

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

**Review Petition No. 75/2007 & 94/2007**

**In the Matter of:**

Application under Section 94(1)(f) of the Electricity Act, 2003 read with Regulation 63 of HPERC (Conduct of Business) Regulations, 2005 for Review of the Order dated 24.02.2007 on Determination of the Capital Cost and Tariffs for 300 MW Baspa II Hydro Power Plant in Petition No. 338/2005.

**AND**

**In the Matter of:**

M/s Jaiprakash Hydro Power Limited,  
JUIT Complex, Wagnaghat,  
P.O. Dumehar Bani, Kandaghat - 173215  
Distt. Solan (H.P.).

.....**Applicant**

**AND**

**In the Matter of:**

H.P. State Electricity Board,  
Vidyut Bhawan, Shimla –171004.

.....**Applicant**

**Coram**

Sh. Yogesh Khanna                      Chairman

(Order Passed on February 7, 2008)

**1.0 Purpose of the Order**

**1.1** Review applications were filed before the Commission by the Jaiprakash Hydro Power Limited (JHPL) and the Himachal Pradesh State Electricity Board (HPSEB) under Section 94(1)(f) of the Electricity Act, 2003 (hereinafter referred to as “**the**

**Act**") read with Regulation 63 of HPERC (Conduct of Business) Regulations, 2005 seeking review of the Commission's order dated 24.02.2007 (hereinafter also referred to as "**the Tariff Order**") on determination of the Capital Cost and Tariffs for 300 MW Baspa II Hydro Power Plant (hereinafter referred to as "**the Project**" or "**Baspa II**") in Petition No. 338/2005. Considering the contents of these applications and the prayers made therein, the Commission decided to hear the applicants before taking a view on their maintainability. The Commission has also considered subsequent responses to the review applications filed by JHPL, HPSEB, Jaya Hydro Power Private Ltd. and other stakeholders.

## **2.0 Power to Review**

**2.1** 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. For the review application to be admitted, it necessarily has to meet the requirements of section 114 and order 47 of the CPC.

**2.2** As per these 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.

**2.3** 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.

- 2.4** It may be pointed out here that Hon'ble Supreme Court and Hon'ble High Courts have held that review jurisdiction is not a substitute for an appeal and cannot be exercised for reconsideration of issues already decided by a Court in its original order, 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.
- 2.5** As regard the third ground of review under order 47 of the CPC namely "for any other sufficient reason", there need to be new grounds other than those considered in the original order of the Commission dated 24.02.2007. It is a well settled principle that the expression "any other sufficient reason" will have a meaning analogous to grounds specified immediately before. This portion of order 47 cannot be used to nullify the specific requirements stipulated in the earlier portions of the same provision, as mentioned in para 2.2 of this Order.
- 2.6** Given this unambiguous position of law as spelt out above it has to be now seen whether the arguments in the review applications under consideration meets these requirements for maintainability for review of the Tariff Order.
- 3.0 Commission's Observations on the Review Petition filed by JHPL (Petition No. 75/2007)**
- 3.1 Administrative Expenses (Para 4.6)**
- 3.1.1** JHPL has submitted that the administrative costs has been allowed only to the extent of Rs.9.44 crores considering a period from 1.4.2001 to COD of the Project, whereas the flash flood period commenced from 31<sup>st</sup> July, 2000. The administrative cost forming part of the hard cost was based on envisaged period of five years while the completion of the project actually took ten and a half years.
- 3.1.2 Commission's View**
- The Commission had approved the administrative expenditure incurred by JHPL as per the quarterly details submitted by JHPL to the Commission and based on the delay in commissioning of the project due to the force majeure event of July, 2000. This has been amply made clear in para 4.6.3 of the Tariff Order. The arguments made by JHPL in its review petition has not pointed out any apparent error on the face of the record or has submitted any new information which was not already available with the Commission at the time of processing of the JHPL petition and passing of the Tariff Order. The claim of JHPL, therefore, does not

qualify for a review within the scope of the review as defined in para 2.2 of this Order and hence cannot be admitted.

### **3.2 Catchment Area Treatment (CAT) Plan Expenditure (Para 4.7)**

**3.2.1** JHPL has submitted that under CAT Plan expenditure of Rs.20.10 crores agreed to be paid to the State Government, JHPL has so far paid an amount of Rs.11.10 crores and the outstanding amount of Rs.9.00 crores has to be paid in accordance with the annual CAT Plan expenditure. The State Government has further intimated enhancement of the CAT Plan expenditure from Rs.20.10 crores to Rs.27.92 crores. JHPL has pleaded for suitable directions to the State Government so that the additional expenditure of Rs.7.82 crores is not loaded to the Project and also to allow it to pay the balance amount to GoHP on an annual basis as agreed with GoHP.

#### **3.2.2 Commission's View**

The Commission has already made the position amply clear on this issue in paras 3.21.5 and 4.7 of the Tariff Order. In the said Order, the Commission had directed JHPL to pay the balance amount of the CAT plan for expeditious completion of the work by the State Government in the interest of the project and public at large at the earliest possible. The Commission has also mentioned in para 4.7.6 of the Tariff Order that there is already sufficient provision made in the TEC cost under the head and no further allowances are admissible in the project cost based on the revised expenditure envisaged by GoHP for CAT implementation.

### **3.3 Inter Connection Facility Cost (Para 4.8)**

**3.3.1** JHPL has submitted that the Commission has allowed the additional expenditure pertaining to Rs.31.42 crores in the hard cost as against Rs.45.11 crores paid by JHPL to Sutlaj Jal Vidyut Nigam Ltd. (SJVNL). JHPL has pleaded that the Commission may make a suitable provision in the Tariff Order for the additional expenditure that may be advised by the SJVNL to JHPL for payment, to form part of the completion cost for the purpose of tariff.

#### **3.3.2 Commission's View**

The Commission has already made its position clear on this issue in para 4.8 of the Tariff Order. The Commission would take a view on any further capital expenditure incurred on the interconnection facility on its merits, in subsequent

tariff proceedings. This plea of JHPL in its review petition does not qualify for review within the scope of the review as defined in para 2.2 of this Order and hence cannot be admitted.

### **3.4 Expenditure incurred on extra items in Transmission and Civil Works (Para 4.9)**

**3.4.1** JHPL has submitted certain details on item-wise expenditure on transmission and civil works in the review petition for consideration of the Commission, while pleading for its allowance. It has argued that it has incurred the expenses in reality and cannot be put to loss without any finding that such an expense was not prudent. JHPL has quoted Clause 8.4 of the PPA that the basic cost and the sealed cost as mentioned in the PPA was to be referred by the Board to the Authority for their approval, which power in the instant case now vests with the Commission.

JHPL has further submitted that the negotiated completion cost of Rs.1550 crores, approved by the HPSEB and the State Government, did not have any deduction on account of the actual expenditure incurred on transmission and civil works. Therefore, there was a tacit approval of the HPSEB and the State Government to the actual expenditure incurred on transmission lines and civil works in relaxation of basic and sealed cost provided in the PPA.

JHPL has, therefore, prayed to the Commission for allowing the expenditure of Rs.45.32 crores to form part of the capital cost.

### **3.4.2 Commission's View**

The Commission has expressed its view on the issue in para 4.9 of the Tariff Order. JHPL was provided adequate opportunities at the time of processing of the tariff petition for the project to justify the expenditure. The Commission has not gone into the merits of the data now being submitted by JHPL, as it was also available with JHPL earlier. The fact remains that the amount involved is significant and JHPL did not make any reference to HPSEB or to the State Government to seek their conformance/ approval during the project execution to justify its prudence despite clear provisions in the PPA of the hard cost being sealed at a specific level. JHPL further failed to provide adequate justification for the expenditure to the Commission during the processing of the tariff petition and

passing of the Tariff Order. A tacit approval of the expenditure by the HPSEB or the State Government in the negotiated cost of Rs. 1550 crores could not have been entertained by the Commission as establishing the prudence or necessity of the expenditure. The Commission, therefore, considered it just to disallow the expenditure in the Tariff Order. However, in case the utility can underwrite 'details of cost break up' of the above expenditure the matter can be revisited in subsequent exercises by the Commission.

### **3.5 Financing Charges (Para 4.12)**

**3.5.1** JHPL has submitted that the Commission has approved penalty for non creation of security of Rs.4.44 crores and interest tax of Rs.1.51 crores. However, these components inadvertently have not been figured in summary under para 4.17.2, making the capital cost under para 4.20.1 short of this amount.

#### **3.5.2 Commission's View**

The Commission has duly considered the penalty for non-creation of security and interest tax mentioned in paras 4.14.2 and 4.14.3 of the Tariff Order in the computations for interest during construction for Indian Rupee loans approved at Rs. 435.93 crores in para 4.18.2 of the said Order. There is no inadvertent error in the computations as such that requires rectification although its consideration is not apparent from the Tariff Order.

### **3.6 DPG Charges to PFC (Para 4.16)**

**3.6.1** JHPL has contended that the Commission has approved deferred payment guarantee charges at Rs.8.87 crores as compared to the actual payment of Rs 9.61 crores by JHPL. JHPL has, therefore, prayed that the balance DPG charges of Rs.0.74 crores actually incurred be allowed.

#### **3.6.2 Commission's View**

The basis of computations of the Commission for arriving at the charges approved has been clarified in para 4.16 of the Tariff Order. JHPL has not provided any computations of the charges to point out any error apparent on the face of the record to refute the approved amount in its review petition. The Commission, therefore, dismisses the plea of JHPL as non-admissible.

### **3.7 Loan Drawls (Para 4.18.2)**

**3.7.1** JHPL has submitted that the loan drawls approved by the Commission in para 4.18.2 of the Tariff Order, would need certain corrections because; the actual drawal of Rs.74 crores from IDBI has been taken as Rs.85 crores and the actual amount of Rs.150 crores of IFCI has been taken as Rs.136.2 crores. JHPL has, therefore, prayed that the Commission may approve the actual draw down placed at Annexure 'C' to the review petition.

JHPL has also submitted that the Commission in the said para 4.18.2 has approved IDC for the Indian rupee loans at Rs 435.93 crores against an IDC of Rs.469.83 crores proposed by JHPL in its tariff petition. It has further submitted that the actual IDC of JHPL for Indian rupee loans stood at Rs. 474.70 crores. The differential amount of Rs 4.87 crores (Rs 474.70 crores – Rs 469.83 crores) is on account of actual interest paid on the rupee cost of foreign currency supplies, i.e. 15% advance paid in foreign currency bought out of rupee funds in respect of imported equipment.

JHPL has prayed for allowing Rs 440.80 crores comprising of IDC already approved (Rs 435.93 crores) and IDC on Rupee component of imported equipment (Rs 4.87 crores), along with compounded interest.

#### **3.7.2 Commission's View**

The Commission notes that the IDC amount for the rupee loans has been inadvertently mentioned as Rs. 469.83 crores for JHPL in para 4.18.2 of the Tariff Order while it is correctly reflected as Rs. 475 crores in para 4.20.1 of the said Order. The Commission regrets the typographical error. However, it does not have any impact on the IDC amount approved by the Commission in the Tariff Order as the Commission has computed the quarterly Indian rupee loan requirements after considering the hard cost approved for the project in Indian and foreign currency, the foreign currency loan drawal, associated financing charges & IDC at the approved levels and equity infusion requirements. The methodology for computing the IDC by the Commission has also been elaborated in para 4.18 of the Tariff Order. The said para amply elaborates that the Commission has been considerate of the facts of the Project, while approving an adequate amount of IDC for the Project. The plea of JHPL to revise the approved amount of IDC for rupee loans based on their observations in the review petition does not merit any consideration.

As regards the loan amount of IDBI, the Commission has already mentioned in para 4.19.1 of the Tariff Order that the amount considered for drawal from IDBI in Indian rupees includes the amount for the foreign currency loan as well. A lack of clarity on the quarterly drawals and corresponding interest on the foreign currency loan from IDBI in the submissions made by JHPL during the processing of the petition and issue of the Tariff Order led the Commission to adopt this approach. The methodology for computing the quarterly drawals of Indian rupee loan amounts and corresponding interest computations has been provided in adequate details in para 4.18 of the Tariff Order. This issue raised by the JHPL in its review petition, therefore, does not merit any consideration for the instant purpose.

### **3.8 Tax on Income (Para 5.11)**

**3.8.1** JHPL has submitted that the Commission has approved payment of actual tax for FY 2003-04 and FY 2004-05, but has allowed only Rs.7.10 crores for FY 2005-06 against the actual payment of Rs.14.03 crores. It has, therefore, prayed for approval of the payment of actual tax paid for FY 2005-06 and FY 2006-07 against submission of proof of payment.

#### **3.8.2 Commission's View**

The Commission in para 5.11 of the Tariff Order has mentioned that the taxes for FY 2005-06 are estimated at this juncture, and require to be trued-up during the subsequent filing based on supporting computations provided by the petitioner. The HPSEB in its response to the review petition filed by JHPL has contended that as per Clause 8.11.1 of the PPA executed on 06.09.1997 between the Board and JHPL, the tax liability of the Board is to be determined by considering the income to JHPL on account of ROE (not exceeding 16%), Depreciation/ Advance depreciation as applicable and 50% of the income on account of incentives for secondary energy and higher plant availability. JHPL has not furnished such calculations while seeking approval of the Commission with regard to payment of actual tax paid for FY 2005-06. The Commission agrees with the viewpoint of HPSEB. The JHPL may accordingly present its case supported by documentary proof in the subsequent filing and it will be considered on merits.

### **3.9 Amortisation of cost of debt restructuring (Para 5.12)**

**3.9.1** JHPL has submitted that the Commission has taken note of the cost of Rs.70.83 crores towards reducing the interest rate; Rs.58.43 for bringing the interest to 10.5% and further amount of Rs.12.40 crores for reducing the interest rate to 8.5%. The Commission has allowed Rs.56.83 crores in the tariff and the balance has been left out. JHPL has pleaded for the approval of the balance cost of Rs.14 crores. JHPL has further prayed for linking the interest rate on the working loan of Rs. 50 crores to the ICICI rate in the Tariff Order and allowing HPSEB to pay the amount in lump sum or in installments as early as the cash flow may permit or out of borrowings to grant relief to them to service the increased debt and the equity.

#### **3.9.2 Commission's View**

The Commission, in para 5.12 of the Tariff Order, has already provided the justification for approving an amount of Rs. 56.83 crores in this regard based on the submissions made by JHPL and has also indicated that necessary adjustments on the interest rate and consequent tariff adjustments would be made, if required, on the merits of the case during the next tariff proceeding, once the petitioner provides the requisite documents to indicate status of interest rates from the concerned institutions and the associated costs.

### **3.10 Annual Fixed Charges (Para 5.16)**

**3.10.1** JHPL has submitted that the Commission while computing the Annual Fixed Charges in sub-para 5.16.2 has reduced an amount of Rs.7.83 crores and Rs.5.80 crores in financial years 2003-04 and 2004-05 respectively on account of adjustment of ICF payments in the backdrop of the discussion of payment of ICF amount in installments in para 5.13 of the Tariff Order. JHPL has contended that the payment of expenditure towards ICF to SJVNL has been made along with interest @14.2% per annum and hence there is no justification for such reductions and requested the Commission accordingly to readjust the reductions in the tariff computations.

#### **3.10.2 Commission's View**

The Commission has already provided the basis of the adjustments in para 5.13 of the Tariff Order. The adjustments were carried out after considering the information supplied by JHPL at the time of processing of the tariff petition. JHPL has not given any justification for consideration of this interest amount for tariff computation

purposes by the Commission. The plea of JHPL for readjustment, therefore, does not stand to reason for consideration in the instant case of review.

### **3.11 Charges for the period commencing from the COD of the First and Second Unit and from COD of Second Unit to COD of the Third Unit (Para 5.14)**

**3.11.1** JHPL has submitted that the Commission has computed the interest on the approved loan component of the capital cost at 10.5% with effect from COD, whereas the rate of interest were realigned by the financial institutions and banks with effect from the different dates approved by their respective competent authorities much after the COD.

#### **3.11.2 Commission's View**

The Commission made its computations relying on the submissions made by JHPL at the time of processing of the petition and issue of the Tariff Order. The submissions now being made by JHPL, therefore, does not qualify for consideration in view of the limited scope of the review as discussed in para 2 of this Order. However, JHPL can provide requisite details along with supporting documents from the concerned banks at the time of subsequent tariff proceedings and the Commission would consider the plea of JHPL on merits of the case while doing a true-up of the previous tariff period.

### **3.12 Arrears payable by HPSEB for the period FY 2003-04 to FY 2005-06 (Para 5.15)**

**3.12.1** JHPL submits that the arrears based on the capital cost and the resultant revenues for the FY 2003-04 to FY 2005-06 would undergo change based on review of various issues mentioned above. JHPL further submits that the Commission has computed the arrears based on interest rate at 8% per annum and rate of interest as set out in the PPA (Article 10.11) be allowed. JHPL has, therefore, pleaded for issuance of direction to HPSEB to make suitable arrangements for payment of the arrears as early as possible.

#### **3.12.2 Commission's View**

The amount of arrears approved in the Tariff Order does not require any change on account of the review petition in view of the observations made in this Order in the earlier paragraphs. For application of the provisions of Article 10.11 of the PPA, necessary adjustments shall be made during processing of the subsequent petition along with necessary adjustments in the arrears payable. As regard the

request of JHPL for early payment of the arrears, it is noted that one of the broader objective of the mandate of the Electricity Act, 2003 is to promote growth of the power sector in the state through private participation. The Commission observes that the mechanism for disbursement of arrears stipulated by the Commission in the Tariff Order denies the claims of JHPL to revenue from the sale of power for an extended period whereas the utility has already taken advantage of the power sold in the previous orders. Moreover, interest rate fluctuations in past few years have further adversely affected the claims of JHPL for the revenue from the sale of power. The Commission in its Tariff Order has stated that HPSEB would include the amount of arrear for approval of the Commission along with payment details, as a separate item of expenditure in its yearly Aggregate Revenue Requirement for the corresponding year for determination of retail tariffs. The Commission is, therefore, of the view that the HPSEB would pay this whole amount of arrears during the year 2008-09 in two installments in contra distinction to the orders in the tariff petition. The Board would be allowed to claim this amount as a separate item of expenditure in its yearly Aggregate Revenue Requirement for the corresponding year for determination of retail tariffs.

#### **4.0 Commission's Observations on the Review Petition filed by HPSEB (Petition No.94/2007)**

##### **4.1 Capital Cost of the Project**

**4.1.1** The Board has contended that as per Clause 8.2 of the PPA the capital cost of the Project is required to be reduced by the amount equal to the value of saleable infirm energy. As per para 4.20.1 of the Tariff Order, the Commission has approved capital cost of the Project at Rs. 1533.96 crores. However, this does not take into consideration the reduction on account of the amount payable by the Board to JHPL against infirm energy of about 8.08 MU supplied from the date of synchronization of its 1st Unit till the plant achieved COD.

JHPL submits that the Infirm Energy has neither been billed nor paid and as such no amount on this account is deductible from the Capital Cost of the Project. It has further been submitted that in response to the Commission's query during processing of the Petition No 338/2005, JHPL had filed an affidavit on 12.05.2006 confirming that no payment was received from HPSEB on this account because of which there was no impact on capital cost.

#### **4.1.2 Commission's view**

The Commission, while processing the petition for the Project for determination of capital cost and tariffs vide Order dated 24.02.2007, had vide letter No. HPERC/ED (TFA)/RG/2006/113 dated 21.04.2006 specifically asked for the information from JHPL, on infirm power supplied to HPSEB during the pre-commissioning period, payments made by HPSEB in this regard and its treatment in project cost computation by JHPL in its tariff petition. JHPL, in its response, indicated saleable infirm energy to the extent of 8.08 MU generated and injected into the grid. During discussions with JHPL in a subsequent technical validation session, JHPL also submitted to the Commission that it was difficult to establish receipt of the saleable infirm energy released into the system by HPSEB, as the project of the petitioner is not directly connected to the State Transmission System. It was submitted that due to the above constraint, JHPL did not raise a bill of the infirm energy to HPSEB. The Commission also found to its dismay that HPSEB also did not pursue this matter with JHPL to raise the bill for the infirm energy despite its potential to reduce the capital cost to HPSEB and consequently the tariffs payable. The Commission also notes that this issue does not find any mention during capital cost negotiations between JHPL and HPSEB. In the above context, the Commission was constrained not to consider the deduction in capital cost due to infirm energy supplied by JHPL to HPSEB in its Order dated 24.02.2007. The position adopted by the Commission in this regard is, therefore, not an apparent error as pointed out by HPSEB but taken in due consideration of the facts and circumstances of the case. This plea of HPSEB in its review petition, therefore, does not merit any consideration in the instant case of review, and hence not admitted.

#### **4.2 Cost of Inter Connection Facility (ICF)**

**4.2.1** The HPSEB has submitted that the Commission has assessed the capital cost of the Project at Rs.1533.96 crores by including Rs.31.42 crores against ICF expenditure, meaning thereby that the Commission has approved a cost of Rs. 1502.54 crores as capital cost against the negotiated cost of Rs. 1550 crores between JHPL and HPSEB. It has contended that in the financial package approved by the State Government and sent to CEA, there was no separate mention of cost on account of ICF expenditure and condition of the JHPL to

confine it for higher cost of these facilities by JHPL was not agreed to between the parties even when the cost of Rs. 1550 crores was negotiated.

#### **4.2.2 Commission's View**

The Commission has already expressed its views on the basis of approving an incremental amount towards cost of ICF facility in the project capital cost over and above the cost accounted for in the basic cost agreed to in the PPA, in paras 3.9.3 and 4.8 of the Tariff Order. This plea of HPSEB in its review petition, therefore, does not merit any consideration in the instant case of review, and hence not admitted.

#### **4.3 Incentive for Higher Plant Availability**

**4.3.1** The Board has submitted that the Commission has correctly interpreted Clause 8.10 of PPA in Section 5.10.1 of the Tariff order, according to which, this amount of incentive payable to JHPL for any tariff year are not to exceed 2% Return on Equity for a tariff year. However, the Commission in Section 5.10.2 of the Tariff Order has instead of 2% Return on Equity considered '2% Equity component' while approving the incentives for higher plant availability upto Financial Year 2005.

#### **4.3.2 Commission's View**

In this regard the Commission wishes to draw attention to Clause 8.10 of the PPA according to which in case the plant availability level in a tariff year as determined in accordance with Schedule I of the PPA exceeds the normative level of 90%, JHPL shall be entitled to an incentive @ 0.35% of equity component of the capital cost as per the approved financial package for each percentage increase in plant availability above 90% normative level during the year when plant availability is more than 90%. Further the amount of this incentive payable for any tariff year shall not exceed 2% Return on Equity for a tariff year and the incentive shall be payable at the end of each tariff year/ tariff period.

As per the Board's contention, 2% Return on Equity (RoE) should be interpreted as 2% of Return on Equity (16% of Equity Component) instead of 2% equity component and, therefore, the maximum cap on amount of higher plant incentive should not exceed 0.0032% (i.e. 2% x 16%) of equity component. However, this interpretation is inconsistent with the Clause 8.10 of the PPA as the said clause provides for an incentive @ 0.35% of the equity component for each percentage

increase in plant availability above 90% normative level. From the interpretation of HPSEB, the cap on the total incentive available under the head thus works out to be lower than the incentive available for each percentage point increase in plant availability. This surely cannot be the intent of the PPA. Therefore, 2% Return on Equity (ROE) as provided in the PPA should be interpreted as 2% of equity component instead of 2% of Return on Equity as contended by the Board. Based on this interpretation, a 0.35% of equity component available as incentive for each percentage increase in plant availability and considering a cap of 2% ROE provided in the PPA, the incentive would be applicable upto a maximum of 5.71% increase in plant availability above 90% or upto a plant availability level of 95.71%. No incentives are available for any further increase in plant availability under the PPA, which appears reasonable. The Commission, therefore, believes that its interpretation of the PPA in this respect stands test of reason unlike the contention of the HPSEB.

#### **4.4 Incentives for Secondary Energy**

**4.4.1** The HPSEB has contended that the calculation of incentives for secondary energy in the Tariff Order has not been done in accordance with the PPA provisions executed between JHPL and the Board. While calculating incentives for Secondary Energy, the Commission has taken 10% of Equity component as a base whereas it should have been 10% "Return on Equity". It has further contended that "Return on Equity" has been defined in Clause 2.2.103 of the PPA as return on the Equity at a per annum rate of 16%, calculated as per Clause 8.7.3 of the PPA. HPSEB has submitted that the above interpretation makes significant difference in per unit cost of Secondary Energy

The Board has further submitted that in para 5.2.5 of the Tariff Order, the saleable energy delivered by the Project during the tariff period 2003-04, has been shown as 993.88 MU whereas the same as per the joint statement made by the JHPL and HPSEB it is 990.76 MU, which shall have the effect on calculations for incentives for secondary energy as per para 5.9 of the Tariff Order. The Board has accordingly pleaded that there is error apparent on the face of the record in computation of incentives for secondary energy.

#### **4.4.2 Commission's View**

The Commission is alive to the fact that the text in the PPA for the Project regarding incentive for secondary energy in Clause 8.9.1 of the PPA read with the definitions for Return on Equity (ROE) provided in the PPA in Clause 2.2.103 and the methodology for computation of Return on Equity provided in Clause 8.7.3 of the PPA is prone to be interpreted in more than one way. Especially so, since Clause 8.9.1 of the PPA mentions the term "10% return on equity" in one of the sentences in a similar fashion as "16% return on equity" mentioned in Clause 2.2.103 while it mentions "10% Return on Equity" in another sentence in title case of the same clause. The title case of a term, in a typical contract document, alludes to an existing definition provided in the contract. The Commission, after a careful evaluation and scrutiny of the PPA provisions, has therefore taken a certain stance in the interpretation of the PPA provisions in this regard in the Tariff Order based on its reasoning and opinions available with it. Apart from considering the ambiguity in the provision in the PPA, the Commission also took note of the interpretation of 2% Return on Equity in another provision of the PPA relating to incentive for higher plant availability as discussed in the previous paragraph. In the said instance, an interpretation of 2% Return on Equity is consistent with the interpretation of 2% of equity component. The Commission, therefore, concluded that the PPA could not have possibly ascribed two interpretations of a term in the contract without adequate clarifications.

The Commission has accordingly made the computations on this account in the Tariff Order. The Commission, therefore, believes that its interpretation of the PPA in this respect stands the test of reason unlike the contention of the HPSEB.

#### **4.5 Operation and Maintenance Charges**

**4.5.1** The Board has submitted that Clause 8.7.2(a) of the PPA dated 4.6.1997 stipulates that operation and maintenance charges including insurance expenses for the 'initial tariff year' shall be calculated @ 1.25% of the capital cost. These charges are to be escalated for each year subsequent to the initial tariff year by 6% (compounded annually) during first 10 years meaning thereby the escalation was required to be allowed for the FY 2005-06, whereas the Commission has allowed 6% escalation for the FY 2004-05, which itself is 'initial tariff year'. This apparent

error shall have consequential effect on O & M charges approved by the Commission for subsequent years.

#### **4.5.2 Commission's View**

The Commission finds considerable force in the contention of the HPSEB and notes that the escalation should be applicable from FY 2005-06 onwards only as per Clause 8.7.2(a) of the PPA instead of FY 2004-05, as computed in the Tariff Order. The Commission, therefore, agrees that it is an error apparent on the face of the record and admits the issue for review.

Considering that the tariffs in the Order dated 24.02.2007 have been approved by the Commission only upto FY 2007-08, these are going to be readjusted based on the actuals available and such further information available as required. The readjustment in the tariffs consequent to the above changes would be made by the Commission at the time of processing of the subsequent petition along with necessary adjustments in the arrears payable. At this juncture, the tariffs determined under the Order dated 24.02.2007 would remain in force till further determination/ revision.

#### **4.6 Interest on Loan**

**4.6.1** The Board has submitted that while dealing with interest on loan, the Commission in para 5.4.4 of the Tariff Order has awarded more interest for the years 2005 to 2008 than what was proposed by JPHL; for example in the year 2005 proposed interest on outstanding loan by JPHL was Rs.125.40 crore whereas the Commission has awarded Rs. 130.33 crore; similarly in the year 2006 proposed interest was Rs.102.86 crore whereas interest approved by this Commission was Rs. 119.14 crore; in the year 2007 the proposed interest was Rs. 93.67 crore whereas the interest approved by the Commission was Rs.103.44 crore and in the year 2008 proposed interest by JPHL is Rs. 85.07 crore whereas interest approved by the Commission is Rs. 87.75 crore.

#### **4.6.2 Commission's View**

The Commission in the Tariff Order has stated that interest on outstanding loan is to be computed for both Rupee term loans and Foreign currency loans taking into account the loan amount as per the approved financial package. The terms and conditions for computation of interest shall be as per the loan agreement entered

with the Financial Institutions/ Banks, as the case may be. Further the applicant (JHPL) submitted that in accordance with the directions given by the Commission in suo motu case No. 25/2003, it has taken requisite steps to restructure the debt and interest rates applicable for the project in order to reduce the long term cost of lending /financing, which has resulted in: a) Reduction of the average interest rate to 16.5% per annum (as on COD, June 2003); and b) Reduction in interest rate to 10.5% per annum from the commercial operation date of the station. In its tariff petition, JHPL has estimated the interest on loans from COD of the station at the reduced rate of 8.5% in some of the cases and has claimed an additional cost of debt restructuring of Rs. 12.40 crore.

In its Tariff Order (Para 5.12.3), the Commission has stated that the Commission would make the necessary adjustment on the interest rate and consequent tariff adjustments during the next tariff proceeding, once the petitioner provides the requisite documents to indicate status of interest rates from the concerned institutions and the associated costs. The Commission would also consider the cost-benefit aspect of any reduction in interest rate to the project and its associated costs.

The Commission, therefore, takes note of the Board's contention in right perspective. Higher interest loans approved is subject to consequent adjustment on submission of proof by JHPL relating to reduction of interest rate as well as cost-benefit aspect of any reduction in interest rate to the project and its associated costs.

#### **4.7 Foreign Exchange Variation**

**4.7.1** The Board submits that capacity charges as per Clause 10.5.1(b) of PPA are inter alia subject to adjustment on account of Foreign exchange rate, which is to be made as per provisions of Clause 8.13 read with Clause 10.7 of the PPA. In this regard, JHPL has contended that the Commission is sensitive to the understanding of the parties under the PPA, which is evident from a reading of the Tariff Order (Paras 2.2.3, 3.8.3, 4.2.1(xi), 4.3.3 and 4.3.4), which has factored foreign exchange rate fluctuation.

#### **4.7.2 Commission's View**

The Commission in the Tariff Order has duly taken into consideration foreign exchange variations and its impact on various components of cost.

#### **4.8 Incentive on Higher Plant Availability pertaining to Force Majeure**

**4.8.1** The Board submits that as per Clause 5.10.2 read with Clause 5.10.3, of the Tariff Order, incentive on higher plant availability of Rs. 9.20 crores for FYs 2005-06 and 2006-07 has been based upon actual generation data for that year. The Board points out that the plant remained out of operation during the period 19.01.2006 to 02.05.2006. A Committee was also constituted vide Chief Engineer (PSP), HPSEB, Shimla office order No. HPSEB (SECTT)/ CE (PSP)/ Baspa-II/2006-3389-92 dated 22.12.06 for determining as to whether in-operation of the plant due to land slide was covered under the force majeure event or not. The Board contends that decision of the said committee is still awaited and non-functioning of Baspa-II power plant w.e.f. 19.01.2006 to 02.05.2006 has implication for two tariff orders i.e. 2005-06 and 2006-07.

#### **4.8.2 Commission's View**

The Commission would take a view on the Board's contention once the said Committee decides on the non-functioning of Baspa-II power plant w.e.f. 19.01.2006 to 02.05.2006. The Board will submit the report of the Committee for consideration of the Commission by 30<sup>th</sup> June, 2008.

#### **4.9 Two Months Average Receivables**

**4.9.1** The Board has submitted that the receivables (two months average) for the year 2005 and 2006 appearing in Table in clause 5.8.3 of the Tariff Order, does not tally with the annual fixed charges worked out for corresponding year in Clauses 5.16.3 and 5.16.5 of the said Order.

#### **4.9.2 Commission's View**

The Commission takes note of the contention of HPSEB and notes that figures for 2005 have inadvertently appeared in 2004 and same is the case for other years.

Considering that the tariffs in the Order dated 24.02.2007 have been approved by the Commission only upto FY 2007-08, these are going to be readjusted based on the actuals available and such further information available as required. The readjustment in the tariffs consequent to the above changes would be made by the Commission at the time of processing of the subsequent petition along with necessary adjustments in the arrears payable. At this juncture, the tariffs

determined under the Order dated 24.02.2007 would remain in force till further determination/ revision.

## **5.0 Conclusion**

In view of the findings contained in the preceding paragraphs, the Commission is convinced that the Order dated 24.02.2007 does not contain any other mistake or error apparent on the face of the record apart from the one discussed in para 4.5.2, where the review petition of HPSEB is admitted to the limited extent under section 94(1)(f) of the Electricity Act, 2003 read with section 114 and order 47 of the CPC. The Commission would review the tariffs applicable based on the changes required in the O&M charges and other expenditure which would be impacted by such change, in the subsequent tariff determination process for the Project.

The review petitions are accordingly disposed off.

(Yogesh Khanna)

Dated: 07.02.2008

Chairman