Notice**

S. No.	Newspaper Name	Date of Publication (Notice related to Review Petition dated 12.10.2020)
1.	Amar Ujala	17.10.2020
2.	Times of India	18.10.2020

Through the above notice, the stakeholders were requested to submit their objections/ suggestions/comments latest by 06.11.2020 on the Review Petition filed by UPCL (copy of the notice is enclosed as **Annexure-I**). The Commission did not receive any objections/ suggestions/comments in writing on the Review Petition filed by UPCL.

1.4 The issues raised by the Petitioner in the Petition, 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 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.

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 Further, as per 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 UPCL and observed that as per the UERC (Conduct of Business Regulations), 2014, UPCL was required to file the current Review Petition latest by 17.06.2020, however, since the meeting of Board of Directors of UPCL could not be held during the intervening period, therefore, UPCL was unable to file the current Review Petition on due time.

2.1.6 UPCL submitted that the meeting of its Board of Directors was held on 20.07.2020 wherein the resolution for approving the filing of Review Petition, against the Commission’s Order dated 18.04.2020, was passed. In this regard, the Commission observed that UPCL’s BoD approving the filing of Review Petition was held on 20.07.2020, however, the Petition for Review of Tariff Order dated 18.04.2020 was filed by UPCL on 12.10.2020, i.e. almost after 3 months from the date of the meeting of BoD.

2.1.7 Furthermore, UPCL 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 the meeting of BoD could not be scheduled during 18.04.2020 to 19.07.2020. In this regard, the Commission is of the view that on the first hand, UPCL 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 meeting of the BoD was

held on 20.07.2020. However, it took UPCL further three months from the date of its BoD's meeting to file the Review Petition, that too without any reasoned justification for the same which also reflects towards the non-seriousness of UPCL.

2.1.8 In view of the above discussion, the Commission is of the view that the delay in filing of Review Petition by UPCL 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, if any of the claims of UPCL in the current Review Petition are allowed to be passed onto consumers in the form of tariff, then the same would be required to be charged/collected from the consumers in a very short span of 4 months commencing from December, 2020, which would result in unduly burdening the consumers for the inefficiency of the utility. Moreover, keeping in view the fact 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, for such a short span of time, which will not only be a burden on the consumers to absorb such frequent and substantial variations in tariff as claimed by UPCL, but also would be detrimental to planning and projection of the key consumers viz. industries, who are assuming the cost of electricity as one of the major cost components. However, UPCL, is given the liberty to raise the issues claimed in the upcoming tariff proceedings.

2.1.9 The Commission, in view of the above, rejects the Review Petition filed by UPCL against the Commission's Order dated 18.04.2020, as not maintainable, and accordingly, Miscellaneous Application No. 29 of 2020 stands disposed off.

2.1.10 Ordered Accordingly.

**(M.K. Jain)**  
**Member (Technical)**

**(D.P. Gairola)**  
**Member (Law)**


**Uttarakhand Power Corporation Limited**  
 (A Govt. of Uttarakhand Undertaking)  
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 Corp. Identity No. U40109UR2001SGC025867, E-mail: cgmupcl@yahoo.com, Website: www.upcl.org

### PUBLIC NOTICE

**Inviting Comments on the Petition for review of Commission's Order dated 18.04.2020 on the Annual Revenue Requirement & Tariff Petition for FY 2020-21 filed by Uttarakhand Power Corporation Limited (UPCL) before the Uttarakhand Electricity Regulatory Commission**

#### Salient Points of the Review Petition

1. Uttarakhand Power Corporation Limited (UPCL), the sole Distribution and Retail Supply Licensee in the State, has filed a Review Petition before Uttarakhand Electricity Regulatory Commission (UERC or Commission) for review of the Commission's order dated 18.04.2020 on the Annual Revenue Requirement & Tariff Petition for FY 2020-21.
2. Through the above Petition, UPCL has made an additional claim of ARR amounting to Rs. 180.65 Crore as summarized below.

S.No.	Particulars of Claim	Rs. Crore
1.	Power Purchase Cost for FY 2018-19	129.58
2.	A&G Expenses for FY 2018-19	11.93
3.	R&M Expenses for FY 2018-19	7.55
4.	A&G Expenses for FY 2020-21	6.44
5.	R&M Expenses for FY 2020-21	25.15
<b>Total</b>		<b>180.65</b>

3. UPCL has proposed to recover the additional revenue gap of Rs. 180.65 Crore through increase in tariffs to be made effective from 01.04.2020. UPCL has, accordingly, proposed an average tariff hike of 2.56% in the existing tariffs as approved in the Tariff order of the Commission.
4. Responses/ suggestions, of any, are sought from consumers and other stakeholders on the Petition, Responses may be sent to the Secretary, Uttarakhand Electricity Regulatory Commission, either in person, or by post at 'Vidyut Niyamak Bhawan', Near ISBT, PO-Majra, Dehradun-248171 or through e-mail to [secy.uerc@gov.in](mailto:secy.uerc@gov.in) by 06.11.2020.
5. The Petition is also available at the website of the Commission ([www.uerc.gov.in](http://www.uerc.gov.in)) and at the Petitioner's website ([www.upcl.org](http://www.upcl.org))

No: 542/EE(CM)/UPCL/A-2 Dated: 16.10.2020

Managing Director

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