

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

In the matter of :-

M/s JSW Hydro Energy Ltd.  
KarchamWangtoo HEP  
(formerly Himachal Baspa Power Company Ltd.)  
thro' Sh. Anurag Aggarwal (authorized Representative)  
SholtuColony,P.O. Tapri-172104, Distt. Kinnaur, HP **.....Petitioner**

Versus

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

The State of Himachal Pradesh,  
thro' its Principal Secretary (MPP & Power)  
Government of HP, Shimla-171002 **.....Respondent**

Review Petition No. 64 of 2020  
(Decided on 28<sup>th</sup> **December, 2020**)

**CORAM**

DEVENDRA KUMAR SHARMA  
**CHAIRMAN**

BHANU PRATAP SINGH  
**MEMBER**

Counsels: -

for Petitioner:	Sh. Aman Anand, Advocate
for Respondent No. 1:	Sh. Surinder Saklani, Standing Counsel a/wSh. Kamlesh Saklani(Authorised Representative)
for Respondent No. 2:	Sh. Shanti Swaroop (Legal Consultant)

**ORDER**

**(Last heard on 28<sup>th</sup>November, 2020 and Orders reserved)**

The above captioned petition has been moved by M/s JSW HYDRO Energy Limited (formerly Himachal Baspa Power Company Ltd.) KarchamWangtoo HEP, Sholtu Colony, PO Tapri-172104, Distt. Kinnaur HP (hereinafter referred as “the petitioner”) seeking review of Order dated 07.07.2020, passed in Petition No. 6 of 2020 in respect of True up of tariff for sale of power from Baspa II, 300MW Hydro Power Plant located on river Baspa (tributary of river Satluj) Distt. Kinnaur, HP (hereinafter referred as “the Project”) to the HP State Electricity Board Ltd. (hereafter referred as the “Respondent Board” or “HPSEBL”) for the period FY 2017-18 to FY 2018-19.

2. Through this review petition, the petitioner alleges that there are errors apparent on the face of the record in respect of grant of carrying cost on the revenue surplus in the Impugned Order dated 07.07.2020, which requires re-consideration. The petitioner has raised two issues stating that -

- (a) The carrying cost has been levied at a rate higher than the rate specified under Regulation 9-A of the Tariff Regulations, inserted vide the HPERC (Terms and Conditions for Determination of Hydro Generation Tariff) (Third Amendment) 2018, and has been levied for the period prior to the commencement of the said Amendment Regulations; and
- (b) While calculating the carrying cost, the admitted facts of payment of the principal amount of Rs. 11.85 Cr. made on 30.11.2019 and 03.01.2020 has not been considered by this Commission.

3. In response to the review petition, the Respondent Board, submits-

- (a) that the Impugned Order is the order passed in accordance with the law governing the field and there is no error on the face of the record which warrants the interference of this Commission in the review jurisdiction;
- (b) that the review petitioner has failed to make out any ground as contemplated under Order 47 of the Code of Civil Procedure or the Electricity Act, 2003 and the Regulations framed under it;
- (c) that the review proceedings cannot be equated to an appeal or rehearing because the scope and ambit of review is strictly confined and the same is not the purpose of inviting a fresh decision in the case.

4. Before proceeding to consider the application for review it must be said, at the outset, that this Commission must adhere to the well settled principles of the review. The Commission, therefore, is to spell out the scope of the power of the Commission to review its order. It is settled law that in the review proceedings the scope of interference is very limited, the review can be granted only in case of clerical omission, mistake, or the like grave error and not for rehearing the cases.

5. The Hon'ble Appellate Tribunal in its two judgments delivered in Appeal Nos. 18 and 30 of 2009-**Ispat Industries Ltd. Mumbai V/s Maharashtra Electricity Regulatory Commission Mumbai -2009 ELR (APTEL) 0618** and **Review petition No. 5 of 2008-Maharashtra State Electricity Distribution Co. Ltd. Mumbai V/s Erotex Industries and Exports Ltd. and one another -2009 ELR (APTEL) 0700** has concluded that Section

94(1)(f) of the Electricity Act, 2003 empowers the Commission to review its decisions, directions and orders and provides that they are vested with the same power which is given to a Civil Court under Order 47 Rule 1 of the Code of Civil Procedure, 1908. Thus the power of the Commission to review its own orders flows from Section 94(1)(f) of the Electricity Act, 2003, read with regulation 63 of the HPERC (Conduct of Business) Regulations, 2005, as the same is conferred on a Civil Court by the Code of Civil Procedure (CPC). These powers have been spelt out in Section 114, read with Order 47, of the CPC. The review application has, therefore, to necessarily meet the requirements of Section 114 and Order 47 of the CPC.

6. As per the said provisions, the specific grounds on which order already passed can be reviewed are-

- (a) if there are mistakes or errors apparent on the face of the record, or
- (b) on the 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.

7. The power of review, legally speaking, is permissible where some mistake or error apparent on the face of the 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 the decision was erroneous on merits. But simultaneously the materials on record, which on proper consideration may justify the claim, cannot be ignored.

8. 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 on its own motion or on the application of any of the parties. The use of the 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 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 facts 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.

9. The factual matrix of the case is that the applicant filed an application (Petition No. 6 of 2020) under Sections 62 and 86 of the Electricity Act, 2003, with the Commission for True up of the Tariff for sale of power from its Baspa-II 300MW Hydro Power Plant, for the period FY 2017-18 to FY 2018-19 and this Commission vide its Order dated 07.07.2020 trued up its tariff of the said Hydro Power Plant for the aforesaid period. In para 4.65 (Table 27) and para 4.66 of the Impugned Order the Commission determined the surplus payable by the petitioner to the Respondent Board, along with interest for the period upto 31.03.2020 as below: -

Table-27. Approved Revenue Surplus (Gap) by the Commission

<b>Particulars</b>	<b>2017-18</b>	<b>2018-19</b>	<b>2019-20</b>
Total annual fixed charges	184.70	168.18	-
Payment made by HPSEBL towards invoices	191.06	174.52	-
Revenue surplus/ (gap)	6.36	6.34	
Opening surplus/ (gap)	-	6.80	14.48
Surplus/ (gap) for the year	6.36	6.34	-
Closing balance surplus/ (gap)	6.36	13.14	14.48
Average Balance	3.18	9.97	14.48
<b>Interest rate %</b>	<b>13.85</b>	<b>13.45</b>	<b>13.80</b>
Interest amount	0.44	1.34	2.00
Closing balance of surplus/ (gap)	6.80	14.48	16.48

*“4.6.6 The closing balance of arrears payable by the Petitioner to HPSEBL at the end of Financial Year 2019-20 is Rs. 16.48 Crores. The Commission directs the Petitioner to pay/adjust the amount alongwith the carrying cost for the balance period of F.Y. 2020-21 in three installments from the date of issuance of this Order.”*

10. The Regulation 9-A has been inserted in the Generation Tariff Regulations, vide the Himachal Pradesh Electricity Regulatory Commission (Terms and Conditions for Determination of Hydro Generation Tariff) (Third Amendment) Regulations, 2018 (which is effective from 02.11.2018) reads as under:-

*“9-A. Carrying Cost.- The generating company, for the approved true-up of any year over and above that approved in the Tariff Order for the year, shall be entitled to a carrying cost at one (1) Year weighted average State Bank of India (SBI) MCLR / any replacement thereof as notified by RBI for the time being in effect applicable for one (1) Year period of the relevant Year plus 300 basis points and for any true-up resulting in less than that approved in the Tariff Order for that year, the carrying cost shall be recovered at the same rate.”*

11. Article 10.5 of the PPA dated 04.06.1997, executed by M/s Jaiparkash Hydro Power Ltd., the predecessor-in-interest of the Appellant, lays down the mechanism for adjustment of surplus/gap of the revenue, after the conclusion of every financial year. The relevant extracts of Article 10.5.1 and 10.5.2 are given hereunder-

*“10.5.1 Not later than thirty (30) days after the end of each tariff period/tariff year, the Company shall deliver to the Board a jointly reconciled statement of the calculations of the Capacity, Primary Energy and other charges for the year, as per the provisions of this Agreement and indicating the amount due, if any, which the Board owes to the Company or which the Company owes to the Board. This statement shall inter-alia, include the following information with respect to each tariff period/tariff year.*

- (a) Calculation for Availability as per Section 9.21.*
- (b) Capacity charges including adjustment on account of Availability as per Article 8 and due to foreign exchange rate variation.*
- (c) Calculation of net saleable primary energy including deemed generation energy (if any) as per section 9.22, and net Saleable Secondary energy.*
- (d) Primary energy charges.*
- (e) Incentive for Plant Availability.*
- (f) Incentive for Secondary Energy.*

*10.5.2 To the extent that the actual amounts of any of the above elements as payable for the tariff period/tariff year, in accordance with the Agreement, are different from the amounts included in the monthly bills, an amount equal to the difference resulting therefrom shall be payable by either party to the other party, as due. The Company will submit supplementary bills to the Board for any such amounts payable to it or adjust the amount in next monthly bill if payable by, it to the Board, based on the above statement.”*

12. The true-up exercise is meant to fill the gap between the actual expenses at the end of the year and the anticipated expenses at the beginning of the year. The Utility is entitled to carrying cost on its claim of legitimate expenditure, if the expenditure is the revenue gap, as a result of expenditure in the True up. It is settled law that the carrying cost is a legitimate expense and, therefore, recovery of such carrying cost is the legitimate expenditure of the distribution licensee and as such the carrying cost for legitimate expenditure has to be provided.

13. In the case of earlier True Ups, when the HPSEBL was required to pay a differential amount, the same was allowed alongwith carrying cost. This Commission in the True up order dated 30.03.2015 for sale of power from Baspa-II 300 MW HEP to Himachal Pradesh State Electricity Board Limited for Control Period FY11-12 to FY13-14 and also in Case No. 21 of 2018 for True up of tariff for sale of power from Baspa-II 300 MW HEP to

HPSEBL for period FY 2014-15 to FY 2016-17 and Mid Term Review for FY 2017-18 to FY 2018-19 vide its Order dated 31-10-2018 has allowed carrying cost. The rate of carrying cost fixed was the same at which Interest on working capital was calculated. In True up of Control Period FY11-12 to FY13-14, the HPSEBL was to pay the carrying cost.

14. The petitioner's Appeal bearing No. 34 of 2019 on the issue of charging carrying cost without having provision in the regulations is sub-judice at present before the Hon'ble Appellant Tribunal of Electricity. But, now the provision for charging carrying cost is there in HPERC relevant regulations as discussed above from 22<sup>nd</sup> November, 2018. Also, the rate of carrying cost has also been prescribed in these regulations. However, the Commission in this impugned order has levied the carrying cost on the principles of earlier True up orders i.e. at the rate of interest of working capital. This True up of the petitioner was for FY 2017-18 and FY 2018-19.

15. In view of the above factual matrix of the case and limited scope of review, the Commission now, and taking into consideration the pleadings made by the parties, proceeds to examine the issues raised by the petitioner in its review petition as hereunder.

16. The petitioner alleges that-

- a) in the Impugned order carrying cost has been applied at variance with the provisions of Regulation 9-A and the carrying cost has been levied for a period prior to the insertion of Regulation 9-A (i.e. 22.11.2018) for which period there was no provision for levy of carrying cost on the True up surplus gap;
- b) the petitioner's appeal (bearing Appeal No. 34/2019) is pending before the Hon'ble APTEL on the issue of whether the carrying in the absence of a regulation cost can be levied on revenue gap/surplus. The Hon'ble APTEL vide its Interim Order dated 12.02.2019 has directed the HPSEBL not to withhold carrying cost amount from the monthly charges payable till further orders;
- c) the carrying cost payable (upto 07.07.2020) should be Rs 2.43Crore instead of Rs. 4.35 Crore.

17. In response to the petition the Respondent Board submits that:-

- (a) the Commission while passing the Impugned Order has taken all the factors in due consideration and has rightly applied the carrying cost on surplus revenue while truing up the Tariff of 300MW Baspa II Hydro Power Plant for the period FY 2017-18 to 2018-19;

- (b) the HPERC (Terms and Conditions for Determination of Hydro Generation Tariff) (Third Amendment) Regulations, 2018 came into force on 22.11.2018 and it is settled position of law that the said Regulations shall be applicable prospectively i.e., after the publication in the Official Gazette;
- (c) so far as Appeal No. 34 of 2019, pending sub-judice in the Appellate Tribunal for Electricity (APTEL) is concerned, the Interim Order dated 12.02.2019 has been passed in that particular matter and yet the matter has not attained its finality;
- (d) the petitioner in the petition has computed the carrying cost rate as per SBI MCLR (1year) plus 300 basis point and the Respondent Board submits that the Commission notified the 3<sup>rd</sup> Amendment of HPERC Tariff Regulations on 22.11.2018. Therefore, the revised carrying cost shall be applicable for the period w.e.f. 22.11.2018. The Regulation 9-A shall be applicable only for post facto till then, the rate of carrying cost shall be applicable as per the then existing Regulations framed by the Commission.

18. The petitioner in its rejoinder to the response of the Respondent Board reiterates that:-

- (a) there are errors apparent on the face of the record in the Impugned Order, so far as the computation of the carrying cost on revenue gap is concerned. The error in the computation of carrying cost is manifest from Table 27 of the Impugned Order;
- (b) the carrying cost on the revenue surplus could have been levied only in accordance with Regulation 9-A of the Tariff Regulations and only for the post period 22.11.2018;
- (c) for the period prior to 22.11.2018 no carrying cost could have been levied on the revenue surplus, in the absence of regulations providing for the same;
- (d) the admitted facts that an amount of Rs. 11.85Crore had been adjusted prior to the passing of the Impugned Order, has not been considered by this Commission while calculating the carrying cost;
- (e) the Impugned Order is silent, as far as the methodology adopted by the Commission while calculating carrying cost in Table 27 is concerned. There is no basis/reason discernable for the carrying cost calculations in the Impugned Order;

- (f) the computation of carrying cost in the Impugned Order has been made without considering the Regulations and law governing the field;
- (g) there is no basis or reason for applying rate of 13.85%, 13.45%, 13.80% and 12.90% for the FY 2017-18, 2018-19,2020-21, respectively. These rates are irrelevant in any event, do not correspond to one year weighted average SBI MCLR plus 300 basis point, as provided under Regulation 9-A of the Tariff Regulations. The interest rate for the said period would be 11%, 11.39%, 11.16% and 10.27%, even if, only for the sake of argument Regulation 9-A were to be applied throughout the aforesaid period;
- (h) the Respondent in their reply has correctly and fairly stated that Regulation 9-A would have only prospective operation i.e. post 22.11.2018. Therefore, admittedly the rate of carrying cost at one year weighted average SBI MCLR plus 300 basis point, could not have been applied for the period prior to 22.11.2018, in any case;
- (i) for the period prior to 22.11.2018, no carrying cost could have been levied, in absence of Regulations providing for the same. In this respect **the National Thermal Power Corporation Ltd. V/s Madhya Pradesh State Electricity Board orders 2011 SCC(580)** has been cited;
- (j) there is a mistake in the calculations filed by the petitioner, as much as, the cutoff date for levy of carrying cost in accordance with Regulation 9-A of the Tariff Regulations has been erroneously considered as 22.11.2018 (i.e. the date on which the Regulations were notified) The petitioner regrets the error in calculations and is placing on record the corrected calculations;
- (k) it is reiterated that since the adjustment of Rs. 11.85Crore was made after the filing of the Petition and the hearing in the matter was not held in view of the outbreak of Covid-19, this relevant fact and evidence supplying the same could not be brought to the notice of this Commission. The errors which are manifest on the face of record if not reviewed and corrected by this Commission would work grave injustice against the review petitioner.

In view of the above, the petitioner prays this Commission to grant review of Impugned Order, and to the extent sought for by the review petitioner.

19. During the hearing of this matter Sh. Aman Anand, the Ld. Advocate appearing for the Petitioner submits-

- (a) that so far as the calculations of carrying cost in the Impugned Order is concerned, there is an error apparent on the face of the record, as there is no reason, analysis or discussion in the Impugned Order as to in what manner the carrying cost has been calculated. It is, therefore, wrong for the Respondent Board to assert that the Impugned Order is a well reasoned one, requiring no interference in a review jurisdiction;
- (b) that since admittedly the Impugned Order has been passed without hearing the parties, owing to the COVID-19 pandemic situation, it is a fit case for the Commission to exercise the review jurisdiction in order to prevent the miscarriage of justice;
- (c) that the applicable provision of Law i.e. Regulation 9-A has not even been adverted to by this Commission in the Impugned Order while determining the carrying cost. It is a settled principle of Law that non-advertence to the relevant provisions of Law is a ground for review. In his support, he has cited the recent decision of **Hon'ble Supreme Court in Yashwant Sinha and others V/s Central Bureau of Investigation 2020 (2) SCC 338**, wherein it has been held that in the judgment rendered a ignorance of the applicable Law, must be reviewed;
- (d) that the role of carrying cost applied in the Impugned Order, is on the face of it, not in accordance with the provisions of Regulation 9-A, as much as, one year weighted average SBI-MCLR plus 300 basis points works out of 11% , 11.39% and 11.16% instead of 13.85%, 13.45% and 13.8%, as has been applied in the Impugned Order;
- (e) that prior to 22.11.2028, when the Regulation 9-A became effective, no carrying cost can be levied as there existed no provision in Law for the same. In this regard reliance is placed on the decision of the **Hon'ble Apex Court in NTPC V/s MPSEB report at 2011(15) SCC 580**, holding that the provision for charging interest is a substantive provision which has to be specifically provided and would become operative when provided;
- (f) that the Regulation 10 of the Tariff Regulations would not cover the field and is not applicable as far as the carrying cost on True Up revenue surplus is concerned;
- (g) that owing to the COVID-19 Pandemic situation, a hearing in the matter could not be conducted and Order was passed on the basis of the documents

available before this Commission. In this process, the admitted fact that a sum of Rs. 11.85 Crore stood adjusted, subsequent to the filing of Petition No. 6 of 2020, between the Petitioner and Respondent Board on 30.11.2019 and 03.01.2020 could not be brought to the notice of this Commission. This is the material fact having a direct bearing on the calculation of the revenue surplus and carrying cost, and comes within the ambit of power of review exercisable under Order 47 of the CPC.

20. Sh. Kamlesh Saklani, representing the HPSEBL, has strongly refuted the arguments addressed on the behalf of the review applicants by stating-

- (a) that the decision relied upon by the Ld. Counsel, representing review petitioner, are distinguishable and are not relevant in the present context;
- (b) that the Commission while passing the Impugned Order dated 07.07.2020 has taken all the factors in due consideration and has rightly applied the carrying cost on surplus revenue while truing up the tariff of 300 MW Baspa II Hydro Project for FY 2017-2018 to 2018-2019;
- (c) that the power of review is permissible where some mistake or an error apparent on the face of the record is found. The Commission has the limited powers to correct the clerical or arithmetical mistake in its Orders;
- (d) that the review proceedings cannot be equated to an appeal or rehearing or inviting a fresh decision in the case;
- (e) that the Regulation 9-A inserted in the Tariff Regulations, would have only prospective operation i.e., post 22.11.018, till then the rate of carrying cost shall be applicable as per the Regulations framed by the Commission i.e. the rate of carrying cost fixed was the same at which interest on working capital was calculated. The Commission in the Impugned Order has levied the carrying cost on the principles of earlier Trueup Orders of the Control Periods FY 2011-12 to FY 2013-14 and FY 2014-15 to 2016-17 i.e. at the rate at which the interest of working capital was calculated;
- (f) that so far as Appeal No. 34 of 2019, pending before the Hon'ble APTEL, is concerned the Order dated 12.02.2019 has been passed in a particular case and yet has not attained its finality.

21. On careful consideration of the contents of the review petition, submissions made and the arguments and counter arguments advanced by the Ld. Counsel for the parties, the Commission finds-

- (a) that the Commission must adhere to the well settled principles of the review. In the review proceedings, the scope of interference is very limited, the review can be granted only in case of clerical omission, mistake, or like grave error and not for rehearing the case. A review cannot be allowed to be an appeal in disguise and it cannot be a ground that the decision was erroneous on merits;
- (b) that the truing-up exercise is meant to fill up the gap between the actual expenses at the end of the year and the anticipated expenses at the beginning of the year. The Utility is entitled to carrying cost on its claim of legitimate expenditure, if the expenditure is the revenue gap, as a result of expenditure in the true-up. It is settled law that the carrying cost is a legitimate expense and, therefore, recovery to such carrying cost is the legitimate expenditure of the Distribution Licensee and as such the carrying cost for the legitimate expenditure has to be provided;
- (c) that the HPERC(Terms and Conditions for Determination of Hydro Generation Tariff)(Third Amendment) Regulations, 2018 came into force on 22.11.2018 and as such the carrying cost as provided in Regulation 9-A shall be applicable for the post period w.e.f. 22.11.2018 and for the period prior to 22.11.2018, the rate of carrying cost is to be the same as was allowed by this Commission in its earlier True-up Orders for the Baspa-II 300 MW HEP for FY 2011-2012 to 2013-14 and FY 2014-15 to 2016-17.
- (d) that Appeal No. 34 of 2019, on the issue of charging carrying cost without having provision in the regulations, is pending before the Hon'ble Appellate Tribunal for Electricity and yet that the matter has not attained its finality. In review jurisdiction the pendency of Appeal in the similar matter cannot be the ground for interference/review of the Impugned Order;
- (e) that the carrying cost for the period post the insertion of Regulation 9-A in the Tariff Regulations, has not been worked out in accordance with the amended Regulations, and as such there are errors in the computation of the carrying cost on the revenue surplus/gap in Table 27 of the Impugned Order.

The rectification of an order stems from the fundamental principle of justice is above all. It is, therefore, expedient to rectify the error in the calculations of the carrying cost;

- (f) that a sum of Rs. 11.85 Crore paid on 30.11.2019 and 03.01.2020, subsequent to the filing of True up Petition No. 6 of 2020 and before the passing of the Impugned Order dated 07.07.2020, has not been considered by this Commission, as the same could not be brought to the notice of this Commission, owing to the COVID-19 pandemic situation as a hearing in the matter could not be conducted and the Order was passed on the basis of the documents then available before this Commission. This is a material fact having a direct bearing on the calculation of the amount of the revenue surplus and carrying cost. In this context, we may quote, with advantage, the verdicts of the Hon,ble Apex Court rendered in **Shikhar Chand Jain V/S Digamber Jain Prabandkarini Sabha and Ors. (1974) 1 SCC 675 (para10); PasupuletiVenkateswarluV/S Motor and General Traders 1975 1 SCC 770; and Kedar Nath Agarwal (dead) &Ors. V/S Dhanraj Devi (Dead) by Lrs&Ors(2004) 8SCC 76**, wherein it is observed that it is basic to our processual jurisprudence that the right to relief must be judged to exist as on the date a suitor institutes the legal proceeding. Equally clear is the principle that procedure is the handmaid and not the mistress of the judicial process. If a fact arising after the *lis* has come to the Court and has a fundamental impact of the right to relief for the manner of moulding it is brought diligently to the notice of the Court, it cannot blink at it or be blind to events which stultify or render inept the decretal remedy. It is the power and duty of the Court to consider the changed circumstances and it may take into account subsequent events inter-alia the following circumstances:-
- i) the relief claimed originally has by the reason of subsequent change of circumstances become in-appropriate; or
  - ii) it is necessary to take notice of subsequent events in order to shorten litigation; or
  - iii) it is necessary to do so in order to do complete justice between the parties.

Apart from this, an order already passed can be reviewed on the 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. Hence this Commission, allows to take into account the payment of Rs. 11.85 Crore while working out the revenue surplus/gap.

22. The upshot of the above discussion is that the review petition is allowed and with a view to rectify the errors in the computation of the carrying cost on revenue surplus/ gap, the Order dated 07-07-2020 passed in Petition 6 of 2020, in respect of True-up of Tariff for sale of the Power from Baspa-II 300 MW Hydro Power Plant for the Financial Year 2017-18 to 2018-19 is hereby modified to the extent that:-

(a) in Para 4.65 for the existing Table 27, the following revised Table 27 shall be substituted namely:-

**Table 27- Approved Revenue Surpluses (Gap) by the Commission**

Particulars	FY 18		FY19		FY20			FY21
	01.04.2017 to 31.03.2018	01.04.2018 to 21.11.2018	22.11.2018 to 31.03.2019	01.04.2019 to 29.11.2019	30.11.2019 to 2.01.2020	03.01.2020 to 31.03.2020	01.04.2020 to 28.11.2020	
<b>Total Annual Fixed Charges</b>	184.70	168.18						
<b>Payment made/ (received) by HPSEBL towards invoices</b>	191.06	174.52			-10.90	-0.95		
<b>Revenue Surplus/(Gap)</b>	6.36	4.08	2.26	0.00				
<b>Opening Surplus/(Gap)</b>	0.00	6.80	11.65	14.43	15.50	4.65	3.80	
<b>Revenue Surplus/(Gap) for the Year</b>	6.36	4.08	2.26	0.00	0.00	0.00	0.00	
<b>Closing balance Surplus/(Gap) for the Year</b>	6.36	10.88	13.91	14.43	4.60	3.70	3.80	
<b>Average Balance</b>	3.18	8.84	12.78	14.43	4.60	3.70	3.80	
<b>1 Year interest rate from 1.04.2017 to 21.11.2018 and SBI MCLR% (Weighted Average) from 22.11.2018 onwards</b>	13.85	13.45	8.39	8.16	8.16	8.16	7.11	
<b>Spread %</b>			3.00	3.00	3.00	3.00	3.00	
<b>Interest rate from 1.04.2017 to 21.11.2018 and (SBI MCLR +Spread) % from 22.11.2018 onwards</b>	13.85	13.45	11.39	11.16	11.16	11.16	10.11	
<b>Days of Interest Calculation from 1.04.2017 to 28.11.2020)</b>	365	235	130	243	34	89	242	
<b>Interest Amount</b>	0.44	0.77	0.52	1.07	0.05	0.10	0.25	
<b>Closing balance of Surplus /(Gap)</b>	<b>6.80</b>	<b>11.65</b>	<b>14.43</b>	<b>15.50</b>	<b>4.65</b>	<b>3.80</b>	<b>4.05</b>	

- (b) Para 4.66 shall be substituted as –‘The Commission directs the Petitioner to pay/ adjust the amount of Rs. 4.05 Crores within two weeks (14 days) of issuance of this order.’

In terms of the above, the present Review Petition is disposed of, with the directions to the registry of this Commission to place a copy of this Order on the case file wherein the Orders dated 07.07.2020, disposing of petition No. 6 of 2020 in respect of the Trueup of Tariff for the sale of power from Baspa-II (300MW) Hydro Power Plant, was passed, and, after carrying out the corrections made as aforesaid in the preceding para 22 of this Order, send, within Seven days from the making this Orders, the copies of this Order to the State Govt.,the Central Electricity Authority, and the concerned licensee and to the person concerned, as provided in the Sub-section (4) of Section 64 of the Electricity Act, 2003.

--Sd/-  
**(Bhanu Pratap Singh)**  
Member

--Sd/-  
**(Devendra Kumar Sharma)**  
Chairman