

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

Review Petition No. 88/2013 as amended by MA No. 106/2013

In the Matter of:

Review Petition u/s 94(1) of the Electricity Act, read with regulation 63 of the HPERC (Conduct of Business) Regulations, 2005 for Review of Commission's Order on True Up for FY12 and Annual Performance Review for FY-14 under the MYT Second Control Period (FY12-14) passed by the Commission on date 27.04.2013 in case No. 176/2012.

AND

In the Matter of:

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

....Petitioner

Versus

- (1) M/S Auro Spinning Mills, Sai Road Baddi, Distt Solan -173205
- (2) M/S Laghu Udyog Bharti, 66 DIC, Industrial Area Baddi, Distt Solan -173205
- (3) M/S Jai Bharat Steel Kala Amb
- (4) The Confederation of Indian Industry (CII), Himachal Pradesh State Council, Northern Region, Sector 31-A, Chandigarh
- (5) The BBN Industry Association, c/o Single Window Clearance Agency, Industrial Area Baddi, Distt Solan -173205
- (6) The Parwanoo Industries Association, HPCED Building, Department of Industrial Association, Sector-1, Parwanoo, Distt. Solan

....Respondents

CORAM

Subhash C Negi
CHAIRMAN

Counsels:-

for the petitioner/applicant:

Sh. Ramesh Chauhan, Authorised
representative along with Er. Mahesh Sirkek,
C.E(Commercial)

for the respondents:

None

ORDER

(Last Heard on 19.11.2013 and orders reserved)

A1: PURPOSE OF THE ORDER

- 1.1 The Himachal Pradesh State Electricity Board Limited (hereinafter referred to as 'HPSEBL') has moved petition on 05.06.2013 before the Himachal Pradesh Electricity Regulatory Commission (hereinafter referred to as 'the Commission' or 'HPERC') seeking

review of the Commission's Order dated 27.04.2013 on True Up for FY12 and Annual Performance Review for FY-14 under the MYT Second Control Period (FY12-14) passed by the Commission in case No. 176/2012; Subsequently, the HPSEBL on 25.07.2013 filed an amended Review petition bearing No. 106/2013.

- 1.2 Vide Interim Order passed by the Commission on 31.08.2013 the petitioner was asked to furnish additional information on Recovery of Survey and Investigation charges such as amounts recovered, amounts recoverable, amounts not recoverable and amounts liable to be recovered; efforts made by the petitioner in respect of recovery of uncovered gap of Rs 320.80 crore to be funded interest free by the Government as per its commitment; and to intimate the practical constraints in implementation of PLVC on day-to-day basis. The HPSEBL vide Miscellaneous Application bearing No MA 128/2013 has furnished the information asked for.

A2: POWER TO REVIEW

- 2.1 The Commission's power to review its own orders flows from Section 94(1)(f) of the Electricity Act, 2003 and as the same is 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.
- 2.2 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 the 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 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.

A3: COMMISSION'S OBSERVATIONS AND ORDERS ON VARIOUS ISSUES RAISED IN THE REVIEW PETITION

The issues raised by the petitioner in respect of the Review of Commission's Tariff Order dated 27.04.2013 and on each of these issues, the respective observations and speaking orders of the Commission are as follows:-

A) Issues of True Up for FY12

3.1 The Commission in paras 5.1 and 5.3 of the Tariff Order dated 27.04.2013 has acknowledged the fact that the True Up of FY12 done by the Commission is a provisional True-Up based not on Audited Accounts which were not submitted by the petitioner HPSEBL, but on provisional Accounts submitted by the HPSEBL and therefore, the Commission's issue-wise Orders on this Review are as under :-

Issue No.1: – T&D Loss

3.2 In respect of FY12, the Commission in the Tariff Order for FY12 dated 19.07.2011 had fixed the T&D loss trajectory as 14%. Based on the submissions made by the HPSEBL for FY13, the Commission in its Tariff Order (1st APR) for FY14 dated 24.04.2012 had revised this trajectory to 12.55%. In the Tariff Order for FY14 (2nd APR) dated 27.04.2013 this trajectory was sustained at the level of 12.55%.

3.3 In Table 14 of the Commission's Tariff Order for FY14 dated 27.04.2013, the T&D loss trajectory proposed by the HPSEBL for FY12, FY13 and FY14 is 13.43%, 13.03% and 12.73% respectively. This revised trajectory has been attributed by the HPSEBL to the large number of RGGVY Schemes executed during FY12 which has increased the LT/HT ratio and also to the reduced EHT sales and, therefore, increased T&D losses.

3.4 The Commission observes that the HPSEBL in its Tariff petition (1st APR) for FY13 had asked for revision in the T&D loss trajectory for the 2nd MYT Control Period to which the Commission had acceded for reasons given in the Tariff Order for FY13. The HPSEBL in its Tariff petition (2nd APR) for FY14 has again asked for revision in the T&D loss trajectory to which the Commission does not accede.

3.5 The Commission observes that in the True-up done for FY12 in the Tariff Order dated 27.04.2013, the Commission has made a conscious Order to continue with trajectory at 12.55%. The Commission does not find this instant case to be of 'abnormal circumstance' as has been held by the Hon'ble APTEL in Appeal No. 186/2009 & IA No. 328/2009 as a necessary pre requisite and, therefore, no intervention is necessary. The Commission declines to further revise the T&D loss trajectory determined by it for the 2nd MYT Control Period. There is no error or mistake apparent on the face of record. No review is made out to this effect. This issue is decided accordingly.

Issue No.2 – Disallowance of Govt Equity invested in Khaulī Project Amounting to Rs 15.16 crore

3.6 In the second issue raised by the Petitioner HPSEBL, it has been submitted that the Commission has erred by not allowing the return on Government Equity of Rs 15.16 crore infused into Khaulī project which had already been accounted for in the balance sheets of the HPSEBL and which had been allowed by the Commission for all years of the 1st MYT Control Period in the True-up Order for FY08 dated 11.08.2009 and that this Equity has not been considered by the Commission during all years of the 2nd MYT Control Period and, therefore, RoE has not been allowed.

3.7 The Commission observes that the HPSEBL had not agitated this issue before the Commission in its Review petition on the Tariff Order dated 19.07.2011 and in the Review petition on the Tariff Order dated 24.04.2012. The issue could have been addressed by the Commission at an early date had the HPSEBL addressed the issue timely.

- 3.8 The Commission however acknowledges this as an error apparent on the face of record which needs to be corrected. The Return on Equity on Rs 15.16 crore infused into Khauli HEP along with carrying cost total amounting to Rs 8.72 crore is allowed to the HPSEBL as follows:-

(Rs in Crore)			
Govt Equity in Khauli HEP = Rs 15.16 crore		RoE = 15.5%	
Year	FY12	FY13	FY14
Carry Forward		2.52	5.42
Return on Equity	2.35	2.35	2.35
Carrying Cost on RoE (%)	14.75%	14.75%	14.45%
Carrying Cost	0.17	0.55	0.95
Total (Rs crore)	2.52	5.42	8.72

- 3.9 The Return on Equity (RoE) admissible to the HPSEBL on account of Government Equity in Khauli HEP is Rs 8.72 crore. This second issue is decided accordingly.

Issue No.3 – Survey and Investigation Charges

- 3.10 In the third issue, the Petitioner HPSEBL in the amended petition has submitted that the Commission has erred in considering the tentative details of the expenditure on Survey and Investigation (S&I) Charges amounting to Rs 467 crore submitted by the HPSEBL to the Commission during finalisation of 2nd MYT Order dated 19.07.2011 and that this finalisation was required to be done on the basis of -

- (a) details of the HEPs allotted to the HPPCL and letter of the HPPCL issuing share certificates to the HPSEBL in lieu of expenditure incurred on Survey and Investigation on the projects allotted to the HPPCL amounting to Rs 113.07 crore;
- (b) amount recovered from the IPPs amounting to Rs 5.60 crore;
- (c) share certificates by the HPPCL that are still to be issued amounting to Rs 17.15 crore;
- (d) amount recoverable as reimbursement from the HPPTCL of Rs 65.85 crore;
- (e) amount recoverable from the IPPs against allotted projects of Rs 77.97 crore;
- (f) amount to be deferred for recovering by way of capitalisation in future in respect of projects allotted to the HPSEBL is Rs 34.50 crore;
- (g) amounts to be deferred for recovering in future due to projects not allotted / Implementation Agreements not signed are Rs 30.51 crore.
- (h) on account of abandonment of projects / cancellation of projects / projects such as Baspa-II (decision taken by the HPSEBL for the non-recovery of such costs from M/s JPVL due to such costs adding to capital cost of the Baspa-II and, therefore, increase in Tariff of power sold from Baspa-II to the HPSEBL resulting in non-recovery of S and I expenses from such projects), total amounting to Rs 122.60 crore as non-recoverable (to be written off).
- (i) total amount recovered is Rs 118.67 crore. Balance that is to be recovered in the near future is Rs 160.97 crore and that which is deferrable is Rs 65.01 crore.
- (j) total amount recoverable out of Rs 467.245 crore is Rs 344.65 crore.

- 3.11 With respect to the issue No. 3, the Commission in para 7.160 to para 7.163 of the MYT Order dated 19.07.2011 has unambiguously deliberated the issue of investment made in the

past by the HPSEBL in respect of Survey and Investigation Wing of the HPSEBL in terms of identification of projects, potential studies, investigations, preparation of PFR / DPRs and out of the said amount of Rs 467 crores, the Commission had considered an amount of Rs 300 crores for the purpose of recovery by the HPSEBL in the three years of the 2nd MYT Control Period (1st year - Rs 150 crore, 2nd year - Rs 100 crore and 3rd year - Rs 50 crore).

- 3.12 The Commission on this issue further observes that the statement by the HPSEBL in respect of issue of share certificates (already issued - Rs 113.07 crore; balance to be issued – Rs 17.15 crore) by the HPPCL to the HPSEBL no where reflects that these are on account of S&I expenditure incurred by the HPSEBL. However, the Commission acknowledges this statement made on affidavit that the HPSEBL has been able to ensure recovery of S&I expenditure to the extent these Certificates are issued (or to be issued) by the HPPCL which are stated by the HPSEBL to be of the order of Rs 130.22 crore and this will hence form part of Non Tariff Income (NTI) of the HPSEBL at the time of True-up of 2nd MYT Control Period.
- 3.13 Out of total of Rs 467 crore, the HPSEBL has shown its inability to recover Rs 122.60 crore and has, therefore, illustrated that it is in a position to recover the balance amount of Rs 344.65 crore out of which Rs 118.67 crore have been shown as already recovered, Rs 160.97 crore as that which is in the process of recovery and Rs 65.01 crore as amount that would be deferred for recovery in the future.
- 3.14 The Commission in para 5.58 of Tariff Order (2nd APR) dated 27.04.2013 has consciously ordered on S&I by carrying over to FY14, 50% of unrecovered amount for FY12 (thus making total amount to be recovered in 2nd MYT Control Period as Rs 250 crores instead of Rs 300 crore) and has accordingly approved the trued-up Non-Tariff Income. The Commission declines to review the Non Tariff Income approved by it in the 2nd APR Order. Any surplus or deficit recovery on S&I account shall be trued during the 2nd MYT Control Period. There is no error or mistake apparent on the face of record. No review is made out to this effect. The third issue is decided accordingly.

Issue No.4 – Non Consideration of Employee Cost of I&P Wing:

- 3.15 In the fourth issue raised by the Petitioner HPSEBL, it has been submitted that the Commission has erred in not considering the employees cost of I&P Wing who are on regular incumbency of the HPSEBL amounting to Rs 2.94 crore;

The Commission is of the opinion that I&P Wing of the HPSEBL, entrusted with the function of survey and investigation (S&I), should work on self sustaining basis and should be a source of additional income by way of its survey and investigation activities. The employee cost of I and P Wing of the HPSEBL is, therefore, to be allocated to such projects and project developers to whom such projects are allotted or in case of projects allotted to the HPSEBL this is to be done by way of capitalisation of this amount in the capital cost of the respective project. The Commission has discussed this aspect in para 5.30 of Tariff Order dated 27.04.2013. The employees cost of I and P Wing of the HPSEBL amounting to Rs 2.94 crore is now being allowed subject to its realisation by way of Survey and Investigation charges from respective projects in the future and in case this amount remains unrecovered then this amount shall be treated as loss because other business shall not encumber the distribution business. The MNRE provides subsidy for DPRs and S&I also which should be availed. Once the final accounts are available, the Commission shall revisit this cost. Review is made out to this effect. The fourth issue is decided accordingly.

Issue No.5 – Interest on Working Capital:

- 3.16 In the fifth issue raised by the Petitioner HPSEBL, it has been submitted that the Commission has erred in not considering the fact that the Normative Working Capital and Interest were computed initially on the basis of lesser costs approved by the Commission and subsequently the approved costs for FY12 are considerably higher and accordingly the working capital and interest have also increased. The HPSEBL has further shown the additional O&M Expenses approved by the Commission as Rs 194.25 crore and has calculated Working Capital Requirement as Rs 93.92 crore on the O&M amount and the

corresponding interest on this Working Capital has been calculated at a rate of 14.75% (based on SBI Advance Rate contained in para 5.65 of Tariff Order for FY14) as Rs 13.85 crore;

- 3.17 As is shown in the following Table, additional working capital is admissible. The additional interest on the working capital accordingly works out to Rs 13.84 crore which consequently becomes admissible:-

Working Capital Requirement for FY12	Amount	
Additional O&M Expenses (Employee cost) (Gen & Dist)	194.00	
Additional O&M Expenses (R&M cost)	0.00	
Additional O&M Expenses (A&G expense)	0.00	
1/12th of Additional O&M Expenses		16.17
Approved Average Revenue from Sale of Power (Tariff Order FY12)	3069.49	
Trued-Up Average Revenue from sale of power for FY12 (Tariff Order FY14)	3663.24	
Additional Receivables equivalent to 2 months Average Billing		98.96
Additional Maintenance Spares 40% of the R&M expenses for one month		0
Additional Power Purchase Expenses (Including Transmission cost)	255.25	
Less one month power purchase		21.27
Additional Working Capital Requirement for FY 12		93.85
Interest Rate (%)	14.75%	
Additional Interest on Working Capital for FY 12		13.84

- 3.18 Commission recognises that there is an error / mistake apparent on the face of record which needs to be corrected. Review is made out. The fifth issue is decided accordingly.

Issue No.6 – Disallowance of Carrying Cost:

- 3.19 In the sixth issue raised by the HPSEBL, it has been stated in the petition that the Commission has erred in allowing the carrying cost on only the amount of Rs 133.80 crore out of Rs 683.03 crore and not on Rs 683.03 crore of the complete true-up amount. The petitioner while quoting the contents of para 5.62 of Tariff Order for the FY 14 has submitted that as a result of true-up, the carrying cost on employee expenses is admissible both on account of arrears of pay in absence of specific commitment from the GoHP on the funding mechanism for the uncovered gap of Rs 320 crore and on account of balance additional employee cost. The carrying cost amounting to Rs 21.21 crore has been shown by the petitioner against the arrears of pay. The carrying cost amounting to Rs 17.37 crore has been shown by the petitioner on account of balance additional employees cost.
- 3.20 The petitioner has also submitted that the Commission in accordance with para 5.63 of the Tariff Order for the FY 14 has also disallowed the carrying cost of Rs 81.97 crore on account of additional power purchase expenses for the FY 12 and in accordance with para 5.64 of the Tariff Order for the FY14 has disallowed the carrying cost of Rs 81.97 crore on account of Survey and Investigation;
- 3.21 In the Interim Order dated 31.08.2013, the Commission had ordered as follows:-

Quote

Respondent claims carrying cost on Rs. 320.00 crores as uncovered gap on account of employees costs due to arrears of pay revisions in absence of specific commitment from GoHP for funding mechanism.

In this context, as per para 8.22 read with para 8.21 of tariff order dated 24.04.2012, Commission had left an uncovered gap of Rs. 320.80 Crores on account of pay and pension arrears

due to pay revision with the provision that such gaps will be recovered in FY-14. This amount will be spent by Board as per GoHP interest free financing mechanism.

Commission invites attention of the respondent to the unequivocal commitment if GoHP as contained in the minutes of meeting held on 18.04.2012 among Pr. Secretary (Power), Pr. Secretary (Finance), Chairman-cum-MD, HPSEBL and Director (Finance), HPSEBL, conveyed formally to this Commission, with the commitment that there shall be no carrying cost to HPSEBL for the same.

There cannot be any commitment more specific than this and made at the most appropriate level in the State Govt. to its Company hence HPSEBL is not being just and fair while taking such stand at this stage.

Arrears of pay and pension on account of pay revision w.e.f. 1.1.2006 estimated/projected (audited balance sheets of FY11 and FY12 not available at the time of tariff order) for the relevant period as per para 7.108 and 7.109 readwith para 7.113 table 125 and para 7.114 table 126 of tariff order dated 24.4.2013 are as under:-

FY 2011	-	Rs.76.00 Crs.
FY 2012	-	Rs.106.00 Crs.
FY 2013	-	Rs.189.00 Crs.

Of these amount, the uncovered gap left by Commission, that is required to be covered by mechanism of interest free financing mechanism was Rs. 320.80 Crs. (Para 8.22).

The involvement of the State Govt. and other Stakeholders in this arrangement is based on the fact that the employees cost of HPSEBL is the highest in the country and is beyond commercial principles in distribution business because part of pension costs and current cost of staff, common to erstwhile HPSEB's integrated function has been continuing with distribution licensee after unbundling also. The interest free financing mechanism was to be by way of using the payables to the Govt. by the Board, like power purchase cost of free power share of State Govt. allotted to Board, E.D. collections etc. without interest till these are recovered in 2013-14 tariff.

Therefore, onus lies on the HPSEBL to settle the accounts with GoHP.

Efforts made in this direction be intimated to the Commission.

Unquote

- 3.22 The petitioner in its application No. MA 128/2013 has also stated that the interest free funding mechanism by the State Government was to be by way of cost of free power share of the Government and electricity duty payable by the HPSEBL to the State Government till these are recovered in FY14. However, the Government has adjusted these against the roll back tariff subsidy during FY13 against amount recoverable by the Government from the petitioner for which HPSEBL had to take short term loans from banks on which interest was paid by the HPSEBL and that carrying cost on loan of Rs 220 crore be allowed to the HPSEBL. The petitioner has also informed that carrying cost on Rs 50.53 crore resulting from difference between assessment of roll back subsidy amount of Rs 270.53 crore and Rs 220 crore paid by the Government, needs to be allowed as the HPSEBL had to take short term loan from banks to meet its liability resulting from the difference.
- 3.23 The Commission does not find merit in the HPSEBL's contention that it had to avail short term loans of Rs 220 crore on account of adjustment of roll back subsidy against cost of free power share of the Government and electricity duty payable by the HPSEBL to the State Government and that the HPSEBL had to also avail loan on account of Rs. 50.53 crore due to difference between assessment of roll back subsidy amount of Rs. 270.53 crore and Rs 220 crore paid by the Government and also that the HPSEBL had to pay interest on these amounts. Firstly, the adjustment made by the Government in this instant case implies that the amounts against which the adjustments were made were already available with the HPSEBL and that therefore no loan would thus be required to be taken. Secondly in the event of shortfall in payment of rollback subsidy by the Government, the HPSEBL was already empowered (refer para 7.84 of Tariff Order for FY14 and the following para 8.84 (c) of Tariff Order for FY13) to fall back on the Commission's determined Tariffs and, therefore, again no loan would be required to be taken by the HPSEBL in this instant case.

- 3.24 In the sixth issue, the Commission also observes that the disallowance of carrying cost on arrears of pay, carrying cost on additional power purchase cost and carrying cost on account of Survey and Investigation is a conscious view taken by the Commission, the reasoned orders on which have been given by the Commission in para 5.62, to para 5.64 respectively of the Tariff Order for FY14.
- 3.25 However, the Commission acknowledges that there is an additional employee cost amounting to Rs 54.10 crore (Refer Table 40 and Table 42 under para 5.26 and 5.31 respectively of Tariff Order for FY 14) which is other than that of arrears of pay for FY12.
- 3.26 In view of above, the petitioner in respect of FY12 is entitled to additional carrying cost on Interest on Working Capital (para 2.17) and on the additional employee cost other than arrears of pay (para 2.21) which ending 31st March, 2013 works out to Rs 6.58 crore as follows:-

(Rs in Crore)

Year	FY12	FY13	FY14
Carry Forward		5.01	5.75
Additional Interest on Working Capital for FY 12	13.84		
Additional Employee cost (other than arrears of pay)	54.10		
Carrying Cost (%)	14.75%	14.75%	14.45%
Interest (Rs crore)	5.01	5.75	6.58

- 3.27 As is shown in above Table, additional carrying cost of Rs 6.58 crore is admissible. Commission recognises that there is an error / mistake apparent on face of record. Review is made out. The sixth issue is decided accordingly.

B) Issues in approved ARR (2nd APR) for FY14:

Issue No.7 to 11 –

Against Disallowance in Power Purchase Cost; Against Consideration / Non-Consideration of certain generating stations; Allocation from new projects; Cost of power from BBMB Stations; Equity Power from GoHP:

- 3.28 These issues raised by the HPSEBL are considered by the Commission together as all of these pertain to power purchase.
- 3.29 The Commission in paragraphs 6.20 to 6.108, 7.25 and 8.4 to 8.11 of Tariff Order for FY 14 dated 27.04.2013 has done a detailed deliberation on the power purchase and power purchase costs of the HPSEBL and has accordingly issued directions and approved the power purchase quantum and costs, reduced the approved power purchase costs by Rs 30 crores as a means to incentivise efficiency and prudence in power management by the HPSEBL, disapproved power purchase from certain generating stations to limit costs on account of higher rates of power from these stations and did not consider quantum towards NJPC equity. The Commission on power purchase by the HPSEBL has made a conscious order and the Commission therefore does not find any error / mistake apparent on the face of record;
- 3.30 The HPSEBL has brought on record letter from the Ministry of Power, GoI dated 10th December, 2012 in respect of revised allocation (3.36% as against 2.75%) from Parbati-III HEP and letter from BBMB dated 19th February, 2013 in respect of revised cost of power from the BBMB old stations. Both of these are new facts which the Commission feels were in the knowledge of the HPSEBL at the time of making of the Order by the Commission and which could have been produced by the HPSEBL at the time of making the Order by the Commission despite opportunities having been afforded to the HPSEBL and thus do not

amount to discovery of new and important matter or evidence. In fact, these would in the future form matters of True-Up for the year FY14.

- 3.31 The HPSEBL in these issues has also prayed to reconsider the allocations from Uri-II HEP as HP has no SOR share nor has any PPA been executed and has asked to correct the Table No. 76 of the Tariff Order dated 27.04.2013. The Commission feels that any variation on this account shall also form a matter of True-Up for the year FY14 in the future.
- 3.32 Hence on all of these issues no review is made out. Issues 7 to 11 are decided accordingly.

Issue No.12 – Treatment of Uncovered Gap of previous Tariff Order:

- 3.33 The HPSEBL has raised the issue of uncovered gap of Rs 320.33 crore of Tariff Order for FY13 dated 24.04.2012 on account of arrears of pay and pension of employee cost and the financing mechanism in respect of these by the GoHP and have informed that the Commission out of this amount has approved only Rs 140.15 crore to be recovered in FY14 and that there is no mention of recovery of Rs 180.18 crore or provision of carrying cost for same.
- 3.34 The issue pertains to the Tariff Order for FY13 dated 24.04.2012 and has consciously been deliberated in detail by the Commission in paragraphs 8.82 of the Order. The issue was once again deliberated in para 5.62 of Tariff Order for FY14 dated 27.04.2013. This issue does not pertain to the Tariff Order for FY14 dated 27.04.2013. No Review is made out. This issue is decided accordingly.

Issue No.13 – Regarding Peak Load Violation Charges for days of violation only:

- 3.35 The HPSEBL in the amended petition has raised a fresh issue and on this issue has submitted that owing to practical constraints, it is not possible for the HPSEBL to implement the provision contained in paragraph 'N' of 'Part-I – General' of Tariff Order for FY14 dated 27.04.2013 in respect of charging of PLVC (Peak Load Violation Charges) for days of violation only.
- 3.36 The HPSEBL in its MA No. 128/2013 has further submitted the practical constraints in implementing PLVC for the days of violation only, citing reasons such as -
- (a) the necessity of relying on load surveys available in metering data using Meter Reading Instrument (MRI) and interpreting these load surveys manually.
 - (b) the necessity of relying on MRI for downloading and reading load surveys for the reason that the meter only displays certain parameters.
 - (c) the necessity of relying on software application interface provided by meter manufacturers which have limited scope for the purpose of extracting the downloaded meter data when this application is interfaced with the computerised billing software presently adopted by the HPSEBL.
- 3.37 The Commission has based the charging of PLVC 'on the days of violation only', for the reason that this serves as a deterrent to the consumers from frequently violating during the peak hours on several days of the month. This provision sans the 'days of violation only' de-facto implies fixing a single PLVC charge for several violations in a month which further implies that once a violation has taken place, then the consumer is not deterred from making more violations for the reason that he still pays a single charge for the violations on several days in the month. This condition of basing PLVC on days of violation can only be waved off if peak load restrictions are completely lifted by the HPSEBL.
- 3.38 The provision of PLVC based 'on the days of violation only' is a feature of Tariff Orders with effect from FY 2008 and is not new to the Tariff Order under Review. In fact this provision was based on Commission's Orders dated 03.08.2002 in the matter of PIA Vs HPSEB.

- 3.39 The Commission also does not find any merit in the reasons cited by the petitioner for not implementing PLVC based upon the days of violation. In order to ensure that the Time of Day (ToD) Tariff is implemented successfully, the meters are accordingly required to be ToD compliant and so are the peripherals, interfaces and billing softwares.
- 3.40 The Commission has taken a conscious view in its Tariff Orders with respect to this provision of basing PLVC 'on the days of violation only'. The Commission finds no error/mistakes apparent on the face of record. No review is made out. This issue 13 is decided accordingly.

The Review made out on Issue No.2 i.e. 'Disallowance of Govt Equity invested in Khaulī Project amounting to Rs 15.16 crore', Issue No.5 i.e. 'Interest on Working Capital' and Issue No.6 i.e. 'Disallowance of Carrying Cost' shall be offset against the surplus of Rs 17.53 crore approved in the Order dated 27.04.2013 (Table 124) and gap arising as a result shall form subjects of true-up in the future. This petition and connected applications are accordingly disposed of.

Shimla :
Dated: **26th November, 2013**

(Subhash C. Negi)
Chairman