BEFORE THE HIMACHAL PRADESH ELECTRICITY REGULATORY COMMISSION, SHIMLA

Review Petition No. 83/2009

In the Matter of:

Application under section 94(1)(f) of the Electricity Act, 2003 read with Regulation 63 of HPERC (Conduct of Business) Regulations, 2005 seeking review of the Order dated 30.03.2009 on determination of tariff for sale of power from Baspa II, 300 MW Hydro Power Plant located on River Baspa (tributary of River Satluj), District Kinnaur (H.P.) to Himachal Pradesh State Electricity Board for MYT Control Period (FY09-FY11) in Petition No. 256/2007.

AND

In the Matter of:

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

V/s

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

Order Passed on September 10, 2009

CORAM

Sh. Yogesh Khanna, Chairman

Counsels

for the applicant	Sh. Pawan Upadhayay, Advocate
for the respondent	Sh. Bimal Gupta, Advocate

A1: BACKGROUND

Purpose of the order

1.1 Jaiprakash Hydro Power Limited (hereinafter referred to as the "Petitioner" or "Applicant" or "JHPL"), JUIT Complex, Waknaghat, P.O. Dumehar Bani, Kandaghat – 173215, Distt. Solan, H.P. is a "generating company" falling within the definition given in section 2 (28) of the Electricity Act, 2003 (hereinafter referred to as the "Act"). The applicant has filed review application with the Himachal Pradesh Electricity Regulatory Commission (hereinafter referred to as the "Commission") under Section 94(1)(f) of the Act read with Regulation 63 of HPERC (Conduct of Business) Regulations, 2005 seeking review of the Commission's order dated March 30, 2009 (hereinafter also referred to as "the Tariff Order") on determination of the Tariffs for 300 MW Baspa II Hydro Power Plant (hereinafter referred to as "the Project" or "Baspa II") in Petition No. 256/2007.

1.2 Considering the contents of the application and the prayers made therein, the Commission decided to hear the applicant before taking a view on their maintainability. The Commission has also considered subsequent responses, to the review application, filed by HPSEB vide MA No. 117/09 and MA no. 139/09.

Power to Review

1.3 The Commission's powers to review its own orders flow from section 94(1)(f) of the Electricity Act, 2003 and are the same as those conferred on a civil court by the Code of Civil Procedure (CPC). These have been spelt out in section 114 read with Order 47 of the CPC. The review application has to necessarily meet the requirements of section 114 and Order 47 of the CPC.

1.4 As per the said provisions, the specific grounds on which an order already passed can be reviewed are: -

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

(b) on discovery of new and important matter or evidence which, after due diligence was not within knowledge or could not be produced at the time of making the order, or

(c) if there exist other sufficient reasons.

1.5 The power of review, legally speaking, is permissible where some mistake or error apparent on the face of record is found and the error apparent on record must be such an error which may strike one on a mere looking at the record and would not require any long drawn process of reasoning. 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.

1.6 It may be pointed out here that Hon'ble Supreme Court and various High Courts have held that review jurisdiction is not a substitute for an appeal and cannot be exercised for reconsideration of issues already decided by a Court in its original order. The error and mistake for correction in review proceeding should be apparent on the face of the record and the same should be self evident.

1.7 As regard the third ground of review under Order 47 of the CPC namely "for any other sufficient reason", there need to be new grounds other than those considered in the original order of the Commission dated 30-3-2009. It is a well settled principle that the expression "any other sufficient reason" will have a meaning analogous to grounds specified immediately before. This provision of Order 47 of CPC cannot be used to nullify the specific requirements stipulated in the earlier portions of the same provision.

1.8 Given this unambiguous position of law as spelt out above it has to be now seen whether the arguments in the review application under consideration meets these requirements for maintainability for review of the Tariff Order.

A2: COMMISSION'S OBSERVATIONS ON VARIOUS ISSUES RAISED IN THE REVIEW PETITION FILED BY JHPL

Interest on Loans for Period FY04-FY08

IDBI Loan and IFCI Debentures

2.1 JHPL has submitted that the loan drawls approved by the Commission in para 4.18 4.37 and 4.54 of the Tariff Order, would need certain corrections because the actual drawal of Rs.74 Cr from IDBI has been taken as Rs.84.96 Cr and the actual amount of Rs.150 Cr of IFCI has been taken as Rs.136.22 Cr. JHPL has, therefore, prayed that the Commission may approve the actual draw down.

2.2 In the MYT Order, the Commission has considered the loan amount as approved by it in its previous tariff orders.

2.3 The Commission in its tariff order dated February 24, 2007, had approved loan amount against IDBI at Rs 84.96 Cr and Rs 136.22 Cr towards IFCI debentures. JHPL in its review petition against the order dated February 24, 2007 had raised the same issue. The Commission in its order dated February 7, 2008, on review petition, had rejected the JHPL plea on this account. Since JHPL has not challenged the Commission's order and therefore this is a settled issue and has achieved finality.

ICICI Bank Loan

2.4 JHPL has submitted that the Commission in its Tariff Order has considered revised rate of interest rate of 12.5% w.e.f. September 15, 2003 as against actual date of September 25, 2003. It has also submitted that the Commission has erroneously considered annual repayment of Rs 13.64 Cr against actual annual repayment of Rs 12.5 Cr.

2.5 The Commission in its Tariff Order had considered interest rate on ICICI Bank @ 12.5% per annum w.e.f September 15, 2003 instead of September 25, 2003. JHPL had changed the effective date of revised interest rate from September 15, 2003 to September 25, 2003 in its last submission on March 16, 2009.The Commission has corrected it in this review order.

2.6 The Commission, in its Tariff Order, had calculated the repayment schedule of ICICI Bank loan based on the bank's letter dated November 7, 2003, in which the bank had mentioned that loan will be repaid in 44 installments (4 per annum). It had assumed these installments to be equal installments and calculated annual repayment as 13.64 Cr (150/11). The revised repayment schedule approved by ICICI Bank does not have 44 equal instalments. It has first 39 equal installments of Rs 3.125 Cr (12.5 Cr in a year) and remaining 5 installments of Rs 5.625 Cr. each. The Commission has corrected the annual principal repayment amount based on the above and has considered Rs 12.5 Cr as annual repayment against ICICI Bank loan.

2.7 Due to the above corrections, the revised loan repayment / principal amount and interest expense for ICICI Bank loan is shown below:

Table 1: Revised Loan Details for ICICI Bank

Particulars	
Sanctioned amount as per loan document	Rs 150.00 Cr
Loan amount drawn by the Petitioner	Rs 150.00 Cr
Loan amount considered by Commission for tariff determination	Rs 150.00 Cr
Original loan repayment installments/ No of Years	40/10
Revised loan repayment installments/ No of Years	44/11
Yearly Installments	4
Principal Installment Payment dates	15 July, 15 Aug, 15 Sep, 15 Oct
Principal Repayment Started from	15 July 2005
Applicable Interest Rate	17.64% p.a. upto 24.09.2003
Revised Interest Rate	12.50% p.a. w.e.f 25.09.2003
Revised Interest Rate	10.50% p.a. w.e.f 01.01.2004
Revised Interest Rate	8.50% p.a. w.e.f 15.06.2005
Revised Interest Rate	13.15% p.a. w.e.f 15.06.2008
Interest Payment Schedule	Monthly

Table 2: Interest Expense / Repayment Schedule Approved in Tariff Order for ICICI Bank Loan

Loan	Interest Expense / Repayment Schedule Approved in Tariff Order				
	FY04	FY05	FY06	FY07	FY08
Opening Balance	150.00	150.00	150.00	136.36	122.73
Addition	0.00	0.00	0.00	0.00	0.00
Principal Repayment	0.00	0.00	13.64	13.64	13.64
Closing Balance	150.00	150.00	136.36	122.73	109.09
Interest Payment	21.52	15.75	12.43	10.91	9.75

Table 3: Interest Expense / Repayment Schedule Now Approved for ICICI Bank Loan (Rs Cr)

Loan	Interest Expense/Repayment Schedule Now Approved				
	FY04	FY05	FY06	FY07	FY08
Opening Balance	150.00	150.00	150.00	137.50	125.00
Addition	0.00	0.00	0.00	0.00	0.00
Principal Repayment	0.00	0.00	12.50	12.50	12..50
Closing Balance	150.00	150.00	137.50	125.00	112.50
Interest Payment	21.73	15.75	12.49	11.07	10.00

LIC Loan

2.8 JHPL has submitted that the Commission has erroneously considered annual repayment of Rs 1.36 Cr as against actual annual repayment of Rs 1.25 Cr.

2.9 The Commission, in its Tariff Order, had calculated the repayment schedule of LIC Bank loan based on the LIC's letter dated June 14, 2003, in which LIC had mentioned that loan will be repaid in 44 installments (4 per annum). It had assumed these installments to be equal installments and calculated annual repayment as 1.36 Cr

(15/11). The revised repayment schedule approved by LIC does not have equal 44 installments. It has first 39 equal installments of Rs 0.3125 Cr (1.25 Cr in a year) and remaining 5 installments of Rs 0.5625 Cr. The Commission has corrected the annual principal repayment amount based on the above and has considered Rs 1.25 Cr as annual repayment against LIC loan.

2.10 Due to the above correction, the revised loan repayment / principal amount and interest expense for LIC is shown below:

Table 4: Interest Expense / Repayment Schedule Approved in Tariff Order for LIC Loan (Rs Cr)

Loan	Interest Expense / Repayment Schedule Approved in Tariff Order				
	FY04	FY05	FY06	FY07	FY08
Opening Balance	15.00	15.00	15.00	13.64	12.27
Addition	0.00	0.00	0.00	0.00	0.00
Principal Repayment	0.00	0.00	1.36	1.36	1.36
Closing Balance	15.00	15.00	13.64	12.27	10.91
Interest Payment	2.35	1.58	1.49	1.35	1.20

Table 5: Interest Expense / Repayment Schedule Now Approved for LIC Loan (Rs Cr)

Loan	Interest Expense/Repayment Schedule Now Approved				
	FY04	FY05	FY06	FY07	FY08
Opening Balance	15.00	15.00	15.00	13.75	12.50
Addition	0.00	0.00	0.00	0.00	0.00
Principal Repayment	0.00	0.00	1.25	1.25	1.25
Closing Balance	15.00	15.00	13.75	12.50	11.25
Interest Payment	2.35	1.58	1.50	1.37	1.24

Depreciation and Advance Against Depreciation

2.11 JHPL has submitted that the Commission in its Tariff Order dated February 24, 2007 had provided depreciation @ 4.3%. The Commission had also allowed Advance Against Depreciation (AAD) in excess of 4.3% depreciation towards the annual loan repaid subject to maximum limit of 1/12 of the approved financial package as per the PPA. However, the Commission in its Tariff Order dated March 30, 2009 calculated AAD considering the cumulative impact of the depreciation, thereby deviating from the calculations contained in the previous tariff order dated February 24, 2007.

2.12 During the public hearing, it was argued by counsel of JHPL that the depreciation, unlike Advance Against Depreciation, is to be allowed notwithstanding whether there is any liability to pay the loan or not.

2.13 ‘Depreciation’ has been defined by The Institute of Chartered Accountants of India, The Institute of Company Secretaries of India, the Accounting Principles Board of USA, as under:

The Institute of Chartered Accountants of India in Accounting Standards AS-6 has defined it as “as measure of the wearing out, consumption or other loss of value of a depreciable asset arising from use, effluxion of time or obsolescence through technology and market changes. Depreciation is allocated so as to charge a fair proportion of depreciable amount in each accounting period during the expected useful life of the asset.”

The Institute of Company Secretaries of India has defined as “As the asset is used for business purpose, the annual loss in the value of the asset is like any other expense hence the cost of asset should be treated as a loss spreading over its life. Thus, depreciation is a process of allocating the cost of fixed assets over its estimated useful life in a rational and systematic manner.”

The Accounting Principles Board of USA has defined as “The cost of a productive facility is one of the costs of the service it renders during its useful economic life. Generally accepted accounting principles require that this cost be spread over the expected useful life of the facility in such a way as to allocate it as equitably as possible to the periods during which services are obtained from the use of the facility. This procedure is known as depreciation accounting, a system of accounting which aims to distribute the cost or other basic value of tangible capital assets, less salvage (if any), over the estimate useful life of the unit (which may be a group of assets) in a systematic an rational manner.”

2.14 The Counsel for JHPL further submitted that in a recent judgement dated 16.3.09, the Appellate Tribunal in Appeals No 133/08, 135/08, 136/08 and 148/08 of NTPC Ltd. Vs. CERC and others, have observed as under:

“(a) The depreciation has to be considered as a mere expense, it would not be considered to be an item allowed for repayment of loan.

(a) The depreciation includes depletion of resources during the process of use. In other words, depreciation is ordinarily not a source of funds under commercial accounting.

(b) There is a difference between the concept of depreciation and the concept of advance against depreciation. In the case of advance against deprecation, loan repayment may be one of the factors, but in the case of rate of depreciation, repayment of loan is not the relevant factor.”

2.15 The Counsel drew attention to Article 8.6.5.1 of the PPA dealing with depreciation and advance against depreciation, which provides as under:

“8.6.5.1 – During the period when the debt is outstanding as per the approved financial package, the payment on this account will be equal to the amount of principal required to be paid in the relevant tariff period/tariff year subject to the condition that the amount payable for a full tariff year shall not be more than an amount equal to 1/12th (one twelfth) of the loan component of the capital cost as per the approved financial package. Out of the amount as paid on account of depreciation/advance against depreciation for debt redemption period, an amount worked out @ 4.3% of the capital

cost for each such full period of 12 months, shall be treated as the payments made on account of depreciation and the balance amount shall be treated as advance against depreciation. After the expiry of the debt redemption period, the total amount already paid/payable by the board to the company on account of advance against depreciation shall be adjusted against he depreciation payable by the board for the future period at a per annum rate of 4.3% of the capital cost. No further payments on account of depreciation shall be made by the board to the company after the debt redemption period until the entire amount of advance against depreciation is fully adjusted against the amount that would have otherwise been payable by the board on this account i.e. at a part and rate of 4.3% of the capital cost. After the full adjustment of the advance against depreciation, further payments on account of depreciation shall be made at an annual rate of 4.3% of the capital cost as per the Financial package, subject to the condition that the total payment on account of depreciation shall not exceed 90% of the capital cost as per the approved financial package. For the purpose of computing the capital cost, the capital cost shall be reduced the value of leased assets as from the scheduled date of commercial operation of the unit(s)/project as per the approved financial package. The amount of depreciation/advance against depreciation, for a part of the year shall be worked out, if necessary, on pro rata basis."

2.16 In terms of the above article the debt repayment which will be considered for the purposes of the tariff has been provided as 1/12th of the loan amount for every full tariff year. The Article provides that the depreciation will be worked out @ 4.3% of the capital cost for each such full period of 12 months and after accounting for the above the amount required to discharge the debt based on the above 1/12th repayment shall be met through advance against deprecation. Once the entire debt is paid then no amount shall be allowed towards depreciation till such time the entire amount of advance against depreciation is fully adjusted against the amount that would be otherwise been payable by the Board @ 4.3% p.a. of the capital cost and after such adjustment depreciation shall be allowed at the annual rate of 4.3% p.a. of the capital cost subject to the total depreciation not to exceed 90% of the capital cost.

2.17 The Counsel for the petitioner further submitted that in accordance with the above the following conclusions emerge:

(a) The depreciation and advance against depreciation and for that matter all components of the tariff are to be determined for the tariff period or for the tariff year, as the case may be.

(b) Both the terms tariff period and tariff year are defined terms. The tariff period refers to the period from the date of the commercial operation till the close for the financial year in which the commercial operation takes place. The tariff year refers to the fixed 12 month period namely the financial year beginning April 1 to March 31.

(c) The admissible depreciation is 4.3% every year irrespective of whether the debt repayment is less or more than the amount equal to the said 4.3%.

(d) The opening part of Article 8.6.5 provides for the calculation of the depreciation and advance against deprecation with reference to each tariff year and not on a cumulative basis.

(e) If in any particular year the generating company has paid to the lenders namely, the debt repayment, of an amount which is less than the amount determined as depreciation at 4.3% and such amount is sufficient to meet the debt repayment of the year, there shall be no advance against deprecation. It will not be appropriate in such cases to deny the quantum of depreciation available at 4.3% on the ground that the loan repayment required to be made is less than the depreciation allowed at 4.3%. If the loan repayment is more than what is available as deprecation at 4.3%, the generating company becomes entitled to advance against deprecation for the remaining amount .

(f) Depreciation is allowed even when there is no debt repayment. This is also clear from the later part of article 8.6.5.1 when it speaks about continuation of the depreciation at 4.3% even after the full redemption of the debt. The depreciation is towards recovering of the value of the assets employed in the business. In this regard the following decisions of the Supreme Court and the Appellate Tribunal for Electricity were quoted.

(i) Judgment 15.02.2007 in Appeal (Civil) 2733 of 2006 - Delhi Electricity Regulatory Commission v. BSES Yamuna Power Limited and others (2007) 3 SCC 33

(ii) Judgement dated 13-6-2007 passed by the Appellate Tribunal in Appeals No.139 – 142, 144, 151, 152, 153, 154, 155, 156, 207, 216-218, 239 and 240 of 2006 10, 11 and 23 of 2007 in the matter of NTPC Ltd. V/s CERC and others;

(iii) Judgement dated 16-3-2009 passed by the Appellate Tribunal in Appeals No.133, 135/08, 136/08 and 148/08 of 2008, in the matter of NTPC Ltd. V/s CERC and others;

(g) Depreciation cannot be equated towards loan repayment. It should be held admissible at all times at the rate of 4.3% per annum, namely for every tariff year, unless specifically provided otherwise in the agreement.

(h) In terms of the power purchase agreement entered into between the parties the only specific provision that the depreciation may not be provided at 4.3% of the capital cost in any particular year is in relation to the period after the debt redemption. Article 8.6.5.1 provides that after the debt redemption, the quantum of advance against depreciation provided for debt redemption in the past shall be liable to be adjusted at the rate of 4.3% namely equal to the depreciation admissible, before any further depreciation is allowed.

(i) Under the above provisions there is no adjustment whatsoever provided for considering the depreciation and advance against depreciation on the cumulative basis during the existence of the debt and adjusting the advance against depreciation against the depreciation amount allowable at the rate of 4.3% on the ground that in one of the years the total repayment of the debt was less than the depreciation amount allowed at 4.3%.

(j) The very concept of considering Depreciation/AAD and the adjustment of loan repayment on a cumulative basis is contrary to the basis of tariff calculation provided under the Power Purchase Agreement. There is no provision in the power purchase agreement which supports the components of the tariff being considered on cumulative basis.

2.18 The Counsel further reiterated that JHPL had entered into the Power Purchase Agreement on the basis of the terms and conditions contained in the said Agreement and had invested in the project based on the above. At this stage the terms and conditions cannot be changed adverse to the interest of JHPL. Reference was also invited to letter No.45/2/2006-R&R dated 15th February, 2008 issued by Ministry of Power, clarifying the provisions of the Tariff Policy would not alter the legal enforceability of the already concluded contracts unless until it is mutually altered on agreeable terms and conditions.

2.19 It is also a settled principle that while undertaking the truing up exercise that Commission cannot change the methodology adopted in the tariff order whereunder the tariff was determined. In a true- up exercise the Commission can only adjust the financials, which were earlier considered on estimate or projection basis to actual. No new methodology can be applied deviating from the methodology earlier adopted. The scope of the true up exercise is therefore limited. In this regard reference was made to the following judgements of the Hon'ble Appellate Tribunal.

(a) Judgement dated 4-12-2007 passed by the Appellate Tribunal in Appeal No.100 of 2007, in the matter of Karnataka Power Trans mission Corporation Limited V/s Karnataka Electricity Regulatory Commission & Others;

(b) Judgement dated 23-5-2007 passed by the Appellate Tribunal in Appeal No.265 of 2006, in the matter of North Delhi Power Limited V/s Delhi Electricity Regulatory Commission & Others.

(c) Judgement dated 9-5-2008 passed by the Appellate Tribunal in Appeal No.9 of 2008, in the matter of Karnataka Power transmission Corporation Limited V/s Karnataka Electricity Regulatory Commission & Others.

2.20 The counsel for the Board pleaded that issues raised by the petitioner do not come under the purview of review and that the remedy for any relief lies with the appropriate appellate authorities and not with the Commission.

2.21 At the outset the Commission accepts that it did change the methodology of calculating the AAD during the true-ing up of the tariff order dated February 24, 2007. Also an important facet at play here is the fact that the original order issued by the Commission (338 of 2007) and Review No.75 and 94 of 2007 have already attained finality in view of the judgement in Appeal No.120 of 2008 by the Appellate Tribunal, upholding methodologies utilised therein. A change of methodology, if approved in case this petition is rejected, would also not be on all fours with that facet and would militate against that judgement.

2.22 Simultaneously, the standard objections laid out against confusion between power of review and appellate power would be considerably mitigated by the fact that in this petition we are setting out to convert from the calculus of a cumulative matrix to an annualised calculus which falls in the jurisdiction of arithmetical correction amenable to review.

2.23 It may also not be incorrect to state that this decision would not, in the ultimate analysis, fiscally impact the Board, as the overall amount being devolved is the same and cannot exceed the parameters of the original tariff order in any case in terms of the PPA. MYT Regulations providing for a specific calculus cannot override the PPA parameters as the Commission has always held that, in the final analysis, the PPA conditions are the final arbiter of Tariff structures dealing with this case and if they do come in the way they should be relaxed looking to the overall sanctity of the PPA components.

2.24 In view of the above the Commission has decided to review the depreciation and advance against depreciation admissible during the relevant years 2003-2008 considering them on annual basis instead of cumulative basis during the said years. Accordingly, the depreciation and AAD are again computed as per the methodology adopted in the original order dated February 24, 2007, however, subject to, the annual loan repayments.

2.25 The revised depreciation and AAD approved for FY04 - FY08 is shown below:

Table 6: Depreciation / AAD approved in Tariff Order for FY04 - FY08 (Rs Cr)

Particulars		Depreciation / AAD Approved in Tariff Order				
		FY04	FY05	FY06	FY07	FY08
1/12th of the Loan(s)	A	89.48	89.48	89.48	89.48	89.48
Repayment of the Loan(s) as considered for working out Interest on Loan	B	12.07	16.13	84.35	84.77	82.88
Minimum of the Above	C	12.07	16.13	84.35	84.77	82.88
Less: Depreciation during the year	D	**55.21**	**65.96**	**65.96**	**65.96**	**65.96**
A	E=C-D	0.00	0.00	18.39	18.81	16.92
Cumulative Repayment of the Loan(s) as considered for working out Interest on Loan	F	12.07	28.20	112.55	197.32	280.20
Less: Cumulative Depreciation	G	55.21	121.17	187.13	253.09	319.05
B	H=F-G	0.00	0.00	0.00	0.00	0.00
Advance Against Depreciation (min (A, B)/ zero if negative)	A	**0.00**	**0.00**	**0.00**	**0.00**	**0.00**
Depreciation + AAD		**55.21**	**65.96**	**65.96**	**65.96**	**65.96**

Table 7: Depreciation / AAD Now Approved for FY04 - FY08 (Rs Cr)

Particulars		Depreciation/AAD Now Approved				
		FY04	FY05	FY06	FY07	FY08

Particulars		Depreciation/AAD Now Approved				
		FY04	FY05	FY06	FY07	FY08
1/12th of the Loan(s)	A	89.48	89.48	89.48	89.48	89.48
Repayment of the Loan(s) as considered for working out Interest on Loan	B	12.07	16.13	83.10	83.52	81.63
Minimum of the Above	C	12.07	16.13	83.10	83.52	81.63
Less: Depreciation during the year	D	55.21	65.96	65.96	65.96	65.96
Advance Against Depreciation (C-D/ zero if negative)		0.00	0.00	17.14	17.56	15.67
Depreciation + AAD		**55.21**	**65.96**	**83.10**	**83.52**	**81.63**

Incentive on Secondary Energy

2.26 JHPL has submitted that the Commission in its Tariff Order dated March 30, 2009 had accorded zero secondary energy and zero incentive for generation of secondary energy for the FY08 against actual secondary energy of 71.2 MU.

2.27 The Commission agrees that a computational error was made. The Commission now approves secondary energy of 71.2 MU for FY08 and Rs 21.14 Cr towards incentive on secondary energy in FY08.

Tax on Income and Minimum Alternate Tax (MAT)

2.28 JHPL has submitted that the Commission in its Tariff Order dated February 24, 2007 had allowed MAT at actuals in accordance with article 20.21- change in law – of the PPA. However in its Tariff Order dated March 30, 2009, the Commission has erroneously computed MAT as per income tax as per article 8.11.1 of the PPA, which provides for payment of tax on income.

2.29 The Commission in its order on review petition dated February 7, 2008 had said that

*"**3.8.2 Commission's View***

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

2.30 The Commission in its MYT Order dated March 30, 2009 has clearly written that

"*3.65 According to the tax on income provision of the PPA as reproduced above, the computation of income for determining the tax liability for the Board is clearly defined and consists of*

(a) Return on Equity not exceeding 16%

(b) Depreciation/ Advance depreciation, and

(c) 50% of income on incentives earned on higher plant availability and secondary energy

3.66 The income for the company so determined is considered for calculation of the tax liability of the Board on income tax rates as per the Income Tax Act of 1961. As MAT benefit is available to the Applicant, the Board's tax liability is computed at the applicable MAT rate.

3.67 The income for computing the tax liability has to be as per the methodology specified in the PPA and there can be no additional tax liability on the Board on account of FBT. Hence, complete tax liability due to FBT shall be on account of the Applicant and the tax liability for the Board shall be strictly computed based on the relevant provisions of the PPA."

2.31 The Commission is of the opinion that MAT is allowable as pass through in tariff in manner and to the extent the Corporate Income Tax is to be allowed. The MAT is in the nature of Income Tax. The Supreme Court in Malayala Manorama Company Limited V/s CIT (2008) 12 SSC ***612*****, at page 613** has held as follows:

"4. It may be pertinent to mention that the book profit tax was abandoned with effect from AY 1990-1991 by the Finance Act, 1990. It was reintroduced with a new name *"Minimum Alternate Tax" with effect from AY 1997-1998 under Section 115-JA.***……………..**

6. *A new Chapter XII-B containing Section 115-J was inserted by the Finance Act, 1987 with effect from 1-4-1988. This new section made provisions for levy of minimum tax on book profits of certain companies. The scope and effect of these provisions havebeen elaborated in the following portion of Departmental Circular No. 495 dated 22-9-1987: "New provisions to levy minimum tax on 'book profit' of certain companies:*
36.1. It is an accepted canon of taxation to levy tax on the basis of ability to pay. However, as a result of various tax concessions and incentives, certain companies making huge profits and also declaring substantial dividends, have been managing their affairs in such a way as to avoid payment of income tax.
36.2. Accordingly, as a measure of equity, Section 115-J has been introduced by the Finance Act. By virtue of the new provisions, in the case of a company whose total income as computed under the provisions of the Income Tax Act is less than 30% of the book profit computed under the section, the total income chargeable to tax will be 30% of the book profit as computed. For the purposes of Section 115-J, book profits will be the net profit as shown in the profit and loss account prepared in accordance with the

provisions of Schedule VI to the Companies Act, 1956, after certain adjustments. The net profit as above will be increased by income tax paid or payable or the provisions thereof, amount carried to any reserve, provision made for liabilities other than ascertained liabilities, provision for losses of subsidiary companies, etc. if the amounts are debited to the profit and loss account. Liabilities relating to expenditure which has been incurred or which have accrued in respect of expenses which are otherwise deductible in computing income will not be added back. The amount so arrived at is to be reduced by:

(i) amounts withdrawn from reserves, if any such amount is credited to the profit and loss account;

(ii) the amount of income to which any of the provisions of Chapter III applies, if any such amount is credited to the profit and loss account; and

(iii) the amount of any brought forward losses or unabsorbed depreciation whichever is less as computed under the provisions of Section 205(1)(b) of the Companies Act, 1956, for the purposes of declaration of dividends. Section 205 of the Companies Act requires every company desirous of declaring dividend to provide for depreciation for the relevant accounting year. Further, the company is required under Section 205 to set off against the profit of the relevant accounting year, the depreciation debited to the profit and loss account of any earlier year(s) or loss whichever is less.

36.3. Section 115-J, therefore, involves two processes. Firstly, an assessing authority has to determine the income of the company under the provisions of the Income Tax Act. Secondly, the book profit is to be worked out in accordance with the Explanation to Section 115-J(1) and it is to be seen whether the income determined under the first process is less than 30 per cent of the book profit. Section 115-J would be invoked if the income determined under the first process is less than 30 per cent of the book profit."

7. The whole purpose of Section 115-J was to tax a company which had no taxable income, but showed a book profit. For instance, a company which adopted the method of straight-line depreciation [as it is entitled to do under the Companies Act, 1956 (hereinafter referred to as "the 1956 Act")], or a company which had not debited to its profit and loss account, the capital expenditure on scientific research and development which is fully deductible under Section 35 of the 1961 Act would be assessed to tax under this section."

2.32 Since MAT is in the nature of tax on income, it has to be allowed in tariff, subject to limitation/guidelines provided in PPA.

2.33 From the above, it is clear that the Board is liable to pay income tax at the applicable income tax rate only for the above mentioned parameters and the Commission has not made any mistake. The Commission rejects the applicant's contention on this point.

2.34 The Commission also observes that it has allowed income tax as Rs 5.52 Cr for FY05 against the actual tax payment of Rs 4.39 Cr made by the JHPL.

2.35 The provision of the PPA dealing with Tax on Income is reproduced below:

"8.11 TAX ON INCOME

Tax on income in accordance with explanation given below will be payable as an expense to the company. If any advance tax shall be payable by the Company in any month based on income relating to the Project, the Company shall submit *a tax bill to the Board at least 40 days prior to the required date of payment of such tax/ advance tax by the Company reflecting the detailed calculations for such tax/ advance tax. Each bill for tax/ advance tax shall be supported by a certificate of the Auditors of the Company. The Board shall pay to the Company an amount equal to the amount of such tax/ advance tax after 30 days from receipt of such bills or ten days prior to the last date of payment by the Company, whichever is later. After the tax assessment is completed for any tariff year/ tariff period the excess/ shortfall so determined will be reflected in the regular monthly bill for Billing Month in which such assessment is completed.*

Explanation:-

Income Tax payable by the Board shall be determined by considering the income to the company on account of ROE (not exceeding 16%), depreciation/ advance depreciation as applicable, and 50% of income on account of incentives as per Section 8.9 and 8.10, in respect of the project as per the Income Tax Law. Rebate on account of depreciation and any other rebate/ exemption admissible under law shall be considered for purpose of calculation of tax liability of the Board.

Under no circumstances tax liability payable by the Board shall be more than the income tax actually payable by the Company.

No Income tax shall be payable by the Board on any other income accrued to the Company.

The Company shall maintain separate record in respect of income tax liability of the Board. These shall be reconciled with the Board annually."

2.36 The Commission has erroneously allowed tax of Rs. 5.52 crores on income which is more than the actual tax paid by the JHPL. The Commission corrects this error and now approves Rs 4.39 Cr as income tax for FY05. Since the Commission, in this review order, has revised the depreciation and advance against depreciation for FY04-FY08, which has resulted in increase in depreciation/AAD for FY06, FY07 & FY08, therefore, the tax allowed by the Commission for the FY06, FY07 and FY08 would also increase. The income tax approved in the Tariff Order dated March 30, 2009 and now approved in this order for FY04-FY08 is shown below:

Table 8: Income Tax for the Period FY04 to FY08 (Rs Cr)

Particulars	Approved in Tariff Order					Now Approved				
	FY04	FY05	FY06	FY07	FY08	FY04	FY05	FY06	FY07	FY08
Income Tax	4.21	5.52	5.92	9.09	7.97	4.21	4.39	7.36	11.06	10.95

Amortization of cost of debt restructuring

2.37 JHPL had submitted that for prepayment of IFCI loan of Rs 150.00 Cr, it has paid a prepayment premium of Rs 23.78 Cr to the bank and the Commission in its Tariff Order dated March 30, 2009 has erroneously allowed only Rs 21.60 Cr towards this.

2.38 The Commission has approved only Rs 136.22 Cr on IFCI loan against the loan of Rs 150 Cr taken by the JHPL. As the loan amount approved is lower than actual loan, the Commission has reduced the prepayment premium of Rs 23.78 Cr in proportion and has allowed only Rs 21.60 Cr towards this. The Commission has not made any mistake and rejects the applicant's contention on this point.

2.39 JHPL had submitted that it has paid an upfront fee @1% (Rs 2.00 Cr) of the sanctioned amount of NCDs of Rs 200.00 Cr of UTI bank and the Commission in its Tariff Order dated March 30, 2009 has erroneously allowed only Rs 1.36 Cr towards this.

2.40 The Commission has approved only Rs 136.22 Cr of the UTI NCD against the total Rs 200 Cr UTI NCD taken by the JHPL. As the loan amount approved is lower than actual loan, the Commission has reduced the upfront of Rs 2.00 Cr in proportion and has allowed only Rs 1.36 Cr towards this. The Commission has not made any mistake and rejects the applicant's contention on this point.

Interest on Working Capital

2.41 JHPL has submitted that its normative working capital requirement will change due to the correction in above mentioned errors and therefore prayed to the Commission to allow Interest on Working Capital based on the revised normative working capital requirement.

2.42 The Commission accepts the appellant's contention on this point and has reworked the working capital requirement based on the revised numbers and approves the same as under:

Table 9: Interest on Working Capital approved in Tariff Order for FY04 - FY08 (Rs Cr)

Particulars	Interest on working capital approved in Tariff Order				
	FY04	FY05	FY06	FY07	FY08
1/12th of O&M Expenses	1.60	1.60	1.69	1.80	1.90
Maintenance Spares 12% of O&M Expenses	0.00	0.00	0.00	0.00	0.00
Receivables equivalent to 2 months average billing	54.82	48.75	47.95	51.60	46.77
Total Working Capital	56.41*	50.35	49.65	53.40	48.67
Rate of Interest	10.75%	10.25%	10.25%	10.25%	12.25%
Interest on Working capital	**5.37***	**5.16**	**5.09**	**5.47**	**5.96**

Table 10: Interest on Working Capital now approved for FY04 - FY08

Particulars	Interest on working capital now approved				
	FY04	FY05	FY06	FY07	FY08
1/12th of O&M Expenses	1.60	1.60	1.69	1.80	1.90
Maintenance Spares 12% of O&M Expenses	0.00	0.00	0.00	0.00	0.00
Receivables equivalent to 2 months average billing	54.82	48.56	51.12	54.94	53.59
Total Working Capital	56.41*	50.16	52.81	56.74	55.49
Rate of Interest	10.75%	10.25%	10.25%	10.25%	12.25%
Interest on Working capital	**5.37**	**5.14**	**5.41**	**5.82**	**6.80**

Arrears Payable by the Board

2.43 JHPL has submitted that due to the rectification of above mentioned mistakes and errors the arrears payable by the Board will change and prayed to the Commission to approve the same.

2.44 The Commission has reworked the arrears payable by the Board to JHPL based on the corrections accepted by the Commission above. The revised calculation of annual fixed cost and arrears is shown below:

Annual Fixed Charge for Baspa II HEP for FY04-FY08

2.45 The revised total Annual Fixed Charges with the components of the capacity charges, primary energy charges and incentives and taxes recomputed for the period FY04 to FY08 and detailed in the previous sections of this chapter are summarized below:

Table 11: Annual Fixed Charges for the Period FY04 to FY08 (Rs Cr) approved in Tariff Order

Particulars	FY04	FY05	FY06	FY07	FY08
Capacity Charges					
Interest on outstanding loans	117.41	116.25	102.46	97.99	89.56
Depreciation/Advance against Depreciation	55.21	65.96	65.96	65.96	65.96
Interest on normative loan related to debt restructuring expenditure	0.37	3.36	5.19	5.44	5.44
Repayment of normative loan related to debt Restructuring expenditure	0.00	0.00	0.00	0.00	0.00
Application fee	0.05	0.05	0.05	0.05	0.05
Financing charges related to HPSEB arrear payment	0.00	0.00	0.00	0.00	0.00
Less: Adjustments for ICF payments	7.83	5.80			
Sub-total Capacity Charges	**165.21**	**179.82**	**173.66**	**169.44**	**161.01**
Primary Energy Charges					
O&M Charges	16.98	19.17	20.32	21.54	22.84
RoE	65.20	73.63	73.63	73.63	73.63

Particulars	FY04	FY05	FY06	FY07	FY08
Interest on Working Capital	5.37	5.16	5.09	5.47	5.96
Sub-total Primary Charges	**87.55**	**97.97**	**99.04**	**100.65**	**102.43**
Incentives and Taxes					
Incentive for Secondary Energy	15.88	0.00	0.00	21.22	0.00
Incentive for Higher Plant Availability	7.70	9.20	9.10	9.20	9.20
Minimum Alternative Tax					
Sub-total Incentives and Taxes	**27.79**	**14.72**	**15.02**	**39.51**	**17.18**
Total Annual Fixed Charges	**280.55**	**292.51**	**287.73**	**309.61**	**280.62**

Table 12: Annual Fixed Charges for the Period FY04 to FY08 (Rs Cr) now approved

Particulars	FY04	FY05	FY06	FY07	FY08
Capacity Charges					
Interest on outstanding loans	117.59	116.25	102.52	98.17	89.84
Depreciation/Advance against Depreciation	55.21	65.96	83.10	83.52	81.63
Interest on normative loan related to debt restructuring expenditure	0.37	3.36	5.19	5.44	5.44
Repayment of normative loan related to debt Restructuring expenditure	0.00	0.00	0.00	0.00	0.00
Application fee	0.05	0.05	0.05	0.05	0.05
Financing charges related to HPSEB arrear payment	0.00	0.00	0.00	0.00	0.00
Less: Adjustments for ICF payments	7.83	5.80			
Sub-total Capacity Charges	**165.21**	**179.82**	**173.66**	**169.44**	**161.01**
Primary Energy Charges					
O&M Charges	16.98	19.17	20.32	21.54	22.84
RoE	65.20	73.63	73.63	73.63	73.63
Interest on Working Capital	5.37	5.14	5.41	5.82	6.80
Sub-total Primary Charges	**87.55**	**97.95**	**99.37**	**100.99**	**103.26**
Incentives and Taxes					
Incentive for Secondary Energy	15.88	0.00	0.00	21.22	21.14
Incentive for Higher Plant Availability	7.70	9.20	9.10	9.20	9.20
Minimum Alternative Tax	4.21	4.39	7.36	11.06	10.95
Sub-total Incentives and Taxes	**27.79**	**13.59**	**16.46**	**41.48**	**41.29**
Total Annual Fixed Charges	**280.73**	**291.36**	**306.69**	**329.66**	**321.52**

2.46 The resultant trued up tariffs for the station for the period FY04 to FY08 are indicated in the table below:

Table 13: Revised Tariffs for the Period FY04 to FY08

Particulars	Unit	FY04	FY05	FY06	FY07	FY08
Energy Generation						
Saleable Primary Energy	MU	940.41	1041.93	1028.50	1050.05	1050.05
Saleable Secondary Energy	MU	53.47	0.00	0.00	71.48	71.20
Total Generation	**MU**	**993.88**	**1041.93**	**1028.50**	**1121.53**	**1050.05**
Total Annual Fixed Charges	Rs Cr	280.73	291.36	306.69	329.66	321.52
Tariff for Total Energy	**Rs/kWh**	**2.82**	**2.80**	**2.98**	**2.94**	**2.87**
Total Primary Energy Charges	Rs Cr	257.15	282.16	297.59	299.23	291.17
Tariff for Primary Energy	**Rs/kWh**	**2.73**	**2.71**	**2.89**	**2.85**	**2.77**

Arrears Payable by the Board

2.47 The Commission has recomputed the arrears payable by the Board and the carrying costs, based on the Annual Fixed Charges (AFC) approved by the Commission now and the payments made by the Board for the period FY04 to FY08. The Commission has considered that the Board will pay the entire arrears of prior period in FY09 as per the Order dated February 7, 2008.

2.48 The arrears payable by the Board are detailed in the table below:

Table 14: Arrears Payable by the Board (Rs Cr)

Particulars	FY04	FY05	FY06	FY07	FY08
Total Annual Fixed Charges	280.73	291.36	306.69	329.66	321.52
Payment made by HPSEB excluding rebate	207.11	250.84	264.02	330.74	390.84
Opening balance	0.00	76.57	124.84	179.21	192.42
Additions/(Subtractions)	73.63	40.53	42.67	-1.08	-69.32
Payments	0.00	0.00	0.00	0.00	0.00
Closing balance base amount	73.63	117.10	167.51	178.12	123.10
Interest rate (%)	8%	8%	8%	8%	8%
Interest	2.95	7.75	11.69	14.29	12.62
Closing balance of payment	**76.57**	**124.84**	**179.21**	**192.42**	**135.72**

INTEREST ON LOANS FOR THE CONTROL PERIOD (FY09- FY11)

ICICI Bank Loan

2.49 JHPL has submitted that the Commission in its Tariff Order has erroneously considered annual repayment of Rs 13.64 Cr. It has submitted that its annual repayment was Rs 12.5 Cr which will further reduce due to the partial pre-payment done by the appellant in FY07 and FY08. JHPL had never informed the Commission about the revised payment plan/ revised agreement due to partial pre-payment. This is a new fact and now cannot be considered in review petition. The petitioner has also not submitted any document supporting its claim.

2.50 Moreover, the interest cost for the ICICI Bank is highest among all the lenders and it should be paid back as fast as possible. The pre-payment done by the Appellant was under this strategy only. Therefore, reduction of repayment installment amount will prolong the loan tenure and thus will result in higher interest outgo.

2.51 The Commission, in its Tariff Order, had calculated the repayment schedule of ICICI Bank loan based on the bank's letter dated November 7, 2003, in which bank has mentioned that loan will be repaid in 44 installments (4 per annum). It had assumed these installments to be equal installments and calculated annual repayment as 13.64 Cr (150/11). The revised repayment schedule approved by ICICI Bank does not have equal 44 installments. It has first 39 equal installments of Rs 3.125 Cr (12.5 Cr in a year) and remaining 5 installments of Rs 5.625 Cr. The Commission has corrected the annual principal repayment amount based on the above and has considered Rs 12.5 Cr as annual repayment against ICICI Bank loan.

2.52 Due to the above corrections, the revised loan repayment / principal amount and interest expense for ICICI Bank is shown below:

Table 15: Interest Expense / Repayment Schedule Approved in Tariff Order (Rs Cr)

Loan	Control Period		
	FY09	FY10	FY11
Opening Balance	109.09	28.08	14.44
Addition	0.00	0.00	0.00
Prepayment (partially prepaid)	67.38	0.00	0.00
Principal Repayment	13.64	13.64	13.64
Closing Balance	28.08	14.44	0.81
Interest Payment	6.29	2.64	0.85

Table 16: Interest Expense / Repayment Schedule Now Approved (Rs Cr)

Loan	Control Period		
	FY09	FY10	FY11
Opening Balance	112.50	32.62	20.12
Addition	0.00	0.00	0.00
Prepayment (partially prepaid)	67.38	0.00	0.00
Principal Repayment	12.50	12.50	12.50
Closing Balance	32.62	20.12	7.62
Interest Payment	6.80	3.33	1.68

LIC Loan

2.53 JHPL has submitted that the Commission has erroneously considered annual repayment of Rs 1.36 Cr against LIC loan against actual annual repayment of Rs 1.25 Cr for each year of the MYT Control Period.

2.54 The Commission, in its Tariff Order, had calculated the repayment schedule of LIC Bank loan based on the LIC's letter dated June 14, 2003, in which LIC has mentioned that loan will be repaid in 44 installments (4 per annum). It had assumed these installments to be equal installments and calculated annual repayment as 1.36 Cr (15/11). The revised repayment schedule approved by LIC does not have equal 44 installments. It has first 39 equal installments of Rs 0.3125 Cr (1.25 Cr in a year) and remaining 5 installments of Rs 0.5625 Cr. The Commission has corrected the annual principal repayment amount based on the above and has considered Rs 1.25 Cr as annual repayment against LIC loan.

2.55 Due to the above correction, the revised loan repayment / principal amount and interest expense for LIC is shown below:

Table 17: Interest Expense / Repayment Schedule Approved in Tariff Order (Rs Cr)

Loan	Control Period		
	FY09	FY10	FY11
Opening Balance	10.91	9.55	8.18
Addition	0.00	0.00	0.00
Principal Repayment	1.36	1.36	1.36
Closing Balance	9.55	8.18	6.82
Interest Payment	1.06	0.92	0.78

Table 18: Interest Expense / Repayment Schedule Now Approved (Rs Cr)

Loan	Control Period		
	FY09	FY10	FY11
Opening Balance	11..25	10.00	8.75
Addition	0.00	0.00	0.00
Principal Repayment	1.25	1.25	1.25
Closing Balance	10.00	8.75	7.50
Interest Payment	1.10	0.97	0.84

Tax on Income and Minimum Alternate Tax (MAT)

2.56 The Government of India has proposed to increase rate of MAT from 10% to 15% effective from April 1, 2010 i.e. FY11 in the union budget for FY10. The Commission, in its order dated March 30, 2009 had assumed MAT rate at 10% for all the years on the control period (FY09-FY11). The Commission has now revised the MAT approved for the JHPL for FY11 as per the new rate proposed by the Government of India. The details of the MAT for Control Period approved by the Commission in its Tariff order dated March 30, 2009 and now approved are given in the table below:

Table 19: Income Tax for the Control Period (FY09-FY11) (Rs Cr)

Particular	Approved in Tariff Order			Approved Now		
	FY09	FY10	FY11	FY09	FY10	FY11
Income Tax	10.12	10.12	10.12	10.12	10.12	15.18

Interest on Working Capital

2.57 JHPL has submitted that its normative working capital requirement will change due to the correction in above mentioned errors and therefore prayed to the Commission to allow Interest on Working Capital based on the revised normative working capital requirement.

2.58 The Commission accepts the appellant's contention on this point and has derived the working capital requirement for the JHPL will be changed based on the revised numbers and approves the same.

Table 20: Interest on Working Capital approved in Tariff Order for Control Period (FY09-FY11) (Rs Cr)

Particulars	FY09	FY10	FY11
1/12th of O&M Expenses	2.02	2.14	2.27
Maintenance Spares 12% of O&M Expenses	2.90	3.08	3.26
Receivables equivalent to 2 months average billing	48.21	43.98	45.20
Total Working Capital	**53.13**	**49.20**	**50.73**
Rate of Interest	12.25%	12.25%	12.25%
Interest on Working capital	**6.51**	**6.03**	**6.21**

Table 21: Interest on Working Capital now approved for Control Period (FY09-FY11) (Rs Cr)

Particulars	FY09	FY10	FY11
1/12th of O&M Expenses	2.02	2.14	2.27
Maintenance Spares 12% of O&M Expenses	2.90	3.08	3.26
Receivables equivalent to 2 months average billing	48.30	44.11	46.21
Total Working Capital	**53.22**	**49.32**	**51.74**
Rate of Interest	12.25%	12.25%	12.25%
Interest on Working capital	**6.52**	**6.04**	**6.34**

Annual Fixed Charge for Baspa II HEP for Control Period (FY09-FY11)

2.59 The revised total Annual Fixed Charges with the components of the capacity charges, primary energy charges and incentives and taxes recomputed for each year of the MYT Control Period FY09 to FY11 are summarized below. The Commission has also revised interest on working capital due to changes in receivables.

Table 22: Annual Fixed Charges for the Period FY09 to FY11 (Rs Cr) approved in Tariff Order

Particulars	FY09	FY10	FY11
Capacity Charges			
Interest on outstanding loans	71.16	45.42	51.70
Depreciation/Advance against Depreciation	89.48	89.48	89.48
Interest on normative loan related to debt restructuring expenditure	5.20	4.60	3.90
Repayment of normative loan related to debt Restructuring expenditure	8.85	8.85	8.85
Application fee	0.08	0.08	0.08
Financing charges related to HPSEB arrear payment	0.00	0.00	0.00
Less: Adjustments for ICF payments			
Sub-total Capacity Charges	**174.78**	**148.44**	**154.01**
Primary Energy Charges			
O&M Charges	24.21	25.66	27.20
RoE	73.63	73.63	73.63
Interest on Working Capital	6.51	6.03	6.21
Sub-total Primary Charges	**104.35**	**105.32**	**107.04**
Incentives and Taxes			
Incentive for Secondary Energy	0.00	0.00	0.00
Incentive for Higher Plant Availability	0.00	0.00	0.00
Minimum Alternative Tax	10.12	10.12	10.12
Sub-total Incentives and Taxes	**10.12**	**10.12**	**10.12**
Total Annual Fixed Charges	**289.24**	**263.88**	**271.17**

Table 23: Annual Fixed Charges for the Period FY09 to FY11 (Rs Cr) now approved

Particulars	FY09	FY10	FY11
Capacity Charges			
Interest on outstanding loans	71.72	46.16	52.60
Depreciation/Advance against Depreciation	89.48	89.48	89.48
Interest on normative loan related to debt restructuring expenditure	5.20	4.60	3.90
Repayment of normative loan related to debt Restructuring expenditure	8.85	8.85	8.85
Application fee	0.08	0.08	0.08
Financing charges related to HPSEB arrear payment	0.00	0.00	0.00
Less: Adjustments for ICF payments			
Sub-total Capacity Charges	**175.33**	**149.18**	**154.91**
Primary Energy Charges			
O&M Charges	24.21	25.66	27.20

Particulars	FY09	FY10	FY11
RoE	73.63	73.63	73.63
Interest on Working Capital	6.52	6.04	6.34
Sub-total Primary Charges	**104.36**	**105.33**	**107.17**
Incentives and Taxes			
Incentive for Secondary Energy	0.00	0.00	0.00
Incentive for Higher Plant Availability	0.00	0.00	0.00
Minimum Alternative Tax	10.12	10.12	15.18
Sub-total Incentives and Taxes	**10.12**	**10.12**	**15.18**
Total Annual Fixed Charges	**289.81**	**264.63**	**277.26**

2.60 The revised tariffs for the station for the period FY09 to FY11 are indicated in the table below:

Table 24: Revised Tariffs for the Period FY09 to FY11

Particulars	Unit	FY09	FY10	FY11
Energy Generation				
Saleable Primary Energy	MU	1050.05	1050.05	1050.05
Saleable Secondary Energy	MU	0.00	0.00	0.00
Total Generation	**MU**	**1050.05**	**1050.05**	**1050.05**
Total Annual Fixed Charges	Rs Cr	289.81	264.63	277.26
Tariff for Total Energy	**Rs/kWh**	**2.76**	**2.52**	**2.64**
Total Primary Energy Charges	Rs Cr	289.81	264.63	277.26
Tariff for Primary Energy	**Rs/kWh**	**2.76**	**2.52**	**2.64**

The review petition is accordingly disposed off.

Sd/-

(Yogesh Khanna)

Dated: 10-9-2009

Chairman