

**PUNJAB STATE ELECTRICITY REGULATORY COMMISSION**  
SITE NO. 3, BLOCK B, SECTOR 18-A MADHYA MARG, CHANDIGARH

**Review Petition No. 07 of 2023**  
**In Petition No. 56 of 2022 (Suo-Motu)**  
**Date of Order: 01.02.2024**

Review Petition under Section 94(1)(f) of the Electricity Act read with Regulations 64 of the PSERC (Conduct of Business) Regulations, 2005 for Review of the Final Order dated 01.06.2023 passed in petition no. 56 of 2022 (Suo-Motu).

AND

In the Matter of: M/s Everest Power Private Limited. Plot No. 13, Sy. No. 64 Part, Block-D, Third Floor, Hitech City Layout, Madhapur Village, Hyderabad- 500081.

.....Review Petitioner

Vs.

1. M/s Punjab State Power Corporation Limited, the Chief Engineer (PP & R), Punjab State Power Corporation Limited, D-3, Shakti Vihar, Patiala – 147001.
2. M/s PTC India Ltd. Executive Director, PTC India Limited, 2<sup>nd</sup> Floor, NBCC, 15, Bhikaji Cama Place, New Delhi- 110066.

.....Respondents

Commission: Sh. Viswajeet Khanna, Chairperson  
Sh. Paramjeet Singh, Member

EPPL: Sh. Parinay Deep Shah, Advocate

PSPCL: Sh. Anand K Ganesan, Advocate  
Ms. Harmohan Kaur, CE/ARR&TR

PTC: Avdesh Mandloi, Advocate

## ORDER

1. M/s Everest Power Private Limited (EPPL) has filed the Present Review petition seeking Review of the Order dated 01.06.2023 passed by the Commission in Petition No. 56 of 2022 (Suo-Motu) on the following issues.
  - i. Disallowance of the Additional Capitalization of INR 6.02 Cr. for FY 2021-22 towards Purchase of Runners & Nozzle Assembly,
  - ii. Disallowance of Additional Capitalization of INR 0.92 Cr. in FY 2020- 21 for Left Abutment Slope Stabilization Measures and Miscellaneous Expenses;
  - iii. Disallowance of Employee Expenses of INR 6.87 Cr. and INR 6.33 Cr. for FY 2020-21 and FY 2021-22 towards Operation and Maintenance Expenses, and
  - iv. Disallowance of Additional Capitalization of INR 2.29 Cr. and INR 0.20 Cr. for FY 2020-21 and FY 2021-22, respectively, towards Miscellaneous Expenses.
- 1.1 The Petition was taken up for hearing on admission on 27.09.2023. Notice was issued to the respondents. PSPCL filed its reply to the Review Petition vide memo No. 7392 dated 26.10.2023 challenging the maintainability of the Petition and Petitioner filed rejoinder dated 29.11.2023 thereto. The counsel for PTC India Ltd. submitted during hearing on 10.01.2024 that no separate reply is required to be filed. After hearing the parties on admission of the petition, Order was reserved vide order dated 12.01.2024.

2. The Commission has gone through the submissions made in the review petition, reply filed by PSPCL on the maintainability of the same, rejoinder thereto and the arguments made by the parties during the hearing. The Review Petitioner is seeking review of the Commission's Order dated 01.06.2023 in Petition No. 56 of 2022 (Suo-Motu) on the issues of Additional Capitalization (for replacement of Runners and Nozzle Assembly, Left Abutment Slope Stabilization Measures and Miscellaneous Expenses) and the Employee Expenses. The Review Petitioner, while submitting that there is an error apparent in the impugned Order in revising the tariff principles at the true-up stage, is also pleading that the said Order is contrary to Regulation 18.2 of PSERC MYT Regulations providing for additional capitalization after the cut-off date.

On the contrary, the respondent PSPCL has raised objections on the maintainability of the Review Petition with the contention that EPPL has failed to establish any error apparent on the face of record which is one of the prerequisites under Order 47 Rule 1 of the Code of Civil Procedure 1908, read with Regulation 64 (1) of the PSERC (Conduct of Business) Regulations 2005. It has been contended that, under the guise of a review petition, EPPL is seeking to reargue its case which is impermissible in review jurisdiction.

The Commission proceeds to examine the Review Petitioner's case as under:

## **2.1 Issue of the expenditure of Rs. 6.02 Crore in FY 2021-22 for purchase/replacement of Runners and Nozzle Assembly:**

### **2.1.1 EPPL's Submission:**

The Review Petitioner's plea is that there is an error in the impugned Order because the Commission has:

- “a) Changed the methodology of determination of tariff at true up stage which is in teeth of the law laid down in BSES Rajdhani,*
- b) Erred in treating a capital expenditure as revenue expenditure;*
- c) Ignored that the said assets have to be mandatorily replaced in view of normal wear and tear which is not considered in insurance and;*
- d) incorrectly interpreted its Regulation to place undue reliance on the insurance claims even though insurance is a financial business while the grant of additional capex is an exercise of regulatory power which requires due consideration to the generators right to a fair and reasonable tariff.*

It has been submitted that, the Commission, vide its earlier Order dated 09.03.2021 in Petition No. 16 of 2020, had allowed the expenditure towards the replacement of Runners & Nozzle Assembly as an additional capital expenditure. However, by the impugned Order, the said methodology was revised by holding that this expenditure ought to be considered under the Repair and Maintenance (R&M) Expenses being allowed separately on a normative basis and not as a capital expenditure. It has cited the Hon'ble Supreme Court Judgment in case of BSES Rajdhani Power Ltd. Vs. DERC (2023) 4 SCC 788, wherein it has been opined that 'truing-up' stage is not an opportunity to re-think de novo on the basic principles, premises and issues involved in the initial projections of the ARR. It was also argued that the Commission has erred in

considering that the Petitioner has submitted that it has not claimed any insurance claim towards replacement of old runners with the submission that it meant to say that 'wear and tear' are not a claimable reimbursement/expense under the Insurance Policy. Reliance in this regard was placed on mail dated 24<sup>th</sup> March 2022 by the Insurance Company stating that, *"the claim was closed as the survey report confirmed that the cause of loss was due to gradual wear & tear in nature, which is not sudden and unforeseen/accidental in nature."* It was further pleaded that the replacement of a 'Runner' in a hydro plant falls in the category of capital expenditure as being allowed by the CERC and the Commission has incorrectly interpreted its Regulation to place undue reliance on the insurance claims.

#### **2.1.2 PSPCL's Reply:**

PSPCL has submitted that, by way of the present Review Petition, EPPL is seeking to confuse the issue and bury the fact that it had made false statements on affidavit on the issue of whether EPPL has had made insurance claim towards Runners and Nozzles Assembly. After having itself misled the Commission by way of false statements, EPPL cannot now contend that the Commission has changed the methodology at the true-up stage. The Commission had taken a consistent view that allowance of expenses towards purchase of Runners would be subject to the fate of the insurance claim to be adjudicated at the true up stage. Even if, the case of EPPL is taken to be true then the grounds as urged by EPPL cannot by any stretch of imagination be in the nature of an *"error apparent on the face of record"* but are in fact grounds of appeal.

### 2.1.3 Commission's Analysis:

The Commission examines the pleas of the Review Petitioner and PSPCL's reply as under:

a) The plea of change in methodology at the true-up stage:

The Commission notes that there cannot be any dispute on the issue that replacement of spares in a plant upon normal wear/tear is a part of its routine R&M activity covered under the O & M expenses. The Runner & Nozzles are also spares fitted in the Turbine of a hydel plant. However, considering the plea of there being an extensive/abnormal damage of unforeseen nature to its Runners & Nozzles, supported by an IIT Report mentioning that they have suffered an extensive damage even under the normal silt conditions, and with all the project material being covered under the project insurance scheme, the Commission, vide Order dated 03.09.2019 in Petition No. 23 of 2017 filed for approval of AFC of the Petitioner's Project for said MYT Control Period of FY 2017-18 to FY 2019-20, had made the following observation:

*"The Commission notes that the material viz. Civil & Hydro mechanical, Electromechanical (Plant & Machinery), Step-up Sub-Station of 132/220 kV 'Chaur' (location: 220/132 kV Chaur sub-station, V.P.O. Chaur, Tehsil & Distt. Kullu-175125, HP and 132 kV Double Circuit Transmission Line and associated Equipments of EPPL are insured for a sum of Rs. 988 crore and premium is being paid. The insurance policy provides as under:*

*“i. As regards buildings, plants and machinery, furniture, fixture, fittings etc. the cost of replacement or reinstatement on the date of replacement or reinstatement subject to the maximum liability being restricted to the sum insured in respect of that category of the item under the policy.”*

*The Commission observes that IIT Roorkee in its report mentioned that even with silt concentration less than the permissible limit, the runners and nozzles have suffered extensive damage. Thus, damage to plant and machinery is covered in the Insurance Policy. EPPL stated in the court that no claim has been raised with the insurance company to either get the insured value or to replace the runners. EPPL is directed to take up the matter with the Insurance Company and come back to the Commission on this issue during true up. Hence this issue is not being adjudicated at this time.”*

As is evident, the Commission, at the beginning itself, after obtaining the IIT report supporting the EPPL's case that its 'Runners and Nozzles' have suffered extensive/abnormal damage of unforeseen nature, had directed EPPL to take up the matter with the Insurance Company and come back to the Commission on this issue during the true up. In the meantime, the Commission even refused to adjudicate the issue. However, upon subsequent submission by EPPL that it has preferred an insurance claim for same and the insurance company has asked for the photographs of the damaged equipment which were also brought on the record, the Commission in its Orders dated 18.09.2020 and

09.03.2021 in Petitions NO. 02 of 2020 and 16 of 2020 filed for approval of its CIP and AFC, respectively, for the MYT Control Period of FY 2020-21 to FY 2022-23, observed that provisioning of the same for FY 2020-21 as per submissions of EPPL can be allowed subject to the adjustment of the insurance claim, which shall be considered on merits in the True up petition.

Thus, the provisioning of expenditure for replacement of damaged Runners and nozzles under additional capitalization was provisionally allowed, clearly, considering the EPPL's plea of extensive/abnormal damage of unforeseen nature and covered under the normal project insurance policy. Therefore, when the Review Petitioner submitted that it has not claimed any insurance claim and accepting the case of the Petitioner that it was only a normal 'wear and tear' and not of abnormal/unforeseen nature claimable under Insurance Policy, the Commission has considered the same to be covered under the R&M Expenses as is the case with expenses of other spares of the plant upon normal wear and tear.

**As such, considering its consistent view that allowance of expenses, towards replacement of Runners and Nozzles claimed to have suffered extensive/abnormal damage of unforeseen nature, under the additional capitalization would be considered on merit subject to the fate of the insurance claim to be adjudicated at the true up stage, the Commission cannot be said to have erred or changed its methodology in considering the same under the R&M expenses, as is the case of replacement of other spares upon usual/normal**



wear/tear, on failure of the Review petitioner to establish its case of said damage to be of an abnormal/unforeseen nature. Rather, it was the Review Petitioner who has erred in projecting a normal wear/tear damage to be of an abnormal/unforeseen nature. Furthermore, since the provision for replacement of the damaged Runners and Nozzles was neither prayed for nor provided by the Commission as an additional Capex in the initial ARR projections for FY 2021-22 in Petition No. 16 of 2020, the Review Petitioner's plea that the Commission has changed the methodology at the true-up stage of FY 2021-22 in not allowing the same is not maintainable.

- b) Further, on the issue of the Review Petitioner's submission that the Commission has erred in considering that it has not claimed any insurance claim towards replacement of old runners, the Commission refers to para 3 of EPPL's rejoinder dated 07.01.2023, to PSPCL's reply in Petition No. 56 of 2022, which reads as under:

***“It is submitted that EPPL have not claimed any insurance claim towards replacement of old runners, as per understanding of EPPL, the same is not a claimable reimbursement/expense as wear and tear is a standard exclusion under IAR Policy. The matter was discussed with Insurance advisors including M/s India Insure and they confirmed that Insurance Claim for the runners is not admissible...”***

***[Emphasis supplied]***

Moreover, the mail dated 24<sup>th</sup> March 2022 by the Insurance Company, now submitted in the review Petition, also confirms that, *“the cause of loss was due to **gradual wear & tear in nature, which is not sudden and unforeseen/accidental in nature.**”*

- c) The Commission has also perused the other pleas of the Review petitioner of there being purported errors in treating a capital expenditure as revenue expenditure and incorrect interpretation of Regulations etc. The same cannot be said to be discovery of new facts/evidence or establishing any error on the face of record. They are only in the nature of an appeal in the guise of a review. The issues has been dealt with appropriately in the original order.

## **2.2 Issue of the expenditure of Rs. 0.92 Crore in FY 2020-21 for Left Abutment Slope Stabilization Measures:**

### **2.2.1 EPPL’s Submission:**

The Review Petitioner’s plea is that, for the measures necessitated on account of the failure of the Left Abutment of the dam complex on 04.04.2019 due to melting of the thick snow layer leading to dislodging of large trees and consequent toppling of RCC wall and other retaining structures, the Commission vide its order dated 18.09.2020 in Petition No. 02 of 2020 had held that the expenditure on this account would be considered after insurance claim has been settled and EPPL claims the expenditure in the true-up petition along with full justification, vouchers /bills and audited accounts, on merit. However, the Commission has erred in limiting the same to the insurance settlement amount despite submission of legitimate

invoices/vouchers and other details. The Regulations nowhere provide that the claim shall be restricted to the insurance claim allowed and instead provides that the same shall be limited by the sum insured as the upper limit.

### **2.2.2 PSPCL's Reply:**

The Commission in Order dated 18.09.2020 had made it amply clear that the said expense would be considered on merit after the settlement of the insurance claim. EPPL thereafter informed the Commission that the insurance company had settled the claim at Rs. 43,087/-. Thus, the Commission had allowed the claim as upheld by the insurance company. After having accepted the Order dated 18.09.2020 which made the expense contingent upon the insurance claim, EPPL cannot now seek for a deviation from the same.

### **2.2.3 Commission's Analysis:**

The Commission observes that vide its Order dated 18.09.2020 in Petition No. 02 of 2020, while allowing the CIP for the Control Period of FY 2020-21 to 2022-23, it was held that the expenditure on this account would be considered after settlement of insurance claim in the true-up petition on merit. Therefore, there is no error in considering the expenditure as per the damage/cost of reinstatement as assessed/settled by the Insurance Company and accepted by the Review Petitioner. The purported claim, which is more than 200 times the insurance settlement accepted by the Review Petitioner, cannot not said to be logical/ justified on any count.

### **2.3 Issue of the expenditure of Rs. 2.29 Crore for FY 2020-21 and Rs. 0.20 Crore for FY 2021-22 as Miscellaneous Expenses.**

### **2.3.1 EPPL's Submission:**

The Review Petitioner's plea is that it had incurred an expense of Rs. 2.29 Crore during FY 2020-21 (towards Office Equipment, Computers and Tools & tackles & Machinery like Trash Cleaning Machines) and Rs 20.88 Lakhs during FY 2021-22 (towards Furniture and Fixtures, Office equipment, and Computers). Trash Cleaning Machine is required for the efficient/smooth operation of the Plant, whereas the other equipment, such as Computers, Furniture & Fixtures, Laptops, Mobile phones and Batteries have a fixed useful life. The Commission has erroneously held that the aforesaid expenses are to be dealt with under the proviso to Regulation 18.2 of PSERC MYT Regulation, which states that any expenditure on acquiring the minor items brought after the cut-off date shall not be considered for additional capitalization for determination of tariff. However, the said Miscellaneous Expenses are not new expenses, but are recurring expenses and are therefore distinct from the expenses detailed in the proviso. Moreover, the Miscellaneous Expenses ought not to be distinguished from other capital expenditure which is necessary for the smooth operation of the Project, to keep in sync with the improved design/technology. Such Miscellaneous Expenses clearly fall, within the category of "replacement of old assets/modernization" and are to be dealt with in accordance with Regulation 18.5.

### **2.3.2 PSPCL's Reply:**

PSPCL in its reply has contended that EPPL is not only attempting to reargue its matter but also raising contentions consistently raised earlier by EPPL and rejected by the Commission on numerous

occasions including in Petitions 2 & 16 of 2020. The Commission has repeatedly rejected the claims of EPPL against minor/miscellaneous expenses. Furthermore, Regulation 18.2(e) of the MYT Regulations leaves no ambiguity, post cut-off date, any expenditure on acquiring the minor items or the assets is categorically excluded from additional capitalization for determination of tariff. EPPL's Reliance placed on Regulation 18.5 of the Tariff Regulations is also incorrect.

### **2.3.3 Commission's Analysis:**

The Commission observes that in its Order dated 18.09.2020 in Petition No. 02 of 2020 filed by EPPL for approval of its Business Plan (including CIP) for control period from FY 2020-21 to FY 2022-23, the Commission, after referring to the provisions of Regulation 18.2 of the PSERC MYT Regulations has held that such miscellaneous expenditure on computers/ laptops, tipper and fork lifter (tools & tackles) are not allowable under the said Regulations. Without contesting this order and indeed based on same, the Review Petitioner filed Petition No. 16 of 2020 for approval of its AFC projections for the Control Period of FY 2020-21 to FY 2022-23. Accordingly, a nil provision was considered for miscellaneous expenditure in the AFC projections for the Control Period of FY 2020-21 to FY 2022-23 allowed vide the Commission's Order dated 09.03.2021. As such, no provision existed for minor items/miscellaneous expenses under additional capital expenditure in the initial AFC projections for the MYT Control period of FY 2020-21 to FY 2022-23 allowed in Petition No. 16 of 2020. Thus, considering the same principle/methodology at the truing-up stage cannot be said

to be an error in the Order. Moreover, the Regulation 9.13 specifically mandates that, *“the capital expenditure incurred shall be only for the schemes as per the approved capital investment plan”*. The Commission also notes that no plea for considering the same under any other Regulation was made therein by the Review petitioner. The Regulation 18.5 cited now in the Review Petition also do not help its cause, as it only provides as under:

*“18.5 Any expenditure admitted on account of committed liabilities within the original scope of work and the expenditure deferred on techno-economic grounds but falling within the original scope of work shall be serviced in the normative debt-equity ratio specified in this Regulation.”*

## **2.4 Issue of Employee Expenses:**

### **EPPL Submissions:**

- a) EPPL has submitted that as per its audited accounts for FY 2020-21 and FY 2021-22, the actual expenses incurred towards Employee Cost were Rs. 8.49 Crore and Rs. 2.12 Crore, respectively. The Commission erred in not considering that as per the audited annual accounts, the actual employee Cost for FY 2020-21 was Rs. 8.49 Crore. The Commission erred by not considering the allocation of employee expense at a group level for serving the particular generation project.
- b) The Commission erroneously considered Rs. 0.07 Cr. and Rs. 0.47 Cr. only towards Employee Cost. The Certificate of the statutory auditors shows the terminal benefits of INR 0.18 crore and INR 0.13 crore for FY 2020-21 and FY 2021-22 respectively.

- c) The Commission erred by considering employee cost of FY 2019-20 as the base while computing the Escalation Index for FY 2020-21 and FY 2021-22 as it has resulted into lower employee cost.
- d) That EPPL had provided justification in its reply dated 07.01.2023, for lower Employee Costs in FY 2021–22 in comparison to previous years. The Commission ought to have considered the specific facts of the present case which demonstrate the rationale behind the Employee Cost as claimed by the Review Petitioner. The Greenko Group acquired the Project from its erstwhile owners in the beginning of FY 2021-22. Post-acquisition, restructuring of employees was the sole reason for low Employee Costs during FY 2021-22. Many employees belonging to Senior management had resigned during the transition phase. The employee strength of EPPL was ‘12’ in FY 2019-20, which decreased to ‘6’ in the next FY 2021-22; and details of the same may be seen in the table below:

**Table No. : Details of No. of Employees**

<b>EPP L</b>	<b>Technical</b>	<b>FY 2019- 20</b>	<b>FY 2020– 21</b>	<b>FY 2021- 22</b>
1	Class I	01	01	01
2	Class II	00	00	00
3	Class III	06	03	01
4	Class IV	00	00	00
	<b>Non - Technical</b>			
1	Class I	01	01	01
2	Class II	02	02	01
3	Class III	02	03	02
4	Class IV	00	00	00
	<b>Total</b>	<b>12</b>	<b>10</b>	<b>06</b>

e) That the strength of employees given in the aforementioned table is for employees working at the site and it does not include the strength of employees working at the corporate level. The Review Petitioner's Hydro Power Plant Activities, other than the project operation, were being handled by the employees employed at the corporate level in FY 2019-20 and FY 2020-21.

**Number of Employees for FY 2019-20 (site and corporate level employees)**

S No	Month	Head Count
1	Apr'19	47
2	May'19	47
3	June'19	47
4	July'19	48
5	Aug'19	46
6	Sep'19	40
7	Oct'19	39
8	Nov'19	38
9	Dec'19	36
10	Jan'20	36
11	Feb'20	36
12	Mar'20	37

**Number of Employees for FY 2020-21 (site and corporate level employees)**

S No	Month	Head Count
1	Apr'20	37
2	May'20	37
3	Jun'20	37



4	Jul'20	37
5	Aug'20	37
6	Sep'20	37
7	Oct'20	35
8	Nov'20	35
9	Dec'20	34
10	Jan'20	34
11	Feb'20	34
12	Mar'21	32

- f) That during the transition phase i.e., in FY 2021-22 total number of employees the head counts for FY 2021-22 reduced drastically up to 6 at plant level and 5 at corporate level (on the payroll of EPPL). In the year 2022-23, number of employees on the Review Petitioner's Pay roll details are as under:

S. No.	Month	Corporate Office	Plant	Total Head Count
1	Apr'22	23	10	33
2	May'22	24	11	35
3	Jun'22	25	11	36
4	July'22	27	11	38
5	Aug'22	28	12	40
6	Sep'22	28S	12	40
7	Oct'22	33	12	45
8	Nov'22	33	12	45
9	Dec'22	34	12	46
10	Jan'23	33	12	45
11	Feb'23	33	12	45
12	Mar'23	33	12	45

- g) In the FY 21-22, the headcount of the plant was reduced upto 6 at plant level and 5 at corporate level. The number of employees from corporate office increased from 5 in April 2021 to 23 in March 2022. This was because of the transition and employees were gradually increased to meet the requirements of running the plant efficiently. Hence, the employee cost of FY 21-22 was on the lower side when compared to FY 2020-21. On similar lines, in FY 22-23, the employees in the corporate office were increased to 33 with the total head count of 45. The employee cost for FY 22-23 is INR 7.73 crores.
- h) That the Employee Costs of similar size of hydro projects are in the range of Rs.60 Crore to Rs.85 Crore and in comparison to such projects, the Employee Costs of Rs. 8.49 Crore for FY 2020-21 for a 100 MW Project is the most competitive among similar sized projects. It is pertinent to reiterate that the Employee Cost was lowest as the headcount during the transition period was reduced to 6 at the plant level and 5 at the corporate level and that this cost is bound to increase when requisite resources are employed. Comparison of various Hydro Electric Projects (HEPs) of similar sizes is as under

**Table: Comparison of Employee cost among a similar capacity of projects**

<b>Sr.No.</b>	<b>HEPs</b>	<b>Capacity (MW)</b>	<b>Employee Cost (in Crore)</b>	<b>Number of Employees</b>
1.	Loktak	105	61.19	261
2.	Bairasiul	180	76.49	298
3.	Tanakpur	120	85.26	488
4.	Sewa II	120	30.85	140
5.	Rangit	60	42.74	201

- (i) M/s Greenko Budhil Hydro Power Project Limited (hereinafter referred to as “GBHPPL”), which is an affiliate company of the Review Petitioner and has similar Employee Expense, has developed a 70 MW (2x35 MW) Hyrdo Electric Power Project in the State of Himachal Pradesh. The GBHPPL executed a PPA for its full capacity with the distribution licensee of the State of Uttarakhand i.e., Uttarakhand Power Corporation Limited and had initiated scheduling of power w.e.f. 01.12.2015. GBHPPL is also like Malana-II project and falls under the cost-plus regime and its tariff is being determined under Section 62 of the Act, regulated by the Hon’ble Uttarakhand Electricity Regulatory Commission (hereinafter referred to as “Hon’ble UERC”). The Hon’ble UERC vide its Order dated 30.03.2023 approved Annual Fixed Cost (hereinafter referred to as “AFC”) (True-Up) for the last year of the 3<sup>rd</sup> Control Period i.e. FY 2021-22 and AFC for the new Control Period i.e. FY 22-23 and FY 23-24. The number of employees GBHPPL had during FY 20-21, 21-22 and 22-23 is 96, 93 and 92 respectively. The Employee Expenses for the above referred financial years is determined as under:

Financial Year	Particulars	Employee Expenses allowed by UERC (in Rs. Cr.)
FY 21-22	True-up	Rs. 5.57 Cr. As against Rs. 7.99 Cr actual incurred
FY 22-23	Annual Performance Review (APR)	Rs. 7.00 Cr
FY 23-24	Annual Revenue Requirement (ARR)	Rs. 7.80 Cr

- j) Therefore, the revision of the employee cost amounting to Rs 5.69 Crore for FY 2020-21, already fixed by this Commission in its order dated 09.03.2021 in Petition no 16 of 2020 for 2nd MYT Control Period of FY 2020-21 to 2022-23, by the Order under Review is an error apparent on the face of the record. The Commission ought not have considered the revised base value for employee cost as determined in the Order dated 01.06.2023 in Suo-Motu Petition 56 of 2022 and re-determined the employee cost for FY 20-21 as per actual audited accounts i.e., Rs. 8.49 Cr and considering suitable group level cost and re-determined the Employee expenses for 21-22 afresh. The Commission, based on the provisional audited accounts, ought to have approved INR 7.73 Cr. as per the actual cost incurred for FY 2022-23.
- k) Further, EPPL prayed that this Commission may be pleased to calculate the employee cost for the new control Period i.e., FY 2023-24 to FY 2025-26 as under:

**Computation of escalation indices for FY 2023-24 to FY 2025-26**

Period	FY 2020-21	FY 2021-22	Increase/ Decrease
CPI Index	338.69	356.06	5.13%
WPI Index	123.38	139.41	13.00%

$$\text{Index } n / \text{Index } n-1 = 0.5 \times 5.13\% + 0.5 \times 13\% = 9.06\%$$

The above indices may be applied for entire control period i.e., FY 2023-24 to FY 2025-26

**Calculation of Employee Cost for FY 2023-24 to FY 2025-26**

Particulars	FY 2023-24	FY 2024-25	FY 2025-26
Baseline value including terminal benefit	7.73 (actual of FY 22-23 as base)	8.43	9.19
Index / WPI & CPI escalation	9.06%	9.06%	9.06%
Employee Cost	8.43	9.19	10.03

**PSPCL's submissions:**

- (l) PSPCL denied that the Commission has in any manner erred in disallowing the employee cost of Rs. 8.49 Crore each for FY 2020–21 and FY 2021-22 respectively.
- (m) It further submitted that the averments now sought to be raised by EPPL by way of the present Review Petition have already been agitated, argued, and considered by the Commission while passing the order dated 01.06.2023 in Suo-Motu Petition No. 56 of 2022.
- (n) That the Commission *vide* order dated 01.06.2023 has duly considered the contention of EPPL namely, comparison with other hydro-electric projects, justification given by EPPL for lower employee cost, restricting of employees post-acquisition and other reasons. The Commission has rejected the same reasons, which are sought to be canvassed again by EPPL by way of the present Review Petition. Relevant extract of the order dated 01.06.2023 is stated as under:

***“3.13 The Commission notes that comparison has been attempted by the Petitioner as shown in table no.7 with other Hydro Electric Projects. However, it is more than evident that there is hardly any similarity between the data of these plants. They are widely divergent and hence not comparable and thus not considered for comparison. Thus, the Commission does its own analysis and follows the notified regulations.*”**

***3.13.1 The Commission also notes that the justification given by EPPL for lower employee cost for FY 2021-22 is not in order considering the submissions regarding details of number of***

***employees given in Table No 6 of this order. The employee cost for FY 2020-21 of Rs.8.31 Crore is not justified keeping in view the number of employee submitted in Table No.6 even if a few senior level employees were working at the corporate office.”***

- n) That, EPPL has requested this Commission not to consider the revised base value for employee cost as determined in the Order dated 01.06.2023 and has curiously sought for a redetermination for employee cost for FY 2020-21 and 2021-22 afresh. This is impermissible in review proceedings. From the contentions as raised by EPPL it is clear that EPPL is seeking for a redetermination of a parameter already decided. Such an exercise can only be undertaken in appellate proceedings under Section 111 of the Electricity Act, 2003.
- o) That the comparison as sought to be drawn by the Petitioner with that of other hydro-electric projects is incorrect. The said hydro-electric projects have very high design energy and as such are not comparable with the project of EPPL. In any event, the said contention amounts to rearguing the matter which cannot be allowed in review proceedings.
- p) That EPPL has simply relied on the change in management for the escalation of employee cost. The change in management is an internal decision of EPPL and any cost escalation on account of the same ought not to be allowed.
- q) That the employee cost was determined as per Regulation 26.1 (ii) of the PSERC MYT Regulations, 2019. The Commission in its order dated 01.06.2023 in Petition No. 56 of 2022 had considered Rs 1.50 Crore as baseline value of other employee cost for FY 2020-21. The employee cost is considered in two parts - other employee cost and Terminal

benefits. EPPL has claimed terminal benefits of Rs. 0.18 Crore and Rs. 0.13 Crore for FY 2020-21 and FY 2021-22 respectively. The Commission approved other employee Cost as under:

Sr.No.	Particulars	FY 2020-21	FY 2021-22
1	Baseline Value	1.50	1.55
2	WPI and CPI Increase	3.1566%	9.06206%
3	<b>Other Employee Cost (1*2)</b>	<b>1.55</b>	<b>1.69</b>

- r) In view of the above, the Commission has taken the figures corresponding to FY 2020-21 and FY 2021-22 as the baseline value and thereafter applying the Consumer Price Index and Wholesale Price Index over the previous years has approved the employee cost Rs 1.62 Crore and Rs.2.16 Crore for FY 2020-21 and FY 2021-22 respectively.

**Commission's analysis:**

The Commission has rightly re-determined the baseline values as per Regulation 8.1 of MYT Regulations, 2019. No new record or evidence has been produced (which was not within the knowledge of EPPL at the time when the data was furnished by them and order was passed by the Commission) nor is there any mistake or error apparent on the face of the record at present to justify any review. As such the prayer for review of the earlier Order on this issue is not admissible.

Further, the Commission observes that Section 94(1)(f) of the Electricity Act specifies that the Appropriate Commission shall, for the purposes of any inquiry or proceedings under the Act, have the same powers as are vested in a civil court under the Code of Civil Procedure (CPC) in respect of reviewing its decisions, directions and orders. Also, in line with Order

47 Rule 1 CPC enumerating the grounds on which a review can be sought, Regulation 64(1) of PSERC (Conduct of Business) Regulations, 2005 provides as under:

**“64. Review of the decisions, directions and orders:-**

*(1) Any person aggrieved by a decision or order of the Commission, from which no appeal is preferred or allowed, 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 decision/order was passed by the Commission or on account of some mistake or error apparent on the face of record, or for any other sufficient reason, may apply for review of such order within 60 days of the date of decision/ order of the Commission.”*

The Commission also refers to the following Hon'ble Supreme Court Judgments:

**a) Parsion Devi & Ors vs Sumitri Devi & Ors. [1997 (8) SCC 715]:**

*“Under Order 47 Rule 1 CPC a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. 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 on the face of the record justifying the court to exercise its power of review under Order 47 Rule 1 CPC. In exercise of the jurisdiction under Order 47 Rule 1 CPC it is not permissible for an erroneous decision to be 'reheard and*



*corrected'. A review petition, it must be remembered has limited purpose and cannot be allowed to be 'an appeal in disguise'.*

*..... There is a clear distinction between an erroneous decision and an error apparent on the face of the record. While the first can be corrected by the higher forum, the later only can be corrected by exercise of the review jurisdiction....."*

**b) Lily Thomas vs Union of India. (2000) 6 SCC 224:**

*"56. It follows, therefore, that the power of review can be exercised for correction of a mistake and not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. The review cannot be treated an appeal in disguise. The mere possibility of two views on the subject is not a ground for review. ...."*

*Keeping the above*

As is evident, a review petition can be preferred only on discovery of new and important matter/ evidence which was not within his knowledge when the decision/order was passed by the Commission or on account of some mistake/error apparent on the face of the record. Further, the Hon'ble Supreme Court has clarified/held that; a review petition cannot be allowed to be 'an appeal in disguise' and that an error which is not self-evident and has to be detected by a process of reasoning cannot be said to be an error apparent on the face of the record.

**Thus, the Commission is of the view that the Review Petitioner has failed to establish any case of discovery of new and important matter/evidence which was not within its knowledge at**

the time when the impugned Order was passed by the Commission or of any self-evident mistake/error apparent on the face of the record. In fact, the pleas made by the Review Petitioner's are in the nature of an appeal in disguise, which is not a permissible ground for the exercise of review jurisdiction. Therefore, no case is made out for review of the original order.

In light of the above analysis and observations, the instant Review Petition does not merit admission and is accordingly dismissed.

Sd/- (Paramjeet Singh) Member  
Sd/- (Viswajeet Khanna) Chairperson

Chandigarh  
Dated:01.02.2024

