

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Review Petition No. 5/RP/2024 in  
Petition. No. 18/GT/2021**

**Coram:**

**Shri Jishnu Barua, Chairperson  
Shri Arun Goyal, Member  
Shri Pravas Kumar Singh, Member**

**Date of Order: 7<sup>th</sup> May, 2024**

**In the matter of:**

Petition for review of the Order dated 27.11.2023 in Petition No. 18/GT/2021 pertaining to the truing-up of tariff for the period 2014-19 and for determination of tariff for the period 2019-24 in respect of Uri-II Hydroelectric Project (240 MW).

**AND**

**IN THE MATTER OF**

NHPC Limited,  
NHPC Office Complex, Sector-33,  
Faridabad (Haryana)- 121003

**...Review Petitioner**

**Vs**

1. Punjab State Power Corporation Limited,  
The Mall, Near Kali Badi Mandir,  
Patiala- 147001
2. Haryana Power Purchase Center,  
Shakti Bhawan, Sector 6  
Panchkula 134109
3. Uttar Pradesh Power Corporation Limited,  
Shakti Bhawan, 14 Ashik Marg,  
Lucknow- 226001
4. Engineering Department, 1<sup>st</sup> Floor,  
UT Secretariat, Sector 9-D,  
Chandigarh - 160009
5. BSES Rajdhani Power Limited,  
BSES Bhawan, Nehru Place,  
New Delhi – 110019.



6. BSES Yamuna Power Limited,  
Shakti Kiran building,  
Karkardooma, Delhi – 110072
7. Tata Power Delhi Distribution Limited,  
33 kV Sub-Station Building,  
Hudson Lane, Kingsway Camp  
New Delhi – 110009
8. Uttaranchal Power Corporation Limited  
Urja Bhawan, Kumar House,  
Dehradun– 248001
9. Jaipur Vidyut Vitaran Nigam Limited  
Vidyut Bhawan, Janpath,  
Jaipur– 302005
10. Ajmer Vidyut Vitaran Nigam Limited  
Old Powerhouse, Hatthi Bhatta,  
Jaipur Road, Ajmer– 305001
11. Jodhpur Vidyut Vitaran Nigam Limited  
New Powerhouse, Industrial Area,  
Jodhpur– 342003 (Rajasthan)
12. Power Development Department,  
New Secretariat, Jammu – 180001

...Respondents

**Parties present:**

Shri Venkatesh, Advocate, NHPC  
Shri Anant Singh Ubeja, Advocate, NHPC  
Ms. Nehal Jain, Advocate, NHPC  
Shri Mohd. Faruquw, NHPC  
Shri Piyush Kumar, NHPC  
Shri Jitendra K. Jha, NHPC  
Shri Mohhit Mudgal, Advocate, BRPL & BYPL  
Shri Sachin Dubey, Advocate, BRPL & BYPL  
Shri Mohit Jain, Advocate, BRPL & BYPL  
Ms. Shweta Chaudhary, BSES Discoms  
Ms. Jaya, BSES Discoms

**ORDER**

Petition No.18/GT/2021 was filed by the Review Petitioner, NHPC for truing-up of tariff for the period 2014-19 and for determination of tariff for the period 2019-24 in respect of Uri-II Hydroelectric Project (240 MW) (in short, ‘the generating station’) and the Commission, vide its order dated 27.11.2023 (in short, ‘the impugned order’) had



trued-up/determined the tariff of the generating station. Aggrieved by the impugned order, the Petitioner has sought a review of the said order on the ground of error apparent on the face of the order on the following issues:

*(a) Disallowance of additional capital expenditure on account of providing concrete cladding above the Dam top along the right bank; and*

*(b) Disallowance of additional capital expenditure on account of providing protection opposite the bank of SFT.*

### **Hearing dated 4.4.2024**

2. The Review Petition was heard on 4.4.2024. The Commission, after hearing the learned counsel for the Review Petitioner and permitting the Respondents BRPL & BYPL to file their replies and the Review Petitioner its rejoinder, reserved its order in the Review Petition. Respondent BRPL has filed its reply to the Review Petition.

3. Based on the submissions of the parties and the documents available on record, we proceed to examine the issues raised by the Review Petitioner in the subsequent paragraphs.

**A. Disallowance of the additional capital expenditure on account of providing concrete cladding above the Dam top along the right bank and**

**B. Disallowance of additional capital expenditure on account of providing protection opposite the bank of SFT.**

4. In respect of the claims of the Review Petitioner, for these assets/items for Rs 52.21 lakh and Rs.32.28 lakh during 2018-19, respectively, in Petition No.18/GT/2021 (main petition), the Commission in the impugned order, under the head 'Items not projected earlier but incurred due to site-specific requirements,' had disallowed the same, on the ground that these expenditures were not allowed earlier, vide order dated 5.2.2020 in Petition No. 308/GT/2018. The Review Petitioner has submitted that though the Commission had not allowed the expenditure for these assets/items, in line with the order dated 5.2.2020 (wherein the expenditure was disallowed considering to be in the nature of O&M expenses), the expenditures claimed were essentially required for the



safety of the power plant and the same is in the nature of capital expenditure. While pointing out that the Commission had not considered the submissions of the Review Petitioner and erroneously disallowed the claim for these assets/items, has submitted that a similar expenditure pertaining to the various protection works has been allowed as the additional capital expenditure vide Commission's order dated 14.9.2022 in Petition No. 245/GT/2020. Accordingly, the Review Petitioner has prayed that the Commission may reconsider and allow the claim for additional capital expenditure in respect of these assets/items.

### **Reply of the Respondent BRPL**

5. Respondent BRPL has referred to the judgment of the Hon'ble Supreme Court in Kamlesh Verma vs. Mayawati & ors (2013 (8) SCC 320), the judgment dated 24.3.2009 of the Appellate Tribunal for Electricity (APTEL) in Review Petition 1/2009 in Appeal No. 64 of 2008 and the Commission's order dated 13.5.2023 in Review Petition No. 6/RP/2022 (GUVNL v CGPL & ors) and submitted that the Review Petitioner has failed to show any apparent error in the impugned order and hence the review is not maintainable. It has also submitted that since the Commission's order dated 5.2.2020, rejecting the claims of the Review Petitioner had not been challenged by the Review Petitioner and has attained finality, the disallowance of the claims in the impugned order dated 27.11.2023, is not an error apparent on the face of the record, warranting any review.

### **Analysis and Decision**

6. We have examined the submissions. It is observed that the additional capitalization claims of the Review Petitioner towards assets viz., 'Providing concrete cladding above Dam Top along right bank' and, Protection opposite bank of SFT' for 2018-19 were rejected by the Commission, based on the findings in order dated



5.2.2020 (in Petition No 308/GT/2018), wherein, the claims of the Review Petitioner for these assets were also rejected on the ground that these are in the nature of O&M expenses. Against this backdrop, the submission of the Review Petitioner that similar additional capitalization claims towards protection works allowed vide Commission's order dated 14.9.2022 in Petition No. 245/GT/2020 had not been considered is misconceived. In our considered view, the Review Petitioner has sought to re-argue the case on merits, which is not permissible in review. The Review Petition has a limited purpose and cannot be an appeal in disguise. It is a settled position in terms of the judgment of the Hon'ble Supreme Court in Parsion Devi v Sumitra Devi r(1997 8 SCC 715) that the review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 of CPC 1908 and that the judgment may be open to review, inter alia, if there is a mistake or an error apparent on the face of the record and that 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 requiring the court to exercise its power of review. These principles of review have also been enunciated by the Hon'ble Supreme Court in its judgment in Kamlesh Verma v. Mayawati and ors. (AIR 2006 SC 75). We, therefore, find no reason to entertain the Review Petition on this count. Accordingly, the prayer of the Review Petitioner for review of the impugned order is rejected as not maintainable.

7. Based on the above discussion and findings, Petition No. 5/RP/2024 in Petition No.18/GT/2021 stands disposed of.

**Sd/-**  
**(Pravas Kumar Singh)**  
**Member**

**Sd/-**  
**(Arun Goyal)**  
**Member**

**Sd/-**  
**(Jishnu Barua)**  
**Chairperson**