

**BEFORE THE HIMACHAL PRADESH ELECTRICITY REGULATORY COMMISSION,
SHIMLA**

Review Petition No. 133/2012

(Order Date: 29th December, 2012)

In the Matter of:

Petition under Section 94(1)(f) of the Electricity Act, 2003 read with Regulation 63 of the Himachal Pradesh Electricity Regulatory Commission (Conduct of Business) Regulations, 2005, for the Clarification / Review of True Up Order dated 23rd April, 2012 in respect of truing up of tariff for sale of power from Baspa-II, 300MW HEP to HPSEBL for the First Control Period (FY09 – FY11).

AND

In the Matter of:

Himachal Pradesh State Electricity Board Limited
Vidyut Bhawan, Shimla –171004

...Petitioner

Versus

M/s Jaiprakash Power Ventures Ltd.,
(formerly known as M/S Jaiprakash Hydro Power Ltd.)
JUIT complex, Wagnaghat,
P.O. Dumehar Bani, Kandaghat,
Distt. Solan, (HP) -173215.

...Respondent

CORAM

Subhash C Negi
CHAIRMAN

Date of Decision: (29th December, 2012)

Counsels:-

for the petitioner/applicant:

Sh. Bimal Gupta, Advocate

for the respondents:

Sh. Pawan Upadhyay Advocate

A1: BACKGROUND

Purpose of the order

- 1.1 The Himachal Pradesh State Electricity Board Limited (hereinafter referred to as 'HPSEBL') had filed petition with the Himachal Pradesh Electricity Regulatory Commission (hereinafter referred to as 'the Commission' or 'HPERC') seeking Clarification / Review of the Commission's True Up Order dated 23rd April, 2012 in respect of trueing up of tariff for sale of power from Baspa-II, 300MW HEP to HPSEBL for the First Control Period (FY09 – FY11).
- 1.2 Respondents, M/s Jaiprakash Power Ventures Limited (hereinafter referred to as 'JPVL') submitted their reply to the above petition vide Miscellaneous Application M.A. No. 157/2012.

Power to Review

- 1.3 The Commission's powers to review its own orders flow from Section 94(1)(f) of the Electricity Act, 2003 and are the same as those conferred on a civil court by the Code of Civil Procedure (CPC). These have been spelt out in Section 114 read with Order 47 of the CPC. The review application has to necessarily meet the requirements of Section 114 and Order 47 of the CPC.
- 1.4 As per the said provisions, the specific grounds on which an order already passed can be reviewed are:
 - (a) if there are mistakes or errors apparent on the face of the record, or
 - (b) on discovery of new and important matter or evidence which, after due diligence was not within knowledge or could not be produced at the time of making the order, or
 - (c) if there exist other sufficient reasons.
- 1.5 The power of review, legally speaking, is permissible where some mistake or error apparent on the face of record is found and the error apparent on record must be such an error which may strike one on a mere looking at the record and would not require any long drawn process of reasoning. A review cannot be equated with the original hearing of a case. A review petition has a limited purpose and cannot be allowed to be an appeal in disguise and it cannot be exercised on the ground that decision was erroneous on merits. But simultaneously the materials on record, which on proper consideration may justify the claim, cannot be ignored.
- 1.6 Clerical or arithmetical mistakes in judgments or orders or errors arising therein from any accidental slip or omission may at any stage be corrected by the Commission under Section 152 of the CPC, either of its own motion or on the application of any of the parties. The use of word "may" shows that no party has a right to have a clerical or arithmetical mistake corrected. The matter is left to the discretion of the Court. Such discretion is required to be exercised judiciously to make corrections necessary to meet the ends of justice. The word "accidental" qualifies the slip/ omission. Therefore, this provision cannot be invoked to correct an omission which is intentional, however erroneous. Because Section 152 does not countenance a re-argument on merits of fact or law, the Commission has the limited powers to correct any clerical or arithmetical mistakes in judgments or orders, or errors arising therein from any accidental slip or omission.

A2: COMMISSION'S OBSERVATIONS AND ORDERS ON VARIOUS ISSUES RAISED IN THE CLARIFICATORY / REVIEW PETITION

Issue No.1 – Interest for the period during which the Stay Order was in Operation

- 2.1 The Hon'ble Appellate Tribunal for Electricity (hereinafter referred to as 'the APTEL') in its Order dated 29th March, 2011 had granted a stay against Commission's Order dated 24.01.2011, which was vacated by the Hon'ble APTEL dated 6th February, 2012. The Hon'ble APTEL in its judgement dated 06.02.2012 has vacated the Stay and upheld the Commission's Order dated 24.01.2011.
- 2.2 In the first Issue raised by the Petitioner HPSEBL, it has been submitted that in the Commission's True-Up Order dated 23rd April 2012, the Commission has calculated the Interest on Arrears for the period when a Stay Order granted by the Hon'ble APTEL was in operation i.e. between the period 29th March, 2011 and 6th February, 2012. Since the APTEL has not given any specific directions about the Interest to be paid, the Petitioner has sought clarification that specific directions about the interest to be paid during the period of stay ordered by the Hon'ble APTEL, was in operation.
- 2.3 In response M/s JPVL asserts that after the vacation of the said Stay Order, the HPSEBL is liable to pay Interest for the interregnum period. The HPSEBL is liable to pay since while disposing off this appeal, the Hon'ble APTEL did not give any concession to the HPSEBL and dismissed the Appeal simpliciter.
- 2.4 The Commission is inclined to agree with the reply of the respondent M/s JPVL, that despite the Stay by the Hon'ble APTEL which is an Interim Order, the beneficiary of the Interim Order shall have to pay the interest on the amount withheld or not paid by virtue of the Interim Order as has been held in case titled as State of Rajasthan & Anr. Vs. J.K. Synthetics Ltd., 2011 (12) SCC 518.
- 2.5 The first issue of Interest on Arrears during the period of Stay granted by the Hon'ble APTEL, is decided accordingly.

Issue No.2 – Submission of documents

- 2.6 In the second issue raised by the Petitioner, it has been prayed that JPVL may be directed to submit the requisite documents in support of actual payment made by M/s JPVL to Satluj Jal Vidyut Nigam Ltd. (or 'the SJVNL') as has been held in paragraph 3.101 of the Commission's Order dated 23rd April, 2012, wherein the Commission has said that it shall consider 0.25% additional O&M expenses after these documents in support of actual payments made by M/s JPVL to SJVNL are submitted by M/s JPVL.
- 2.7 With respect to the second issue on directions as prayed by the petitioner to be imparted to M/s JPVL for the submission of documents in support of actual payment by M/s JPVL to Satluj Jal Vidyut Nigam Ltd. (or 'the SJVNL'), the Commission finds no error or mistake apparent on face of record. Imparting directions are not covered under the scope of Review or clarificatory Orders to be made by the Commission. The petitioner HPSEBL is free to file a separate application/ petition in this regard.
- 2.8 The second issue of imparting directions to M/s JPVL is decided accordingly.

Issue No.3 – Correction of errors or mistake in Table No. 61, 62, 63 of Order dated 23rd April, 2012

- 2.9 In the third issue, the Petitioner has submitted that in the Order dated 23rd April 2012, the Commission has revised the O&M expenses, Return on Equity and Interest on Working

Capital for the year FY04 which were already decided in the Review Order dated 23.10.2010 without assigning any reason.

- 2.10 With respect to the third issue, the Commission observes that there is an error or mistake apparent on the face of record with respect to the O&M Expenses, Return on Equity and Interest on Working Capital as have been depicted in table No. 61, 62 & 63 of the Commission's Order dated 23rd April, 2012, which needs to be corrected. This error has crept in due to clerical/typographical mistake and this is evident from the Table No. 68 under paragraph 3.126 of the order which infact depicts the correct figures as has been raised by the Petitioner HPSEBL. The values for the year FY04 as depicted in the tables 61, 62 and 63 now stand corrected as follows:-

Table 61: Trued Up Operations & Maintenance Expenses (Rs Cr)

Particulars	True Up							
	FY04	FY05	FY06	FY07	FY08	FY09	FY10	FY11
Base O&M Expense	19.17							
O&M Expenses	16.05	19.17	20.32	21.54	22.84	24.21	25.66	27.20
Additional O&M Expenses				0.27	0.80	1.15	1.28	1.37
Total O&M Expenses	16.05	19.17	20.32	21.82	23.63	25.35	26.94	28.57

Table 62: Trued Up Return on Equity for the Period FY04 to FY08 (Rs Cr)

Particulars	True Up							
	FY04	FY05	FY06	FY07	FY08	FY09	FY10	FY11
Opening Equity	460.19	460.19	460.19	460.19	473.29	485.36	488.41	488.95
Additional Equity	0	0	0	13.10	12.07	3.05	0.54	0
Closing Equity	460.19	460.19	460.19	473.29	485.36	488.41	488.95	488.95
Average Equity	460.19	460.19	460.19	466.74	479.32	486.89	488.68	488.95
Return on Equity	61.63*	73.63	73.63	74.68	76.69	77.90	78.19	78.23

Table 63: Trued Up Interest on Working Capital for the period FY04 to FY11 (Rs Cr)

Particulars	True Up							
	FY04	FY05	FY06	FY07	FY08	FY09	FY10	FY11
1/12 th of O&M Expenses	1.60	1.60	1.69	1.82	1.97	2.11	2.25	2.38
Maintenance Spares 12% of O&M Expenses	0.00	0.00	0.00	0.00	0.00	3.04	3.23	3.43
Receivables equivalent to 2 months average billing	54.82	48.53	51.10	55.64	57.91	57.49	54.60	60.37
Total Working Capital	56.41*	50.13	52.80	57.46	59.87	62.65	60.08	66.18
Rate of Interest	10.75%	10.25%	10.25%	10.25%	12.25%	12.25%	12.25%	11.75%
Interest on Working capital	5.06*	5.14	5.41	5.89	7.33	7.67	7.36	7.78

- 2.11 The third issue is decided accordingly.

Issue No.4 – Tariff calculations

- 2.12 In the fourth issue raised by the Petitioner HPSEBL, it has been submitted that while computing the receivables for two months, the Commission has considered the tax and

incentive components of the Tariff and that these are not to be considered towards calculating Interest on Working Capital and that this is contrary to the provisions of the regulations 17 & 25 of Tariff Regulation 2007 dated 10.10.2007.

2.13 With respect of the fourth issue the Petitioner has not shown where in the Commission's Order dated 23rd April, 2012 the Taxes and Incentives have been considered by the Commission while computing the receivables for two months or while calculating the Interest on Working Capital. If this refers to the Interest on Working Capital as raised in the third issue, then that stands decided. However, as a matter of record, the Commission does not include both of these items while computing the two months receivables or while calculating the interest on working capital. No error or mistake is found apparent on face of record. No review is made out as to this issue.

2.14 The fourth issue is decided accordingly.

The Petition is accordingly disposed.

Shimla :
Dated: 29th December, 2012

(Subhash Chander Negi)
Chairman