



**THE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION
LUCKNOW**

Petition No. 2185 of 2025

QUORUM

Hon'ble Shri Arvind Kumar, Chairman

Hon'ble Shri Sanjay Kumar Singh, Member

IN THE MATTER OF

Review Petition under Section 94 (1) (F) of the Electricity Act, 2003 Read with Regulations 51 & 61 of the UPERC (Conduct of Business) Regulations, 2019 for Review of the Order dated 10.10.2024 Passed by the Hon'ble UPERC in Petition No. 1980 of 2023, 2045 of 2023 and 2046 of 2023.

AND

IN THE MATTER OF

Uttar Pradesh State Load Dispatch Centre

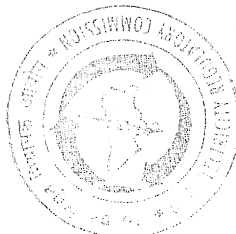
Phase II, Vibhuti Khand, Gomti Nagar, Lucknow,

Uttar Pradesh- 226001.

..... Petitioner

THE FOLLOWING WAS PRESENT

1. Sh. Divyanshu Bhatt, Advocate, UPSLDC
2. Sh. Harsh V Shukla, Advocate, UPSLDC
3. Sh. Sarvesh Kumar, SE (RAU), UPSLDC
4. Sh. Rakesh Kumar Suman, EE (RAU), UPSLDC
5. Sh. Abhishek Verma, EE (RAU), UPSLDC
6. Sh. Baishnav Kumar Verma, AE (RAU), UPSLDC





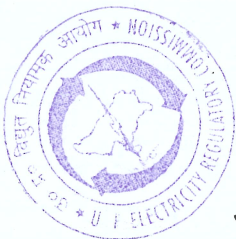
ORDER

(DATE OF HEARING: 12.06.2025)

1. UPSLDC filed instant Petition under Section 94 (1) (f) of the Electricity Act, 2003 Read with Regulations 51 & 61 of the UPERC (Conduct of Business) Regulations, 2019 for Review of the Order dated 10.10.2024 passed by the Hon'ble Commission in Petition No. 1980 of 2023, 2045 of 2023 and 2046 of 2023. The Prayers of the Petitioner are as follows: -
 - a) Allow the present review Petition in terms of the limited grounds and submissions made hereinabove;
 - b) Kindly review and revise the O&M Expenses determined by this Hon'ble Commission in the impugned order dated 10.10.2024 to the extent sought for in the instant Review Petition;
 - c) Kindly review and revise the Return on Equity determined by this Hon'ble Commission in the impugned order dated 10.10.2024 to the extent sought for in the instant Review Petition;
 - d) Kindly review and revise the Interest on Working Capital determined by this Hon'ble Commission in the impugned order dated 10.10.2024 to the extent sought for in the instant Review Petition;
 - e) Kindly review and revise the impugned order to extent that any consequential changes or revisions that are required to be carried out that are necessitated due to the revisions sought in the captioned Review petition;
 - f) Pass any other further order(s) that this Hon'ble Commission may deem fit in the interest of justice.

Petitioner's submission under Petition

2. This petition has been filed by the petitioner UPSLDC seeking review of the Order dated 10.10.2024 ("Impugned Order"), passed by this Commission in Petition No. 1980 of 2023, 2045 of 2023 and 2046 of 2023.
3. UPSLDC vide Petition No. 1980 of 2023, 2045 of 2023 and 2046 of 2023 filed its tariff petition for True up for FY 2022-23 and APR of FY 2023-24 before the UPERC. However, by way of the Order, this Commission has rendered certain





findings in which some inadvertent errors apparent on the face of record have crept in; hence the Review Petitioner has preferred the present review Petition.

Governing Law Applicable for Review

4. For the purpose of reviewing its own decisions, the Commission has the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908. Review under the Civil Procedure Code is permissible as per Order 47 Rule 1 which has been outlined below:

"Any person considering himself aggrieved-

by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

by a decree or order from which no appeal is allowed, or

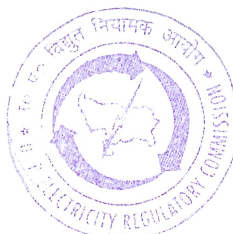
by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record of for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order."

5. The Petitioner has sought review of the aforesaid Order under Section 94 (i) (f) of the Electricity Act, 2003 read with Regulation 51 of the UPERC (Conduct of Business) Regulations, 2019. Regulation 51 of the UPERC (Conduct of Business) Regulations, 2019 has been outlined below:

"51. Review of the decisions, directions and orders:

- a. Any person aggrieved by a direction, decision or order of the Commission, from which (I) no appeal has been preferred or (II) from which no appeal is allowed, may file a review, subject to provisions of Civil Procedure Code, within ninety (90) days of the date of the direction, decision or order, as the case may be, to the Commission.*
- b. An application for such review shall be filed in the same manner as a Petition under Chapter 2 of these Regulations.*
- c. The Commission shall for the purposes of any proceedings for review of its decisions, directions and orders be vested with the same powers as are vested in a civil court under the Code of Civil Procedure, 1908.*

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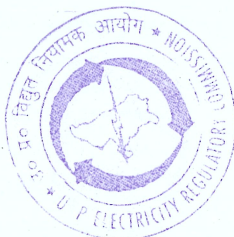
When it appears to the Commission that there is no sufficient ground for review, the Commission shall reject such review Petition.

- d. When the Commission is of opinion that the review application should be granted, it shall grant the same provided that no such application will be granted without previous notice to the opposite side or party to enable him to appear and to be heard in support of the decision or order, the review of which is applied for."*

Error Apparent in The Impugned Order

Issue A: Operation And Maintenance (O&M) Expenses

6. UPSLDC filed its tariff petition for FY 2023-24 and FY 2024-25 before this Commission. UPSLDC vide its data gap reply submitted its True up for FY 2022-23 & APR of FY 2023-24.
7. UPERC vide its Impugned Order has gone beyond the scope of Regulation 9.2 as it has erroneously benchmarked each component of O&M Expenses as per normative values and thereafter, has arbitrarily chosen from the two, i.e., the lower of the actual (audited accounts) and normative value of each component of O&M Expenses which is nowhere provided for in the Regulations.
8. Further, Regulation 11 (Operation and Maintenance Expenses) of Regulations provides for calculating the normative expenses based actual expenses of 5 years up to 31.03.2020 i.e., FY 2015-16 to FY 2019-20 based on the audited accounts or allocation Statement of the respective year.
9. Error apparent in UPERC's methodology is that as per Regulation 11.1 of Regulations, even though normalizing of O&M expenses is permitted but the discretion of adopting the lower of the actual and normative cost is nowhere provided for in the Regulations.
10. UPERC has erroneously adopted the lower of the actual and normative cost while computing the O&M expenses of UPSLDC as the same methodology is not provided for in the Regulations.
11. O&M expenses of UPSLDC approved by the UPERC for FY 2022-23 have been reproduced below:



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Particulars	Audited Accounts	Computed (Normative)	Approved (True Up)	Nature of Cost Approved
Employee Expenses	1,365.81	1,513.30	1,365.81	Audited
Less: Employee Expenses Capitalized	-	-	-	-
Net Employee Expenses	1,365.81	1,513.30	1,365.81	Audited
Net R&M Expenses	381.30	185.45	185.45	Normative
Net A&G Expenses	119.65	209.28	119.65	Audited
Total O&M Expenses	1,866.76	1,908.03	1670.91	

12. Error apparent on UPERC's part is that UPERC has erroneously adopted between Audited and Normative cost in an inconsistent and arbitrary manner which is nowhere provided for in the Regulations.
13. During FY 2015-16 till FY 2019- 20, UPSLDC was operating as a part of UPPTCL and therefore, the accounts of UPSLDC were maintained as part of UPPTCL's account no separate account was maintained by UPSLDC.
14. There were some technological and process-based initiatives, such as SAMAST, SCADA, and C-SOC, have also been implemented in recent years by UPSLDC and the aforementioned initiatives entail mandatory maintenance expenses that were not covered during the FY 2015-16 to FY 2019-20 period and cannot be made up for by the escalation factors such as WPI/CPI.
15. UPSLDC is not a profit-making entity and operates on limited funds. UPSLDC will have to bear unjustifiable financial burden if the expenses of UPSLDC are not approved in a rightful and a just manner.

Issue B: Return On Equity

16. UPERC has committed an error in considering Rs. 1,00,000 as the Equity Base for the purpose of computing RoE.
17. Regulation 10.1 of the Regulations, the capital expenditure actually incurred on the date the asset was placed in commercial use shall be used to calculate the asset's cost. Furthermore, it stipulates that for determining charges for existing assets, net fixed assets as reported in audited annual accounts as of April 1st of the relevant fiscal year must be used.
18. A balance sheet was created outlining the assets and liabilities that UPSLDC will assume on 22.08.2022. Assets and corresponding liabilities transferred to





UPSLDC was excluded from the Balance sheet of UPPTCL and the value of assets of UPPTCL were reduced to that extent.

19. Gross Fixed Assets of UPSLDC for FY 2022-23 have been reproduced below:

S. No	Particulars	Actuals From 23.08.2022 To 31.03.2023 as per Audited Accounts (Rs. In Crores)
1	Opening GFA	9.27
2	Addition during the year	0.92
3	Total GFA at the end	10.19

20. RoE claimed by UPSLDC for the FY 2022-23 has been reproduced below:

S. No	Particulars	Claimed For FY 2022-23 (Rs. In Crores)
1	Opening Equity	2.66
2	Equity addition during the year	0.39
3	Closing Equity	3.06
4	Average Equity	2.86
5	Rate of Return on Equity	12.50%
6	Tax Rate %	0.00%
7	Effective Rate of Return on Equity	12.50%
8	Return on Equity	0.36

21. On the date of transfer, the value of the assets provided to UPSLDC is reflected in the company's accounts as GFA. As per Regulation 10.1 of the Regulations, the net fixed assets as reported in the audited annual accounts as of 1st April of the relevant fiscal year shall be taken into consideration for the purpose of determining charges for existing assets.
22. Actual paid-up capital balance of Rs. 1,00,000/- reflecting in the books of UPSLDC on 23.08.2023 cannot be used as the basis for determining the source of funding for the assets since the assets were obtained through a transfer scheme instead of being purchased by UPSLDC.
23. As per Regulation 10.2 of Regulations, if the equity employed is more than 30% then the amount of equity for determination of charges shall be limited to 30% and the balance shall be considered as the normative loan. UPSLDC has not acquired any debt for the purpose of funding the procurement of assets as per the Scheme.





24. UPSLDC has considered the debt-equity ratio of 70:30 for determination of charges and the Equity base has been taken as 30% of the opening GFA as on 23.08.2022.
25. Net fixed assets recorded in the audited annual accounts as of April 1st of the relevant fiscal year should have been taken into consideration by the UPERC when assessing charges for existing assets.
26. UPERC has erroneously considered Rs. 1,00,000 as the Equity base for the purpose of computing RoE in the impugned Order.

Issue C: Interest On Working Capital

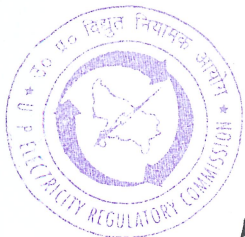
27. Interest on Working Capital claimed by UPSLDC for the FY 2022-23 is reproduced below:

<u>S.No</u>	<u>Particulars</u>	<u>Claimed For FY 2023-24 (Rs. In Crores)</u>
1	O&M Expenses of one month	2.65
2	Receivables equivalent to 45 days	3.97
3	Working Capital Requirement	6.62
4	Rate of interest	10.30%
5	Interest on Working Capital	0.68

28. Interest on working capital is based on the O&M expenses and Receivables which includes the Return on Equity as well.
29. The approved interest on working capital may also be reviewed by the UPERC and the interest on working capital as claimed by UPSLDC be allowed.

Hearing dated 13.05.2025

30. Sh. Divyanshu Bhatt, Counsel, appearing on behalf of the Petitioner, requested the Commission to withdraw its Petition with liberty to file a fresh Petition and also requested for condonation of delay and waiver from submission of Petition fee for filing of a fresh review Petition due to discrepancies found in the Petition.
31. Considering the above, the Commission allowed the Petitioner to withdraw the present Review Petition and to file a revised petition with all necessary documents, within a period of two weeks. The Commission further directed that in the interest of justice, (i) no additional petition filing fee should be levied for the revised petition, and (ii) condonation of delay allowed till the time granted by the Commission in this Order for filing the revised review petition. The



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Petitioner was also directed to file a concise note, not exceeding two pages, detailing the specific grounds for maintainability of the Review Petition.

Commission's View

32. The Commission heard the matter at considerable length and has carefully gone through the written submissions/arguments of the parties and has also taken note of the relevant material available on record during the proceedings. The Commission has observed that the Petitioner is seeking review of Tariff Order dated 10.10.2024 passed by the Commission in Petition No. 1980 of 2023, 2045 of 2023 and 2046 of 2023. The Petitioner has filed the Review Petition on the grounds that there is an error apparent on the face of the record while determining the O&M expenses and calculating ROE, which has also led to wrong computation of IoWC.
33. The Commission has examined the issue with respect to Operation & Maintenance Expenses. The Petitioner has argued that the Commission has allowed lower of normative and actual O&M expenses, which is not specified in the Regulations and is beyond the scope of the Regulations. In this regard, it is observed that the Commission in the Tariff Order dated 10.10.2024 has taken a considered view to allow O&M expenses on actual basis subject to the ceiling of normative value determined by the Commission in accordance with Regulations. The Commission had deliberated upon the issue in detail and the justification so made in the Tariff Order for FY2024-25 dated 10.10.2024 is reproduced here below: -

"4.2.8. Regulation 9.2 of UPERC SLDC Regulations, 2020 provides for carrying out the Truing-Up exercise of expenses and revenue based on audited annual accounts of the corresponding year subject to the prudence check of the Commission. Further, Regulation 11.2 of the UPERC SLDC Regulations, 2020 provides that the Commission may consider normalizing of O&M Expenses based on the data of other States' SLDCs. Furthermore, regulations provide that O&M Expenses shall be normalised by excluding abnormal O&M variations/spikes. The Commission on comparing the O&M expenditure with SLDCs of other states of Bihar, Gujarat, Odisha and Rajasthan has prima facie observed that the Audited O&M Expenses of the Petitioner are on higher side. Further, in order to ascertain if there is any abnormality in the O&M Expenses as it is the first Tariff Order of UPSLDC, the Commission has carried out prudence check of each component and has also benchmarked it with the normative values, that are computed subsequently.

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4.2.18. Further, as per prudence check, it is observed that R&M Expenses w.r.t Plant and Machinery claimed by the Petitioner are even higher than the net fixed assets value (GFA less accumulated depreciation) of the Petitioner during the year. Thus, it seems that there is abnormality in R&M Expenses, therefore, as per Regulation 9.2, the Commission as part of the prudence check has benchmarked each component of O&M Expenses as per normative values computed above. The same has been compared with the actual/ audited figures, such that these do not exceed the normative values. Accordingly, the Commission has approved the net O&M Expenses for FY 2022-23 based on lower of the actual (audited accounts) and normative value of each component of O&M Expenses."

34. Further, with respect to the issue of Return on Equity (RoE), the Commission had considered an amount of ₹1.00 Lakh as RoE in the Tariff Order dated 10.10.2024, based on the audited financial statements for FY 2022-23, as submitted by the Petitioner. In this context, the Commission through the said Tariff Order, had sought a detailed justification from the Petitioner for the claimed RoE amount. However, the Petitioner, i.e., UPSLDC, failed to furnish any substantive justification or supporting evidence regarding the basis of the ₹1.00 Lakh claimed as Return on Equity.

The relevant extract of the Tariff Order is reproduced below for reference:

"4.6.1. The opening Equity and Debt as on 23.08.2022 are derived in above Table. As the Equity Share Capital of the Petitioner (as on March 31, 2023) was Rs 1.00 Lakh only and the net addition to GFA from 23.08.2022 to 31.03.2023 was Rs 91.95 Lakh and the Petitioner has also not claimed any Consumer Contributions, Capital Subsidies, and Grants towards cost of capital assets. The Petitioner was given multiple opportunities to provide details regarding means of finance/funding of assets and the required information on CC/Grants/Subsidies along with any Equity funding, but no submission was provided against the same. Therefore, the Commission has considered entire net addition to GFA for True Up of FY 2022-23 to be funded by Debt only"

35. Further, it is pertinent to mention that the Commission had decided the issues after careful consideration of facts of the case and the reasonings were provided in the Tariff Order itself. Therefore, the Commission is of view that the Petitioner has not been able to establish as ^{to} how this Petition was coming under the scope of review. Either a ground that **"Presentation of a fact which was existing at the time of passing the initial Order but which could not be placed before the court despite the due diligence of review**



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applicant and which has potential to alter the course judgment” or “an order where an inadvertent error has crept in” are the only two grounds, which can be taken for invoking the review jurisdiction of the court. The Petitioner’s grounds of review are associated with the approach that has been applied and not of any error apparent in calculation of O&M expenses and Return on Equity. Further, the Commission issued speaking order while allowing the O&M expenses and Return on Equity. The Commission is of the view that such matters, which will require a change in approach, cannot be addressed through a Review Petition, which is meant to cure only those defects or apparent errors, which can be pinpointed without any elaborate argument.

In this context, it is relevant to refer to the legal principles governing maintainability of review petitions, as laid down by the Hon’ble Supreme Court in *Kamlesh Verma v. Mayawati and Ors.* [(2013) 8 SCC 320] which outlines the circumstances under which a review petition may be maintainable. As per the said judgement of the Hon’ble Supreme Court, a review is permissible only when there is (i) discovery of new and important matter or evidence which, despite due diligence, was not within the knowledge of the petitioner or could not be produced earlier; (ii) a mistake or error apparent on the face of the record; or (iii) any other sufficient reason, interpreted to mean reasons analogous to those mentioned above. However, a review is not maintainable where it merely involves repetition of arguments already considered and rejected, minor or inconsequential errors, or attempts to substitute a review for an appeal. Further a review petition not intended to be a rehearing on merits or to correct an erroneous view, nor when there is a possibility of an alternative interpretation. Additionally, the error must be obvious on the face of the record, and not one that requires detailed examination or reasoning; reassessment of evidence is not permitted, and reliefs already declined in the original proceedings cannot be re-agitated through review. The relevant excerpts from the said judgment are reproduced below:

"20.1. When the review will be maintainable:

- (i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;*
- (ii) Mistake or error apparent on the face of the record; (iii) Any other sufficient reason.*



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The words "any other sufficient reason" have been interpreted in Chhajju Ram v. Neki [(1921-22) 49 IA 144 : (1922) 16 LW 37 : AIR 1922 PC 112] and approved by this Court in Moran Mar Basselios Catholicos v. Most Rev. Mar Poulose Athanasius [AIR 1954 SC 526 : (1955) 1 SCR 520] to mean "a reason sufficient on grounds at least analogous to those specified in the rule". The same principles have been reiterated in Union of India v. Sandur Manganese & Iron Ores Ltd. [(2013) 8 SCC 337: JT (2013) 8 SC 275]

20.2 When the review will not be maintainable:

- (i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.*
- (ii) Minor mistakes of inconsequential import.*
- (iii) Review proceedings cannot be equated with the original hearing of the case.*
- (iv) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.*
- (v) A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error.*
- (vi) The mere possibility of two views on the subject cannot be a ground for review.*
- (vii) The error apparent on the face of the record-should not be an error which has to be fished out and searched.*
- (viii) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.*
- (ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negative."*

36. In fact, Hon'ble Supreme Court in catena of judgments has already held that: A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error [Tungabhadra & c v. Govt, A 1964 SC 1372; Shiv Ganesh v. State of UP., AIR 2005 All 412 (415,416)]. It has also been clearly laid down by the Hon'ble Supreme Court that: The scope of review is for review of "error apparent" only and not to review the judgment/order, even if the parties are in a position to satisfy the Court that the order under review is an erroneous order [Sharada Devi v. Bank of India, (2001), 2 BLJR 967 (969) (Pat); Ahmedabad Electricity Co. Ltd v. State of Gujarat, AIR 2003 Guj 157 (159) (DB)]. Hon'ble Supreme Court has also held that: Decision wrong in law is not error apparent on the face of record [Bardhan v. Sarkar, 53 CWN 869]. In face of above judgments of Hon'ble



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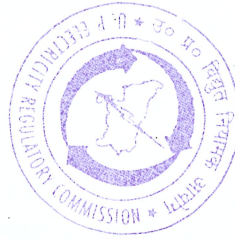


Supreme Court, the grounds taken by review applicant prima facie does not fall stricto sensu within the scope of review.

37. Hence, the Petition is being dismissed on the grounds of maintainability and is accordingly disposed of.


(Sanjay Kumar Singh)
Member


(Arvind Kumar)
Chairman



Place: Lucknow
Dated: 24.07.2025