THE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION

LUCKNOW

Petition No. 1323 of 2018

QUORUM

Hon'ble Shri Arvind Kumar, Chairman

Hon'ble Shri Sanjay Kumar Singh, Member

IN THE MATTER OF

Recall of the order of this Commission dated 30.11.2017, contained specifically in paragraphs 7.4.8 to 7.4.17 and in paragraph 7.5.3, read with 7.5.4, on the subject of approval of Business plan/MYT ARR and tariff for State Discoms for FY 2017-18 to FY 2019-20 and true up of FY 2014-15.

AND

IN THE MATTER OF

Uttar Pradesh Power Corporation Limited (UPPCL)

.........Petitioner

THE FOLLOWING WERE PRESENT

1. Shri Pankaj Saxena, CE RAU, UPPCL
2. Shri Savyasachi Saumitra, Advocate, UPPCL
3. Shri A K Zaidi, Advocate, UPPCL
4. Shri Ishan, Advocate, UPPCL
5. Shri Kriti Singh Chauhan, Advocate, UPPCL

ORDER

(DATE OF HEARING: 16.06.2026)

Background:

1. The present petition has been filed by the Petitioner under Regulation 156 read with Regulation 159 of the U.P. Electricity Regulatory Commission (Conduct of Business) Regulations, 2004, seeking recall of certain paragraphs of the Order dated November 30, 2017, passed by this Commission in the Multi-Year Tariff (MYT) proceedings for the First Control Period (FY 2017-18 to FY 2019-20).

2. The Commission in Order dated February 25, 2019, had directed the Petitioner to make certain submission on the issues that were raised in the Petition within 4 weeks. The Petitioner failed to comply therewith for more than seven years and eventually filed its submissions only on June 15, 2026.

3. The Commission observed that, although it had, during the course of the proceedings, directed the Petitioner to file its submissions on the issues raised in the Petition, it is of the considered view that the question of maintainability must be decided as a threshold issue. Accordingly, without expressing any opinion whatsoever on the merits of the written submissions dated June 15, 2026, the Commission directed the Petitioner to specifically address the issue of maintainability and file its submissions thereon.

4. Pursuant to the directions of the Commission, the Petitioner filed written submissions dated June 22, 2026 addressing the issue of maintainability of the present Petition. The Petitioner contended that since the Commission had entertained the Petition over several hearings without raising any objection as to maintainability, the Petition ought not to be dismissed at this stage on the ground of limitation.

5. The Petitioner, placing reliance on the judgment of the Hon'ble Supreme Court in Godrej Sara Lee Ltd. v. Excise and Taxation Commissioner, (2023) 109 GSTR 402, submitted that there is a distinction between the maintainability and entertainability of a petition. It was contended that the limitation prescribed in UPERC (Conduct of Business) Regulations, 2004 is not a jurisdictional bar affecting the maintainability of the Petition, but merely a procedural requirement relating to its entertainability, which the Commission has the discretion to condone.

<u>Commission's view:</u>

6. At the outset, the Commission considers it necessary to clarify the nature of the present proceedings. The present Petition has been instituted as a petition for recall of certain portions of the Commission's Order dated November 30, 2017 and not as a petition seeking review thereof. Indeed, the Petitioner itself has consistently maintained, both in the Petition as well as in its written submissions, that the present proceedings are in the nature of a recall petition and are distinct from a review petition. The Commission, therefore, does not propose to examine the

maintainability of the Petition with reference to the provisions governing review proceedings under Regulation 150 of the UPERC (Conduct of Business) Regulations, 2004, as mentioned by the Petitioner in its written submission dated June 22, 2026. The issue that falls for consideration is whether the present Petition satisfies the requirements of a recall petition under the applicable provisions of the Conduct of Business Regulations and whether such jurisdiction can be invoked in the facts of the present case.

7. It is pertinent to mention that, despite the Commission having, vide its Order dated February 25, 2019, directed the Petitioner to file its submissions on the issues raised in the Petition within four weeks, the Petitioner complied with the said directions only on June 15, 2026, after a lapse of more than seven years. Although the Petitioner has tendered apology for the delay, it has neither furnished any satisfactory explanation nor demonstrated sufficient cause for such extraordinary delay. The prolonged and unexplained inaction on the part of the Petitioner reflects a clear lack of diligence in pursuing the present proceedings.

8. The Commission finds that the Petitioner has not placed on record any explanation, much less sufficient cause, for the delay in filing the present recall petition. The pleadings are conspicuously silent about the circumstances, which prevented the Petitioner from invoking the remedy of recall within the period prescribed under Regulation 63 of the UPERC (Conduct of Business) Regulations, 2004.

9. The Commission has further examined the submissions made by the Petitioner which have been elaborated below.

Whether the procedural orders passed by the Commission during the pendency of the proceedings preclude it from examining the maintainability of the Petition?

10. The Commission is unable to accept the Petitioner's contention that the objection regarding limitation cannot be raised at the present stage. Regulation 63 of the UPERC (Conduct of Business) Regulations, 2004 expressly provides that a person aggrieved by an order dismissing a petition in default or proceeding ex parte may file an application for recall within thirty days from the date of such order. The Regulation, therefore, prescribes a specific period within which the statutory remedy of recall is required to be invoked. The discretion conferred upon the

Commission is to recall the order if it is satisfied that there was sufficient cause for the non-appearance of the Party concerned. In the present case, the date of the impugned Order as well as the date of institution of the present Petition are undisputed. It is an admitted position that the Petition was filed more than five months after the passing of the impugned Order. No factual enquiry is, therefore, required for determining whether the Petition has been instituted within the period prescribed under Regulation 63 of the UPERC (Conduct of Business) Regulations, 2004.

11. Mere pendency of a proceeding or the grant of opportunities to the parties does not preclude the Commission from examining whether the proceeding is maintainable in law. An objection touching the jurisdiction or maintainability of a proceeding goes to the root of the matter and may be considered at any stage of the proceedings, including at the stage of final hearing. The Hon'ble Supreme Court in R. Nagaraj (Dead) through Lrs. & Another vs Rajmani & Others, 2025 SCC OnLine SC 762 has clarified: "Limitation, as we generally know is a mixed question of fact and law. However, there is no hard and fast rule that every question of limitation is to be treated as a mixed question of fact and law. In cases, where the action is initiated after several years after the right to sue accrued, without any pleadings to explain the reasons for delay or as to when the fraud was discovered, the question of limitation is to be treated as a question of law.". It further clarified: "In cases, where the pleadings are silent, then it becomes the duty of the Court to ascertain from the evidence and the overall facts of the case, as pleaded by either party, and to render a finding on limitation where the question of limitation is to be treated as a question of law, since the Court cannot entertain frivolous or stale claims. It is also apropos to reiterate the settled position of law that a question of law can be raised at any stage." Accordingly, the objection regarding limitation has been rightly considered as a preliminary issue notwithstanding the stage of the proceedings.

12. The record reveals that, during the hearings held on August 08, 2018 and February 07, 2019, the Commission sought certain clarifications from the Petitioner with a view to understand the issues raised in the Petition. Such procedural directions were issued to facilitate the proceedings and cannot be construed as an adjudication on the maintainability of the Petition. The Petitioner's contention that

the objection ought to have been raised only at the threshold is, accordingly, rejected.

13. The Petitioner's reliance on M/s Godrej Sara Lee Ltd. v. The Excise and Taxation Officer-cum-Assessing Authority & Ors. is misconceived. The Hon'ble Supreme Court held that the existence of an alternative remedy does not render a writ petition non-maintainable and that the rule of exhaustion of statutory remedies is one of discretion rather than an absolute rule of law. The present case, however, raises no question regarding the exercise of an alternative remedy. The issue for consideration is whether the present recall petition has been instituted within the period prescribed under Regulation 63 of the UPERC (Conduct of Business) Regulations, 2004. The ratio of the aforesaid judgment, therefore, has no application to the determination of the question of limitation arising in the present proceedings.

Whether the present Petition is capable of affording any meaningful or effective relief?

14. The Commission observes that the impugned Order dated November 30, 2017, was passed under the UPERC Multi Year Tariff Regulations, 2014, which governed the First Control Period from FY 2017-18 to FY 2019-20. The determination contained therein was made in the context of the statutory framework and tariff principles applicable to the said Control Period.

15. The Petitioner, despite being fully aware of the contents of the impugned Order, instituted the present recall petition more than five months after the passing of the Order. Thereafter, despite specific directions issued by the Commission on February 25, 2019, the Petitioner failed to diligently pursue the proceedings and remained inactive for more than seven years before filing its submissions in June 2026. During this period, the First Control Period from FY 2017-18 to FY 2019-20, which was governed by the MYT Regulations, 2014, came to an end and was succeeded first by the UPERC Multi Year Tariff Regulations, 2019 governing the Second Control Period from FY 2020-21 to FY 2024-25 and thereafter by the UPERC Multi Year Tariff Regulations, 2025 governing the Third Control Period from FY 2025-26 to FY 2029-30.

16. The issues sought to be reopened by the Petitioner are intrinsically linked to the tariff framework applicable to the First Control Period. The tariff determination for the said period has long since been implemented and attained finality, while subsequent tariff orders have been issued under independent statutory regimes governing subsequent control periods. Consequently, the proceedings could neither revive the MYT Regulations, 2014 nor alter the tariff framework presently in force. The Commission is, therefore, of the considered opinion that the present proceedings have been rendered purely academic. In the absence of any surviving or enforceable relief, adjudication of the issues raised in the Petition would amount to an exercise in futility.

17. The Commission is of the considered opinion that the relief sought by the Petitioner has become incapable of affording any meaningful or effective consequence, not merely because of the passage of time or the supersession of the MYT Regulations, 2014, but also on account of the Petitioner's own failure to diligently prosecute the proceedings. A litigant, who permits the relevant control period to conclude and the governing regulatory framework to be replaced cannot, after the lapse of several years, seek reopening of tariff determinations that have already been implemented and have attained finality.

18. In view of the foregoing, the Commission is of the considered opinion that the present Petition is not maintainable, on grounds of limitation in terms of Regulation 63 of the UPERC (Conduct of Business) Regulations, 2004 and that adjudication in the matter is incapable of affording meaningful or effective relief to the Petitioner. The Petition is, accordingly, dismissed as not maintainable.

Sanjay

(Sanjay Kumar Singh)
Member

(Arvind Kumar)
Chairman

Place: Lucknow
Dated: 29 .07.2026