

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

**Review Petition No. 158/2012**

**(Order Dated: 29<sup>th</sup> December, 2012)**

**In the Matter of:-**

Application for Review of the Order Dated 31.08.2012 passed in Petition No. 134/2012 and MA No. 101/2012 in 135/2011 for the tariff for 300 MW BASPA II Hydro Power Plant.

**AND**

**In the Matter of:**

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.

**Petitioner**

**Versus**

The Himachal Pradesh State Electricity Board Ltd.  
Vidyut Bhawan, Shimla-171004

**Respondent**

**CORAM**

Subhash C Negi  
CHAIRMAN

**Counsels:-**

for the petitioner/applicant:

Sh. Pawan Upadhyay Advocate

for the respondent:

Sh. Sh. Bimal Gupta Advocate

## **A1: BACKGROUND**

### **Purpose of the order**

- 1.1 Pursuant to Order dated 31.08.2012 passed by the Himachal Pradesh Electricity Regulatory Commission (hereinafter referred to as “the Commission” or “the HPERC”) in MA No. 101/2012 in petition 135/2011 in respect of payment of MAT, M/s Jaiprakash Power Ventures Ltd., JUIT Complex, Wahnaghat, P.O. Dumehar Bani, Tehsil Kandaghat, Distt. Solan, Himachal Pradesh (hereinafter referred to as “the Generating Company” or the “Review Petitioner” or the “JPVL”), under regulation 63 of the HPERC (Conduct of Business) Regulations, 2005, has preferred petition seeking review of the combined Consequential Order dated 31.08.2012 for the True Up of MAT and for the Revision of HPERC MYT Order dated 15 July, 2011 for sale of power from Baspa-II, 300 MW HEP to the Himachal Pradesh State Electricity Board Ltd. (hereinafter referred to as “the HPSEBL”).
- 1.2 The Review Petitioner, has stated that error has crept in column FY11 of Table 5 under para 1.37 of the HPERC Order dated 31.08.2012, wherein the Commission against the item ‘Opening Balance’ has considered Rs 25.68 crores which infact should be Rs 24.65 crores. As a result of this error, the item ‘Closing Balance’ will be Rs 30.89 crores as against that given as Rs 30.43 crores and accordingly the carrying cost and final Closing Balance will work out to be Rs 34.15 crores respectively.

### **Power to Review**

- 1.3 The Commission’s powers to review its own orders flow from clause (f) of subsection (1) of Section 94 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. The error and mistake for correction in review proceeding should be apparent on the face of the record and the same should be self evident.
- 1.6 Clerical or arithmetical mistakes in judgments or orders or errors arising therein from any accidental slip or omission may at any stage also 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.

## A2: COMMISSION'S OBSERVATIONS AND ORDER

- 2.1 Delay condoned. The Review Prayer is allowed partially.
- 2.2 The Commission observes that there is an error, apparent on the face of record, which is of clerical and arithmetic nature. However, the error has not resulted in the change in the final figure of the Closing Balance for FY11 in Table 5 under para 1.37, which continues to remain the same as in the Order dated 31.08.2012. The error therefore, has not resulted in any modification to the execution of the Order dated 31.08.2012.
- 2.3 That there is a calculation mistake in the MAT Order which has also been shown by the HPSEBL in its response filed before the Commission vide MA No. 179/2012.
- 2.4 The Table 5 under para 1.37 of the Order dated 1.37 is now corrected and is revised as follows:-

**TABLE 5**

Year	2003-04	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11
Revenue from Sale of Electricity	295.31	299.52	271.82	329.08	300.82	288.88	272.37	316.67
Interest on Arrears				24.18	25.92	17.80	14.66	13.63
<b>(A) Total Revenue</b>	<b>295.31</b>	<b>299.52</b>	<b>271.82</b>	<b>353.26</b>	<b>326.74</b>	<b>306.68</b>	<b>287.03</b>	<b>330.3</b>
O&M Expenses	21.57	18.69	19.98	25.16	25.12	23.43	35.16	28.35
Misc Expenses Written Off	9.65	16.31	22.39					
Interest	131.24	127.30	101.44	110.11	99.29	81.94	69.62	63.50
Depreciation	71.26	83.56	43.95	45.62	45.88	46.97	49.31	49.01
<b>(B) Total Expenses</b>	<b>233.72</b>	<b>245.86</b>	<b>187.76</b>	<b>180.89</b>	<b>170.29</b>	<b>152.34</b>	<b>154.09</b>	<b>140.86</b>
<b>(C) Profit eligible for MAT (A-B)</b>	61.59	53.66	84.06	172.37	156.45	154.34	132.94	189.44
<b>(D) MAT Rate</b>	7.69%	7.84%	8.42%	11.22%	11.33%	11.33%	16.995%	19.93%
MAT now approved (C*D)	4.74	4.21	7.08	19.34	17.73	17.49	22.59	37.76
<b>(E) MAT Actually paid (see Note1 below)</b>	4.83	4.39	14.22	25.60	27.39	17.00	24.15	31.92
<b>(F) Lower Of the MAT Approved and MAT Actually Paid</b>	4.74	4.21	7.08	19.34	17.73	17.00	22.59	31.92
<b>(G) MAT Approved in previous Orders</b>	4.18	4.39	7.36	11.20	12.74	13.22	20.12	25.68
<b>(H) Additional MAT approved in this Order (F-G)</b>	0.56	-0.18	-0.28	8.14	4.99	3.78	2.47	6.24
<b>Opening Balance</b>	0	0.58	0.43	0.18	8.66	14.53	19.63	24.19
<b>Addition during the Year</b>	0.56	-0.18	-0.28	8.14	4.99	3.78	2.47	6.24
<b>Closing Balance</b>	0.56	0.40	0.15	8.31	13.64	18.31	22.10	30.43
<b>Interest Rate for Carrying Cost</b>	8%	8%	8%	8%	8%	8%	10%	11.75%
<b>Carrying Cost</b>	0.02	0.04	0.02	0.34	0.89	1.31	2.09	3.21
<b>Closing Balance including Carrying Cost</b>	0.58	0.43	0.18	8.66	14.53	19.63	24.19	33.63
<b>Note1:</b> Amounts submitted by the M/s JPVL in MA No.76/2012 in case No. 135/2011 and includes Interest etc u/s 234B and 234C of Income Tax Act as per Assessment Orders passed by the Ld Commissioner Income Tax.								

In view of aforesaid, the review petition filed by M/s JPVL is accordingly disposed.

Shimla

Date: 29<sup>th</sup> December, 2012

Subhash C Negi

Chairman