

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

Miscellaneous Application No. 42 of 2025

in Petition No. 27 of 2024

Instituted on: 03.01.2025

Heard on: 03.03.2025

Decided on: 01.04.2025

CORAM:

DEVENDRA KUMAR SHARMA
CHAIRMAN.

YASHWANT SINGH CHOHAL
MEMBER (Law).

SHASHI KANT JOSHI
MEMBER.

In the matter of:-

Determination of Tariff for FY 2024-25 to FY 2028-29 for sale of power
from Baspa-II 300 MW HEP to Himachal Pradesh State Electricity Board
Limited (HPSEBL).

And in the matter of:-

Representation of JSW Hydro Energy Limited as per the order passed
by the Hon'ble High Court on 02.12.2024 in Civil Writ Petition No. 13925
of 2024 challenging the directions given by the Commission in para
4.59 of the order dated 12.06.2024 passed by the Commission in
Petition No. 27 of 2024 regarding design energy of Baspa-II 300 MW
HEP.

Present:-

Sh. Aman Anand, Ld. Counsel for the Petitioner.

Sh. Kamlesh Saklani, Authorised Representative for the
HPSEBL.

ORDER

This representation has been filed by M/s JSW Hydro Energy
Limited pursuant to the directions passed by the Hon'ble High Court
vide order dated 02.12.2024 in Civil Writ Petition No. 13925 of 2024.

2. The Commission, while determining the tariff for the fifth control period (FY 2024-25 to FY 2028-29) for Baspa-II 300 MW Hydro Electric Project (Project for short), vide order dated 12.06.2024 in Petition No. 27/2024, inter-alia directed the Directorate of Energy, Government of Himachal Pradesh (GoHP for short) in para 4.59 of the order to constitute a committee of experts familiar with the subject matter (hydrology and hydro power) to analyze the hydrological data and based on such analysis, compute the design energy of the Baspa-II, 300 MW Hydro Electric Plant (Project for short) and that the committee shall submit the report within three months to the Directorate of Energy (DoE for short) with a copy to the Commission and based on that, the design energy of BASPA-II HEP shall be reviewed by the DoE. Para 4.59 of the order dated 12.06.2024 in Petition No. 27 of 2024 is reproduced as under:

“4.59 From the above Table, it has been quite evident that the Baspa HEP has generated more energy than the design energy for the seventeen (17) years out of the last twenty (20) years. Also, it can be seen that the lesser energy generation to that of the design energy was only for the initial three years of the operation of the Plant. From the year 2006-07 onwards, there has not been even a single year when the actual generation has been less than the design energy. This clearly shows that hydrological series computed for generation of energy needs review. Therefore, the Commission is of the firm view that the design energy of the Plant needs to be studied based on the latest details/data available. Accordingly, the Commission hereby directs the Directorate of Energy to constitute a Committee of experts familiar with the subject matter (hydrology and hydropower) for the same. The mandate for the Committee shall be to analyse the hydrological data and

based on such analysis, compute the design energy generation from the Project. This Committee shall submit its report, within three months from the issuance of this Order, to the Directorate of Energy, with a copy to the Commission. The Directorate of Energy based on the recommendations in report of the said Committee shall review the design energy of the Baspa-II HEP and submit the same to the Commission.”

3. Feeling aggrieved with the aforesaid directions contained in Para 4.59 of the order dated 12.06.2024 in Petition No. 27 of 2024, the Applicant/ Representationist (Applicant for short) filed a Writ Petition before the Hon'ble High Court (being W.P. (C) 13925/2024), for setting aside the directions contained at para 4.59 of the order dated 12.06.2024 in Petition No. 27 of 2024 and withdrawing the letters dated 05.08.2024 and 14.08.2024 issued by the DoE pursuant to the aforesaid directions contained at para 4.59 of the Order dated 12.06.2024 in Petition No. 27 of 2024.

4. The Hon'ble High Court, after hearing the parties, disposed of the aforesaid Writ Petition filed by the Applicant vide judgment dated 02.12.2024, without going into the merits of the case and by reserving liberty to the Petitioner/ Applicant to file a representation before the Commission within a period of four weeks which in turn was ordered to be decided by the Commission within a period of three months after affording an opportunity of being heard to the Petitioner and by passing a detailed speaking order. The directions issued by the Commission in aforesaid para 4.49 of the tariff order were kept in abeyance till then.

Paras 6 and 7 of the judgement dated 02.12.2024 passed by the Hon'ble High Court are reproduced as under:-

"6. Since Respondent-Commission has agreed to afford due opportunity of being heard to the Petitioner qua the direction issued to Respondent No.3 i.e. Directorate of Energy for submission of hydrological data for computation of design energy for generation of the energy in the Project, this Court without going into the merits of the case, deems it fit to dispose of the present petition, reserving liberty to the petitioner to file representation before the Respondent- Commission within a period of four weeks, which in turn, shall be decided by the Respondent-Commission within a period of three months. Ordered accordingly.

7. Needless to say, authority concerned, while considering the representation of the Petitioner, shall afford an opportunity of being heard to the petitioner and pass detailed speaking order thereupon. Till the disposal of the representation, if any, filed by the petitioner pursuant to instant order, direction issued to Commission as contained in Clause 4.59 of the Tariff order shall remain in abeyance."

Copy of the order dated 02.12.2024 alongwith copy Civil Writ Petition No. 13925 of 2024 (without Annexures) have been annexed as Annexure 2 (Colly).

5. In terms of the aforesaid directions, the present representation has been filed by the Applicant with the following submissions:-

- a) It is completely unjust to change the design energy of Baspa-II HEP during the life of the project. The design energy, as agreed in the PPA is the benchmark power potential of the Project which forms the basis for the Applicant having invested approximately Rs. 1600 Crores in the Project. The design energy is the projected output of the Project in terms of energy

generated, based on design of various project components and taking into account various parameters like hydrological potential, economic and social costs benefits etc. at the time of project preparation and subsequent execution and O&M as planned. Therefore, it is not expected that design energy is changed during the life of the project. The entire revenue model based on which the business decision to invest was taken is bound to get adversely affected, if the design energy of the project is revised mid-way, during the life of the project/ term of the PPA. Hence, for regulatory certainty and business efficacy, the design energy should not be revisited at all, before the useful life of the project expires.

- b) The Commission cannot revise the design energy of the project, as the same does not form a part of its functions as provided under Section 86 the Electricity Act, 2003 (Act for short). The expertise to revise design energy lies with the Central Electricity Authority (CEA) which is the appropriate authority. Further, the direction in para 4.59 of the order dated 12.06.2024, also acknowledges the lack of expertise with the State Commission to undertake such revision itself.
- c) The Regulation 42 (7) (c) of the HPERC (Terms and Conditions for Determination of Hydro Generation Tariff) Regulations, 2024

(Tariff Regulations, 2024), empowering the Commission to consider upward revision of design energy has correctly not been applied to the case of the Applicant as the Order in Petition No. 27 of 2024 was reserved by the Commission on 23.03.2024, whereas, the Tariff Regulations, 2024, came into effect only w.e.f. 05.06.2024. The Applicant reserves it's right to challenge the said Regulations at an appropriate time, before an appropriate forum, if and when the need so arises.

d) Without admitting, the Commission can refer the issue of revision of design energy to the CEA as the mandate in relation to fixing/revision of design energy for projects involving a capital expenditure exceeding the limit/sum fixed by the Central Government, statutorily vests with the CEA under Section 8(1) of the Act and in this regard, the Notification No. SO 550(E) dated 18.04.2006, modified vide Notification No. SO 490(E) dated 28.01.2014, issued by the Central Government under Section 8 of the Act gives clear mandate to the CEA to provide concurrence to a scheme of Hydro Electric Projects, whose estimated capital expenditure exceeds Rs. 1000 Crore, as such, the expertise lies solely with CEA. Copy of the above notifications issued by the Central Government are annexed as Annexure 3 (Colly).

- e) According to the Applicant, the design energy for the Project of the Applicant has been originally approved by the CEA, as part of granting concurrence/ techno economic clearance (TEC) to the proposal/ DPR way back on 29.04.1994. (Annexure 4) and any revision in the scheme, including revision in the essential/ fundamental parameter of the project design energy can only be made by the CEA as it is settled that the authority which has power to grant has also the power to revise, alter or modify the terms of the grant.
- f) Additionally, it is the CEA, which has the mandate under Section 73(n) of the Act to advise the appropriate commission and the appropriate government on all technical matters relating to generation which function cannot be assigned to any other body.
- g) The directions made in para 4.59 of order dated 12.06.2024 to the DoE to re-compute and review the design energy of the Project is untenable as the same amounts to usurpation of CEA's power/ jurisdiction under the Act.
- h) The DoE is an interested party, being a department of the State Government, which also administratively controls the counter party in the PPA i.e. the Himachal Pradesh State Electricity Board Limited (the HPSEBL/ Respondent No. 2 for short) and

thus, entrusting the task of design energy revision to the DoE for this reason is unfair and unsustainable.

- i) The DoE, unlike the CEA, has no guidelines for revising/ re-computing the project design energy and any action of the DoE without guidelines would be an arbitrary exercise of the powers.

A copy of the CEA guidelines for revision in design energy have been annexed as Annexure 5.

RESPONSE TO THE REPRESENTATION

6. During the process of deciding the Petition No. 27 of 2024, the Commission as required under Section 61, 62, 64 and 181 of the Electricity Act, 2003 (Act for short) and the rule made thereunder had accorded opportunity to all the interested parties/ stakeholders to submit their objections and suggestions to the Petition and a public hearing was also conducted after inviting the objections and suggestions, therefore, it was decided to host/ upload the representation on the website of the Commission as also on the website of the Applicant asking the stakeholders to file their objections/ suggestions within a period of 30 days on the representation.

7. Pursuant thereto, the (MPP & Power Department), Government of Himachal Pradesh through Directorate of Energy, the Himachal Pradesh State Electricity Board Limited (HPSEBL for short), the

Himachal Power Engineers Association (HPEA) and the Consumer Representative have filed their suggestions/ replies.

8. The Deptt. of MPP & Power, GoHP through DoE in its reply has submitted that the DoE, constituted a committee vide order dated 23.07.2024 as per the mandate of the order of the Commission asking the committee to submit the report within three months. Also the TEC of the Project has been accorded by the CEA vide order dated 29.04.1994 (Annexure-II) and that in view of Ministry of Power, GoI notification dated 28.01.2014 (Annexure-III), the Project of the Petitioner does not fall under the purview of the DoE. It is submitted that hydrology is a vital parameter for accessing the design energy of the Project but the reassessment of hydrology is the mandate of CEA and the State Authority cannot interfere with the mandate of the CEA. As such, it would be appropriate that the reassessment of hydrology and design energy is carried out through the CEA.

9. The HPSEBL has also filed its response to the representation that the actual power generation from the Baspa-II Project as evident from Table No. 23 of order dated 12.06.2024 in Petition No. 27 of 2024 is significantly higher as compared to the design energy of the Project ever since the COD of the Project till date. Therefore, the analysis of hydrological data of the Project should be computed for the design

energy which may be revised as per the guidelines of CEA and the Commission may pass necessary directions in this regard.

10. The HPSEBL, being the sole procurer of the power from the Project is directly impacted from the artificially low design energy as the existing design energy computation does not reflect actual hydrological water series and operational trends, leading to an unjust financial burden on the HPSEBL in the form of excessive secondary energy payments and that the Commission vide order dated 12.06.2024 in Multi Year Tariff Petition, has rightly directed the DoE, GoHP to constitute an committee of experts to re-examine the hydrological data and to compute the revised design energy. Therefore, the HPSEBL emphasize the need for fair reassessment of design energy while recognizing that the revision of design energy falls under the exclusive domain of the CEA under the Electricity Act, 2003.

11. As per the HPSEBL, the Commission has notified the Himachal Pradesh Electricity Regulatory Commission (Hydro Generation Tariff) Regulation, 2024, on 05.06.2024 and Regulation 42(7) thereof provides for the revision of the design energy by the Commission in case the actual total energy generated by a hydro generating station has been more than the design energy for at least ten (10) years during the operation of a hydro plant after COD under a long-term PPA with the DISCOM. It is denied that the Commission has no jurisdiction to pass

direction under the above Regulations for the revision of the design energy by asserting that the date of pronouncement of an order is determinative of the applicable law, not the date of reservation and that the Commission was bound to consider the regulatory framework in force on the date of its final order dated 12.06.2024 and also that the Regulation 42(7) is fully applicable.

12. As it is a well-established legal principle that a judicial or quasi-judicial order takes effect only when it is formally pronounced and communicated to the parties and the mere act of reserving an order does not create an enforceable right in favor of any party. Further, the Hon'ble Supreme Court of India, in its catena of judgments has held that the rights of the parties in a legal proceeding are governed by the law prevailing on the date of the final order, unless otherwise provided. Thus, the Commission was bound to apply Regulation 42(7) of the above Regulations while finalizing the MYT order since it was already in force at that time.

13. Also averred that the revision of design energy is based on objective hydrological data and long-term performance of the plant, ensuring fair and transparent tariff computation and the Commission's intent behind Regulation 42(7) is to ensure that excess generation is factored into tariff determination to protect the interests of DISCOMs and consumers. Further, the revision of Design Energy is in Public

Interest and to avoids excessive financial burden on the DISCOM/ HPSEBL as the design energy of the Project of the Petitioner has been consistently higher over the last ten (10) years, as evident from actual energy generation records and due to this excess generation, the HPSEBL is bearing an unwarranted financial burden in the form of additional charges for secondary energy, which are ultimately being passed on to the electricity consumers of the State of H.P. In the circumstances, the Regulation 42(7) provides for a mechanism to prevent such unjustified financial impact and must be applied to rationalize the design energy in line with actual operational performance.

14. It is further averred that Regulation 42(9) of the HPERC (Terms & Conditions for Determination of Hydro Generation Tariff) Regulations, 2024, provides further that in case energy charge rate (ECR) for a Hydro Generating Station, as computed under this regulation, exceeds ₹1.20 per kWh, and the actual saleable energy in a year exceeds $\{DE \times (100-AUX) \times (100-FEHS)/10000\}$ MWH, the energy charges for the energy in excess of the above shall be billed at Rs. 1.20 per kWh only (effective w.e.f 01.04.2024 to 31.03.2029). Not only this, Regulation 26(7) of the HPERC (Terms & Conditions for Determination of Hydro Generation Tariff) Regulations, 2011, provides that in case, the energy charge rate (ECR) for a Hydro Generating Station, as computed under

this Regulation, exceeds ₹1.15 per kWh, and the actual saleable energy in a year exceeds $\{DE \times (100-AUX) \times (100-FEHS)/10000\}$ MWH, the energy charges for the energy in excess of the above shall be billed at Rs.1.15 per kWh only (effective w.e.f 01.04.2014 to 31.03.2024). However, as per Section 8.9.1 of PPA, “The per unit rate for saleable secondary energy (i.e. 88% of the secondary energy available at interconnection point at Jhakri) shall be calculated by dividing 10% return on equity with normative saleable secondary energy amounting to 155 MU at Jhakri. The charges for the saleable secondary energy for the tariff year shall not exceed 10% return on equity.” Accordingly, the rate for secondary energy for Baspa-II is in line with the said clause as ₹3.17 per kWh for FY25.

15. It is further averred that the Regulatory framework serves as the backbone of governance in various sectors, particularly in industries where public interest and essential services are at stake. The power sector in India is one such domain, governed primarily by the Electricity Act, 2003, which empowers regulatory commissions to oversee market operations and ensure compliance with statutory norms. The Supreme Court of India has consistently upheld that regulatory provisions framed under this Act prevail over individual contractual agreements such as Power Purchase Agreements (PPAs) and Transmission Service Agreements (TSAs).

16. The Himachal Power Engineers Association has also filed suggestions/ response that as evident from Table No. 23 of tariff order dated 12.06.2024, the generation from the Project is significantly high ever since the COD as compared to the design energy and, therefore, the hydrological data of the Project needs to be computed for the design energy which may be revised as per guidelines of the CEA. Further, the HPSEBL and the consumers of the State are directly impacted by the artificially low design energy and high secondary energy as the existing design energy computation does not reflect actual hydrological conditions and operational trends leading to an unjust financial burden on the HPSEBL in the form of excessive secondary energy payments to the Baspa-II HEP. Also that the Commission has rightly directed the DoE to constitute a committee of experts to re-examine the hydrological data and compute the design energy.

17. It is mentioned that Himachal Power Engineer Association emphasize the need of fair assessment of design energy but the revision of design energy falls under the exclusive domain of the CEA under the Act.

18. According to HPEA, on coming into force the HPERC Hydro Generation Tariff Regulations, 2024, the Commission may consider the revision of design energy as Regulation 42 (7) provides for revision of

design energy in case the actual total energy generated by a generating station has more than the design energy for at least ten years during the operation of hydro plant after COD under a long term PPA. Further, the revision of the design energy is in public interest and to avoid excessive financial burden on the HPSEBL and the consumers.

19. The Consumer Representative has also filed the response that the designed prime energy rates are much lower as compared to the rates for the secondary energy and thus, it will be appropriate to revise the design energy in the interest of the consumers so that tariff is worked out prudently. Further, the Regulations provide for capping the secondary energy rates at about Rs. 0.80 paise, whereas, the tariff for the secondary energy for the Project is about Rs. 3.50 per unit. Further the generators cost is recovered by the design energy. Therefore, if the generation is more than the design energy, the same is required to be revised as mandated under Section 61, 62, 64 and 181 of the Act and rules framed thereunder.

20. We have heard Sh. Aman Anand, Ld. Counsel for the Applicant and Sh. Kamlesh Saklani, Authorised Representative for the HPSEBL and have perused the entire record carefully. We have also perused the additional submissions made by the Applicant.

21. The Commission invited the objections/ suggestions on the representation and conducted the public hearing in the matter on 01.03.2025.

22. At the very outset, it is relevant to mention that the Applicant has not disputed the energy generated from the Project from FY 2003-04 to FY 2022-23 as contained in Table No. 23 of the order dated 12.06.2024 in Petition No. 27 of 2024 showing the energy generation based on monthly billing to the HPSEBL. Table No. 23, as mentioned in para 4.58 of order dated 12.06.2024 in Petition No. 27 of 2024 is reproduced as under:-

Table 1: Baspa II Energy Generation (based on monthly billing to HPSEBL)

Year	Total Energy at delivery point (ICF Jhakri)	GoHP Energy (@12%)	Saleable Energy (@88%)	Saleable Design Energy (Primary Energy)	Secondary Energy beyond Design Energy	Excess to Secondary Energy limit of 155MUs (free of cost)
	(in MU)	(in MU)	(in MU)	(in MU)	(in MU)	(in MU)
2003-04	1125.85	135.10	990.75	1050.06	0.00	0
2004-05	1184.01	142.08	1041.93	1050.06	0.00	0
2005-06	1168.75	140.25	1028.50	1050.06	0.00	0
2006-07	1274.48	152.94	1121.54	1050.06	71.48	0
2007-08	1274.16	152.90	1121.26	1050.06	71.20	0
2008-09	1285.75	154.29	1131.46	1050.06	81.40	0
2009-10	1294.35	155.32	1139.03	1050.06	88.97	0
2010-11	1467.74	176.13	1291.61	1050.06	241.55	86.55
2011-12	1391.30	166.96	1224.34	1050.06	174.28	19.28
2012-13	1226.54	147.18	1079.36	1050.06	29.30	0
2013-14	1330.69	159.68	1171.01	1050.06	120.95	0
2014-15	1242.40	149.09	1093.31	1050.06	43.25	0
2015-16	1295.76	155.49	1140.27	1050.06	90.21	0
2016-17	1327.69	159.32	1168.36	1050.06	118.30	0
2017-18	1322.00	158.64	1163.36	1050.06	113.30	0
2018-19	1261.47	151.38	1110.09	1050.06	60.03	0
2019-20	1338.17	160.58	1177.59	1050.06	127.53	0
2020-21	1296.49	155.58	1140.91	1050.06	90.85	0
2021-22	1305.89	156.71	1149.18	1050.06	99.12	0
2022-23	1338.07	160.57	1177.50	1050.06	127.44	0

23. Similarly, the Applicant has also not disputed that design energy cannot be revised. What is disputed by the Applicant is that it is the CEA which has the authority to revise the same and the Commission may refer the matter to the CEA.

24. The design energy of the Project is 1213 MUs. A careful perusal of the energy generation data as contained in the aforesaid table clearly shows that the Project has consistently recorded excess generation of energy than the Design Energy except for initial 3 years where the same had been less than the Design Energy. However, no explanation has come forward for such excess generation consistently. Even no document in this regard had been placed on record in Petition No. 27 of 2024. It is thus, conclusively established that the energy generation is more than the Design Energy.

25. In the circumstances, this Commission while disposing off Petition No. 27 of 2024, based on the analysis of energy generation contained in Table No. 23 of para 4.58, was constrained to observe that the hydrological series computed for generation of energy needs a review and directed the DoE to constitute a committee of experts in this regard and take a decision on the basis of the recommendations of the committee to review the Design Energy.

26. It is the contention of the Applicant that it is unjust to change the design energy mid-way during the life of the Project as the design

energy as agreed in the PPA is the benchmark power potential of the Project which forms the basis of the Applicant having invested approximately Rs. 1600 Crores and the projected output of the Project based on design of various Project components. Therefore, it is not expected to change the design energy during the lifetime of the Project which would adversely affect the entire revenue model. This contention is not tenable. The Regulation 42 (7) (c) of the HPERC (Terms and Conditions for Determination of Hydro Generation Tariff) Regulations, 2024 (Hydro Generation Tariff Regulations, 2024 for short) provides for revision of the design energy in case the actual total energy generated has been more than the design energy for atleast ten years. In the case of the Project, it is continuously more than the design energy for last 17-18 years as evident from Table No. 23 in Para 4.58 of the order dated 12.06.2024 in Petition No. 27 of 2024 which has not been disputed. Therefore, the Commission is well within its jurisdiction to ask for a fair assessment of the Design Energy in the interest of the consumers of the State of Himachal Pradesh. Therefore, it can be revised.

27. With regard to Hydro Generation Tariff Regulations, 2024, the Applicant has also submitted that though said Regulations empower the Commission to consider upward revision of design energy but the Commission has rightly not applied the same as the Commission reserved the verdict on 22.03.2024 and pronounced the order on

12.06.2024 whereas the above Regulations came into effect w.e.f. 05.06.2024. In nutshell, it is submitted that said Regulations have no applicability to the Project. This submission of the Applicant too is without any basis as the applicability of law will be on the date when the said law was made enforceable. The Hydro Generation Tariff Regulations, 2024 have been made by the Commission in exercise of the power under Section 181 of the Act, which had come into effect w.e.f. 10.06.2024. The order was pronounced by the Commission on 12.06.2024 meaning thereby that the Regulations had come into being before pronouncing the order. As such, the Hydro Generation Tariff Regulations, 2024 are applicable to the facts and circumstances of the case. Thus, the contention that only the law existing at the time of hearing is to be considered is without any basis and does not hold good as it is the date of the pronouncement of the order when the applicability of law is to be seen.

28. However, the Commission has not applied the Regulation 42 (7) (c) of the Hydro Generation Tariff Regulations, 2024, in the matter as the Commission only directed the DoE to constitute a committee of experts to analyze the hydrological data and based on the recommendations of committee, take a decision to review the design energy. In fact, Regulation 42 (7) (c) of the above Regulations empowers the Commission to revise the design energy upwards in case

the total energy generated by a hydro generating Station is more than the design energy for atleast ten years during the operation of a hydro plant after CoD under long term PPA with a DISCOM but the Commission did not exercise such power as the intention of the Commission was simply to get the design energy of the Project studied in detail so that the DoE is in a position to take a considered view for the revision of design energy, if the data is found convincing. The decision to revise the design energy was to be made only by the DoE on the basis of the recommendations of the committee. Therefore, the Commission is empowered to order re-assessment of the design energy in exercise of the powers vested in it under Regulation 42 (7) (c) of the Hydro Generation Tariff Regulations, 2024.

29. The Applicant has also contended that the GoI vide Notification No. SO 550(E) dated 18.04.2006, modified vide Notification No. SO 490(E) dated 28.01.2014 has enhanced the estimated expenditure from Rs. 500/- Crore to Rs. 1,000/- Crore under Section 8 of the Act. As such, the mandate lies on the CEA for fixing/ revision of the design energy. Further, the design energy of the Project was initially approved by the CEA as part of TEC way back on 29.04.1994 and thus, it is the CEA which has the mandate to revise the design energy, if any. Further, the construction cost of the Project was Rs. 1600 Crore, thus, it

is the CEA which only has the mandate to revise/ review the design energy.

30. Incidentally, the DoE, Himachal Power Engineers Association (HPEA) and the HPSEBL have submitted in one voice that though there is need for the revision of design energy but said authority is vested with the CEA as per Section 8 of the Act. The project cost is said to be Rs. 1600 Crore. The DoE has also placed on record Notification No. SO 490(E) dated 28.01.2014, which has also been relied upon by the Applicant, whereby the ceiling has been enhanced to Rs. 1000 Crore from Rs. 500 Crore based on which, the DoE has submitted that is not possible for it to interfere with the mandate of the CEA and it would be appropriate that the reassessment of hydrology and design energy is carried out by the CEA.

31. It is clear from the data of energy assessment submitted to the HPSEBL and reflected in Table 23 of Order dated 12.06.2024 in Petition No. 27 that the generation is consistently higher than the design energy which is certainly on the basis of wrong assessment of the design energy when the Detailed Project Report (DPR) was prepared. Though the Ld. Counsel for the Applicant has submitted that the tariff is being drawn as per the Power Purchase Agreement (PPA) for the useful life of the project but at the time, the consumers of the State

cannot be made captive to pay excess charges on the basis of wrong assessment of the design energy.

32. On careful analysis of the Notification No. SO 490(E) dated 28.01.2014 and taking into consideration the submissions of the Applicant, it is clear that the Project cost is more than Rs. 1,000/- Crore. The HPSEBL, DoE and HPEA have submitted that the CEA only has the mandate to carry out the revision in design energy. Therefore, there appears to be merits in the submissions of the Applicant.

33. Undisputedly, the initial Design Energy and hydrology of the Project was fixed by the CEA, in exercise of the statutory functions vested under Section 8 of the Act. As evident from the data given in Table No. 23 in para 4.58 of the order dated 12.06.2024, the generation is consistently excess than the design energy ever since CoD except for initial three years. The Cost of the Project is Rs. 1600 Crore. The Design Energy had been fixed by the CEA, as such, the CEA is competent to revise the Design Energy based on the hydrological data and the energy generated over and above the design energy by the Project. Therefore, the Commission on careful consideration of the matter is of the considered view that the hydrology and design energy are reassessed by the CEA instead of the DoE. Otherwise also, it is settled law that the authority which has the power to grant has also the power to revise the same. It would, therefore, be appropriate for the

Commission to direct the CEA, to reassess the hydrology and Design Energy of the Project based on the data of actual generation ever since the CoD. Thus, it is prudent to revise para 4.59 of the order dated 12.06.2024 as under:-

“4.59 From the above Table, it has been quite evident that the Baspa HEP has generated more energy than the design energy for the seventeen (17) years out of the last twenty (20) years. Also, it can be seen that the lesser energy generation to that of the design energy was only for the initial three years of the operation of the Plant. From the year 2006-07 onwards, there has not been even a single year when the actual generation has been less than the design energy. This clearly shows that hydrological series computed for generation of energy needs review. The Applicant has not disputed the energy generation as contained in Table No. 23, as discussed above. The Project cost is about Rs. 1600 Crore, as evident from the Representation. The TEC has been accorded by the CEA, therefore, the Commission is of the firm view that the design energy of the Plant needs to be studied by the CEA based on the latest details/data available. Therefore, the Commission hereby directs the CEA to constitute a Committee of experts familiar with the subject matter (hydrology and hydropower) for the purpose which shall analyse the hydrological data and based on such analysis, compute the design energy generation from the Project. This Committee shall submit its report, within three months from today i.e. 01.04.2025 to the CEA with a copy to the Commission. The CEA based on the recommendations in report of the said Committee shall review the design energy of the Baspa-II HEP taking into consideration the Energy Generation (based on monthly billing to the HPSEBL) as contained in Para 4.58 of the order dated 12.06.2024 in Petition No. 27 of 2024. A copy of the order dated 12.06.2024 be sent to the CEA alongwith the reference. The CEA is further

directed to submit the report to the Commission within a period of three months.”

34. A copy of the order be sent to the CEA for compliance.
35. The Directorate of Energy (DoE), GoHP is directed to send complete record to the CEA alongwith primary and secondary energy generation and year wise rates for the same, within 15 days from the date of issuance of this order. Any other data requested by the CEA be also made available to them on priority.
36. The representation is accordingly disposed off.
37. A copy of this order be placed above the order dated 12.06.2024 in Petition No. 27 of 2024 for ready reference.
38. Pending applications, if any, are also disposed off.
39. Let a copy of this order be supplied to the parties.

The file after needful be tagged to Petition No. 27 of 2024.

Announced

01.04.2025

-Sd-

(Shashi Kant Joshi)
Member

-Sd-

(Yashwant Singh Chogal)
Member(Law)

-Sd-

(Devendra Kumar Sharma)
Chairman