

**Before**

**UTTARAKHAND ELECTRICITY REGULATORY COMMISSION**

**Misc. Appl. No. 58 of 2015**

**In the matter of:**

Petition for Review of the UERC's Order dated 11.04.2015 on "True-up of FY 2013-14, Annual Performance Review for FY 2014-15 and Annual Fixed Charges for FY 2015-16 for UJVN Ltd".

**In the matter of:**

UJVN Ltd. Dehradun.

.....Petitioner

**And**

1. Uttarakhand Power Corporation Ltd. (UPCL)
2. Himachal Pradesh State Electricity Board Ltd. (HPSEB Ltd.)  
Vidyut Bhawan, Kumar House, Shimla (H.P.)

.....Respondents

**Coram**

**Shri Subhash Kumar**

**Chairman**

**Shri K.P. Singh**

**Member**

**Date of Hearing: November 17, 2015**

**Date of Order: January, 22 2016**

**ORDER**

This Order relates to the Petition filed by UJVN Ltd. (hereinafter referred to as "UJVN Ltd." or "the Petitioner") for Review of the UERC's Order dated 11.04.2015 on "True-up of FY 2013-14, Annual Performance Review for FY 2014-15 and Annual Fixed Charges for FY 2015-16 for UJVN Ltd.

**Background**

2. UJVN Ltd. vide its letter No. 10/UJVNL/04/D(F)/Comm dated 09.09.2015 filed a Petition for Review of the Commission's Order dated 11.04.2015 on "True-up of FY 2013-14, Annual Performance Review for FY 2014-15 and Annual Fixed Charges for FY 2015-16 for UJVN Ltd.

3. Earlier, UJVN Ltd. had submitted the Review Petition on dated 10.06.2015 for Review of the Commission's Order dated 11.04.2015 on 'True-up of FY 2013-14, Annual Performance Review for FY 2014-15 and Annual Fixed Charges for FY 2015-16". However, the said Review Petition was returned by the Receiving Officer, UERC due to non-submission of "Resolution of BoD". Thereafter, the petitioner filed a Petition on dated 26.06.2015 to the Commission for allowing presentation and acceptance of the Review Petition, submitted on 10.06.2015 which was disposed off by the Commission vide Order dated 07.08.2015 directing that:

*"Based on the submissions of the Petitioner, UJVN Ltd. is allowed filing of a fresh Review Petition in the matter, subject to the submission of copy of the Board's resolution and request for condonation of delay giving adequate justification."*

4. Thereafter, the Petitioner vide its letter dated 09.09.2015 submitted a Review petition before the Commission stating that as the 75<sup>th</sup> Meeting of Board of Directors was to be held on 27.06.2015 and the application was barred by time. Therefore, in order to comply with the Regulations 10 of UERC (Conduct of Business) Regulations, 2014, to file the aforesaid Review Petition within the period of limitation, the Review Petition was got approved by the Chairman, UJVN Ltd. A certificate in this regard was submitted by the MD, UJVN Ltd. to the Commission alongwith the Review Petition requesting that the copy of the Resolution passed by the Board of Directors, UJVN Ltd. shall be submitted to the Commission in due course of time. UJVN Ltd. further submitted that in 75<sup>th</sup> Board meeting held on 27.06.2015 the Board authorized the Chairman, UJVN Ltd. to approve petitions, revisions and matters incidental thereto to be filled with the Commission and other statutory authorities and accordingly UJVN Ltd. submitted its Petition vide letter dated 09.09.2015.
5. Further, the Petitioner vide its letter no. 5958 dated 13.10.2015 has submitted additional submission in the matters before the Commission.
6. The issue-wise submission of UJVN Ltd. in its Review Petition dated 09.09.2015 & in additional submission dated 13.10.2015 are as follows:-

**(1) Capital Cost of Maneri Bhali-II (MB-II) HEP**

- a. The Petitioner in its review petition has submitted that it had requested for approval of capital cost of its MB-II HEP as Rs. 1958.13 Crore as on COD i.e. 15.03.2008 in its petition dated 28.11.2014 for MB-II HEP.

However, the Commission had approved Capital Cost as Rs. 1889.22 Crore in its APR Order for 20014-15.

- b. The Petitioner in its review petition has submitted that the Commission in its tariff Order dated 11.04.2015 had not approved 50% of the excess IDC and 50% of the Price variation while approving the capital cost. However, the delay caused was due to extra quantity of work which resulted in extra time. Further, the petitioner has submitted that the Commission had also not allowed Rs. 12.00 Crore of Guarantee fee paid by the Petitioner in FY 2008-09 to the GoU and Rs 18.81 Crore against provision made by petitioner towards late payment of Guarantee fee to GoU.
- c. The Petitioner in its review petition has submitted that its submissions vide letters dated 25.02.2015 and 30.03.2015 have not been taken into consideration while issuing the Order dated 11.04.2015.
- d. With regard to the guarantee fee the petitioner has submitted that guarantee fee of Rs 12 Crore is a part of capital cost of MB-II and as this amount relates to period before commissioning , therefore has requested to consider it as part of capital expense cost.
- e. The petitioner in its additional submission dated 13.10.2015 has again reiterated its submission with regard to consideration of delay of last 6 months due to uncontrollable factors. Further, with regard to guarantee fee, the petitioner in its additional submission dated 13.10.2015 has submitted that as per definition clause 3(20) of Tariff Regulation, 2004 the Original Project Cost means *“the actual expenditure incurred by the generating company, as per the original scope of project up to first financial year closing after one year of the date of commercial operation of the last unit as admitted by the Commission for determination of tariff”* and as the Project was commissioned on 15.3.2008 and payment was made on 8.5.2008 therefore, it should be considered as original project cost and under clause 15 of the Regulation of 2004, this is required to be accounted for while determining the financial tariff.

**(2) Return on Equity (RoE) on investment made out of power Development Fund (PDF) for MB-II**

- a. The Petitioner in its review petition has submitted that as directed by the Commission in its previous Orders the Petitioner has tried to bring documentary evidence either by way of related Vidhan Sabha's resolution or the State Government Orders. However, the reply from the GoU is still awaited.
- b. The petitioner has also submitted that it had requested the Commission for allowing the RoE on the equity amount contribution from power development fund for MB-II in its tariff petition. However, the Commission did not deviate from its earlier approach and had a view that the money for the purpose of this fund is collected by the State Government through Cess imposed on the electricity generated from old hydro generating stations which are more than 10 years old and the cost of such cess is further passed on to UPCL which in turn recovers the same from ultimate consumers of electricity through tariffs.
- c. Further, the Petitioner in its review petition has referred to APTEL Order in reference to Appeal No. 163 of 2015 in the matter of Power Transmission Corporation of Uttarakhand Ltd. (PTCUL) and submitted that the RoE claim of the Petitioner on investments made out of the PDF is justified.
- d. The petitioner has quoted excerpts of the APTEL judgment dated 14.09.2006 in the matter of Appeal no 189 of 2005 which is reproduced below:

“

*Para 25... CESS is being levied by the Government of Uttaranchal in exercise of its legislative powers. The CESS is collected on the consumption of electricity. It is nothing but a duty on the consumer which the State Government levies and collects. The sum total of such collection of CESS goes to State exchequer, though it may ultimately go for implementation of projects for generations etc. That does not mean that it is an income to the generator or the appellant undertaking or a substitute for ROE. What is allocated by the State Government is from its revenue which it collected by way of CESS or it may be under any other head. CESS cannot be equated to ROE.*

*...CESS is different from return on equity which the appellant generator is entitled to as per statutory provisions. It may be that, the appellant may be*

*liable to pay income tax but that does not mean that it should be denied of ROE. There is nothing to suggest that once ROE is sustained the appellant could be denied of State allocation of funds. As already pointed out, the CESS collected by virtue of state enactment and it is the levy by legislation and the same cannot be taken as a substitute for ROE. Such a contention advanced for the Respondent is a misconception and it is legally untenable."*

- e. The Petitioner has also submitted the copy of APTEL Judgment dated May 15, 2015 issued in R.P. No. 2 of 2015 in Appeal No. 163 of 2015.
- f. Moreover, the Petitioner in its review petition has submitted that the Commission has completely overlooked the settled position of law on RoE as held by the APTEL in the case of Uttaranchal Jal Vidyut Nigam Ltd. vs. Uttaranchal Electricity Regulatory Commission (Appeal no 189 of 2005) on 14.09.2006.
- g. The Petitioner in its additional submission dated 13.10.2015 has reiterated its submission as provided in the Petition. Further, the Petitioner has submitted that the Government has asked it to seek inclusion of such fund for the purposes of return on equity while determining the tariff by the Commission.
- h. Moreover, the Petitioner in its additional submission has submitted that the investment made by Government of Uttarakhand in the form of equity should be treated as capital on which return on equity should be given in terms of the provisions of the Regulation as the same provides no distinction in treatment of the fund received towards equity on the basis of the source from where such fund has been generated.

**(3) Interest on Loan for 09 Large Hydro Power Stations (LHP's) for FY 2013-14**

- a. The Petitioner in its review petition has submitted that there is a difference between claimed opening loan (Rs. 48.52 Crore) and opening loan (Rs. 40.61 Crore) as considered by the commission in Table 3.18 of Tariff Order dated 11.04.2015 and accordingly, Interest on Loan of Rs. 4.73 Crore was allowed to its instead of its claim of Rs. 6.01 Crore for FY 2013-14. Therefore, has requested the Commission to re-approve the Interest on loan for FY 2013-14.

b. The Petitioner in its additional submission dated 13.10.2015 has reiterated its submission in the Petition and has further submitted that the Tariff Order neither discloses the basis on which the claim for normative opening outstanding loan has not been allowed nor it discloses the basis on which the Hon'ble Commission has arrived at opening loan of Rs.40.61 crore.

**(4) Interest on Working capital for FY 2013-14**

- a. The Petitioner in its review petition has submitted that it had allowed a rebate of Rs 6.59 Crore to UPCL for timely payment of energy bills of 09 Old LHP's (4.03 Crore), MB-II (2.36 Crore) and SHP's (0.20 Crore) for FY 2013-14 Rs and as the energy bills payments were received in time thus reduced the requirement of loans for working capital from Banks. Further, the Petitioner has submitted that it has achieved a considerable efficiency gain on interest on working capital for FY 2013-14.
- b. Moreover, the Petitioner has requested the Commission to consider rebate as an expense towards Interest on Working Capital and has requested for reapproving the efficiency gain and net entitlement of Interest on Working Capital for FY 2013-14.
- c. The Petitioner in its additional submission dated 13.10.2015 has reiterated its submission of the Petition and submitted that its rebate should be treated as expense as it is meted out by them from the approved annual fixed charges.

**(5) Carrying Cost on trued-up value of MB-II for FY 2013-14**

- a. The Petitioner in its review petition has submitted that in the True-up upto FY 2013-14 for 9 LHP's the carrying cost has been allowed. However, in case of MB-II the same has not been allowed by the Commission in its tariff Order dated 11.04.2015.
- b. The Petitioner in its additional submission dated 13.10.2015 has reiterated its submission in the Petition and submitted it appears it had happened due to inadvertent error and the same should be allowed.

**(6) Normative Annual Plant Availability Factor (NAPAF) fixed by Hon'ble UERC for MB-II HEP for MYT period FY 2013-14 to FY 2015-16**

- a. The Petitioner in its review petition has submitted that MB-II as per DPR is Run of River (RoR) project with Pondage and accordingly its NAPAF has been fixed by the Commission. However, due to restriction from district administration MB-II is unable to achieve its reservoir capacity of 1108 M at Joshiyara Barrage and is operating at 1104 M which is as good as plant operating as Run of River project.
- b. Further, the Petitioner has requested the Commission to consider following NAPAF values for MB-II considering it as pure RoR until the pondage of water up to maximum operating level at Joshiyara Barrage is allowed by the District Administration:-

FY	2013-14	2014-15	2015-16
NAPAF (Approved by the Hon'ble UERC)	58.23 %	72 %	73 %
Revised Claim for NAPAF based on pure RoR plant	42.87 %	42.73 %	53.17 %

- c. The Petitioner in its additional submission dated 13.10.2015 has reiterated its submission as given in the Petition.

**(7) Sharing of gains/Losses on account of specific Trajectory of generating Station's Plant Availability:**

- a. The Petitioner in its review petition has submitted that the Commission in the tariff order dated 11.04.2015 with respect to sharing of gains and losses for FY 2013-14 for its 10 LHP's has not considered the superior or inferior performance of the plant as against the targets fixed for NAPAF as mentioned in the Regulation 10 & 14 of the UERC Regulations, 2011. Further, the Petitioner has requested the Commission to consider the following Gain/Loss for 10 LHP's for FY 2013-14:

S. No	Power Station	Approved NAPAF (%)	Achieved Annual PAF (%)	UPCL			HPSEB		
				AFC/2	Recovered Capacity Charges	Gain/ (Loss)	AFC/2	Recovered Capacity Charges	Gain/ (Loss)
1	DHAKRANI	57.00	70.40	41450000	51196210	9746210	14750000	18218154	3468154
2	DHALIPUR	57.00	68.25	56650000	67831973	11181973	20200000	24187172	3987172
3	CHIBRO	62.00	65.86	149950000	159282691	9332691	56150000	59645691	3495691
4	KHODRI	55.00	59.37	86650000	93527399	6877399	32000000	34539533	2539533
5	KULHAL	65.00	78.07	37900000	45522830	7622830	10050000	12071420	2021420
6	RAMGANGA	19.00	14.81	112850000	87953138	-24896862			
7	CHILLA	74.00	70.68	223750000	213717798	-10032202			

S. No	Power Station	Approved NAPF (%)	Achieved Annual PAF (%)	UPCL			HPSEB		
				AFC/2	Recovered Capacity Charges	Gain/ (Loss)	AFC/2	Recovered Capacity Charges	Gain/ (Loss)
8	MANERI BHALI-I	77.00	64.66	227000000	190610878	-36389122			
9	KHATIMA	47.00	52.46	58600000	65403503	6803503			
10	MB-II	58.23	39.45	1119350000	758256341	-361093659			
	<b>Total</b>			<b>2114150000</b>	<b>1733302761</b>	<b>-380847239</b>	<b>133150000</b>	<b>148661970</b>	<b>15511970</b>

b. The Petitioner in its additional submission dated 13.10.2015 has reiterated its submission as given in the Petition and submitted that it reserves the liberty to revise the claim under this sharing of Gains/Losses in case the NAPAF of MB-II is revised by the Commission as claimed by it in the review petition.

7. The Commission decided to hear the matter for admissibility on 15.10.2015 and accordingly notices were issued to the Petitioner and Respondents for submitting their comments on the same. However, due to unavoidable circumstances the hearing was posted to 17.11.2015.

8. Meanwhile, UPCL vide its letter no. 4605 dated 12.10.2015 had submitted its comments stating that:

“

1. *That the petition has been filed under Sec 94(1) (f) of the Electricity Act, 2003 and Regulation 54 of CBR, 2004 and the same is not applicable in the matter.*
2. *That the petition does not give any ground of review as permissible under law for reviewing an order, the petitioner has failed to show any error apparent on the face of the record.*
3. *That in para 18 & 19 of the petition pertaining to cause of action the petitioner has not disclosed any cause of action. The statements in the said paragraphs does not qualify as statements disclosing cause of action.*
4. *There are no ground of relief as stated in para 20 and are not the grounds of relief as are required to be stated as per CBR 2014. Hence also the petition is not maintainable.*
5. *That the petitioner has not given any details of remedies exhausted which is mandated to be disclosed. That from the para 3 to 5 above it is apparent that the petition is not in accordance with the CBR 2014 and is therefore liable to be rejected.*
6. *That the order which is being sought to be reviewed is dated 11-04-2015 and the limitation for moving review petition is 60 days hence the present review petition is hopelessly barred by time, and further no separate application for condoning the delay has been moved by the petitioner therefore the petition being barred by time liable to be rejected.*
7. *That the petitioner in para (B) sub para (6) has wrongly mentioned that since the Hon'ble Commission has allowed the petitioner to file fresh review petition therefore the present petition is not barred limitation, it is humbly submitted that the*



*permission by Hon'ble Commission to file fresh review petition is not same thing as condoning the delay in moving the petition.*

8. *That the petitioner in para 10 of the petition has mentioned that there are certain errors apparent and the petitioner has apprehension over the way certain issues has been dealt with by the Hon'ble Commission, it is humbly submitted that the petitioner has nowhere in the petition has disclosed the error apparent as stated above, moreover, the apprehension of the petitioner is not a ground for a review.*
  9. *That the petitioner in para 23 of the petition pertaining to relief has requested the Hon'ble Commission to "**condone the delay in obtaining resolution of the Board before the limitation period**". It is humbly submitted that no such relief can be granted neither be same is legally permissible.*
  10. *That the present petition is basically an appeal in form of a review petition and requires application of mind and reassessment of the issues and facts which have already been adjudicated by the Hon'ble Commission. That the Hon'ble Supreme Court of India has in catena of judgments have laid down that the review petition cannot be an appeal in disguise.*
  11. *That the present petition does not fulfil the criteria of review as per order 47 of Civil Procedure Code, 1908.*
  12. *That the present petition is not maintainable and is liable to be dismissed."*
9. Further, the Commission heard the matter on 17.11.2015. Petitioner and both the Respondents were present during the hearing. The Petitioner and Respondent No.1 re-iterated their submissions, while during hearing, Representative of Respondent No.2 submitted that HPSEB Ltd. doesn't have any objection on admissibility of the Petition.

#### **Commission's Views and decision**

10. The issue-wise contentions of UJVN Ltd. filed in the Review Petition were examined w.r.t. the provisions of Order XLVII (1) of the Code of Civil Procedure, 1908 and it has been observed that in accordance with the Order XLVII (1) of the Code of Civil Procedure, 1908 an Order issued by the Commission may be reviewed if:
  - (i) 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.
  - (ii) There is any error or mistake apparent on the face of the record.
  - (iii) 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 was of undoubted character; (2) that it was so material that its absence might cause miscarriage of justice.

11. On examination of the submissions made by UJVN Ltd. for individual issues, the views and decision of the Commission are as follows:

**(1) Capital Cost of Maneri Bhali-II (MB-II) HEP**

- (a) With regard to the contention of the Petitioner that its submissions dated 25.2.2015 and 30.3.2015 have not been considered by the Commission while issuing the tariff Order dated 11.04.2015 is not correct, as all the submissions made by the Petitioner in this regard prior to issuance of the Tariff Order dated 11.04.2015 have been taken into consideration.
- (b) With regard to examination of the delay of last six months in the Project on account of “uncontrollable factors”, the Commission had appointed an expert consultant for the evaluation of the same, who had reviewed all submissions of the Petitioner in this regard and had submitted a report which was examined by the Commission and accordingly the Commission came to the conclusion that the delay in the project except for delay of the last 6 months was on account of factors beyond the control of the Petitioner. Since, it could not be established that the last 6 months delay was on account of controllable factors or due to uncontrollable factors, consequently, the Commission allowed the 50% of the excess IDC and 50% of price variation while approving the Capital cost for the delay of last 6 months in accordance with the principle laid down by Hon’ble APTEL in its judgment in Appeal No. 72 of 2010.

Therefore, the Commission opines that the view adopted by the Commission in the Order dated 11.04.2015 was based on the records brought before the Commission and also in line with the principle laid

down by Hon'ble APTEL in similar matters. Hence, the Commission does not find any **error apparent on the face of record** and therefore, the contentions of the Petitioners cannot be considered as point for review.

- (c) With regard to disallowance of guarantee fee paid to GoU of Rs.12.00 crore, the Petitioner in its Petition has submitted that the sum of Rs.12.00 crore was provided for in the financial year 2007-08 though the payment was actually made on 08.05.2008 and the Project was commissioned on 15.03.2008 i.e. within one year after the financial year and therefore, it should be considered in original project cost.

In accordance with AS 16, capitalisation of Borrowing Cost in respect of Qualifying Assets should commence when borrowing costs are being incurred and activities that are necessary to prepare the asset for its intended use or sale are in progress. Capitalisation should cease when substantially all of the activities necessary to prepare the asset for its intended use or sale are complete.

As per para 7 of GO बी-4-1094 / दस-2006-10(28)-1994 dated 15.09.2000 of UP Govt. the guarantee fee is payable year on year on the outstanding balance of loan at the beginning of each year.

Similar view was held by the Commission while allowing the capitalisation of Guarantee fees of MB-II project. The Guarantee fees attributable upto the COD amounting to Rs. 28.86 Crore as detailed below was allowed as part of the capital cost of the project and the amount of Guarantee fees incurred after the COD on the outstanding loan shall be allowed to be recovered through ARR.

FY	2002-03	2003-04	2004-05	2005-06	2006-07	2007-08	Total
<b>Closing Loan (Rs. crore)</b>	146.82	227.83	210.38	188.90	232.14	193.93	
<b>Govt. Guarantee 1% (Rs. crore)</b>		1.47	3.75	5.85	7.74	10.06	28.86

Rs. 12 crore claimed by the Petitioner is to be provided for FY 2008-09 i.e. 1% on the closing loan of Rs 1200 crore as on 31.03.2008 and hence, cannot be treated as part of the capital cost consequent to the

commissioning of the project and would be allowed as revenue expenditure.

However, while considering the guarantee fee for FY 2008-09 onwards on PFC loan, the Commission allowed the same on closing balance at the end of each year instead of considering it on opening balance. Therefore, on this particular issue, the Commission is of the view that impact of the same would be taken into account while carrying out the final true up of MB-II as part of the ongoing Business Plan and MYT proceedings.

**(2) Return on Equity (RoE) on investment made out of Power Development Fund (PDF) for MB-II**

- (a) The Commission has gone through the submissions made by UJVN Ltd., on this issue of allowance of RoE on investment made out of PDF and it has been observed that despite the Commission's explicit view expressed in the matter in earlier Tariff Orders issued to UJVN Ltd., the issue is being brought before the Commission again and again.
- (b) With regard to the reference of Judgment dated 15.05.2015 of Hon'ble APTEL in the matter of M/s BHPL and PTC, it is important to note that the aforesaid Judgment issued in R.P. No. 2 of 2015 in Appeal No. 163 of 2015 have been issued on a different matter i.e., allowing Return on Equity on the assets from which power is being sold to consumers outside the State of Uttarakhand. Para 9(iv) of Hon'ble APTEL Judgment in this regard stipulates as follows:

*"In addition and without prejudice to the above, the State Commission's reasoning of not allowing RoE on the amount provided by the State Government from PDF as it would tantamount to double loading on consumers in the State of Uttarakhand, is entirely misplaced in the context of the present case since the power generated by BHPL is not being sold to consumers in the State of Uttarakhand. BHPL is selling the power from its Hydro Project out of the State of Uttarakhand through a PPA with Tata Power Trading Corporation Limited which in turn is selling the power in Punjab.*

- (c) The Commission has observed that the Petitioner has not submitted any new and important matter which could influence the Orders issued in Tariff Order dated 11.04.2015.

(d) Based on the observations made above, the Commission is of the view that this issue does not qualify for review as there is neither any error apparent on the face of record nor there is discovery of new and important matter or evidence. Therefore, the Commission holds that the review of this issue of RoE on investments made out of PDF is not maintainable, hence, decides to reject the review of this particular issue.

**(3) Interest on Loan for 09 Large Hydro Power Stations (LHP's) for FY 2013-14**

(a) The Commission had been approving interest on loan considering the opening and closing loan balances for a particular power plant on year on year basis in its respective Tariff Orders in line with the provisions of the relevant regulations. Till FY 2012-13, the repayment period for normative loans was considered as 10 years and accordingly, the repayment for the year was considered in line with the approach adopted in previous orders. The repayment has been considered equivalent to depreciation from FY 2013-14 onwards as per UERC (Terms and Conditions for determination of Tariff) Regulations, 2011. Hence, the contention of the Petitioner with regard to claiming of different opening loan does not appear to be justified.

(b) The Commission has observed that the Petitioner has not submitted any new important matter which could influence the Orders issued in Tariff Order dated 11.04.2015.

(c) It appears that the Petitioner is seeking review of the Order merely for the purpose of hearing a fresh decision on the issue as none of the specific grounds on which review can be considered are clearly brought out by it in its Petition. Whereas, the principle is that the Order by the Commission is final and deviation from that 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.

(d) In light of the above, the Commission observed that the grounds, brought before it for review, are not sufficient and sustainable and hence holds that the review Petition with respect to this particular

issue is not maintainable and accordingly decides to reject this particular issue of Interest of Loan.

**(4) Interest on Working capital for FY 2013-14**

- (a) The Petitioner has requested the Commission for consideration of rebate as an expense. However, it is observed that no specific provision for consideration of rebate as an expense exists in the UERC (Terms and conditions for Determination of Tariff) Regulations, 2011. Hence, the contention of the Petitioner does not qualify for review.
- (b) Further, it appears that the Petitioner is seeking review of this point, merely for the purpose of hearing a fresh decision of the case as none of the specific grounds on which review can be considered are brought before the Commission. Whereas, the principle is that the Order by the Commission is final and deviation from that 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.
- (c) In light of the above, the Commission observed that the grounds, brought before it for review, are not sufficient and sustainable and hence holds that the review Petition with respect to this particular issue as not maintainable and accordingly decides to reject this particular issue of Interest on Working Capital.

**(5) Carrying Cost on trued-up value of MB-II for FY 2013-14**

- (a) The contention of UJVN Ltd. with regard to allowance of carrying cost on Trued up amount for MB-II for FY 2013-14 was not considered in tariff Order dated 11.04.2015 as final true-up of MB-II was pending due to non-finalization of additional capitalization.
- (b) The Commission is of the view that this particular issue shall be taken up while carrying out the final true up of MB-II as part of Business Plan and MYT proceedings.

**(6) Normative Annual Plant Availability Factor (NAPAF) fixed by Hon'ble UERC for MB-II HEP for MYT period FY 2013-14 to FY 2015-16**

- (a) The Commission had been considerate with regard to loss of generation/availability of plant due to natural calamity/any other genuine reason responsible for the same and had accordingly revised

NAPAF as and when UJVN Ltd. came for revision for the same. However, it has been observed that UJVN Ltd. has inculcated a tendency of seeking relief in NAPAF percentage on a regular basis and has therefore approached the Commission for again revision of already decided NAPAF of FY 2013-14 as 42.87% which was approved earlier as 58.23%, FY 2014-15 as 42.73% against earlier approved of 72% & FY 2015-16 as 53.17% as against earlier approved 73%.

(b) The Petitioner on one side is seeking relaxation in NAPAF and has also claimed additional capitalisation specifically to avoid generation loss and to improve the PAF.

(a) The Petitioner has not mentioned any specific grounds in its petition on which review is to be considered.

(b) In light of the above, the Commission observed that the grounds, brought before it for review, are not sufficient and sustainable and hence holds that the review Petition with respect to this particular issue is not maintainable and accordingly decides to reject this particular issue of relaxation of NAPAF for MB-II.

**(7) Sharing of gains/Losses on account of specific Trajectory of generating Station's Plant Availability**

(a) The Commission is of the view that in the Tariff Order for UJVN Ltd., while carrying out the truing up for FY 2013-14, the Commission has approved the Tariff for UJVN Ltd stations and has accordingly carried out the sharing of gains and losses on account of O&M expenses and Interest on Working Capital. The tariff for UJVN Ltd stations trued up by the Commission for FY 2013-14 in UJVN Ltd Tariff Order is recoverable at normative performance parameters.

(b) The Commission has carried out the analysis of normative NAPAF and actual PAF achieved during FY 2013-14 and has worked out the Capacity charges payable by UPCL for FY 2013-14 after considering the sharing of gains and losses on account of variation in PAF in the Order dated April 11, 2015 issued by the Commission on UPCL's APR Petition. Thus, the issue raised by UJVN Ltd does not have any merit as the Commission has already shared the gains and losses on account

of variation in PAF while arriving at the amount payable by UPCL to UJVNL for FY 2013-14.

- (c) The Commission is of the view that this particular issue does not qualify for review as there is neither any error apparent on the face of record nor there is discovery of new and important matter or evidence.

The Review Petition is disposed off accordingly.

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

**(Subhash Kumar)**  
Chairman