

**BEFORE THE HON'BLE HIMACHAL PRADESH ELECTRICITY
REGULATORY COMMISSION**

Petition No. 27/2024

IN THE MATTER OF:

Determination of Tariff for FY 2024-25 to 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:

JSW Hydro Energy Limited
Karcham Wangtoo H.E. Project
Sholtu Colony, PO, Tapri 172104
District Kinnaur (H.P.)

APPLICANT/PETITIONER

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Dated : 30.12.24

Place: New Delhi

Applicant

**BEFORE THE HON'BLE HIMACHAL PRADESH ELECTRICITY
REGULATORY COMMISSION**

Petition No. 27/2024

IN THE MATTER OF:

Determination of Tariff for FY 2024-25 to 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:

JSW Hydro Energy Limited
Karcham Wangtoo H.E. Project
Sholtu Colony, PO, Tapri 172104
District Kinnaur (H.P.)

APPLICANT/PETITIONER

**Representation of JSW Hydro Energy Ltd. on the direction passed by this
Hon'ble Commission in Petition No. 27 of 2024 vide Order dated 12.06.2024
regarding design energy of BASPA-II 300 MW HEP pursuant to Hon'ble
High Court of Himachal Pradesh Order dated 02.12.2024 in W.P. (C)
13925/2024**

Most Respectfully Showeth:

1. This Hon'ble Commission, while determining the Multi-Year Tariff (FY 2024-25 to FY 2028-29) for BASPA-II 300 MW HEP, vide its order dated 12.06.2024 in Petition No. 27/2024, *inter-alia*, directed the Directorate of Energy ('DoE'), Government of Himachal Pradesh to form a committee to compute the BASPA-II 300 MW HEP design energy based on the hydrological data for the period 2003-04 till 2022-23; and based on such recommendation, further directed the DoE to review the design energy generation from the BASPA-II HEP of the Petitioner. Relevant portion of the order dated 12.06.2024 is reproduced below for ready reference:

"4.58 The Commission has noted that the actual power generation from the Baspa HEP since COD of the Plant has been significantly higher, barring initial few years, as compared to the design energy of the Plant. The detail of the actual energy generation for the last 20 years from the Baspa HEP, based on the monthly billing to the HPSEBL, has been 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."
(Emphasis Supplied)

Copy of the order dated 12.06.2024 is annexed herewith and marked as **Annexure 1**.

2. Aggrieved, by the above directions, the Applicant filed a writ petition before the Hon'ble High Court of Himachal Pradesh at Shimla (being W.P. (C) 13925/2024), *inter-alia*, on the grounds of want of jurisdiction, complete lack of authority by DoE to revise the design energy and violation of principles of natural justice etc. The Hon'ble High Court, after hearing the Parties, disposed of the writ petition filed by the Applicant, vide its judgment and order dated 02.12.2024. Relevant portion of the order is reproduced here below for ready reference:

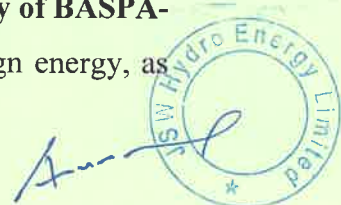
"6. Since respondent-Commission has agreed to afford due opportunity of being heard to the petitioner qua the direction issued to respondent No.3 i.e. Directorate of Energy for submission of hydrological data for computation of design energy for generation of the energy in the project, this Court without 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."
(Emphasis supplied)

Copy of the order dated 02.12.2024, along with the copy of the Writ Petition being W.P.(C) 13925/2024 (without annexures) are annexed herewith and marked as **Annexure 2 (colly)**.

3. Accordingly, in terms of the liberty granted by the Hon'ble High Court in the above order, the Applicant submits the following for consideration of this Hon'ble Commission:

- a. **It is completely unjust to change the design energy of BASPA-II HEP during the life of the project:** The design energy, as

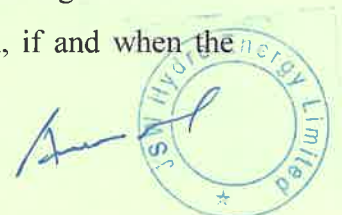


agreed in the PPA, is the benchmark power potential of the project which forms the basis of the Applicant having invested approximately Rs. 1600 crore in the project. Design energy is the projected output of the project in terms of energy generated, based on design of various project components taking 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. **Without prejudice, this Hon'ble Commission cannot revise design energy of the project, as the same does not form a part of its functions as provided under the Electricity Act, 2003 (Act):** Fixing/revision of design energy is not a function to be discharged by this Hon'ble Commission under section 86 of the Act. The constitution of the SERC's would reveal that the expertise to revise design energy is not there with the State Commission, but lies elsewhere i.e., the Central Electricity Authority (CEA) which is the appropriate authority.

The direction in para 4.59 of the order dated 12.06.2024 (Tariff Order), also acknowledges the lack of expertise with the State Commission to undertake such revision itself.

[Another aspect which deserves a mention is that the HPERC (Terms and Conditions for Determination of Hydro Generation Tariff) 2024 (Tariff Regulations, 2024), reveal insertion of Regulation 42(7)(c), empowering this Hon'ble Commission to consider upward revision of design energy. However, the said Regulation has correctly, not been applied to the case of the Applicant as the orders in Petition No. 27/2024 were reserved by this Hon'ble Commission on 23.03.2024 and the Tariff Regulations, 2024, came into effect only on 05.06.2024. The Applicant reserves it's right to challenge the said regulation at an appropriate time, before an appropriate forum, if and when the need so arises.]



- c. **Even presuming, without admitting, that this Hon'ble Commission can refer the issue of revision of design energy to another expert body, that body can only be the CEA:** 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 only with the CEA under section 8(1) of the Act.

In terms of section 8(1) of the Act and the notifications issued by the Central Government under section 8 viz. Notification No. SO 550(E) dated 18.04.2006, modified vide Notification No. SO 490(E) dated 28.01.2014, the clear mandate to provide concurrence to a scheme of hydroelectric projects, whose estimated capital expenditure (earlier Rs. 500 Crore; and now after amendment exceeds Rs. 1000 Crore), such as the Petitioner's BASPA II HEP, lies solely with CEA. Copy of the notification of Central Government are annexed herewith and marked as **Annexure 3 (Colly.)**.

As a matter of fact, the design energy for BASPA- II HEP of the Applicant has been originally approved by the CEA, as part of granting concurrence/techno economic clearance to the proposal/DPR way back on 29.04.1994. A copy of the techno-economic clearance dated 29.04.1994 is attached herewith as **Annexure 4**. Consequently, any revision in the scheme, including a revision in the essential/fundamental parameter of project design energy can only be made by the CEA. It is settled that the authority which has power to grant is the authority which can revise, alter or modify the terms of the grant.

Additionally, it is only the CEA, which has the mandate under section 73(n) to advise the appropriate commission and the appropriate government on all technical matters relating to generation. This function cannot be assigned to any other body.

- d. **Directing the DoE to re-compute and review the design energy of the Petitioner's power plant is untenable:** Entrusting the task of recomputing design energy of BASPA-II HEP to DoE, firstly, amounts to usurpation of CEA's power/jurisdiction under the Act; and therefore unsustainable.



Further, DoE is clearly an interested party, being a department of the State Government, which Government also administratively controls the counter party in the PPA i.e. HPSEBL. Entrusting the task of design energy revision to DoE is, for this reason also, unfair and unsustainable.

Thirdly, the DoE, unlike the CEA has no guidelines which are to be followed for revising/re-computing the project design energy. Any action of the DoE sans guidelines would be a completely arbitrary exercise. A copy of the CEA guidelines for revision in design energy is attached herewith as **Annexure 5**.

4. The present representation has been made bona-fide and in the interest of justice. The Applicant requests for a personal hearing in the matter as also directed by the Hon'ble High Court in its order dated 02.12.2024.
5. In view of the foregoing submissions, the Applicant humbly prays that this Hon'ble Commission may be pleased to:
 - a. Withdraw the direction at para 4.59 of the order dated 12.06.2024 passed in Petition No. 27/2024; or
 - b. Strictly in the alternative, refer the issue of revision of design energy for BASPA-II HEP to the Central Electricity Authority, instead of the Directorate of Energy (DoE); and/or
 - c. Pass any other order/s as the Hon'ble Commission may deem just, fit and proper in favour of the Applicant.

Date: 30th December 2024

Place: *New Delhi*

Anurag
 APPLICANT 

**BEFORE THE HON'BLE HIMACHAL PRADESH ELECTRICITY
REGULATORY COMMISSION**

Petition No. 27/2024

IN THE MATTER OF:

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

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AFFIDAVIT

I, Anurag Agarwal son of Shri Kamal Kishore Agarwal Aged about 44 years, at present posted as General Manager, Authorised signatory of M/s JSW Hydro Energy Ltd. 4th Floor, NTH Complex, Shaheed Jeet Singh, Marg, Qutub Institutional Area, New Delhi- 110067, do hereby solemnly state and affirm as under:

1. That I am the authorised signatory of the petitioner company and I am well conversant with the facts of the case.
2. That accompanying representation has been drafted under my instructions and I have gone through same. The contents of the representation are true to my knowledge and record and believed to be true on the basis of the legal information imparted to me.
3. That the contents of my affidavit are true to the best of my personal knowledge. Nothing contained herein is false and nothing material has been concealed.

Declared at Delhi on this the 30th day of December, 2024.

DEPONENT



ATTESTED
NOTARY PUBLIC

30 DEC 2024

Annexure 1

**Multi-Year Tariff Order
for
BASPA II HEP
for
FY 2024-25 to FY 2028-29**



**Himachal Pradesh Electricity Regulatory
Commission**



BEFORE THE HIMACHAL PRADESH ELECTRICITY REGULATORY COMMISSION, SHIMLA
Petition No. 27/2024

CORAM
Sh. Devender Kumar Sharma
Sh. Yashwant Singh Chogal
Sh. Shashi Kant Joshi

IN THE MATTER OF:

Determination of Tariff for FY 2024-25 to 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:

JSW Hydro Energy Limited
Karcham Wangtoo H.E. Project
Sholtu Colony, PO, Tapri 172104
District Kinnaur (H.P.)

APPLICANT/ PETITIONER

ORDER

The Applicant/Petitioner has filed the present Petition with the Himachal Pradesh Electricity Regulatory Commission for 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 Ltd. for period FY 2024-25 to FY 2028-29.

The Commission, after considering the Petition filed by the Applicant (also referred to as the Generating Company), the facts presented in its various submissions/filings, objections/suggestions received by the Commission from various stakeholders, the responses of the Applicant to the objections/suggestions and documents available on record and in exercise of the powers vested in it under Section 62 and Section 86 of the Electricity Act, 2003 (Act No. 36 of 2003) read with HPERC (Terms & Conditions for Determination of Hydro Generation Supply Tariffs) Regulations 2011, along with its subsequent amendments, and in terms of the Power Purchase Agreement signed between the Himachal Pradesh State Electricity Board Limited (also referred to as the Distribution Licensee) and the Generating Company on 04th June , 1997, passes the following Order for determination of tariff for 300 MW Baspa II Hydro Power Plant for the fifth Control Period FY 2024-25 to FY 2028-29.

Sd/- (SHASHI KANT JOSHI) Member	Sd/- (YASHWANT SINGH CHOGAL) Member Law	Sd/- (DEVENDRA KUMAR SHARMA) Chairman
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Shimla
Dated: 12.06.2024



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1. BACKGROUND

- 1.1 M/s JSW Hydro Energy Limited (hereinafter referred to as the "Petitioner" or "Applicant"), which operates the Karcham Wangtoo H.E. Project Sholtu Colony, PO, Tapri 172104, District Kinnaur H.P. is a "generating company" falling within the definition of Section 2 (28) of the Electricity Act, 2003 (hereinafter referred to as the "Act").
- 1.2 The Baspa-II Hydro-electric project is a 300 MW plant with three units each of 100 MW which was commissioned by M/s Jai Prakash Power Ventures Limited (JPVL) in the FY 2003-04. The COD of the last unit of the project was 08.06.2003.
- 1.3 On 04.06.1997, a Power Purchase Agreement (PPA) was executed between Jaiprakash Hydro-Power Limited and HPSEBL for sale of Power from Baspa-II HEP. Pursuant to a scheme of arrangement approved by Hon'ble High Court, Shimla, 300 MW Baspa II Hydroelectric Project located in Himachal Pradesh has been transferred by M/s. Jaiprakash Power Ventures Limited to the Petitioner w.e.f. 1.09.2015.
- 1.4 The applicant has now filed a Petition on 01.12.2023 with the Himachal Pradesh Electricity Regulatory Commission (hereinafter referred to as the "Commission") under sections 62 and 86 of the Electricity Act, 2003 and Regulation 37 of the Himachal Pradesh Electricity Regulatory Commission (Terms and Conditions for Determination of Hydro Generation Tariff) Regulations, 2011 as amended from time to time, seeking determination of tariff for sale of electricity generated at Baspa II 300 MW hydro power plant on River Baspa, a tributary of River Satluj, District Kinnaur, Himachal Pradesh (hereinafter referred to as "Baspa II") to the Himachal Pradesh State Electricity Board Limited (hereinafter referred to as the "HPSEBL"), a "deemed licensee" under the Act, engaged in generation and distribution of electricity in the State of Himachal Pradesh for FY 2024-25 to FY 2028-29.
- 1.5 In this Order, the Commission has reviewed the operational and financial performance of the Applicant based on the PPA for supply of power to the HPSEBL, analysis of the past records, information filed by the Applicant in the Petition and various other submissions in response to queries raised by the Commission and views expressed by the stakeholders.

Multi Year Tariff Regulations

- 1.6 As per Section 61 of the Electricity Act, 2003, the Appropriate Commission shall specify the terms and conditions for the determination of tariff, and in doing so, shall be guided by the principles and methodologies specified by the Central Commission for determination of tariff applicable to generating companies and also by the National Tariff Policy formulated under the said Act.



- 1.7 The Commission, in view of the principles and methodologies specified by the Central Electricity Regulatory Commission, had issued Himachal Pradesh Electricity Regulatory Commission (Terms and Conditions for Determination of Hydro Generation Tariff) Regulations, 2011 vide notification dated 1.04.2011.
- 1.8 Subsequently, the Commission came out with amendments to these Regulations. The Commission in exercise of the powers conferred by clauses (zd), (ze) and (zf) of sub-section (2) of Section 181, read with sections 61, 62 and 86, of the Electricity Act, 2003 (36 of 2003) issued the Himachal Pradesh Electricity Regulatory Commission (Terms and Conditions for Determination of Hydro Generation Tariff) (Second Amendment) Regulations, 2013 vide notification dated 1.11.2013 and HPERC (Terms and Conditions for Determination of Hydro Generation Tariff) (Third Amendment) Regulations, 2018 vide notification 22.11.2018, determines the tariff for hydro generation projects.

Procedural Background

- 1.9 The Commission had passed an Order dated 24.02.2007, approving the capital cost of the Baspa II 300 MW Hydro Electric Project at Rs.1533.96 Cr. for the purpose of determination of tariff and had approved the tariff for the initial 5 years from FY 2003-04 to FY 2007-08. Subsequently, the Commission vide its Order dated 30.03.2009 and vide Review Orders dated 10.09.2009 and 23.06.2010 approved the tariff for the First Control Period FY 2008-09 to FY 2010-11 and trued up the tariff for the period FY 2003-04 to FY 2007-08.
- 1.10 Thereafter, the Commission by an Order dated 24.01.2011, passed in Petition No. 11/2010, revised the Annual Revenue Requirement for the FY 2006-07 to FY 2010-11 on account of additional capitalization allowed due to Force Majeure event, expenditure on Inter-Connection facility and additional O&M Expenses on Inter-Connection facility.
- 1.11 Subsequently, the Commission issued the Second MYT Order dated 15.07.2011 approving the tariff for sale of power from 300 MW Baspa II HEP to the HPSEBL for each year of the Control Period i.e. FY 2011-12 to FY 2013-14.
- 1.12 The Petitioner, moved a Petition bearing No. 135/11 dated 08.02.2011 before the Commission to revise the tariff for the Control Period (FY2011-12 to FY2013-14) in compliance to the Order dated 21.10.2011 passed by Hon'ble Appellate Tribunal for Electricity in Appeal No. 39 of 2010 and re-compute the arrears payable by the HPSEBL to the Petitioner from FY 2003-04 onwards till date of actual payment by the HPSEBL to the Petitioner. The Commission issued an Order dated 06.09.2012 on the said Petition and revised the tariff for Second MYT Control Period taking into consideration new facts brought on record by the Petitioner, which were unavailable at the time of issuance of MYT Order dated 15.07.2011.
- 1.13 The Commission issued Third MYT Order dated 06.06.2014 approving the tariff for sale of power from 300 MW Baspa II HEP to the HPSEBL for each year of the Control Period i.e. FY 2014-15 to FY 2018-19. The Commission also undertook true-up of the ARR for



the first Control Period i.e. FY 2008-09 to FY 2010-11 vide its Order dated 23.04.2012, true-up for the second Control Period i.e. FY 2011-12 to FY 2013-14 vide its order dated 30.03.2015 and true-up for partial years of the third Control Period i.e. FY 2014-15 to FY 2016-17vide its Order 'True Up for FY 2014-15 to FY 2016-17 and Mid Term Review for FY 2017-18 to FY 2018-19' dated 31.10.2018.

1.14 The Commission has also passed MYT Order for the control period FY2019-20 to FY2023-24, on 29-Jun-2019.True-up Order of FY2017-18 to FY2018-19 for BASPA II HEP was issued by the Commission on 07-Jul-2020. Further the Commission has passed order for True-Up of FY 2019-20 to FY 2021-22 and Mid Term Review (MTR) of FY 2022-23 and FY 2023-24 on 16-May-2023.

Admission of Petition

- 1.15 The Petitioner has filed the present Petition vide Filling No. 263/2023 on 01.12.2023, with the Commission for determination of tariff for the period FY 2024-25 to FY 2028-29.
- 1.16 The Commission admitted the Petition through vide Interim Order dated 12.02.2024 and directed the Petitioner to publish the salient features of the Petition on or before 16.02.2024 in the manner and as per the disclosure formats attached with the Interim Order. The Petition was registered as Petition number 27/2024.
- 1.17 The Petitioner published the salient features of the Petition in a public notice in the following newspapers:

Table 1: Details of public notices in newspapers

Sl.	Name of News Paper	Date of Publication
1.	Dainik Bhaskar	15.02.2024
2.	Dainik Bhaskar	16.02.2024
3.	The Tribune	15.02.2024
4.	The Tribune	16.02.2024

1.18 Detailed scrutiny of the Petition was made and clarifications/ information were sought by the Commission from the Petitioner. The submissions made by the Petitioner in response there to, as detailed hereunder, have been taken into consideration:

Table 2: Communication with Petitioner

Sl.	Letter from Commission	Response from Petitioner
1.	HPERC/-F(1)/-69/2023/3007 Dated 19.12.2023	Filling No. 263 of 2023 Dated 02.01.2024
2.	HPERC/-F(1)/-69/2023/3769 Dated 08.02.2024	Filling No. 27 of 2024 Dated 26.02.2024



Public Hearing

- 1.19 The Commission also invited suggestions and objections from the public on the Petition filed by the Petitioner in accordance with Section 64(3) of the Electricity Act, subsequent to the publication of salient features by the Petitioner. The public notice, issued by the Commission, inviting objections/ suggestions was published in the following newspapers:

Table 3: Details of publications in newspapers

Sl.	Name of News Paper	Date of Publication
1.	Hindustan Times	23.02.2024
2.	Amar Ujala	23.02.2024

- 1.20 Through the aforementioned publications, the interested parties/ stakeholders were asked to file their objections and suggestions on the Petition and rejoinders to the Replies filed by the Petitioner for which dates were specified by the Commission through the publications.
- 1.21 A public hearing was held in the Commission at Shimla on 23rd March, 2024 for providing adequate opportunity to all the stakeholders for expression of their opinions, suggestions and objections in the matter.
- 1.22 The objections, issues and concerns raised by the Stakeholders i.e. Consumer Representative and the HPSEBL, the responses along with the submissions of the Petitioner and the views of the Commission are detailed in Chapter 3 of this Order.



2. SUMMARY OF THE PETITION

2.1 This Chapter summarizes the Petition for determination of tariff for sale of power from the Baspa II, 300 MW Hydro Electric Project located on River Baspa, District Kinnaur (H.P.) for the fifth Control Period FY 2024-25 to FY 2028-29.

Details of the Project

- 2.2 The Baspa II Hydro-electric project is a 300 MW plant with three units of 100 MW each which was commissioned by M/s JPVL in the FY 2003-04 and transferred to the Petitioner in FY 2015-16.
- 2.3 It is a diurnal peaking plant with 4 hours of peaking supported by diurnal pondage. The power house is underground with static excitation. The Government of Himachal Pradesh receives 12% of energy generated as free energy. The details of the plant submitted by the Petitioner are as given below:

Table 4: 300 MW BASPA II - Project Details

Particular	Details
Name of the Company	JSW Hydro Energy Limited (Formerly Himachal Baspa Power Company Limited)
Name of the Station	Baspa II Hydro Electric Project
Installed Capacity (MW)	3 X 100 = 300
Free power to home state	12%
Date of Commercial Operation	
Unit-1	24.05.2003
Unit-2	29.05.2003
Unit-3	08.06.2003
Type of Station	
Surface/underground	Underground
Purely ROR/ Pondage/Storage	Diurnal Pondage
Peaking/non-peaking	Diurnal Peaking
No. of hours of peaking	4
Type of excitation	Static excitation
Design Energy	1213.18 MU
Transformation Losses (as per PPA)	0.50%
Auxiliary Losses	0.50%
Transmission Losses	0.65%



Details of the Tariff Petition

2.4 The Petition has been filed for the determination of Tariff for the Control period FY 2024-25 to FY 2028-29.

2.5 Salient features of the petition are as follows:

- a. No additional capital cost has been claimed by the petitioner for the fifth control period.
- b. All the financial details have been compiled in the prescribed forms based on the approved capital cost of Rs.1638.34 crore comprising of:
 - capital cost as on COD Rs 1533.96 crore approved vide of Order dated 24.02.2007
 - additional capital cost of Rs 95.88 crore approved vide Order dated 24.01.2011
 - additional capital cost of Rs 2.57 crore approved vide Order dated 06.06.2014
 - additional capital cost of Rs 6.58 crore approved vide Order dated 29.06.2019
 - additional capital cost (net of decapitalization) of Rs -0.65 crore approved vide Order dated 16.05.2023
- c. For the Interest on Loans, the Petitioner has continued with approach as per previous MYT order for Normative Loans 3 and 4. Interest Rate is taken as approved for in the last True-up order for FY2021-22
- d. Application fee of Rs. 37,50,000 or Rs. 7,50,000 per annum paid by the petitioner towards fee specified in the 13th amendment to HPERC (Conduct of Business) regulations, 2005 dt. 31.3.2023
- e. O&M Expense, ROE and Interest of Working Capital claimed as per norms specified under PPA or applicable regulations
- f. No incentive for higher Plant Availability and Secondary Energy claimed by petitioner and to be claimed during respective year's true up
- g. No publication expense claimed by the petitioner and to be claimed during respective year's true up
- h. No Water Cess has been claimed by the petitioner
- i. Income Tax has been claimed using per MAT rates

2.6 The details of the Total Annual Charges claimed by the Petitioner for period FY 2024-25 to FY 2028-29, are as under:



Table 5: Summary of Tariff Petition filed by Petitioner for FY25 to FY29 (Rs. Cr.)

Particulars	FY25	FY26	FY27	FY28	FY29
Capacity Charges					
Interest on Outstanding Loan	0.21	0.17	0.13	0.08	0.04
Depreciation + AAD	10.65	4.49	4.49	4.49	0.91
Application Fees	0.08	0.08	0.08	0.08	0.08
Publication Expense*	0.00	0.00	0.00	0.00	0.00
Total Capacity Charges	10.93	4.73	4.69	4.65	1.03
Primary Energy Charges					
O&M Expenses	56.94	59.55	62.28	65.14	68.12
Return on Equity	78.64	78.64	78.64	78.64	78.64
Interest on Working Capital	5.78	5.74	5.90	6.06	6.13
Sub- Total Primary Charges	141.36	143.94	146.82	149.84	152.89
Incentive and Taxes					
Income Tax	11.67	10.72	10.85	10.97	10.46
Water Cess	0.00	0.00	0.00	0.00	0.00
Incentive for Higher Plant Availability*	0.00	0.00	0.00	0.00	0.00
Incentive for Secondary Energy*	0.00	0.00	0.00	0.00	0.00
Sub-Total Incentive and taxes	11.67	10.72	10.85	10.97	10.46
Total Annual Charges	163.96	159.39	162.36	165.45	164.38
Net Saleable Energy (MUs)	1,117.60	1,117.60	1,117.60	1,117.60	1,117.60
Tariff for Total Energy (Rs./Kwh)	1.47	1.43	1.45	1.48	1.47

* To be claimed during respective year's true up



3. COMMENTS/ OBJECTIONS FILED BY STAKEHOLDERS

- 3.1 The Commission had published a Public Notice inviting the interested parties/ stakeholders to file their objections and suggestions on the Petition for fifth Control Period for BASPA II HEP by 20th March, 2024. Pursuant to the notice, written comments were received from the HPSEBL and from Sh. K.S.Dhaulta Consumer Representative, on the Petition filed by the Petitioner.
- 3.2 A public hearing was held on 23rd March, 2024 in the Commission at Shimla where the stakeholders made comments and gave observations on the Petition to which the Petitioner has submitted the response. The issues raised by Stakeholders along with response of the Petitioner and Commission's views on the issues are detailed in the subsequent paragraphs.

General

Stakeholder's Objections

- 3.3 The Consumer Representative has suggested that the Petition filed by JSW, in view of the HPERC approved capital cost and tariff orders since 2007 to 2023, issued from time to time, for generation of power in respect of Baspa-II (300 MW) HEP, in its present form is not a detailed Petition as required under the Commission's Regulations. It does not appear to be a Multi-Year Tariff Petition (MYT) as required under the HPERC Regulations.

Petitioner's Reply

- 3.4 The Petitioner has submitted that the petition for tariff determination for the control period 2024-29 has been filed in accordance with the prevailing HPERC Regulations and all the required details have been provided in the Petition and subsequent technical validations.

Commission's View

- 3.5 The Commission has undertaken a detailed analysis of the Petition and wherever required has sought additional information/ clarification from the Petitioner. From the careful perusal of the Petition and the response, the Commission is of the view that the objections raised by the Consumer Representative are without any basis.

Capital Cost exclusion of Karcham Wangtoo-Jhakri transmission line

Stakeholder's Objections



- 3.6 The HPSEBL has suggested that the cost of 35.22 Km line portion (Karcham Wangtoo – Jhakri) (which is serving as ISTS but still not declared ISTS by Hon'ble CERC) is included in the capital cost of BASPA II and HPSEBL has to bear the complete charges for this portion of line. Therefore, it is prayed that the charges for corresponding portion of the line may be excluded as and when declared as ISTS by Hon'ble CERC.
- 3.7 The HPSEBL also suggested that the ICF (Interconnection Facility) charges for NJHPS substation being claimed in ARR by BASPA II HEP, shall be made part of transmission line ARR of Wangtoo-Jhakri line from the date of COD of Karcham-Wangtoo Hydro Project as and when declared ISTS. As the system is used for evacuation of Karcham-Wangtoo HEP's power and ICF charges are only borne by HPSEBL in Baspa-HEP ARR.

Petitioner's Reply

- 3.8 The Petition with Hon'ble CERC was filed on 21.8.2023 and is pending. The Petitioner has sought grant of transmission license for the Wangtoo Jhakri portion of the original Baspa Jhakri transmission line. Declaration of status for this portion of the original line is a part and parcel of the transmission license proceedings. The Petition was last listed on 10.4.2024 has been admitted by the learned CERC. As such, the Petition is pending adjudication and disposal by the learned CERC.
- 3.9 Any exclusion of the capital cost for this portion of the line & denial of inter connection facility (ICF) charges can only be taken up after grant of the transmission license by the CERC and not before that. It is denied that the any moneys including ICF charges which already stand recovered, considering the entire line as an associated transmission line of the generation asset in the past can be recovered/ clawed back by this Hon'ble Commission. This is so as the declaration of the status of ISTS can only be prospective and not retrospective.

Commission's View

- 3.10 The Commission has taken cognizance of the stakeholder's comments and the fact that the Petition filed by Petitioner with Hon'ble CERC in this matter is still pending. Accordingly, the Commission has directed the Petitioner in this order to periodically inform the Commission of the progress in said Petition filed with Hon'ble CERC.

Cost escalations

Stakeholder's Objections

- 3.11 The Consumer Representative has suggested that the Petitioner has claimed tariff proposal to the tune of Rs.164.38 Cr. based on projections for control period for FY 2024-25 to 2028-29. The projections appear to be based on inflated costs/charges. Since the matter regarding water cess has been finally decided by the Hon'ble Court, the Petitioner needs to review the present Petition. A detailed tariff proposal along with category-wise tariff increase proposed should be submitted. Otherwise, the utility may not be allowed to increase the tariff.



Petitioner's Reply

- 3.12 The Petitioner has responded that water cess has not been claimed in the current MYT Petition for the Control Period 2024-29, in view of the ongoing Writ proceedings before the Hon'ble High Court of Himachal Pradesh, Shimla. Further, the Petitioner has updated that the said Writ no. 3130 of 2023 has been allowed and the HP Water Cess Act & Rules have been set aside by the Hon'ble High Court of Himachal Pradesh, Shimla.

Commission's View

- 3.13 The Commission has noted the submission of Stakeholder as well as the Petitioner with regard to water cess. It is observed that the Petitioner has not claimed any additional expense for water cess in view of the judgement of Hon'ble High Court of Himachal Pradesh, regarding applicability of the water cess. The GoHP has filed an appeal before Hon'ble Supreme Court against the judgement of Hon'ble High Court which is pending. Therefore the Commission not allowed any expense towards water cess in this Order, at this stage.

Scope/ period of tariff**Stakeholder's Objections**

- 3.14 The Consumer Representative has submitted that the Petitioner has not yet completed audit of the annual accounts for FY 2021-22 and FY 2022-23 and has claimed true-up for both years based on provisional accounts. The Commission may ask Petitioner to clarify and place on record the reasons for delay in finalization of audited accounts for the respective years.
- 3.15 Also, the Consumer Representative has highlighted that Petitioner should clarify if all financial details/ parameters claimed under true-up for FY23 and projections for the 5th Control Period are for distribution business only. In case of consolidated claim for hydro generation and not for distribution business, all information is required to be segregated between generation and distribution business. Further, the stakeholder has requested the Commission to direct the Petitioner to file proper Tariff Petition with cost and other parameters segregated in a proper manner.

Petitioner's Reply

- 3.16 The Petitioner has responded that the current petition is for the Multi year tariff pertaining to the control period 2024-29 and not the true up of FY 21-22 & 22-23. Though not required during current MYT proceedings, it has submitted audited accounts and ITR for the FY 22-23 to the Commission vide its reply dt 27.12.23. This is to emphasize that true up for the FY 19-20 to 21-22 is already completed vide order dt. 16.5.23 in petition no. 2 of 2023.



- 3.17 Also, the Petitioner has submitted that as evident in the tariff forms S1, S3 & S4, the Petitioner is purely in Generation business. The Petitioner has reiterated that all the Tariff forms for the Control Period 2024-29 have been filed in accordance with the prevailing HPERC Regulations.

Commission's View

- 3.18 The Commission on careful consideration of the submission and records agrees to the view point of the Petitioner and has approved tariff for fifth Control Period FY 2024-25 to FY 2028-29 for BASPA II HEP (a Hydro generating plant) in this Order.

Capital investment

Stakeholder's Objections

- 3.19 The Consumer Representative has submitted that Regulation 9(4) of the MYT Regulations, 2011 requires the Petitioner to submit the investment plan with details of purpose of investment, capital structure, capitalization schedule, financing plan, cost-benefit analysis, improvement in operational efficiency envisaged in the Control Period. The Stakeholder has also highlighted that the Petitioner has not provided the following details:

- Purpose of investment,
- Work wise details of ongoing and new EHV schemes
- Break-up of scheme-wise financing plan; and
- Cost-benefit analysis, if any for the works being proposed

- 3.20 The Consumer representative has also emphasized that the Petitioner is required to provide the means of financing (break-up of debt, equity, grants/deposit works) for the proposed capitalization for FY24 and each year of the Control Period.

Petitioner's Reply

- 3.21 The Petitioner has responded that the contents of paragraphs mentioned by the Stakeholder pertain to the HPERC (Terms & conditions for determination of wheeling tariff & retail supply tariff) Regulations 2011 and are not applicable for generation business.
- 3.22 Further, the Petitioner has clarified that no capitalization / additional capitalization is proposed by the Petitioner in its current MYT petition.

Commission's View

- 3.23 The Commission agrees with the view point of the Petitioner and has approved tariff in this Order in accordance with HPERC (Terms & Conditions for Determination of Hydro Generation Tariff) Regulations 2011 (as amended from time to time) and PPA of BASPA II HEP with HPSEBL.



O&M Expense**Stakeholder's Objections**

- 3.24 The Consumer Representative has suggested that the Petitioner's claim for O&M expense has increased from Rs. 52.07 Cr (FY 22-23) to Rs. 68.12 Cr ((FY 28-29), against actual approved of Rs. 49.44 (FY 21-22) in true up order dated 16.05.2023. There is a discernible increase/escalation of 4.48% and with respect to SJVN bills for ICF O&M to 9.43%. This may lead to increase in tariff.

Petitioner's Reply

- 3.25 Petitioner has provided details in respect of O&M costs in Annexure 3 to the Petition filed on 30.11.2023. Apart from this, the petitioner has provided explanations related to O&M costs in its replies dt. 27.12.23 and 22.2.24.

Commission's View

- 3.26 The Commission has considered the suggestions & response and has detailed its approach for approving Operation and Maintenance expense in subsequent chapter of this Order.

Outstanding Debt**Stakeholder's Objections**

- 3.27 The Consumer Representative has suggested that the Petitioner should provide loan-wise details of the outstanding debt as on cut-off date as defined in the MoU along with the break-up of short-term and long-term loan details. The Petitioner must also clearly identify each loan which has been restructured.

Petitioner's Reply

- 3.28 There are no normative outstanding loans pending (except related to additional capex allowed by the Commission, as per tariff form F8C).

Commission's View

- 3.29 The Commission has detailed its approach for approving Interest on Loans in subsequent chapter of this Order.

Depreciation**Stakeholder's Objections**

- 3.30 HPSEBL has suggested that the figure of Depreciation for the year 2024-25 has been listed as Rs. 10.65 Crore, which does not match with both previous and next year. The Depreciation should be as per the PPA.



- 3.31 The Consumer Representative has suggested that the Petitioner has mentioned in the MYT Petition that it has considered 4.49% as depreciation rate based on historical data. The detailed computation for depreciation rate considered for generation assets should be provided.

Petitioner's Reply

- 3.32 In response to the comment of HPSEBL, the petitioner has stated that it has worked out depreciation in accordance with the clause 8.6.5 of the Power Purchase agreement (PPA) dated 4.6.1997.

'8.6.5 Depreciation and advance against depreciation

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 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 payment made on account of depreciation and balance amount shall be treated as advance against depreciation.

After the expiry of 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 the 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 per annum 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 capital cost as per the approved 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 will be reduced by the value of leased assets as on the scheduled date for 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.'

In accordance with the aforesaid PPA provisions, advance against depreciation has been fully recovered by the year 2019-20. Thereafter, depreciation is calculated @ 4.3% p.a. subject to condition that the total depreciation shall not exceed 90% of the capital cost. Depreciation on initial approved capital cost of 1533.96 crore is fully recovered in FY 2024-25 and on subsequent approved capital cost of 95.88 crore, it is fully recovered in FY 2028-29. This has resulted in different depreciation during the control period years.

- 3.33 In response to the comment by Consumer Representative, the petitioner has stated that it has not considered depreciation rate of 4.49%, rather Rs. 4.49 crore depreciation is claimed in FY 25-26, 26-27 & 27-28 in its current MYT petition.

Commission's View

- 3.34 The Commission on considering the suggestions and response, has detailed its approach for approving Depreciation expense in subsequent chapter of this Order.

Others

Stakeholder's Objections

- 3.35 HPSEBL has suggested that testing of pondage & performance for peaking power has been scheduled for 26-Mar-2024, results of which shall be intimated to HPERC. The Consumer Representative also suggested during the public hearing that the BASPA Plant should generate power during peak hours.
- 3.36 The Consumer Representative has suggested that the Hon'ble Commission may consider issuing guidelines for building up an accurate data base of administrative, financial and technical information. Further the Consumer Representative has suggested that the petitioner should renew focus on Energy Efficiency and Conservation measures so that power procurement cost gets reduced. Energy Audit should be made compulsory.

Petitioner's Reply

- 3.37 In response to the comment by HPSEBL, the Petitioner has replied that issue of testing pondage and performance for peaking power has no bearing on the tariff determination proceedings for Baspa II HEP. The petitioner has submitted that there was no performance test, in terms of the PPA, scheduled for 26.03.2024. The period in which the performance test is to be conducted, is to be indicated by the petitioner, where after the procedure prescribed in clause 3.3 of the Schedule V of the PPA is to be followed. Additionally, the performance test having been performed successfully in the previous year. Further, during the public hearing, the Petitioner has agreed that the



project shall continue to follow schedule provided by load dispatch centre for generation of power during peak hours.

- 3.38 In response to the comments of the Consumer Representative, the Petitioner has replied that the comments do not relate to the generation business.

Commission's View

- 3.39 The Commission takes cognizance of the stakeholder comments and response of the Petitioner in this regard. In view of the rising energy requirements during the peak hours, the Commission feels that it is appropriate for the Petitioner to undertake necessary steps for supplying maximum energy from its project during peak hours as per the requirement of HPSEBL. Also, the Petitioner is directed to submit to the Commission a copy of performance/ periodic tests reports undertaken in accordance with the provisions of the PPA, within a month of the issuance of this order or the conduct of test, whichever is earlier.



4. ANALYSIS OF THE PETITION

Introduction

- 4.1 This Chapter deals with the analysis of the Petition filed by the Petitioner for the period from FY 2024-25 to FY 2028-29 for sale of energy from BASPA II HEP to HPSEBL.
- 4.2 The Commission has finalized this Order based on the analysis and prudence check of the Petition/additional submissions/clarifications submitted by the Petitioner in response to the queries, suggestions and comments raised by the stakeholders during the public hearing and response submitted by the Petitioner. Various parameters and their computation have been undertaken after giving due consideration to the Power Purchase Agreement (PPA) for sale of power from BASPA-II to HPSEBL. The following sections contain the detailed analysis of various components of tariff, based on the various submissions of the Petitioner.

Computation of Tariff

- 4.3 As per the PPA, the tariff for the energy generated by Baspa II HEP comprises of five parts:
- (a) Capacity Charges
 - (b) Primary Energy Charge
 - (c) Incentive for Secondary Energy
 - (d) Incentive for Higher Plant Availability
 - (e) Tax on Income

Capacity Charge

- 4.4 The capacity charge as per Section 8.6 of the PPA is a sum of:
- (a) Interest on outstanding loan due during the tariff year, as per the loans approved by the Commission while approving the project cost;
 - (b) Depreciation and Advance Against Depreciation for the tariff year as per the Section 8.6.5 of the PPA; and
 - (c) Leasing Charges.

Primary Energy Charge

- 4.5 The primary energy charge as per Section 8.7 of the PPA is a sum of:
- (a) Operations and maintenance charges computed as per Section 8.7.2 of the PPA;
 - (b) Return on equity computed as per Section 8.7.3 of the PPA on the equity component approved by the Commission;
 - (c) Interest on working capital as per Section 8.7.4 of the PPA; and



(d) Other miscellaneous charges as defined under Section 8.7.5 of the PPA.

Incentive for Secondary Energy

4.6 The incentive for secondary energy shall be calculated as per Section 8.9 of the PPA and has been detailed in relevant section of this Order.

Incentive for Higher Plant Availability

4.7 The incentive for higher plant availability shall be calculated as per the Section 8.10 of the PPA and has been detailed in relevant section of this Order.

Tax on Income

4.8 The tax on income shall be computed as per Section 8.11 of the PPA and has been discussed in detail in the relevant section of this Order.

Energy Generation

4.9 Schedule IX-A of the PPA provides the details of design energy of the plant which is at 1213.18 MU per annum. As per the Section 8.12 of the PPA, the net saleable energy from the plant shall be equal to 88% (after excluding 12% of free energy to the Government of Himachal Pradesh) of the energy worked out by deducting:

- (a) 0.5% auxiliary consumption
- (b) 0.5% transformation losses
- (c) 0.65% transmission losses

4.10 The net saleable energy has been considered by the Commission in accordance with the PPA as shown below:

Table 6: Net Saleable Energy from BASPA II HEP

Particulars	Unit	
Design Energy	MU	1213.18
Auxiliary Consumption	%	0.50%
Transformation losses	%	0.50%
Transmission loss to grid	%	0.65%
Share of Available Power	%	88.00%
Net Saleable Energy	MU	1050.06

4.11 The Petitioner has proposed in its petition, annual energy generation of 1,117.60 MUs from the plant based on actual gross generation (net of Aux. consumption) for the last 3 years as follows:



BASPA II HEP

MYT Order for fifth Control Period (FY25–FY29)

Table 7: Annual Generation from BASPA II HEP, proposed by Petitioner

Particulars	Unit	Gross Generation
2021-22	MU	1,149.18
2022-23	MU	1,177.50
2023-24 (Estimated)	MU	1,026.11
Average of 3 years	MU	1,117.60

- 4.12 The Commission has considered the generation of primary energy as 1050.06 MUs for each year of the Control Period from FY 2024-25 to FY 2028-29. Secondary energy has been considered as nil, and the Plant availability has been considered at normative availability of 90% for the Control Period. The same shall be trued-up as per actual plant availability and actual generation of secondary energy.

Table 8: Energy Generation and Plant Availability approved for fifth Control Period

Particulars	FY 25	FY 26	FY 27	FY 28	FY 29
Generation of Energy (MUs)					
Primary Energy	1050.06	1050.06	1050.06	1050.06	1050.06
Secondary Energy (Saleable Energy minus primary energy)	-	-	-	-	-
Plant Availability (%), normative	90%	90%	90%	90%	90%

Capital Cost

- 4.13 No additional capital cost has been claimed by the petitioner for the fifth control period.
- 4.14 Accordingly, the Commission has taken closing balance of capital cost for FY2023-24 approved in previous MTR Order dated 16.05.2023 as opening balance of capital cost for FY2024-25, with no additional capitalization/ de-capitalization during the control period, as follows:

Table 9: Capital Cost allowed by the Commission (Rs. Cr.)

Particulars	FY 25	FY 26	FY 27	FY 28	FY 29
Opening Capital Cost	1,638.34	1,638.34	1,638.34	1,638.34	1,638.34
Additional Capital Expenditure	-	-	-	-	-
Capital cost as on 31 st March of year	1,638.34	1,638.34	1,638.34	1,638.34	1,638.34

- 4.15 Based on the capital cost approved above, the gross debt and equity approved for the period FY2024-25 to FY2028-29 is as summarized below:

Table 10: Gross Equity and Gross Debt allowed by the Commission (Rs. Cr.)

Particulars	FY 25	FY 26	FY 27	FY 28	FY 29
Equity	491.50	491.50	491.50	491.50	491.50



BASPA II HEP

MYT Order for fifth Control Period (FY25–FY29)

Particulars	FY 25	FY 26	FY 27	FY 28	FY 29
Gross Debt	1,146.84	1,146.84	1,146.84	1,146.84	1,146.84

Capital Cost exclusion of Karcham Wangtoo-Jhakri transmission line

- 4.16 Along with the BASPA-II project, a transmission line from BASPA II HEP to Nathpa Jhakri HEP of 55 kms, was built to evacuate power from BASPA II HEP. At the time of commissioning of another generation project in the region – Karcham Wangtoo HEP, a LILO was made on this Baspa-Jhakri Transmission line at Karcham Wangtoo with the approval of CEA & CTU, to evacuate power of Karcham Wangtoo HEP, till the time its own Wangtoo–Abdullapur transmission line was made ready. Accordingly, the Commission in its earlier orders has discussed that the capital cost of this portion of Karcham Wangtoo-Jhakri Transmission line may be excluded from the Capital Cost of BASPA II HEP, once it is included in the calculation of ISTS Transmission charges as determined by Hon'ble CERC. The direction issued to the Petitioner in Commission's order dated 16.05.2023 is as follows:

'4.29 Until the matter is clarified and an Order is issued by the Appropriate Commission, the Commission feels that at this stage it is inappropriate to exclude the Capital Cost of Baspa Jhakri LILO transmission line at Wangtoo from the overall Capital Cost of Baspa II HEP. In spite of several observations of the Commission made in the previous Orders, the Petitioner has failed to undertake suitable measures to resolve the issue and file a separate Petition with the Appropriate Commission for determination of capital cost and tariff against the said Transmission Line. It is made clear that the responsibility of filing of the separate Petition against the Karcham Wangtoo – Jhakri portion of Baspa Jhakri Transmission Line before the CERC rests solely with the Petitioner as the asset is owned by the Petitioner. Therefore, the Commission directs the Petitioner to file the requisite Petition with Appropriate Commission (i.e. CERC in this case) within three months of issuance of this Order else the Commission shall be constrained to disallow the cost of this transmission asset on notional basis from the next financial year i.e. FY 2024-25 onwards. Also, the Commission shall ensure that cost recovered through tariff from HPSEBL over the period since declaration of the asset as interstate would be adjusted in the next tariff order with carrying cost as applicable from time to time. The Petitioner is directed to update the Commission regarding the filing of the Petition with the Hon'ble CERC.'

- 4.17 The Commission in order dated 16.05.2023, as well in its earlier orders, had directed the Petitioner to file a petition with Hon'ble CERC for determination of capital cost and tariff against the said Transmission Line. In its reply to clarifications sought by the Commission, the Petitioner stated that it has already filed a petition (No. 262/TL/2023) with CERC for grant of transmission license in respect to Karcham Wangtoo – Jhakri portion of BASPA II – Jhakri Transmission line.
- 4.18 As per the submissions of the Petitioner, it is observed that the initial steps for seeking necessary approvals and inclusion of this transmission asset under inter-state



transmission network is still in process. However, the capital cost against this asset would only be available when the CERC grants the license and issues the corresponding Tariff Order against this transmission line. Therefore, the Commission does not find it appropriate to exclude capital cost of the said transmission line at this stage. The Petitioner is directed to periodically inform Commission of the progress in this matter, and also file a Petition for tariff determination of Karcham Wangtoo – Jhakri portion of BASPA II – Jhakri Transmission line with Hon'ble CERC at appropriate stage.

Interest on Loans

- 4.19 For determination of interest on loans, the Petitioner has continued with the approach followed by the Commission in previous MYT Orders.
- 4.20 The loan balances corresponding to the approved loans have been continued for the purpose of interest approval and the Commission has considered the outstanding loan balances for FY2023-24 as approved in the Mid-Term Review (MTR) Order dated 16.05.2023 of the Petitioner. The methodology considered for approving the interest for each loan is detailed in the subsequent sub-sections.
- 4.21 Repayment of all Domestic and Foreign Loans for Baspa II HEP (except for Normative Loan 3 and Normative Loan 4) had been completed before the start of fifth control period of FY2024-25 to FY 2028-29.
- 4.22 The Petitioner in the MYT Petition has submitted rate of interest of 8.07% for FY 2024-25 to FY2028-29, as approved by the Commission for True-up of FY2021-22 in its order dated 16.05.2023.
- 4.23 Regulation 17(2) of HPERC Generation MYT Tariff Regulation 2011 (as amended from time to time) states as under:-

"(2) The rate of interest shall be the weighted average rate of interest calculated on the basis of the actual loan portfolio at the beginning of each year applicable to the project:

Provided that if there is no actual loan for a particular year but normative loan is still outstanding, the last available weighted average rate of interest shall be considered:

Provided further that if the generating station, does not have actual loan, then the weighted average rate of interest of the generating company as a whole shall be considered:

Provided further that if the generating company does not have actual loan, then one (1) Year 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, as may be applicable as on 1st April of the relevant Year plus 200 basis points shall



be considered as the rate of interest for the purpose of allowing the interest on the normative loan.”;

- 4.24 Accordingly, the Commission has used the rate of interest proposed by the Petitioner, for calculation of tariff in this Order, subject to true-up later.
- 4.25 The repayments and interest charges on the remaining normative loans considered by the Commission for determination of tariff for FY 2024-25 to FY 2028-29 are discussed in the following paragraphs.

Normative Loan – 3

- 4.26 The Commission had approved a normative loan of Rs. 1.11 Crore with loan repayment tenure of 11 years, in the MYT Order dated 29.06.2019 for meeting the debt requirement of implementing FGMO/ RGMO.
- 4.27 The Commission has continued with the loan scheduled approved for this normative loan in its previous True-up and MTR Order dated 16.05.2023, and allowed the repayment and interest charge as follows:

Table 11: Normative Loan-3 Repayment and Interest approved for FY25 to FY29 (Rs. Cr.)

Particulars	FY 25	FY 26	FY 27	FY 28	FY 29
Opening balance	0.63	0.54	0.45	0.36	0.27
Addition	-	-	-	-	-
Principal Repayment	0.09	0.09	0.09	0.09	0.09
Closing Balance	0.54	0.45	0.36	0.27	0.18
Interest Rate	8.07%	8.07%	8.07%	8.07%	8.07%
Approved Interest	0.05	0.04	0.03	0.03	0.02

Normative Loan– 4

- 4.28 The Commission had approved a normative loan of Rs. 4.61 Crore with loan repayment tenure of 11 years, in the MYT Order dated 29.06.2019 for meeting the debt requirement towards additional capitalization of Rs. 6.58 Crores approved by Arbitral Tribunal vide Order dated 21.06.2018.
- 4.29 The Commission has continued with the loan scheduled approved for this normative loan in its previous True-up and MTR Order dated 16.05.2023, and allowed the repayment and interest charge as follows:

Table 12: Normative Loan-4 Repayment and Interest approved for FY25 to FY29 (Rs. Cr.)

Particulars	FY 25	FY 26	FY 27	FY 28	FY 29
Opening balance	2.20	1.78	1.36	0.94	0.52
Addition	-	-	-	-	-
Principal Repayment	0.42	0.42	0.42	0.42	0.42



BASPA II HEP

MYT Order for fifth Control Period (FY25–FY29)

Particulars	FY 25	FY 26	FY 27	FY 28	FY 29
Closing Balance	1.78	1.36	0.94	0.52	0.10
Interest Rate	8.07%	8.07%	8.07%	8.07%	8.07%
Approved Interest	0.16	0.13	0.09	0.06	0.03

Total Interest and Repayment

4.30 The following table depicts the total interest and repayment approved for the fifth Control Period.

Table 13: Total Interest and Repayments approved for FY25 to FY29 (Rs. Cr.)

Rs. Cr.	FY25	FY26	FY27	FY28	FY29
Interest Payments	0.21	0.17	0.13	0.08	0.04
Principal Repayments	0.51	0.51	0.51	0.51	0.51

Depreciation

4.31 In the previous Tariff/ True-up orders, the Commission has allowed depreciation and advance against depreciation for the plant, in accordance with the provisions under clause 8.6.5.1 of the PPA between BASPA-II HEP and HPSEBL, at a depreciation rate of 4.30% per annum. Only Rs. 27.78 Crores of depreciable value of the plant is remaining as on closing of FY 2023-24, which is less than 4.30% of plant's GFA.

4.32 The Petitioner has suggested to calculate the depreciation in future years, by taking depreciation of each additional capitalization separately from its respective year of capitalization, at a depreciation rate of 4.30% per year, as follows:

Table 14: Depreciation proposed by Petitioner (Rs. Cr.)

Capital cost allowed	Total depreciation @ 90%	Depreciation till 31.3.24	Balance depreciation on 31.3.24	FY25	FY26	FY27	FY28	FY29
1533.96 cr.	1,380.56	1,374.41	6.15	6.15	-	-	-	-
95.88 cr.	86.29	69.27	17.02	4.12	4.12	4.12	4.12	0.54
2.57 cr.	2.31	1.46	0.86	0.11	0.11	0.11	0.11	0.11
6.58 cr.	5.92	1.66	4.27	0.28	0.28	0.28	0.28	0.28
De-capitalisation of (-) 0.65 cr.	-0.59	-0.09	-0.50	-0.03	-0.03	-0.03	-0.03	-0.03
Total 1638.34	1,474.51	1,446.70	27.80	10.64	4.49	4.49	4.49	0.91

4.33 It is observed that the remaining depreciation amount of the plant as on closing of FY2023-24, is primarily due to the additional capitalizations allowed in the previous orders. Taking cognizance of submissions made by the Petitioner and the Stakeholders



in this regard, the Commission has decided to spread the remaining depreciable value equally over the next five (5) years. This shall ensure an unvarying depreciation in the future years using a straightforward adjustment of the balance depreciation during the control period, in the interest of consumers.

Table 15: Depreciation approved for the fifth Control Period (Rs. Cr.)

Particular	FY24	FY25	FY26	FY27	FY28	FY29
Depreciable Value	1,474.51	1,474.51	1,474.51	1,474.51	1,474.51	1,474.51
Depreciation + AAD	70.45	5.56	5.56	5.56	5.56	5.56
Cumulative Depreciation + AAD	1,446.73	1,452.29	1,457.84	1,463.40	1,468.95	1,474.51
Remaining Depreciable value	27.78	22.22	16.67	11.11	5.56	0.00

4.34 The Advance Against Depreciation (AAD) provided in previous years as per provisions of the PPA has already been recovered back before FY2023-24 and hence does not impact depreciation in future years.

Operations and Maintenance Expenses

4.35 Clause 8.7.2 of the PPA, allows for O&M escalation at weighted average of WPI and CPI indices, 11th year onwards after COD. Clause 8.7.2 of the PPA states that:

"Operation and maintenance charges including Insurance expenses for the initial tariff year shall be calculated at the rate of 1.25% (one and a quarter percentage) of the capital cost. These charges shall be escalated for each year subsequent to the initial tariff year, every year by 6% (compounded annually) for the first ten tariff years. Thereafter the escalation for each year shall be computed as per the formula given in Schedule XI"

4.36 The Part B of the Schedule XI of the PPA which deals with escalation in O&M charges reads as under:

"The rate of Escalation in operation and maintenance charges shall be worked out for each tariff year after the expiry of first ten year, as per the following formula in terms of section 8.7.2

Percentage rate of annual escalation = $0.3 \times \frac{W_1 - W_2}{W_o} + 0.7 \times \frac{L_1 - L_2}{L_o}$

Where

W₁ = Index Number of wholesale prices in India (All Commodities) (1981-82 = 100) , as published by reserve bank of India (R.B.I) , for the month of march of the financial year for which annual escalation to be worked out



$W_0 =$ Index Number of wholesale prices in India (All Commodities) (1981-82 = 100) , as published by reserve bank of India (R.B.I) , for the month of march immediately preceding the financial year for which annual escalation is to be determined

$L_1 =$ Consumer price index for Industrial Workers (All India) (1981-82 = 100), as published by reserve bank of India (R.B.I) , for the month of march of the financial year for which annual escalation to be worked out

$L_0 =$ Consumer price index for Industrial Workers (All India) (1981-82 = 100), as published by reserve bank of India (R.B.I) , for the month of march immediately preceding the financial year for which annual escalation is to be determined

Note: i) Pending determination of annual rate of escalation for such tariff years for which annual escalation is to be allowed on actual basis as per section 8.7.2 on the basis of above formula, the rate of escalation worked out for the 12 months period ending on last day of the month of December immediately preceding the relevant tariff year on similar basis shall be adopted on provisional basis for purpose of section 8.14. Final adjustment on this account shall be made as soon as the published indices for the month of March of that tariff year become available."

4.37 As per the provision of PPA, the CPI and WPI index to be considered for computation of escalation rate should be of 1981-82 series as published by the RBI. However, since 1981-82 series of CPI and WPI indices have been discontinued, the Commission has considered the latest available series of CPI and WPI index in line with approach followed in previous orders.

4.38 The table below summarizes the computation of escalation factor as per the provisions of the PPA:

Table 16: WPI and CPI considered for calculation of O&M escalation factor

Particulars	2021-22	2022-23
WPI All Commodities (base year 2011-12)		
For the month of March	148.9	151.0
Change		1.41%
CPI for Industrial Workers (Base year 2001)		
For the month of March	126.0	133.3
Change		5.79%
Escalation factor		4.48%



- 4.39 The Commission has computed the O&M expense as per the provisions of the PPA using the escalation factor calculated above and the approved capital cost (including additional capitalization). Further, O&M expenses on account of decapitalization of assets during FY2019-20 to FY 2021-22 have been adjusted in the respective year's O&M expenses and additional O&M expenses towards the new assets have been accounted. The O&M expense towards additional capitalization has been considered @1.25% of the approved capitalization in the first year. Thereafter, O&M expense for subsequent years is calculated using the approved escalation factor of 4.48% as discussed above.
- 4.40 The Commission in MYT Order dated 06.06.2014 had approved additional O&M expenses of 0.25% towards ICF facility, from Petitioner to SJVNL, from the date of commissioning of the project. In this respect, the Commission has continued with the methodology used in previous Orders. Also, service tax (18% GST) on the O&M cost for ICF has been considered as per the practice adopted in previous Orders.
- 4.41 Further the Commission observed that while calculating the O&M expense for base year of FY2023-24, the Petitioner used a higher escalation rate for O&M towards ICF facility. In its reply to the clarification sought by the Commission, the Petitioner stated that in true-up of FY2021-22, ICF O&M of Rs. 2.42 Crores was allowed by the Commission, while actual expenditure incurred was Rs. 2.62 Crores. The Petitioner added this additional amount in FY 2022-23, leading to higher escalation. The Commission has not considered this additional expenditure in its calculation of ICF O&M, as this expenditure does not pertain to the period under review and True-up of FY2021-22 has already attained finality.
- 4.42 The total O&M expenses approved for the Control Period FY 2024-25 to FY 2028-29 are detailed in table below:

Table 17: O&M Expenses approved for fifth Control Period (Rs. Cr.)

Particulars	FY 25	FY 26	FY 27	FY28	FY29
Base O&M Expenses (adjusted for de-capitalization)	50.41	52.67	55.03	57.49	60.07
Add: O&M expense towards additional capitalization of Rs. 94.08 Cr.	2.61	2.73	2.85	2.98	3.11
Add: O&M expense towards additional capitalization of Rs. 67.23 Cr. (for ICF facility)	2.96	3.14	3.33	3.52	3.73
Add: Service Charge on ICF O&M Expenses	0.53	0.56	0.60	0.63	0.67
Add: O&M expense towards additional capitalization of Rs. 1.59Cr.	0.02	0.02	0.02	0.02	0.03
Add: O&M expense towards additional capitalization of Rs. 6.58 Cr.	0.08	0.09	0.09	0.10	0.10
Total O&M Expenses Approved	56.63	59.21	61.92	64.75	67.71



Return on Equity (RoE)

4.43 As per the Section 8.7.3 of the PPA:

"Return on Equity for each tariff year from the initial tariff year onwards will be calculated at a per annum rate of 16% (sixteen percent) of the equity component of the capital cost as per approved financial package. The return on equity for the tariff period and the last tariff year shall be worked out on proportionate basis for actual number of days for which such return on equity is to be determined."

4.44 The Commission has approved the Return on Equity (RoE) as per Section 8.7.3 of the PPA and has computed the same at 16% per annum on the approved equity base.

Table 18: Return on Equity approved for fifth Control Period (Rs. Cr.)

Rs. Cr.	FY 25	FY 26	FY 27	FY 28	FY 29
Closing Balance of Equity	491.50	491.50	491.50	491.50	491.50
Rate Of Return	16%	16%	16%	16%	16%
Return on Equity	78.64	78.64	78.64	78.64	78.64

Interest on Working Capital

4.45 As per clause 8.7.4 of the PPA:

"Interest on working capital shall be accounted for at the SBI lending rate as applicable from time to time for the secured loans. For this purpose the working capital shall consist of:-

- i) *The Operation and Maintenance (O&M) charges for one month:*
- ii) *Maintenance spares at actual but not exceeding one year's requirement less value of one fifth of initial spares already capitalized. The value of maintenance spares for one year requirement shall be taken as 12% of the O&M charges for that tariff period/ tariff year.*
- iii) *Receivables equivalent to two months of average billing for sale of electricity*

4.46 The rate of interest for calculating the interest on working capital has been taken as per the SBI PLR of 15.00% as on 1st April 2024 for the entire Fifth Control Period. The interest on working capital shall be trued up based on the actual SBI PLR applicable as on 1st April of each year.



Table 19: Interest on Working Capital approved for fifth Control Period (Rs. Cr.)

Rs. Cr.	FY 25	FY 26	FY 27	FY 28	FY 29
1/12th of O&M Expenses	4.72	4.93	5.16	5.40	5.64
Maintenance Spares 12% of O&M Expenses	6.80	7.11	7.43	7.77	8.13
Receivables equivalent to 2 months average billing	26.28	26.75	27.24	27.75	28.29
Total Working Capital	37.80	38.79	39.83	40.92	42.05
Rate of Interest	15.00%	15.00%	15.00%	15.00%	15.00%
Interest on Working capital	5.67	5.82	5.97	6.14	6.31

Incentive for Secondary Energy and Higher Plant Availability

4.47 As per the Section 8.9.1 of the 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 any tariff year shall not exceed 10% Return on Equity..."

4.48 Further, as per the Section 8.10 of the PPA, the incentive towards higher plant availability factor is required to be computed as below:

"In case the Plant Availability level in a Tariff year, as determined in accordance with Schedule I, exceeds the normative level of 90%, the Company shall be entitled to an incentive at the rate of 0.35% of Equity component of the capital cost as per the approved financial package for each percentage increase in plant availability above 90% normative level during the year when plant availability is more than 90%. The amount of this incentive payable for any tariff year shall not exceed 2% Return on Equity. The ceiling for the initial and last tariff period shall be worked out on pro-rata basis. Incentive shall be payable at the end of each tariff year/ tariff period."

4.49 The Petitioner has claimed no incentive for higher Plant Availability and Secondary Energy, stating that same shall be claimed during respective year's true up based on actual plant availability and secondary energy achieved.

4.50 Accordingly, the Commission has not considered any secondary energy generation or higher than normative plant availability for the purpose of approval of the ARR/ Tariff for the fifth Control Period. The incentives shall be billed by the Petitioner to HPSEBL as per the actual generation and plant availability in the applicable tariff for each year in accordance with the provisions of the PPA and the Commission shall true up the same.



Income Tax

- 4.51 As per Clause 8.11 of the PPA, the Tax on Income is payable as an expense to the Petitioner by the HPSEBL. Clause 8.11.1 states:

"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 against 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 income tax law. Rebate on account of depreciation and any other rebate/ exemption admissible under law shall be considered for the purpose of calculation on tax liability of the Board.

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

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

- 4.52 The Petitioner has filed computation of income tax on the basis of prevalent MAT Rate of 17.47%, as approved by the Commission in its MTR Order for FY2023-24 dated 16.05.2023.
- 4.53 The Commission feels appropriate to continue with the MAT Rate for calculation of income tax in view of the Petitioner's submissions. The actual tax paid by the Petitioner would be considered at the time of true-up of fifth Control Period based on the submissions of the Petitioner and prudence check.
- 4.54 The income tax approved by the Commission for fifth Control Period is provided in table below:

Table 20: Approved Income Tax for FY 25 to FY 29 (Rs. Cr.)

Rs. Cr.	FY 25	FY 26	FY 27	FY 28	FY 29
Return on Equity	78.64	78.64	78.64	78.64	78.64
Incentive for secondary energy	0.00	0.00	0.00	0.00	0.00
Incentive for higher plant availability	0.00	0.00	0.00	0.00	0.00
Add: Depreciation	5.56	5.56	5.56	5.56	5.56
Subtract: Income Tax Depreciation	21.74	21.03	20.35	19.69	19.06
Taxable Income	62.45	63.16	63.85	64.50	65.14
Tax Rate	17.47%	17.47%	17.47%	17.47%	17.47%
Income Tax	10.91	11.04	11.16	11.27	11.38

Application fees

- 4.55 The Commission has allowed an Application Fees of Rs. 7.5 lacs per annum in line with the HPERC Conduct of Business Regulations, 2005, as amended from time to time.



BASPA II HEP

MYT Order for fifth Control Period (FY25–FY29)

Annual Fixed Charge for BASPA II HEP

4.56 The total Annual Fixed Charges for the BASPA-II, with the components of the capacity charges, primary energy charges and incentives and taxes approved for the Control Period and detailed in the previous sections in this chapter, are summarized below:

Table 21: Annual Fixed Charge approved for BASPA-II HEP for fifth Control Period (Rs. Cr.)

Particulars	FY 25	FY 26	FY 27	FY 28	FY 29
Capacity Charges					
Interest on outstanding loans	0.21	0.17	0.13	0.08	0.04
Depreciation	5.56	5.56	5.56	5.56	5.56
Application fee	0.08	0.08	0.08	0.08	0.08
Sub-total Capacity Charges	5.84	5.80	5.76	5.71	5.67
Primary Energy Charges					
O&M Charges	56.63	59.21	61.92	64.75	67.71
Return on Equity	78.64	78.64	78.64	78.64	78.64
Interest on Working Capital	5.67	5.82	5.97	6.14	6.31
Sub-total Primary Charges	140.94	143.67	146.54	149.53	152.66
Incentives and Taxes					
Incentive for Secondary Energy	0.00	0.00	0.00	0.00	0.00
Incentive for Higher Plant Availability	0.00	0.00	0.00	0.00	0.00
Tax	10.91	11.04	11.16	11.27	11.38
Sub-total Incentives and Taxes	10.91	11.04	11.16	11.27	11.38
Total Annual Fixed Charges	157.69	160.51	163.45	166.52	169.72

4.57 The Approved Tariff for the BASPA-II for the Fifth Control Period is given in the table below:

Table 22: Approved Tariff for fifth Control Period

Particulars	Units	FY 25	FY 26	FY 27	FY 28	FY 29
Energy Generation						
Saleable Primary Energy	MU	1050.06	1050.06	1050.06	1050.06	1050.06
Saleable Secondary Energy	MU	0	0	0	0	0
Total Generation	MU	1050.06	1050.06	1050.06	1050.06	1050.06
Total Annual Fixed Charges	Rs. Cr.	157.69	160.51	163.45	166.52	169.72
Tariff for Total Energy	Rs./Kwh	1.50	1.53	1.56	1.59	1.62



BASPA II HEP

MYT Order for fifth Control Period (FY25–FY29)

Revision in Design Energy of the Baspa HEP

- 4.58 The Commission has noted that the actual power generation from the Baspa HEP since COD of the Plant has been significantly higher, barring initial few years, as compared to the design energy of the Plant. The detail of the actual energy generation for the last 20 years from the Baspa HEP, based on the monthly billing to the HPSEBL, has been as under:

Table 23: 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



BASPA II HEP

MYT Order for fifth Control Period (FY25–FY29)

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)
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

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.

Directives

4.60 The Commission issues following directives to the Petitioner:

1. The Petitioner shall supply power to HPSEBL as per tariff approved for fifth control period in this order.
2. The Petitioner shall take necessary steps required for generating power during peak period.
3. The Petitioner shall periodically inform Commission of the progress in the matter of Petition filed with Hon'ble CERC for grant of transmission license in respect to Karcham Wangtoo – Jhakri portion of BASPA II – Jhakri Transmission line. Also,



BASPA II HEP*MYT Order for fifth Control Period (FY25-FY29)*

the Petitioner shall take all necessary steps to promptly file a Petition for tariff determination of Karcham Wangtoo – Jhakri portion of BASPA II – Jhakri Transmission line with Hon'ble CERC, at appropriate stage.

4. Submit to the Commission a copy of performance/ periodic tests reports undertaken in accordance with the provisions of the PPA, within a month of the issuance of this order or the conduct of test, whichever is earlier.

Sd/-
(SHASHI KANT JOSHI)
Member

Sd/-
(YASHWANT SINGH CHOGAL)
Member Law

Sd/-
(DEVENDRA KUMAR SHARMA)
Chairman

Shimla

Dated: 12.06.2024



Annexure 2(Colly)

2024:HHC:12989

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**CWP No.13925 of 2024****Date of Decision: 02.12.2024**

JSW Hydro Energy Limited

.....Petitioner

Versus

Himachal Pradesh Electricity Regulatory Commission and others

... Respondents

Coram:

Hon'ble Mr. Justice Sandeep Sharma, Judge.Whether approved for reporting? ¹

For the Petitioner: Mr. P. Chidambaram, Senior Advocate with Mr. Aman Anand and Mr. Janesh Gupta, Advocates.**For the Respondents:** Mr. N.K. Sood. Senior Advocate with Mr. Vinay Mehta, Advocate, for respondent No.1.

Ms. Sunita Sharma, Senior Advocate with Mr. Dhananjay Sharma, Advocate, for respondent No.2.

Mr. Anup Rattan, Advocate General with Mr. Rajan Kahol, Mr. Vishal Panwar and Mr. B.C.Verma, Additional Advocate Generals and Mr. Ravi Chauhan, Deputy Advocate General, for respondent No.3.

Mr. Shiv Pal Manhas, Advocate, for respondent No.4.

Sandeep Sharma, Judge(oral):

By way of instant petition filed under Article 226 of the Constitution of India, petitioner has prayed for following main reliefs:-

- “(a) ***Issue a writ of certiorari or any order or direction in the nature of certiorari and set aside the impugned directions***

¹ Whether the reporters of the local papers may be allowed to see the judgment?



at para 4.59 of the Tariff order dated 12.06.2024 passed by respondent No.1, HPERC in petition No.27/2024; and
(b) *Direct the respondent No.3/DOE to withdraw its letters dated 05.08.2024 and 14.08.2024, asking the petitioner to submit the ten daily discharge data at dam site, form FY 2003-04 till date."*

2. Precisely, the grouse of the petitioner, as has been highlighted in the petition and further canvassed by Mr. P. Chidambaram, learned Senior counsel duly assisted by Mr. Aman Anand and Mr. Janesh Gupta, Advocates, representing the petitioner is that, while passing Multi-Year Tariff order for BASPA-II, HEP/Power Plant i.e. petitioner herein for the FY 2024-25 to FY 2028-29, respondent No.1-Himachal Pradesh State Electricity Regulatory Commission (**hereinafter referred to as the Commission**) had no jurisdiction to issue direction to respondent No.3, Directorate of Energy, State of Himachal Pradesh, to review the design energy already approved by respondent No.4-Central Electricity Authority in the year April, 1994 and further reviewed in the year, 2023. Learned Senior counsel representing the petitioner, while fairly admitting that power to prescribe tariff is exclusively with the Commission, further submitted that Commission could not have passed any order with regard to revision of design energy, rather in that regard, appropriate order, if any, can only be passed by respondent No.4-Central Electricity Authority (**hereinafter referred to as the CEA**) as provided



under Electricity Act, 2003. He further submitted that though direction contained in Clause 4.59 of the Tariff order(Annexure P-1) passed by the Commission is without jurisdiction, but even if it is presumed that same could have been issued by the Commission, petitioner herein was required to be given adequate opportunity to put forth his case.

3. While responding to aforesaid grouse as well as submissions made by learned Senior Counsel representing the petitioner, Mr. N.K. Sood, learned Senior counsel representing the respondent-Commission, though vehemently argued that Commission, while passing Tariff order in terms of Sections 62 and 86 of the Electricity Act, 2003 read with regulations, has jurisdiction to call for hydrological data and analysis on which design energy of particular project is evaluated, but with a view to cut short the controversy, he has instruction to state that Commission is ready and willing to afford opportunity of being heard to the petitioner inasmuch as direction contained in Clause 4.59 of the Tariff order is concerned(Annexure P-1).

4. Having heard learned Senior counsel representing the parties and perused material available on record vis-à-vis impugned order, this Court finds that primarily the petitioner herein is aggrieved of the findings/direction recorded/given in Clause 4.59 of the Tariff order, which read 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 year2006-07 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.”

5. Though, parties are in agreement that Commission is well within its jurisdiction to pass Tariff order in terms of Section 62 of the Act and it can also render advise to State Government under Section 86 of the Act, but question which needs to be determined is that “whether while passing tariff order, Commission can call for the data, enabling it to pass order, if any, with regard to revision of design



energy?”. Though, it came to be vehemently argued on behalf of learned Senior counsel representing the Commission that since Clause 4.59 is part of the Tariff order, appropriate remedy, if any, for the petitioner is to file appeal under Section 111 of the Act before the Appellate Authority, but this Court is persuaded to agree with learned Senior counsel representing the petitioner that Commission, while directing respondent No.3, Directorate of Energy to review design energy, has acceded its jurisdiction and as such, petition cannot be thrown out merely on account of provision of appeal contained under Section 111 of the Act.

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. Pending applications, if any, also stand disposed of.

**(Sandeep Sharma),
Judge**

December 02, 2024
(shankar)



**IN THE HON'BLE HIGH COURT OF HIMACHAL
PRADESH AT SHIMLA**

CWP NO. ____ OF 2024

JSW Hydro Energy Ltd.

...Petitioner

Versus

Himachal Pradesh Electricity Regulatory Commission & Ors.

...Respondents

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	Relevant extract of CEA's report for Review of Performance of Hydro Power Stations 2022-23.	
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12.	<u>Annexure P6 (colly)</u> Copy of the notifications dated 18.04.2006 and 28.01.2014, by the Central Government along with its true typed copy.	
13.	<u>Annexure P7</u> Copy of the CEA Guidelines for processing cases for revision of design energy along with its true typed copy.	

Shimla

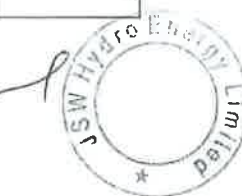
Petitioner

Dated :

Through

Counsel

(..... & Janesh Gupta)
Advocates



**IN THE HON'BLE HIGH COURT OF HIMACHAL
PRADESH AT SHIMLA**

CWP NO. ____ OF 2024

M/s JSW Hydro Energy Ltd.
4th Floor, NTH Complex,
Shaheed Jeet Singh Marg,
Qutub Institutional Area, New Delhi- 110067.
Through its authorised signatory Shri Anurag
Agarwal Son of Shri Kamal Kishore Agarwal
Aged About 44 years

...Petitioner

Versus

1. Himachal Pradesh Electricity Regulatory Commission
Through Secretary
Vidyut Aayog Bhawan, Block No.- 37,
SDA Complex, Kasumpti, Shimla-09
2. Himachal Pradesh State Electricity Board.
Through Director, Vidyut Bhawan, Shimla-171004



3. Directorate of Energy

Dept of MPP & Power, GoHP

Through Director New Parking Complex Tutikandi Crossing

Near New ISBT Shimla – 171001

4. Central Electricity Authority

Through Chairperson, Sewa Bhawan, R.K. Puram,

Sector-1, New Delhi-110066



Shimla

Petitioner

Dated:

Through Counsel

(..... & Janesh Gupta)
Advocates



**IN THE HON'BLE HIGH COURT OF HIMACHAL
PRADESH AT SHIMLA**

CWP NO. ____ OF 2024

JSW Hydro Energy Ltd.

...Petitioner

Versus

Himachal Pradesh Electricity Regulatory Commission & Ors.

...Respondents

SYNOPSIS

The present writ petition is being filed against the directions given by the Respondent No. 1 i.e. Himachal Pradesh Electricity Regulatory Commission (HPERC) at paragraph 4.59 of the Tariff Order dated 12.06.2024, passed in petition no. 27/2024 (“**Impugned Directions**”), directing the Respondent No. 3/ Directorate of Energy (DoE), Government of Himachal Pradesh to form a committee of experts to compute the design energy generation in respect of 300 MW BASPA-II Hydro-Electric Power Plant of the Petitioner



located on River Baspa (tributary of river Satluj), District Kinnaur, Himachal Pradesh (“**BASPA-II HEP/power plant**”) based on the analysis of hydrological data for the period 2003-04 till 2022-23; and further directs Respondent No. 3, to review the design energy generation of the Petitioner’s power plant based on the recommendation of the Committee of experts and submit the same to Respondent No.1.

The Impugned Directions are with respect to revision of design energy of the power plant, viz:

“4.59....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.”

The Impugned Directions have been passed *suo-moto*, and without giving an opportunity of being heard. No issue was joined/hearing undertaken on the issue during the course of the proceedings, which culminated into the Impugned Directions. In any event, the Impugned Directions constitute a manifest error of law on the face of the record, as the same are in complete disregard of the statutory provisions of Section 8 of the Electricity Act, 2003 r/w the applicable notifications of the Central Government, which provides that any concurrence to a scheme of hydro generation (and consequently any revision thereof) involving a capital expenditure of Rs. 500 crore or above (later revised to Rs. 1000 crore or above) can be statutorily given effect to, only



by the Respondent No. 4/Central Electricity Authority (CEA). The Tariff order dated 12.06.2024 itself considers capital expenditure in excess of Rs. 1000 crore for the Petitioner's power plant.

The Impugned Directions, if not set-aside, will cause grave injustice and prejudice to the Petitioner as the task of revision of design energy has been given to Respondent No. 3, which is a body [which shares the same administrative control] as the counter party to the power purchase agreement i.e. Respondent No. 2/Himachal Pradesh State Electricity Board (HPSEB). Further, while Respondent No. 4/CEA has framed and published guidelines which are applicable to the Petitioner's plant for revision of design energy, no such guidelines exist with the Respondent No. 3. The Respondent No. 3, which lacks authority over the design parameters of the



Petitioner's plant, cannot be permitted to carry out a completely arbitrary exercise.

Shimla

Petitioner



Dated :

Through Counsel

(..... & Janesh Gupta)
Advocates





	per detailed project report approved by the Authority etc. are determined under the PPA itself.
08.06.2003	All units of the BASPA-II HEP are commissioned.
<u>10.06.2003</u>	<p>Electricity Act, 2003 (Act) enacted.</p> <p><i>Section 8. (Hydro-electric generation): ---</i></p> <p><i>(1) Notwithstanding anything contained in section 7, any generating company intending to set-up a hydroelectric station shall prepare and submit to the Authority for its concurrence, a scheme estimated to involve a capital expenditure exceeding such sum, as may be fixed by the Central Government, from time to time, by notification.</i></p> <p>....</p> <p>Pursuant to Section 8(1) of the Act, the Central Government fixed the sum as Rs. 500 Crore vide Notification No. SO 550(E) dated 18.04.2006 which was later modified to Rs. 1000 Crore vide Notification No. SO 490(E) dated 28.01.2014.</p>
Dec' 2003	Matter for revision of design energy discussed in Respondent No.4/CEA Meeting No. 11/2003. It was decided that a committee be constituted to frame guidelines for processing the case for revision of design energy benefits in respect of existing stations.



09.03.2004	Committee constituted vide Respondent No.4/CEA office order no. 5-41(5)/Secy-2004 (CEA)/61.
August 2004	Report of the committee to formulate guidelines for processing cases for revision of design energy of hydroelectric stations in operation.
24.02.2007	<p>HPERC approved capital cost of the BASPA II HEP at Rs. 1533.96 Cr and approved the tariff for the initial 5 years from FY 2003-04 to FY 2007-08.</p> <p><u>Design Energy considered as per PPA i.e. 1213 MUs.</u></p> <p>Thereafter till date the design energy has been considered as per PPA by all stakeholders including the HPERC.</p>
23.03.2024	Order reserved in Petition No. 27/2024 for determination of multi-year tariff for FY 2024-25 to FY 2028-29. No issue regarding revision of design energy arose during the proceedings. There was no pleading to this effect, nor was the Petitioner put to notice of the same via. Data gaps/information sought from the Petitioner.
12.06.2024	HPERC in MYT Order for Baspa II HEP of Petitioner, for FY 2024-29, has directed the DoE to constitute a committee of experts to analyse the hydrological data and compute the design energy generation from the project. Committee is to submit its report,



	<p>within three months, to the DoE, with a copy to HPERC. The DoE 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.</p> <p>HPERC has observed that Baspa HEP has generated more energy than the design energy for the seventeen (17) years out of the last twenty (20) years. Thus, the hydrological series computed for generation of energy needs review. (Pr. 4.59 of the Order)</p>
05.08.2024	Letter for DoE to the Petitioner asking for ten-daily discharge data at dam site from 2003-04 till date, within 3 days, in accordance with HPERC order.
14.08.2024	Reminder to Letter dated 05.08.2024.
	Aggrieved by the Impugned Directions in relation to revision of design energy, the present Petition has been preferred.

Shimla

 Petitioner 


Dated :

Through Counsel

 (..... & Janesh Gupta)
Advocates


May It Please Your Lordships:

1. That the present Petition has been filed for setting aside paragraph 4.59 of the Tariff Order (“Impugned Direction”) dated 12.06.2024 passed by the Respondent No. 1 (HPERC) in Petition no. 27/2024 which directs the Respondent No. 3 i.e. DoE to form a committee to compute the project design energy based on the hydrological data for the period 2003-04 till 2022-23; and based on such recommendation, further directs the DoE to review the design energy generation from the BASPA-II HEP of the Petitioner, and submit the same to the Respondent No. 1. Copy of the Impugned Directions passed in Petition No. 27/2024 is annexed herewith and marked as **Annexure P1**.
2. It is submitted that, in terms of section 8(1) of the Electricity Act, 2003 (Act) and the notifications issued by the Central Government under section 8 i.e. Notification No. SO 550(E) dated 18.04.2006, modified vide Notification No. SO 490(E) dated 28.01.2014, the clear mandate to provide concurrence to a scheme of hydroelectric projects, whose estimated capital expenditure (now after amendment) exceeds Rs. 1000 Crore,



such as the Petitioner's BASPA II HEP, lies solely with Respondent No. 4 i.e. CEA.

3. The Respondent No. 1 i.e. Himachal Pradesh Electricity Regulatory Commission (HPERC) has passed the Impugned Directions in violation of principles of natural justice as the same was passed without affording the Petitioner any opportunity of being heard in relation to the finding arrived at paragraph 4.59 and no issue was joined or hearing undertaken on revision of design energy during the course of the proceedings, which culminated into the Impugned Directions in the Tariff Order dated 12.06.2024.
4. These manifestly illegal actions of the Respondent No.1 has resulted in failure of justice towards the Petitioner, in as much as, it has been relegated for revision of design energy generation of its BASPA-II HEP to the Respondent No. 3/DoE, an interested party, who in any case does not have any authority in law, to re-compute/revise design energy of a project involving a capital expenditure of more than Rs. 1000 Crore, the said being the exclusive statutory function and mandate of the Respondent No. 4/CEA.



Position of Parties and Background Facts

5. That Petitioner, JSW Hydro Energy Ltd. [earlier known as Himachal Baspa Power Company Limited (HBPCL) which name has now been changed to JSW Hydro Energy Ltd. vide approval from Registrar of Companies dated 11.09.2018] is a generating company in terms of Section 2(28) of the Electricity Act, 2003, incorporated under the Companies Act, 1956 and having its registered office at Karcham-Wangtoo H.E. Project, Sholtu Colony, P.O, Tapri Sholtu, Kinnaur, Himachal Pradesh-172104.
6. The Respondent No. 1 is the Himachal Pradesh Electricity Regulatory Commission (HPERC/State Commission).
7. The Respondent No. 2 is the Himachal Pradesh State Electricity Board Limited (HPSEBL) is a government owned organization responsible for the generation, transmission and distribution of electricity in the state of Himachal Pradesh.
5. Respondent No. 3 is the Directorate of Energy (DoE) which is the nodal office of Departments of MPP & Power, GoHP and works for effective and prompt coordination between all



power utilities of power sector of the state of Himachal Pradesh.

8. Respondent No. 4 is the Central Electricity Authority (CEA) constituted under section 70 of the Electricity Act, 2003 ('Act') and is responsible for providing concurrence to schemes for hydroelectric projects under section 8(1) of the Act.
9. The Petitioner (through its predecessor) has entered an into implementation agreement dated 01.10.1992 with the Government of Himachal Pradesh, herein to establish, own, operate, maintain the project of generation and transmission of electricity from its 300 MW BASPA Hydro-Electric Power Plant Stage-II (BASPA-II HEP), in Kinnaur District, Himachal Pradesh. The last unit of the project achieved commercial operation on 08.06.2023.
10. The design energy for project involved in the instant case i.e. BASPA-II HEP has been fixed at 1213.18 MUs. The Respondent No.4/CEA has provided the concurrence/techno economic clearance (TEC), as envisaged under sections 28-31 of the Electricity Supply Act, 1998, to the project on 29.04.1994. Copy of the TEC is annexed herewith and marked



as **Annexure P2**. It may be noted that the Design Energy of the project in the Respondent No.4/CEA report for Review of Performance of Hydro Power Stations 2022-23, recognises the Design Energy of the project as 1213 MUs. Relevant extract of the said report is attached herewith and marked as **Annexure P3**.

11.The Respondent No. 1, determines the tariff for BASPA-II HEP in terms of the PPA dated 04.06.1997 and the Himachal Pradesh Electricity Regulatory Commission (Terms and Conditions for Determination of Hydro Generation Tariff) Regulations, 2024 as amended from time to time. All the tariff/true up orders passed by the Respondent No. 1/HPERC till date have considered the saleable design energy based on the project design energy of 1213 MUs.

12.The Petitioner and the Respondent No. 2/HPSEB have a subsisting Power Purchase Agreement (PPA) dated 04.06.1997 for sale of the entire power generated from the BASPA-II HEP to Respondent No. 2. Copy of the PPA dated 04.06.1997 is annexed herewith and marked as **Annexure P4**. Design Energy (i.e. 1213 MUs), Net Saleable Design Energy, Secondary energy, 90% Dependable Year as per detailed



project report approved by the Respondent No. 4/CEA etc. are determined under the PPA itself.

13. Respondent No. 1/HPERC has been directed Respondent No. 3/DoE at Para 4.59 of the Impugned Directions in the Tariff Order dated 12.06.2024 to constitute a committee to re-compute the Design Energy of the BASPA-II project and to review the same and thereafter submit its report to the Respondent No. 1/HPERC. The Respondent No. 3/DoE has in furtherance of this direction issued letters dated 05.08.2024 and 14.08.2024, seeking the ten daily discharge data at dam site, from the Petitioner allegedly to be able to comply with the directions of the Respondent No.1/HPERC. It is submitted that this data, directly measured from established gauge stations, in any case, is not available in the record of the Petitioner. Copies of these letters dated 05.08.2024 and 14.08.2024 are annexed herewith and marked as **Annexure P5 (colly.)**.

14. That while determining the tariff of the BASPA-II HEP, the Respondent No. 1/HPERC in order to arrive at the energy charge rate ('ECR') has to take into account the annual design



energy ('DE') of the power plant. The design energy is defined in the Regulations and the PPA as under:

Tariff Regulations, 2024

3(26) "*Design Energy*" means the quantum of energy which can be generated in a 90% dependable year with 95% installed capacity of the hydro generating station;

PPA dated 04.06.1997

2.2.5 DESIGN ENERGY OF THE PROJECT
Means the quantum of the energy which could be generated in a 90% dependable year with 95% installed capacity of the station (based on 10 day discharge period of the year), which has been determined to be 1213.18 MU (corresponding to the year, 1981-82 which has been determined as 90% dependable year) with monthly break up given in Schedule IX. The annual design energy figure stated above shall, however, be revised by mutual agreement between the parties due to any relaxation in the State Government/MoEF stipulation of a minimum down-stream discharge of 5 cusecs.

15. Section 8(1) of the Act is reproduced here below for ready reference:

"Section 8. (Hydro-electric generation): ---
(1) Notwithstanding anything contained in



section 7, any generating company intending to set-up a hydrogenating station shall prepare and submit to the Authority for its concurrence, a scheme estimated to involve a capital expenditure exceeding such sum, as may be fixed by the Central Government, from time to time, by notification."

16. In compliance with Section 8(1) of the Electricity Act, 2003, the Central Government vide Notification No. SO 550(E) dated 18.04.2006, modified vide Notification No. SO 490(E) dated 28.01.2014, has fixed the following limits of capital expenditure for various categories of hydroelectric schemes exceeding which the scheme is to be submitted to the CEA for concurrence:

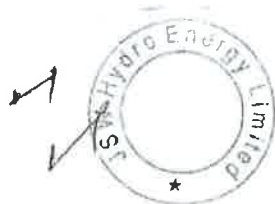
- i) ₹ 2500 crores, provided that –*
 - a) the scheme is included in National Electricity Plan (NEP) as notified by Central Electricity Authority (CEA) and conforms to the capacity and type.*
 - b) the site for setting up the generating station has been allocated through the transparent process of bidding in accordance with the guidelines issued by Central Govt.*
- ii) ₹ 1000 crores for any other scheme not covered by para i (a) and i (b) of clause.*



Copy of the notifications dated 18.04.2006 and 28.01.2014 are annexed herewith and marked as **Annexure P6(colly)**.

17. That admittedly the capital expenditure of the Petitioner's power plant far exceeds Rs. 1000 crore and therefore the Respondent No.4/CEA continues to be the statutory authority for computing and/or revising the design energy for the BASPA-II HEP. This is also clear from a bare reading of section 185 of the EA, 2003.

18. It may be relevant to note, that the Respondent No.4/CEA in its Authority Meeting No. 11/2003, held in December, 2003 discussed the matter for revision of design energy and decided that a committee be constituted to frame guidelines for processing the case for revision of design energy benefits in respect of existing stations. Such committee was constituted vide Respondent No.4/CEA office order no. 5-41(5)/Secy-2004 (CEA)/61 dated 09.03.2004. A report of the committee to formulate guidelines for processing cases for revision of design energy of hydroelectric stations in operation. was published in August 2004, wherein it was mentioned that the These guidelines clearly provided that the Respondent No.4/CEA may review the design energy of a power plant



subsequent to its commissioning. Copy of the CEA Guidelines for processing cases for revision of design energy is annexed herewith and marked as **Annexure P7**.

19. That, from the foregoing it is absolutely clear that the design energy of BASPA-II HEP can only be revised by the Respondent No.4/CEA. Appellate Tribunal for Electricity (APTEL) has also repeatedly held that Respondent No. 4/CEA is the apex technical and statutory body to review and vet revisions in Design Energy for hydroelectric projects and, such approvals shall be binding on all.
20. That, in complete disregard to the above legal position, the Respondent No.1/HPERC while determining the multi-year tariff of BASPA-II HEP for FY 2024-25 to FY 2028-29, vide Impugned Directions, has directed the Respondent No.3/DoE for constituting a committee for analysing the hydrological data and re-computing the design energy generation from the power plant; and based on on the report of the committee, the Respondent No.3/ DoE has also been directed to review the design energy of BASPA-II HEP. Relevant paragraph 4.59 of the Impugned Directions is reproduced herein below for ready reference:



"4.59 ... 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."

21. That, the Impugned Directions of the Respondent No. 1/HPERC are not only in violation of the section 8(1) Electricity Act, 2003 but also directly in the teeth of notifications dated 18.04.2006 and 28.01.2014, issued by the central government. The said notifications specifically mandate that scheme for all projects having capital expenditure above Rs. 1000 Crore and not notified in the National Electricity Policy (NEP) or allocated through the bidding route, have to be submitted to the Respondent



No.4/CEA for concurrence Hence, only the Respondent No.4/CEA can review/revise the design energy of the Petitioner's power plant; and not the Respondent No.3/DoE.

22.It is submitted that all the tariff/true up orders passed by the Respondent No.1/HPERC till date have considered the saleable design energy based on the project design energy approved by the Respondent No.4/CEA. Further, no issue was joined nor was there any hearing on the issue revision of design energy during the course of the proceedings by the Respondent No.1/HPERC, which culminated into the Impugned Directions.

23.That, the Respondent No.1/HPERC, without hearing the Petitioner, has directed the Respondent No.3/DoE, an interested party being a department of the State Government, which Government also administratively controls the counter party in the PPA, to review the design energy of the Petitioner's power plant. It is submitted that such actions of the Respondent No.1/HPERC are arbitrary and wholly without jurisdiction.



24. It is submitted that the Respondent No.4/CEA, under section 8(1) of the Act, is the only authority which possess the jurisdiction to revise/review its design energy. Therefore, the Petitioner is under no obligation to provide any data as requested by Respondent No.3/DoE for computation of its design energy.

25. It is submitted that the Respondent No.3/DoE is an interested party and also lacks jurisdiction to review the design energy of the Petitioner's project.



GROUND

26. Because, the Impugned Directions are against the law and facts of the case.

27. Because the Impugned Directions dated 12.06.2024 passed by the Respondent No. 1/HPERC, with respect of revision of design energy by the Respondent No.3/DoE, constitute a manifest error of law on the face of the record, as the same is clearly in ignorance and disregard of the provisions of law.

28. Because, in terms of section 8(1) of the Electricity Act, 2003 (Act) and the notifications issued by the Central Government under section 8 viz. Notification No. SO 550(E) dated 18.04.2006, modified vide Notification No. SO 490(E) dated 28.01.2014, the clear mandate to provide concurrence to a scheme of hydroelectric projects, whose estimated capital expenditure (now after amendment) exceeds Rs. 1000 Crore, such as the Petitioner's BASPA II HEP, lies solely with Respondent No. 4/CEA. Consequently, any revision in the scheme, including a revision in the essential/fundamental



parameter of project design energy can only be made by the CEA.

29.Because, directing the Respondent No. 3/DoE to re-compute and review the design energy of the Petitioner's power plant, which mandate statutorily vests only with the Respondent No.4/CEA under section 8(1) of the Act, amounts to usurpation of CEA's power under the Act. This is completely untenable.

30.Because, the Respondent No.1/HPERC, has acted illegally in the exercise of its jurisdiction, as it has passed the Impugned Direction without giving an opportunity to the Petitioner to be heard and thus violated the principles of natural justice. It may be noted that no issue was joined/hearing undertaken on revision of design energy during the course of the proceedings, which culminated into the Impugned Directions in the Tariff Order dated 12.06.2024.

31.Because, actions of the Respondent No.1/HPERC have resulted in manifest injustice to the Petitioner, in as much as, that the Petitioner has been relegated for revision of design energy of its project to the Respondent No. 3/DoE, who otherwise lacks any authority in law to re-compute/revise



design energy of a project involving a capital expenditure of more than Rs. 1000 Crore, the said being the exclusive statutory function and mandate of the Respondent No.4/CEA. The impugned direction, being against this statutory mandate deserves to be set aside.

32. Because re-computation in the project design energy, based on a fresh study of the hydrological data of subsequent years (after the project has achieved COD) can only be undertaken by the Respondent No.4/CEA, the Respondent No.4/CEA being the original grantor and approver of the concurrence and the DPR. It is settled that the authority which has power to grant is the authority which can revise, alter or modify the terms of the grant.

33. Because, Respondent No.4/CEA being the statutory body for granting concurrence to a scheme of hydroelectric generation under section 8 of the Electricity Act, 2003, whose estimated capital expenditure exceeds the limit fixed by the Central Government, it is only the Respondent No.4/CEA that can re-compute and revise the project design energy in such cases. Section 185 also clarifies the said position in respect of projects commissioned prior to the Electricity Act, 2003 and



which had taken concurrence of the Respondent No.4/CEA under the Electricity Supply Act of 1948.

34. Because, the Respondent No.3/DoE lacking competence to review the design energy of BASPA II HEP could not have sent unsanctioned and illegal communications to the Petitioner requesting ten daily discharge data at dam site, for the past 20 years for BASPA-II HEP.

35. Even if the Respondent No.1/HPERC has the power to consider the revision of design energy of the power plant, then it must have necessarily referred the matter to the Respondent No.4/CEA and not to Respondent No.3/DoE as has been done in the Impugned Directions. It is only the Respondent No.4/CEA that has the statutory function under section 70(n) of advising the Appropriate Commission in all technical matters relating to generation.

36. Because the present is a classic case of usurpation of the powers of the Respondent No.4/CEA, by entrusting the task of revision in design energy to an interested party. There is a clear conflict of interest as Respondent No.3/DoE will be an interested party being a department of the State Government,



which Government also administratively controls the counter party in the PPA.

37. Because the Respondent No.3/DoE, unlike the Respondent No.4/CEA has no guidelines which are to be followed for revising/re-computing the project design energy. Any action of the DoE sans guidelines would be a completely arbitrary exercise.

38. That the Petitioner craves leave of this Hon'ble Court to amend the Petition, as may be necessary in the present case and file further documents and affidavits.

39. The Petitioner has not filed any other similar Petition before the Hon'ble Supreme Court of India or before this Hon'ble Court.

40. The Petition humbly submits that there is no other equally alternative efficacious remedy available to it except to invoke the Extra-ordinary Civil Writ Jurisdiction of this Hon'ble Court under Article 226 of the Constitution of India.



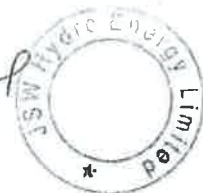
PRAYER

It is therefore prayed that this Hon'ble Court may be pleased to:

- A) Issue a writ of Certiorari, or any order or direction in the nature of Certiorari and set aside the Impugned Directions at para 4.59 of the Tariff Order dated 12.06.2024 passed by Respondent No. 1, HPERC in Petition No. 27/2024; and
- B) Direct the Respondent No. 3/DOE to withdraw its letters dated 05.08.2024 and 14.08.2024, asking the Petitioner to submit the ten daily discharge data at dam site, from FY 2003-04 till date; and
- C) Pass any other order(s) as it may deem fit.

Shimla

Petitioner



Dated:

Through Counsel

(..... & Janesh Gupta)
Advocates



**IN THE HON'BLE HIGH COURT OF HIMACHAL
PRADESH AT SHIMLA**

CWP NO. ____ OF 2024

JSW Hydro Energy Ltd.

...Petitioner

Versus

Himachal Pradesh Electricity Regulatory Commission & Ors.
...Respondents

AFFIDAVIT IN SUPPORT OF PETITION

I, Anurag Agarwal son of Shri Kamal Kishore Agarwal Aged about 44 years, at present posted as General Manager, Authorised signatory of M/s JSW Hydro Energy Ltd. 4th Floor, NTH Complex, Shaheed Jeet Singh Marg, Qutub Institutional Area, New Delhi- 110067, do hereby solemnly state and affirm as under :

1. That I am the authorised signatory of the petitioner company and I am well conversant with the facts of the case.



2. That accompanying petition has been drafted under my instructions and I have gone through same. The contents of the petition in paras 1 to 25 and of those in 26 to 35 of the grounds are true to my knowledge and record and believed to be true on the basis of the legal information imparted to me.
3. That the contents of my affidavit are true to the best of my personal knowledge. Nothing contained herein is false and nothing material has been concealed.

Declared at Shimla on this the ____ day of _____
2024.

DEPONENT



**IN THE HON'BLE HIGH COURT OF HIMACHAL
PRADESH AT SHIMLA**

**C.M.P. No. OF 2024
IN
CWP NO. ____ OF 2024**

JSW Hydro Energy Ltd. ...Petitioner- Applicant

Versus

Himachal Pradesh Electricity Regulatory Commission & Ors.
...Respondents- Non-Applicants

**APPLICATION UNDER SECTION 151 OF THE
CODE OF CIVIL PROCEDURE, 1908 READ WITH
H.P. HIGH COURT RULES SEEKING STAY OF
OPERATION DIRECTIONS AT PARA 4.59 OF
THE ORDER DATED 12.06.2024 PASSED BY
HPERC IN PETITION NO. 27/2024**

MAY IT PLEASE YOUR LORDSHIP

1. That the present Writ Petition has been filed by JSW Hydro Energy Ltd. seeking a writ of Certiorari, for



setting aside the directions given by the Respondent No. 1 i.e. Himachal Pradesh Electricity Regulatory Commission (HPERC), with respect to revision of design energy in respect of 300 MW BASPA-II Hydro-Electric Power Plant of the Petitioner, at paragraph 4.59 of the Tariff Order dated 12.06.2024, passed in petition no. 27/2024 (“**Impugned Directions**”).

2. The Impugned Directions with respect to revision of design energy of the power plant, are reproduced here below for ready reference:

“4.59....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. The facts leading up to the present writ petition have been set out in detail in the accompanying writ petition and are not being repeated here for the sake of brevity and to avoid prolixity.
4. The Impugned Directions in the order dated 12.06.2024 have been challenged, inter-alia, amongst the following grounds:
 - a) The Impugned Directions dated 12.06.2024 passed by the Respondent No. 1/HPERC, with respect of revision of design energy by the Respondent No.3/DoE, constitute a manifest error of law on the face of the record, as the same is clearly in ignorance and disregard of the provisions of law.
 - b) In terms of section 8(1) of the Electricity Act, 2003 (Act) and the notifications issued by the Central Government under section 8 viz. Notification No. SO 550(E) dated 18.04.2006, modified vide Notification No. SO 490(E) dated 28.01.2014, the clear mandate



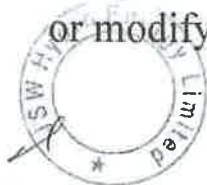
to provide concurrence to a scheme of hydroelectric projects, whose estimated capital expenditure (now after amendment) exceeds Rs. 1000 Crore, such as the Petitioner's BASPA II HEP, lies solely with Respondent No. 4/CEA. Consequently, any revision in the scheme, including a revision in the essential/fundamental parameter of project design energy can only be made by the CEA.

- c) Directing the Respondent No. 3/DoE to re-compute and review the design energy of the Petitioner's power plant, which mandate statutorily vests only with the Respondent No.4/CEA under section 8(1) of the Act, amounts to usurpation of CEA's power under the Act. This is completely untenable.
- d) The Respondent No.1/HPERC, has acted illegally in the exercise of its jurisdiction, as it has passed the Impugned Direction without giving an opportunity to the Petitioner to be heard and thus violated the principles of natural justice. It may be noted that no issue was joined/hearing undertaken on revision of design energy during the course of the proceedings,



which culminated into the Impugned Directions in the Tariff Order dated 12.06.2024.

- e) That the actions the Respondent No.1/HPERC have resulted in manifest injustice to the Petitioner, in as much as, that the Petitioner has been relegated for revision of design energy of its project to the Respondent No. 3/DoE, who otherwise lacks any authority in law to re-compute/revise design energy of a project involving a capital expenditure of more than Rs. 1000 Crore, the said being the exclusive statutory function and mandate of the Respondent No.4/CEA. The impugned direction, being against this statutory mandate deserves to be set aside.
- f) The re-computation in the project design energy, based on a fresh study of the hydrological data of subsequent years (after the project has achieved COD) can only be undertaken by the Respondent No.4/CEA, the Respondent No.4/CEA being the original grantor and approver of the concurrence and the DPR. It is settled that the authority which has power to grant is the authority which can revise, alter or modify the terms of the grant.



- g) The Respondent No.4/CEA being the statutory body for granting concurrence to a scheme of hydroelectric generation under section 8 of the Electricity Act, 2003, whose estimated capital expenditure exceeds the limit fixed by the Central Government, it is only the Respondent No.4/CEA that can re-compute and revise the project design energy in such cases. Section 185 also clarifies the said position in respect of projects commissioned prior to the Electricity Act, 2003 and which had taken concurrence of the Respondent No.4/CEA under the Electricity Supply Act of 1948.
- h) The Respondent No.3/DoE lacking competence to review the design energy of BASPA II HEP could not have sent unsanctioned and illegal communications to the Petitioner requesting ten daily discharge data at dam site, for the past 20 years for BASPA-II HEP.
- i) Even if the Respondent No.1/HPERC has the power to consider the revision of design energy of the power plant, then it must have necessarily referred the matter to the Respondent No.4/CEA and not to Respondent



No.3/DoE as has been done in the Impugned Directions. It is only the Respondent No.4/CEA that has the statutory function under section 70(n) of advising the Appropriate Commission in all technical matters relating to generation.

j) The present is a classic case of usurpation of the powers of the Respondent No.4/CEA, by entrusting the task of revision in design energy to an interested party. There is a clear conflict of interest as Respondent No.3/DoE will be an interested party being a department of the State Government, which Government also administratively controls the counter party in the PPA.

k) The Respondent No.3/DoE, unlike the Respondent No.4/CEA has no guidelines which are to be followed for revising/re-computing the project design energy. Any action of the DoE sans guidelines would be a completely arbitrary exercise.

5. That, the Petitioner has a good prima facie case on merits and is likely to succeed before this Hon'ble Court. The balance of convenience lies in favour of the Petitioner, in



as much as, if the present application seeking stay of the Impugned Directions is not allowed, it will cause grave injustice and prejudice to the Petitioner as the task of revision of design energy has been given to Respondent No. 3, which is a body [which shares the same administrative control] as the counter party to the power purchase agreement i.e. Respondent No. 2/Himachal Pradesh State Electricity Board (HPSEB).

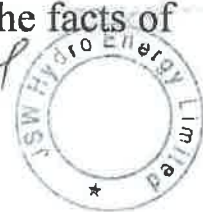
It is therefore prayed that this Hon'ble Court, during the pendency of this Writ Petition, may be pleased to:

A) Stay the operation of the Impugned Directions at para 4.59 of the order dated 12.06.2024 passed by Respondent No. 1, HPERC in Petition No. 27/2024; and

B) Pass any other order(s) as it may deem fit in the facts of the case.

Shimla

Petitioner



Dated :

Through Counsel

(..... & Janesh Gupta)
Advocates



**IN THE HON'BLE HIGH COURT OF HIMACHAL
PRADESH AT SHIMLA**

C.M.P. No. OF 2024

IN

CWP NO. ____ OF 2024

JSW Hydro Energy Ltd.

...Petitioner- Applicant

Versus

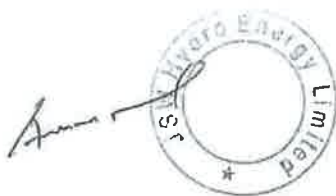
Himachal Pradesh Electricity Regulatory Commission & Ors.

...Respondents- Non-Applicants

AFFIDAVIT IN SUPPORT OF APPLICATION

I, Anurag Agarwal son of Shri Kamal Kishore Agarwal Aged about 44 years, at present posted as General Manager, Authorised signatory of M/s JSW Hydro Energy Ltd. 4th Floor, NTH Complex, Shaheed Jeet Singh Marg, Qutub Institutional Area, New Delhi- 110067, do hereby solemnly state and affirm as under :

1. The accompanying application has been drafted under my instructions and I have gone through the same.





2. That the contents of the application in paras 1 to 5 are true to my knowledge and record and believed to be true on the basis of the legal information imparted to me.
3. That the contents of my affidavit are true to the best of my personal knowledge. Nothing contained herein is false and nothing material has been concealed.

Declared at Shimla on this the ____ day of _____, 2024.

DEPONENT



**IN THE HON'BLE HIGH COURT OF HIMACHAL
PRADESH AT SHIMLA**

**C.M.P. No. OF 2024
IN
CWP NO. ____ OF 2024**

JSW Hydro Energy Ltd. ...Petitioner- Applicant

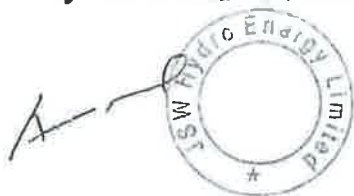
Versus

**Himachal Pradesh Electricity Regulatory Commission & Ors.
...Respondents- Non-Applicants**

AFFIDAVIT IN SUPPORT OF APPLICATION

I, Anurag Agarwal son of Shri Kamal Kishore Agarwal Aged about 44 years, at present posted as General Manager, Authorised signatory of M/s JSW Hydro Energy Ltd. 4th Floor, NTH Complex, Shaheed Jeet Singh, Marg, Qutub Institutional Area, New Delhi- 110067, do hereby solemnly state and affirm as under :

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2. That the contents of the application in paras 1 to 5 are true to my knowledge and record and believed to be true on the basis of the legal information imparted to me.
3. That the contents of my affidavit are true to the best of my personal knowledge. Nothing contained herein is false and nothing material has been concealed.

Declared at Shimla on this the ____ day of _____, 2024.


DEPONENT



**IN THE HON'BLE HIGH COURT OF HIMACHAL
PRADESH AT SHIMLA**

**C.M.P. No. OF 2024
IN
CWP NO. ____ OF 2024**

JSW Hydro Energy Ltd. ...Petitioner- Applicant

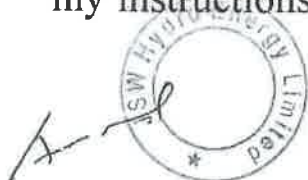
Versus

**Himachal Pradesh Electricity Regulatory Commission & Ors.
...Respondents- Non-Applicants**

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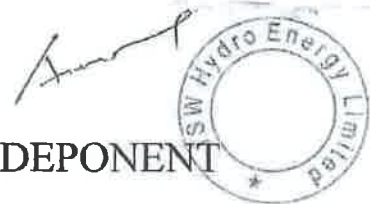




2. That the contents of the application in paras 1 to 5 are true to my knowledge and record and believed to be true on the basis of the legal information imparted to me.
3. That the contents of my affidavit are true to the best of my personal knowledge. Nothing contained herein is false and nothing material has been concealed.

Declared at Shimla on this the ____ day of _____,
2024.

DEPONENT



आिद्री सं. डी. एल.-33004/99

Annexure 3(Colly)

REGD. NO. D. L.-33004/99



भारत का राजपत्र The Gazette of India

असाधारण

EXTRAORDINARY

भाग II—खण्ड 3—उप-खण्ड (II)

PART II—Section 3—Sub-section (II)

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

सं. 361]

नई दिल्ली, मंगलवार, अप्रैल 18, 2006/चैत्र 28, 1928

No. 361]

NEW DELHI, TUESDAY, APRIL 18, 2006/CHAITRA 28, 1928

विद्युत मंत्रालय

अधिसूचना

नई दिल्ली, 18 अप्रैल, 2006

का.आ. 550(अ).—केन्द्रीय सरकार विद्युत अधिनियम, 2003 (इसके बाद अधिनियम संदर्भित किया गया है) की धारा 8 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए एतद्वारा यह अधिसूचित करती है कि निम्नलिखित धनराशि से अधिक अनुमानित पूंजीगत व्यय वाली किसी भी विद्युत उत्पादन कम्पनी द्वारा स्थापित किए जाने वाले बल विद्युत उत्पादक स्टेशनों की स्वीय धी केन्द्रीय विद्युत प्राधिकरण (इसके बाद प्राधिकरण संदर्भित किया गया है) की स्वीकृति हेतु प्रस्तुत किया जाएगा, नामक:—

1. दो हजार पांच सौ करोड़ रुपये चरिते कि—

- (क) स्कीम अधिनियम की धारा 3 की उप-धारा (4) के अन्तर्गत प्राधिकरण द्वारा सघा अधिसूचित राष्ट्रीय विद्युत योजना (एनईपी) में शामिल हो और स्कीम एनईपी में यथा उल्लिखित क्षमता व प्रकार (रन-आफ-रिवर/स्टोरेज) के अनुरूप हो;
- (ख) बल विद्युत उत्पादक स्टेशन की स्थापना हेतु स्थल का आवंटन अधिनियम की धारा 63 के अन्तर्गत केन्द्रीय सरकार द्वारा जारी दिशा-निर्देशों के अनुसार पारदर्शी बोली प्रक्रिया के जरिए किया गया हो।

2. उपरोक्त पैरा 1 के खण्ड (क) और (ख) में शामिल न की गई अन्य स्कीम के लिए पांच सौ करोड़ रुपये।

[फा. सं. 23/28/2003-आर एण्ड आर]

यू. एन. पंजियार, अपर सचिव

MINISTRY OF POWER

NOTIFICATION

New Delhi, the 18th April, 2006

S.O. 550(E).—In exercise of the powers conferred by sub-section (1) of Section 8 of the Electricity Act, 2003 (hereinafter referred to as the Act), the Central Government hereby notifies that the schemes for setting up hydro generating stations by any generating company involving an estimated capital expenditure exceeding the following sum shall be submitted for concurrence of Central Electricity Authority (hereinafter referred to as the Authority), namely:—

1. Rupees two thousand five hundred crores, provided that—

- (a) the scheme is included in the National Electricity Plan (NEP) as notified by the Authority under sub-section (4) of Section 3 of the Act and the scheme conforms to the capacity and type (run-of-river/storage) as mentioned in the NEP; and
- (b) the site for setting up the hydro generating station has been allocated through the transparent process of bidding in accordance with the guidelines issued by the Central Government under Section 63 of the Act.

2. Rupees five hundred crores for any other scheme not covered by clauses (a) and (b) to para 1 above.

[F. No. 23/28/2003-K&R]

U. N. PANJIAR, Addl. Secy,

1154 GI/2006



गजिस्ट्री सं० सी० एल०-३३००४/९९

REGD. NO. D. L.-33004/99



भारत का राजपत्र The Gazette of India

असाधारण

EXTRAORDINARY

भाग II—खण्ड 3—उप-खण्ड (ii)

PART II—Section 3—Sub-section (ii)

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

सं. 410]

नई दिल्ली, बुधवार, फरवरी 20, 2014/फाल्गुन 1, 1935

No. 410]

NEW DELHI, THURSDAY, FEBRUARY 20, 2014/PHALGUNA 1, 1935

विद्युत मंत्रालय

अधिसूचना

नई दिल्ली, 28 जनवरी, 2014

का.आ. 490(अ).—विद्युत अधिनियम, 2003 (2003 का अधिनियम 36) की धारा 8 की उप-धारा (1) के द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्र सरकार दिनांक 18 अप्रैल, 2006 के का.आ. 550(अ) के तहत प्रकाशित भारत सरकार, विद्युत मंत्रालय की अधिसूचना में एतद्वारा निम्नलिखित संशोधन करती है, अर्थात् :—

उक्त अधिसूचना के पैरा 2 में "पैंच सौ करोड़ रुपये" शब्दों को "एक हजार करोड़ रुपये" द्वारा प्रतिस्थापित किया जाए।

[का. सं. 23/28/2003-आरएण्डआर]

ज्योति अरोरा, संयुक्त सचिव

MINISTRY OF POWER

NOTIFICATION

New Delhi, the 28th January, 2014

S.O. 490(E).—In exercise of the powers conferred by sub-section (1) of Section 8 of the Electricity Act, 2003 (Act 36 of 2003), the Central Government hereby makes the following amendment to the notification of the Government of India in the Ministry of Power published vide S.O. 550(E), dated 18th April, 2006, namely :—

In the said notification, in paragraph 2, for the words "Rupees five hundred crores" the words "Rupees One thousand crores" shall be substituted.

[F.No. 23/28/2003-R&R]

JYOTI ARORA, Jt. Secy



Confidential
Dhawal Maheshwari
Jaiprakash Associates Limited
Mar 20, 2014 00:38

Annexure 4

Dated the 29th April, 1992

No. 2/12/1/87-710

M/s Jaiprakash Industries Ltd.,
JA House,
63, Ansari Lokh,
Vasant Vihar,
New Delhi-110037.

Subject: - Rana Hydro Electric Project Stage-II (3x100 MW) with associated Transmission system upto Chakri (Himachal Pradesh) by M/s JIL.

Sir,

Your above proposal submitted through HPSEB letter dated 2nd June '92 and as updated from time to time in accordance with the discussion/correspondence with CEA/CWC, was considered by CEA at its 122nd meeting held on 19th April '94. The proposal is hereby accorded techno-economic clearance at an estimated cost of Rs. 949.23 crores (December '93 price level) subject to:

- i) Furnishing of final financial package by M/s JIL;
 - ii) Signing of power purchase agreement between Govt. of Himachal Pradesh/HPSEB and M/s JIL;
 - iii) JIL entering into an agreement with M/s NJPC for terminating the 400 KV transmission lines in Chakri Switch Yard.
2. The techno-economic clearance accorded by CEA is subject to review on furnishing of firm financial package which should be done in a period of six months from the date of issue of the letter.

3. The break-up of the estimated costs is indicated below:

GENERATION	Rs. crores
- Civil Works	292.69
- Electrical/Mechanical Works	356.83
- IDC	218.13
Total (Generation)	867.70
TRANSMISSION	
- Transmission Works	68.89
- IDC	12.64
Total transmission	81.53
Total (Gen. & Trans.) (Incl. IDC)	949.23

Yours faithful

(V.V.R.K. R
SECRETARY,

Confidential
Dhawal Maheshwari
Jaiprakash Associates Limited
Mar 20, 2014 00:38



confidential
Government of India
Central Electricity Authority
Sewa Bhawan, R.K. Puram
New Delhi - 110 066

Annexure VI- 1A

No. 2/HP/1/87-PAC

Dated: 29th April 1994

M/s Jaiprakash Industries Ltd.,
JA House,
63, Basant Lok, Vasant Vihar
NEW DELHI - 110 057

Sub: Baspa Hydro Electric Project Stage-II (3x100 MW) with associated transmission system upto Jhakri (Himachal Pradesh) by M/s

Sir,

Your above proposal submitted through HPSEB letter date 2nd June' 92 and as updated from time to time in accordance with the discussion/correspondence with CEA/CWC, was considered by CEA at its 122nd meeting held on 19th April' 94. The proposal is hereby accorded techno-economic clearance at an estimated cost of Rs. 949.23 crores (December' 93 price level) subject to :

- i) Furnishing of final financial package by M/s. ;
 - ii) Signing of power purchase agreement between Govt. of Himachal Pradesh/HPSEB and M/s.
 - iii) entering into an agreement with M/s. NJPC for terminating the 400 KV transmission lines in Jhakri Switchyard.
2. The techno-economic clearance accorded by CEA is subject to review on furnishing of firm financial package which should be done in a period of six months from the date of issue of this letter.
 3. The break-up of the estimated cost is indicated below:

<u>GENERATION</u>	Rs. Crores
- Civil Works	292.69
- Electrical/Mechanical Works	356.88
- IDC	218.13
Total (Generation)	867.70

<u>TRANSMISSION</u>	
- Transmission Works	68.89
- IDC	12.64
- Total transmission	81.53
Total (Gen. & Trans.) (incl. IDC)	949.23

Yours faithfully,
SE-
(V.V.R.K. RAO)
SECRETARY, CEA

confidential
Dhawal Maheshwari
Jaiprakash Associates Limited
Mar 20, 2014 00:38



Government of India
Central Electricity Authority
Sewa Bhawan, R.K. Puram
New Delhi – 110006

No. 2/HP/1/87-PAC

Dated: 29th April, 1994

M/s Jaiprakash Industries Ltd.,
JA House
63, Basant Lok, Vasant Vihar
NEW DELHI – 110057

Sub: Baspa Hydro Electric Project Stage-II (3x100 MW) with
associated transmission system upto Jhakri (Himachal
Pradesh) by M/s JIL.

Sir,

Your above proposal submitted through HPSEB letter date
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The proposal is hereby accorded techno-economic clearance at an
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subject to:

- i) Furnishing of final financial package by M/s. JIL;
- ii) Signing of power purchase agreement between Govt. of
Himachal Pradesh / HPSEB and M/s. JIL;



iii) entering into an agreement with M/s. NJPC for termination the 400 KV transmission lines in Jhakri Switchyard.

2. The techno-economic clearance accorded by CEA is subject to review on furnishing of firm financial package which should be done in a period of six months from the date of issue of this letter.

3. The break-up of the estimated cost is indicated below:

GENERATION	Rs. Crores
- Civil Works	292.69
- Electrical/Mechanical Works	356.88
- IDC	218.13
Total (Generation)	867.70
TRANSMISSION	
- Transmission Works	68.89
- IDC	12.64
- Total transmission	81.53
Total (Gen. & Trans.) (Incl. IDC)	<u>949.23</u>

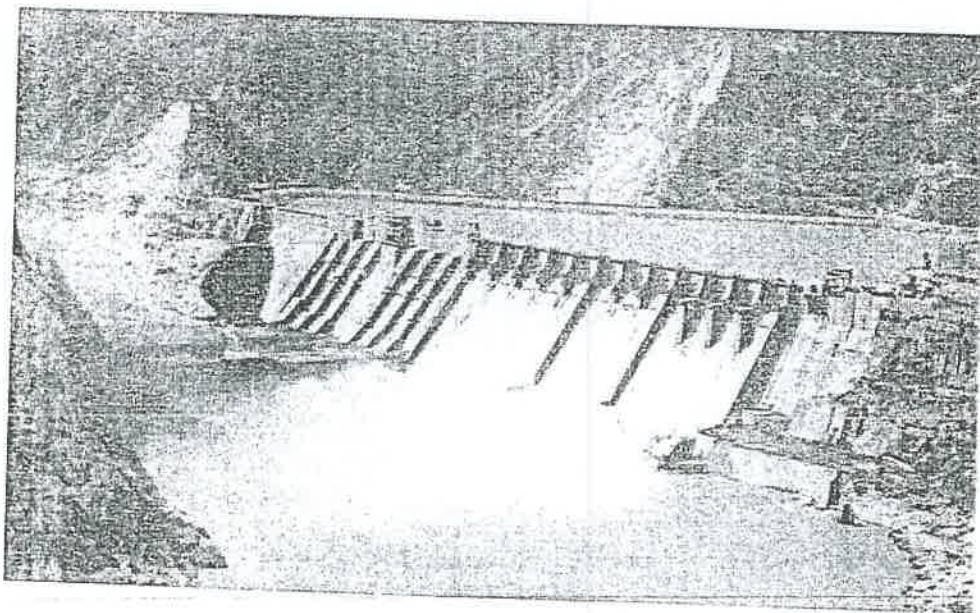
Yours faithfully,

Sd/-

(VIVEK RAO)

SECRETARY, CEA



CENTRAL ELECTRICITY AUTHORITY**REPORT OF THE COMMITTEE
TO FORMULATE GUIDELINES FOR
PROCESSING CASES****FOR****REVISION OF DESIGN ENERGY****OF****HYDRO ELECTRIC STATIONS IN OPERATION****AUGUST, 2004
NEW DELHI**

REPORT OF THE COMMITTEE FOR REVISION OF DESIGN ENERGY FOR HE STATIONS IN OPERATION

1.0 BACKGROUND:

- 1.1 CERC in their Order No. 20/3(10)/2001/CERC dated 16.8.2001 (Copy of extracts enclosed as Annex.-IV) desired that design energy benefits of all existing hydro power stations of NHPC & NEEPCO be reviewed by CEA. The following observations were made by CERC on operational norms of hydro power stations under its jurisdiction:
- i) Design Energy set out in the Techno-Economic Clearance of the Authority be considered for fixation of tariff.
 - ii) In case of multi-unit projects, the Design Energy applicable on commissioning of units shall be as set out for the respective unit in the Techno-Economic Clearance of the Authority.
 - iii) The Authority may review the Design Energy on completion of the project to consider additional hydrological data which would become available and latest status of completion/ commissioning of upstream projects involving consumptive use of water.
 - iv) The Authority may also review the Design Energy subsequent to the commissioning of the project as and when any specific information about the change in consumptive use of water upstream or in run off is brought to the notice of the Authority.
 - v) The design energy presently in use shall continue to be used for tariff purposes. However, the authority may take necessary action to review the design energy of all NHPC and NEEPCO projects within a period of 2 years from the issue of this order.
- 1.2 The matter for revision of Design Energy was discussed in the CEA, Authority meeting No. 11/2003 held in Dec., 2003 and it was decided that a Committee be constituted to frame guidelines for processing the cases for revision of design energy benefits in respect of existing stations. Committee was constituted for the purpose vide Secretary, CEA Office Order No. 5-41(5)/Secy-2004 (CEA)/61 dated 9.3.04 (Annex.-II).
- ### 1.3 COMPOSITION OF THE COMMITTEE

The composition of the Committee is as under:

S. No.	Name & Designation	
1	Sh. S.M. Dhiman, CE (HP&I), CEA	Chairman
2	Sh. M.P. Singh, Director (HPA), CEA	Member
3	Sh. Shankar Mahto, Director, Hyd. (NE), CWC	Member
4	Sh. Naresh Kumar, Director, HCD(N&W), CWC	Member
5	Sh. M.M. Rawal, Director (HP&I), CEA	Member-Secretary



Subsequently with the approval of Member (Hydro), Sh. B. Poddar, Director (HE&RM) was co-opted as member of the Committee vide CE (HP&I) order No. 3/58/2004-HP&I(1)/164-71 dated 25.3.2004 (Annex-III).




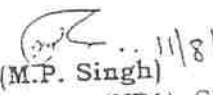
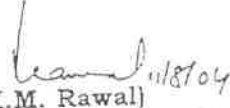
1.4 TERMS OF REFERENCE


The terms of reference of the Committee have been defined as :

"The Committee shall study CERC orders in this respect and would formulate comprehensive guidelines for the utilities to facilitate them to prepare proposals for review of design energy of the Hydro Electric Stations and appraisal of the proposal in CEA/ CWC."

1.5 RECOMMENDATIONS OF THE COMMITTEE

The Committee for review of Design Energy held 3 (three) meetings and guidelines proposed by the Committee for submission of proposal for revision of design energy benefits from HE stations in operation are given as Annex-I

 (Shankar Mahto) 11/8/2004 Director, Hyd.(NE), CWC Member	 (B. Poddar) Director (HE&RM), CEA Member	 (Naresh Kumar) 11/8/2004 Director, HCD(N&W), CWC Member
 (M.P. Singh) 11/8/2004 Director(HPA), CEA Member	 (M.M. Rawal) 11/8/2004 Director (HP&I), CEA Member-Secretary	


 (S.M. Dhiman) 11/8/2004
 CE (HP&I), CEA
 Chairman



ANNEX-I**GUIDELINES FOR SUBMISSION OF PROPOSAL FOR REVISION OF
DESIGN ENERGY OF HYDRO ELECTRIC STATIONS****1.0 OBJECTIVES**

These guidelines have been framed for submission of proposals for review of Design Energy of HE stations in operation for consideration by CEA. Even though efforts have been made to incorporate all the relevant aspects in the guidelines, however, hydro developments being site-specific, it is possible that in some cases, additional information may be required to process the proposals for review in an expeditious manner which would be sought by CEA, wherever required.

2.0 PREPARATION OF PROPOSAL FOR REVISION OF DESIGN ENERGY

The request for revision of design energy from the project authority shall be accompanied with the following:

2.1 Proposal Outline

The proposal for revision of Design Energy shall contain a brief background of the project including layout plan and salient features of the project, as cleared and as finally constructed, reasons for the need to revise Design Energy, upstream and downstream developments since commissioning of the project etc.

The proposal should be accompanied by copy of letter of TEC (along with enclosures, if any) accorded by CEA to the project and all the relevant data including the following as considered for assessment of energy benefits at the time of TEC :

- Hydrological flow series and Hydrological year
- Design/ rated head
- Tail water Level and Rating Curve
- Area-Capacity characteristics of reservoir/ pondage, if necessary
- Losses in Water Conductor system
- Overall TG efficiency
- D/S releases for sustaining aquatic life or for any other purposes, if any
- Flushing discharges, if any

Ranganadi-Design Energy Report-GUIDELINES-Reservoir 3



2.2 Hydrological Data

For the Review of Design Energy, it is essential to have site-specific Hydrometeorological data. It is therefore, desirable that the Hydro-meteorological sites established for the project at the DPR/construction stage should remain in operation even during operation of the station for subsequent review of Design Energy, if any. Following aspects need to be considered while framing proposal for Review of Design Energy :

- i) If the project was conceived based on other than site specific or synthetic data and at the review stage if site specific data are available, then before clubbing both set of data, their validation is essential. In case of discrepancy, the precedence should be given to the site-specific data.
- ii) The flow series to be utilized for estimation/Review of Design Energy should be continuous in time, as far as possible.
- iii) All locations of sites and observations shall be as per ISI/IMD standards. Methodology adopted shall be described.
- iv) A brief note about quality, consistency, processing of data including filling of gap etc should be prepared & enclosed with data/study set.

2.3 Hydro-meteorological data

2.3.1 General Information about the Region

The proposal should contain sufficient information about the types of climate, season, type of monsoon causing rainfall and general hydrologic regime of the river. In addition, following maps and tables should be included to support these details:

- Index map showing the boundaries of all the areas and reaches of interest
- Annual normal rainfall map of the region
- Table or bar charts showing monthly, normal and extremes of rainfall-number of rainy days
- Average ten daily, monthly and annual flow data
- River profile, cross-section and roughness coefficient for the reaches relevant to the project.

2.3.2 Presentation of Hydrological and Meteorological Data

Description of the available hydrological and meteorological data, supported by inventories in the form of bar diagram indicating



source-location and altitude. An sketch of maps showing the areas of interest and surrounding region shall be furnished in respect of the following.

- Rainfall and Snowfall
- Pan Evaporation
- River Gauge and Discharge

A map to a scale of 1:50,000 depending upon the size of the area involved, showing the location of relevant hydrological and meteorological stations, shall be furnished with the proposal.

2.3.3 Period and Frequency of Hydro-Meteorological Data

Broad guidelines regarding the length and frequency of hydrological observations are indicated below:

Sr. No.	Type of Information	Desirable length (years)	Frequency
I	River gauge data	10	Daily at 0800 hrs. During monsoon at hourly interval. Either manually or by automatic water level recorder.
II	River flow discharge	10	Daily. Preferably by area velocity method by using current meter.
III	Rainfall by ORG (Ordinary Rain Gauge)	10	Daily. By ordinary Rain Gauges and concurrent with flow data.
IV	Rainfall by SRRG (Self Recording Rain Gauge)	10	Continuously in calibration with ORG
V	Pan Evaporation	3	Daily

For Storage Based Reservoir Schemes, hydro-meteorological data need to be considered for a longer period of about 25 years.

2.4 Abstraction

Details of abstraction in upper reaches should be simultaneously collected to help work out water availability series at the point of interest.



2.5 Losses in Water Conductor System

Project Authorities shall submit drawings of water conductor System right from the intake to exit point in the power house indicating final length and layout including bends and diameter of various sections including constrictions and expansions and type of lining etc. Project Authorities shall also furnish details of Water Conductor System considered at the time of techno-economic clearance of the Project.

Project Authorities shall furnish head loss, as considered while deciding the net heads. Detailed calculations of head loss shall be worked out corresponding to full load and design discharges as per established practices/ formulae and submitted alongwith proposal.

2.6 Head

Project Authorities shall supply the following information pertaining to head :

- Minimum net head (m) (as per original design)
- Maximum net head (m) (as per original design)
- Rated design head (m) (as per original design)
- Minimum net head (m) available at site
- Maximum net head (m) available at site
- Measured head (m) available at site and reasons for deviations, if any

2.7 Tail Water Level

Project Authorities shall supply tail water rating curve at Power House site. In addition, based on the above, following levels may also be indicated :

- Minimum water level (one unit discharge without any load)
- Maximum water level (with all units discharge at full load)
- Water levels at
 - One unit full discharge
 - Two units full discharge
 - Three units full discharge etc.

2.8 Efficiency Data

Weighted average efficiency of turbine and generator as available in the Guaranteed Technical Particulars of the suppliers based on which overall efficiency computed and utilised for design energy



review may be specified. Copy of Guaranteed Technical Particular of suppliers may be furnished. Overall TG efficiency considered for assessment of benefits at the time of accord of TEC may also be furnished. Further, efficiency curves at full load and part loads may also be included in the proposal.

2.9 Data pertaining to Storage Based Schemes

In case of reservoir storage hydro schemes, detailed reservoir simulation studies needs to be carried out considering hydrological series based on actual observed flow data. Simulation studies should take into account:

- i) Rule curve for reservoir operation,
- ii) Flood moderation aspects,
- iii) Committed releases for irrigation or any other use in the downstream,
- iv) Additional/ regulated flows made available by upstream developments, if any.

In addition following information, based on which studies have been carried out, may also be incorporated :

- Sedimentation studies
- Original & Revised Elevation-Area-Capacity curve of the Reservoir. Methodology used for developing revised curve.
- Actual Live storage available
- Impact on down stream developments
- Evaporation Losses

2.10 Power Benefits

- 2.10.1 As per norms issued by Govt. of India, "**Design Energy**" means the quantum of energy, which could be generated in a 90 percent dependable year with 95 percent availability of installed capacity of the station:

Explanation- If the total energy generation in the years for which hydrological data is available (say N years) is arranged in descending order, the $(N+1) \times 0.9$ th year would represent the 90 per cent dependable year. The 90 per cent dependable year is a year in which the annual energy generation has the probability of being equal to or in excess of 90 per cent of the expected period of operation of the scheme.



Based on revised hydrological flow series at the project site (taking into consideration abstractions upstream, if any) design energy benefits from the project would be estimated by Project Authorities for 90% dependable year and presented in the proposal. Project Authorities would also furnish design energy benefits from the project as approved at the time of techno-economic clearance by CEA or subsequent design energy reviews, if any. Additional energy generation from the project achieved after carrying out R&M works on the Units, if any, may also be indicated.

2.9.2 In case there is less energy than the design energy as approved during TEC, reasons for the same need also to be elaborated in the proposal.

2.11 General Information

- Date of Commissioning of the units/ Station.
- Annual Generation since commissioning.
- Past performance of the station including any major break-down faced by the station.
- Loss of generation due to power evacuation problem.
- Variations in features of the scheme vis-à-vis that incorporated in the approved DPR, if any.

3.0 FREQUENCY OF DESIGN ENERGY REVIEWS

- 3.1 As per CERC orders, review of Design Energy of the station may undertaken as below:
- After every five years
 - Upon completion of the project to consider additional hydrological data which would become available and latest status of completion/ commissioning of upstream projects involving consumptive use of water
 - subsequent to the commissioning of the project or as and when any specific information about the change in consumptive use of water upstream or in run off is brought to the notice of the Authority

4.0 VISIT TO HYDRO-METEOROLOGICAL SITE

- 4.1 A-list of projects to be taken up for review of the Design Energy would be prepared by Project Authorities in advance and submitted to CEA indicating names of G&D sites and rainfall stations whose data will be utilized for the review to enable timely review of hydrological data.



4.2 Officers of CWC/ CEA may visit the Hydro-meteorological sites of the project to satisfy themselves about the correctness/ adequacy of the observations as also the maintenance of these sites. The team may also like to examine the methodology being used for taking inflows/ other data and procedure of computations and may suggest measures for proper observation & maintenance. To enable CEA/ CWC to examine these aspects, project authority must indicate their intention of revising the design energy at least 2 years in advance. The concerned organization may nominate a nodal officer to facilitate proper coordination in the matter.

5. FINANCIAL IMPLICATION

Changes in design energy from the project may result in financial implications in respect of sale of power from the station. A note in this regard would need to be appended with the proposal.

6. LEGAL IMPLICATIONS

The revision in the design energy may have implications on the station tariff and may invite legal proceedings from the buyers. A note in this regard would need to be appended with the proposal.

7. OBSERVATIONS OF OTHER UTILITIES/ DEPARTMENTS

In case of change in design energy, if any other Utilities/IPPs/ Deptts. are affected, the same may be clearly brought out in the proposal.

8. OPTIMUM ALTERNATIVES AVAILABLE WITH CONSEQUENCES

Studies may be carried out by the project authorities considering updated/ modified flow series and the results of the same with analysis may be furnished

9. OTHER RELEVANT INFORMATION:

Other relevant information which the project authorities may consider pertinent to the subject may be supplied.

