

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APPEAL No. 13 of 2022

Dated : 2nd April, 2025

Present: Hon'ble Mr. Sandesh Kumar Sharma, Technical Member
Hon'ble Mr. Virender Bhat, Judicial Member

In the matter of:

Punjab State Power Corporation Limited

Through its Chairman and Managing Director,

The Mall, Patiala – 147001

Email ID:- cmd-ppsc@ppsc.in

... Appellant

Versus

1. Central Electricity Regulatory Commission

Through its Secretary

3rd and 4th Floor, Chanderlok Building

36, Janpath, New Delhi – 110001

Email ID:- secyderc@nic.in

2. JSW Hydro Energy Ltd.

(Formerly Himachal Baspa Power Company Limited)

Through its Director,

4th Floor, NTH Complex, A-2, Shaheed Jeet Singh Marg,

Qutub Institutional Area, New Delhi – 110067

Email ID:- admin@jsw.in

3. PTC India Limited

Through its CMD,

15, Bhikaji Cama Place, New Delhi – 110066

Email ID:- info@ptcindia.com

4. Ajmer Vidyut Vitran Nigam Limited

Through its Chairman and Managing Director,
Hathi Bhata, City Power House,
Ajmer – 305001, Rajasthan.
Email ID:- avvnl0145@yahoo.com

5. Jaipur Vidyut Vitran Nigam Limited

Through its Chairman and Managing Director,
Vidyut Bhawan, Janpath,
Jaipur – 302005
Email ID:- md@jvvn.org

6. Jodhpur Vidyut Vitran Nigam Limited

Through its Chairman and Managing Director,
New Power House, Industrial Area,
Jodhpur – 302003
Email ID:- md.jdvvnl@rajasthan.gov.in

7. Haryana Power Purchase Centre

Through its Chief Engineer
Shakti Bhawan, Sector – 6,
Panchkula, Haryana – 134109
Email ID:- cehppc@gmail.com

8. Uttar Pradesh Power Corporation Limited

Through its Chairman and Managing Director,
Shakti Bhawan, 14, Ashok Marg,
Lucknow – 226001
Email ID:- cmd@uppcl.org

... Respondent (s)

Counsel for the Appellant(s) : Anand K. Ganesan
Swapna Seshadri
Amal Nair for App.

Counsel for the Respondent(s) : Aman Anand
Aman Dixit
Abhimanyu Maheshwari for Res.
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Pradeep Misra for Res. 8

J U D G M E N T

PER HON'BLE MR. VIRENDER BHAT, JUDICIAL MEMBER

1. Following crucial issue arises for our consideration in this appeal :-

“Whether 35.97 MU’s generated and injected for grid support by the 2nd Respondent under Central Electricity Regulation Commission (Deviation Settlement Mechanism and Related Matters) Regulations 2014 (in short “DSM Regulations 2014”) in the Financial Year 2018-19 should be accounted for to arrive at the shortfall quantum in terms of Regulation 44(6) of the Central Electricity Regulatory Commission (terms and conditions of tariff) Regulations 2019 (in short “Tariff Regulations, 2019)”?

2. Facts of the case, in brief, which are germane for adjudicating the said issue are as follows :-

3. The 2nd Respondent JSW Hydro Energy Limited (earlier known as Himachal Baspa Power Company Limited) is a generating company which owns, operates and maintains the 1000 MW (250x4MW) Karcham Wangtoo HEP in the State of Himachal Pradesh.

4. The 3rd Respondent PTC India Limited is an inter-state trading licensee and has entered into Power Purchase Agreement (PPA) dated 21st March, 2006 and 1st December, 2017 with the 2nd

Respondent for purchase of 880 MW of power from the said power project.

5. The respondent Nos. 4, 5 & 6 are the Distribution Licensees in the State of Rajasthan. 7th Respondent – Haryana Power Purchase Centre is the nodal procurement agency for the two distribution companies namely Uttar Haryana Bijli Vitran Nigam and Dakshin Haryana Bijli Vitran Nigam in the State of Haryana.

6. The Appellant is the Distribution Licensees in the Sate of Punjab whereas Respondent No. 8 is the Distribution Licensees in the State of Uttar Pradesh.

7. Since the Appellant and Respondent Nos. 4 to 8 have entered into power sale agreements with the 3rd Respondent PTC, for resale of power purchase by 3rd Respondent from 2nd Respondent, a composite scheme for generation/sale of electricity in more than one State is involved and accordingly, the tariff for the power project of 2nd Respondent is determined by the 1st Respondent Central Electricity Regulatory Commission (hereinafter referred to as the Commission) in terms of Section 79(1)(b) of the Electricity Act, 2003.

8. The Commission has approved the capital cost and Annual Fixed Cost (AFC) for the control period 2014-19 for the Karcham Wangtoo HEP (KWHEP) vide its order dated 30th March, 2017. AFC approved

by the Commission in the said order for Financial Year 2019-20 is Rs.125237.78 lakhs. The annual design energy and saleable design energy for the project approved and considered by the Commission are 4131.06 MU and 3591.71 MU respectively.

9. It appears that the 2nd Respondent has injected 3942.22 MUs into the grid as against the schedule injection of 3906.25 MUs in the Financial Year 2018-19. Thus, the 2nd Respondent had generated 35.97 MUs as un-scheduled energy which it over-injected into the grid and was accounted as per the DSM Regulations, 2014. According to the 2nd Respondent, this unscheduled energy of 35.97 MUs, other than saleable schedule energy, was injected into the grid as per grid requirement as per the DSM Regulations 2014 and should not be adjusted against the shortfall of energy claimed by it as per Regulations 44(6) (7) & (8) of Tariff Regulations, 2019.

10. Accordingly, the 2nd Respondent had approached the Commission with Petition No. 184/MP/2019 with the following prayers.

“a) Allow recovery of energy charges amounting to Rs. 26.88 crore in FY 2019-20 in six equal monthly instalments, against the shortfall in energy charges on account of saleable scheduled energy (ex-bus) being less than saleable design energy (ex-bus) of 154.21 Mus in FY 2018-19, as per Regulation 44(6), (7) & (8) of

The Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2019; and

b) Allow further revision of shortfall in energy charges, if any, on the basis of true up by this Hon'ble Commission for FY 2018-19, by way of a supplementary bill.

c) Pass any such further order(s) which this Hon'ble Commission may deem just fit and proper in favour of the Petitioner."

11. Vide order dated 4th February, 2020, the Commission has negatived the submission of the Appellant as well as Respondent Nos. 3 to 8 to adjust the un-scheduled energy of 35.97 MUs against the claimed shortfall in energy and has allowed the 2nd Respondent to recover the energy charge shortfall of Rs.2663.30 for the period 2018-19 in six equal monthly installments in terms of Regulation 44(7) of 2019 tariff Regulations.

12. The said order of the Commission has been impugned in this appeal.

13. It is not in dispute that the shortfall in saleable schedule energy pertains to the Financial Year 2018-19 and, therefore, CERC Tariff Regulations, 2019 are applicable. Regulation 44 (6)(7)(8) of Regulations, 2009 are extracted herein below:-

“6) In case the saleable scheduled energy (ex-bus) of a hydro generating station during a year is less than the saleable design energy (ex-bus) for reasons beyond the control of the generating station, the treatment shall be as per clause (7) of this Regulation, on an application filed by the generating company.

(7) Shortfall in energy charges in comparison to fifty percent of the annual fixed cost shall be allowed to be recovered in six equal monthly installments.

Provided that in case actual generation from a hydro generating station is less than the design energy for a continuous period of four years on account of hydrology factor, the generating station shall approach the Central Electricity Authority with relevant hydrology data for revision of design energy of the station.

(8) Any shortfall in the energy charges on account of saleable scheduled energy (ex-bus) being less than the saleable design energy (ex-bus) during the tariff period 2014-19 which was beyond the control of the generating station and which could not be recovered during the said tariff period shall be recovered in accordance with clause (7) of this Regulation.”

14. The reasoning given by the Commission in allowing the claim of the 2nd Respondent can be found in following portion of the impugned order :-

“47. Accordingly, following energy should have been generated after accounting for the reasons within the control of the petitioner:

(In MU)

<i>Actual energy generated at the generator terminal</i>	<i>3968.69</i>
<i>Add: Energy lost due to unit</i>	<i>1.61</i>

outages	
Total energy which should have been generated at generator terminal after accounting for the reasons within the control of the petitioner	3970.30

48. The above generation of 3970.30 MU is the energy which petitioner should have generated at generator terminal. However, as per Regulation 44(6) of the 2019 Tariff Regulations, energy shortfall has to be calculated at ex-bus i.e. difference between saleable scheduled energy (ex-bus) and saleable design energy (ex-bus). It is noticed that the petitioner has generated 35.97 MU as unscheduled energy which has been accounted as per DSM Regulations. Respondents PSPCL and HPPC have submitted that the quantification of shortfall in saleable energy (ex-bus) against the saleable design energy (ex-bus) during FY 2018-19 by the Petitioner is also advanced on the basis of incorrect presumptions and inconsistencies in as much as 35.97 MU of energy was over-injected by the Petitioner as compared to the scheduled energy. Respondents have further submitted that against the sale to the long term beneficiaries including PSPCL, the Petitioner has injected 3942.22 MU against the scheduled injection of 3906.25 MU. Therefore, at least to the extent of 35.97 MU, there can be no question of energy shortfall towards the energy being supplied to the long-term beneficiaries and this quantum should be adjusted against the claimed shortfall.

49. The petitioner has stated that the energy injection of 35.97 MU, other

than saleable scheduled energy, is unscheduled energy generated as per grid requirement under CERC (Deviation settlement mechanism and related matters) Regulations, 2014 and is accounted for in the DSM.

50. In this regard, Commission is of the view that the unscheduled energy of 35.97 MU (around 1% of the saleable design energy) has been generated by the generator as per requirements of the grid and the corresponding frequency based incentive for such injection is governed by provisions of DSM Regulations, 2014. As such, the Commission does not agree with the submission of the respondents that the unscheduled energy of 35.97 MU should be adjusted against the claimed shortfall.

51. Accordingly, saleable schedule energy and saleable design energy at ex-bus are worked out as follows:

	Design	As claimed by the petitioner	As per CERC
Design Energy/ Maximum possible generation at generator terminal (A)	4131.06	3968.69	3970.30
Auxiliary Energy consumption (AEC) (B)	49.57	26.47	26.48
	(@ 1.2%)	(actual AEC @ 0.67%)	(actual AEC @ 0.67%)
Saleable energy at ex-bus (C)- (A)-(B)	4081.49	3942.22	3943.82
DSM/ UI on account of grid requirement (D)	-	35.97	35.97
Free power to GoHP @12% of saleable energy (FEHS) (E)=[(C)- (D)]x0.12	489.78	468.75	468.94
Net Saleable energy (F)=(C)-(D)-	3591.71	3437.50	3438.91

(E)			
Shortfall with respect to saleable design energy		154.21	152.80

52. In view of the above deliberations, Commission is of the view that energy shortfall of 152.80 MU is for the reasons beyond control of the Petitioner and accordingly, the Petitioner is entitled for the corresponding energy charge shortfall as given below:

Approved AFC for FY 2018-19 (A)	Rs. (in lakh)	125233.78
Energy Charges recoverable (B) – [0.5 of (A)]	Rs. (in lakh)	62616.89
Approved saleable design energy	MU	3591.71
Energy charge rate (as per regulation 44(5) of CERC Tariff Regulations, 2019) (D) = (B)/{(C)*10}	Rs. Per kWh	1.743
Shortfall allowed	MU	152.80
Energy charges allowed to be recovered (F)=(D)*(E)*10	Rs.(in lakh)	2663.30

53. Accordingly, in terms of Regulation 44(7) of the 2019 Tariff Regulations, we allow the energy charge shortfall of Rs. 2663.30 lakh for the period 2018-19 and the same shall be recovered by the petitioner in six equal monthly instalments. Further, the difference in energy charge shortfall to be recovered for the year 2018-19 which may arise after the true-up of tariff for the period 2014-19 shall be recovered directly by the generating station from beneficiaries through supplementary bills.”

(Emphasis supplied)

15. Thus, according to the Commission, the unscheduled energy of 35.97 MUs has been generated by the generator i.e. the 2nd Respondent as per the requirements of the grid and is governed by the provisions of DSM Regulations, 2014 and accordingly it felt that the same cannot be adjusted against the claimed energy charge shortfall by the 2nd Respondent in view of Regulation 44(6) of 2019 Regulations which envisaged that the energy shortfall has to be calculated at (ex-bus) i.e. difference between saleable scheduled energy (ex-bus) and saleable design energy (ex-bus).

16. Learned Counsel for the Appellant argued that the Commission has erroneously refrained from adjusting the revenue earned by 2nd Respondent through DSM in its claim with regard to energy shortfall on mis-conceived notion which has resulted in double accounting of the 35.97 MUs of energy in question. It is, therefore, argued that on one hand, the Appellant has lost a portion of its contracted capacity which might have been made good at that point of time by resorting to short-term power and on the other hand, it is being made to make good deficit in energy charge for the 2nd Respondent. It is pointed out that the 2nd Respondent stands to gain doubly as it has received the amount for the said energy supplied under DSM and at the same time it is also being compensated for the shortfall in scheduled energy. It

is argued that any revenue earned from the sale of unscheduled energy through DSM directly mitigates the financial impact of the purported energy shortfall and, therefore, such revenue must necessarily be accounted for and adjusted against the energy shortfall charges to ensure a fair and equitable outcome which would be consistent with the over-arching regulatory framework.

16. Per contra, it is argued on behalf of the 2nd Respondent that the impugned order does not suffer from any infirmity at all for the reason that the Commission has interpreted the Regulation 44(6) of 2019 Tariff Regulations correctly and strictly.

17. It is argued that the said Regulation 44(6) envisages that only the difference between saleable scheduled energy (ex-bus) and saleable design energy (ex-bus) can be considered for determination of shortfall in energy charges to be compensated in terms of Regulation 44(7). It is argued that the Appellant, actually, wants this Tribunal to re-write the Regulation 44(6) of 2019 tariff Regulations by replacing/substituting the phrase “saleable scheduled energy (ex-bus)” with “actually total energy generated”.

18. It is pointed out that in case the Appellant’s arguments are accepted, it would be reverting back to the position emanating from tariff Regulations 2014 which contained following clause in this

regard.

“31. Computation and Payment of Capacity charge and Energy Charge for Hydro Generating Stations: ...

(6) In case the actual total energy generated by a hydro generating station during a year is less than the design energy for reasons beyond the control of the generating station, the following treatment shall be applied on a rolling basis on an application filed by the generating company:”

(Emphasis Supplied)

19. It is argued that the Commission as well as this Tribunal are bound by the Tariff Regulations and can not ignore the Regulations even if same are found to be defective.

20. We note that the Learned Counsel for Appellant has brought to our notice certain subsequent order passed by the Commission under 2019 Tariff Regulations wherein they have taken a contrary view to the effect that revenue earned through DSM mechanism ought to be adjusted from the energy shortfall charges under Regulation 44(6). Copies of such orders dated 26th May, 2023, 26th September, 2023 and 1st January, 2024 passed by the Commission in Petition Nos. 550/MP/2020, 98/MP/2022 and 464/MP/2019 respectively have been filed by the Appellant’s counsel along with the written submissions. We have perused all of these orders.

21. In order dated 26th May, 2023 passed in petition No.

550/MP/2020, the Commission has held as under :-

“59. The Commission vide ROP of the hearing dated 22.4.2021 and 5.8.2022, had directed the Petitioner to submit the Day-wise details of scheduled energy, actual energy injected in the grid and energy accounted for in DSM along with the revenue earned from DSM for such energy details of energy accounted for DSM during 2018- 19. The Petitioner, vide affidavits dated 15.9.2022 & 24.5.2021, has submitted the details of energy accounted for in DSM. Beneficiaries UPCL and PSPCL have also submitted that shortfall in energy charge may be decided by the Commission after considering the energy accounted for in DSM. Payment for energy under DSM is governed by provisions of the Central Electricity Regulatory Commission (Deviation Settlement Mechanism and related matters) Regulations, 2014 (hereinafter referred to as “the 2014 DSM Regulations”). It has been submitted by the Petitioner that 66.02 MU has been accounted for in DSM and corresponding revenue earned from DSM is Rs. 25.14 crore. Regulation 44(6), (7) and (8) of the 2019 Tariff Regulations provides for recovery of energy charge shortfall corresponding to the energy which could not be generated for the reasons beyond the control of the Petitioner. There is no doubt that the energy accounted in DSM is actual energy generated and also that the Petitioner has received payment for the same in terms of the provisions of 2014 DSM Regulations. Therefore, energy that has been accounted in DSM, cannot be counted towards shortfall in energy in terms of Regulation 44 (6), (7) and (8) of the 2019 Tariff Regulations and, therefore, corresponding

energy charge cannot be recovered in terms of that regulation. Thus, energy accounted in DSM needs to be appropriately accounted for while deciding the quantum of shortfall under provisions of Regulation 44 (6), (7) and (8) of the 2019 Tariff Regulations.

60. In terms of Regulation 44(7) of the 2019 Tariff Regulations, shortfall in energy charges in comparison to fifty percent of the annual fixed cost has to be allowed. However, considering the interest of the beneficiaries, it would be prudent to calculate the energy charge shortfall by accounting energy under DSM in the financial year (for which shortfall is claimed).”

(Emphasis Supplied)

22. In order dated 26th September, 2023 passed in Petition No. 98/MP/2022, the Commission has held as under :-

“47. Accordingly, in terms of Regulation 44(6) of the 2019 Tariff Regulations, we allow the energy charge shortfall of Rs.10.40 crore for the FY 2020-21. The same shall be recovered in six equal monthly interest free instalments by raising supplementary bills to the beneficiaries as per Regulation 44(7) of CERC (Terms and Conditions of Tariff) Regulation 2019. Further, the difference in energy charge shortfall to be recovered for the FY 2020-21, which may arise after determination and true up of tariff for the period 2019-24 shall be recovered directly by the generating station from the beneficiaries through supplementary bills after true-up.

48. *Petition No. 98/MP/2022 is disposed of in terms of above.*”

(Emphasis Supplied)

23. Similarly in order dated 1st January, 2024 passed in Petition No. 464/MP/2019, the Commission has held as under :-“

“31. *Based on above deliberations, the Petitioner needs to be compensated for energy shortfall of (-) 23.12 MU which has occurred due to reasons beyond the control of the Petitioner out of total energy shortfall of (-)28.65 MU. Accordingly, the energy charge to be recovered out of energy charge shortfall of Rs.3.51 crore from the beneficiaries works out as under:*

<i>Total shortfall in generation during FY 2018-19 (after adjustment of DSM energy)</i>	A	<i>(-)28.65 MU</i>
<i>Total under-recovery of energy charges during Financial Year 2018-19 (after adjustment of energy charge corresponding to DSM energy)</i>	B	<i>₹ 3.51 Crore</i>
<i>Shortfall in generation due to reasons beyond control</i>	C	<i>(-) 23.12 MU</i>
<i>Shortfall in energy charges to be recovered during FY 2019-20</i>	$D=C*B/A$	<i>₹2.83 Crore</i>

32. *Accordingly, in terms of Regulation 44(6) of the 2019 Tariff Regulations, we allow the energy charge shortfall of Rs.2.83 crore for the FY 2018-19. The same shall be recovered in six equal monthly interest free instalments by raising supplementary bills to the beneficiaries as per Regulation 44(7) of CERC (Terms and Conditions of Tariff) Regulation 2019. Further, the difference in energy charge shortfall to be recovered for the FY 2018-19, which*

may arise after true up of tariff for the period 2014-19 shall be recovered directly by the generating station from the beneficiaries through supplementary bills.”

(Emphasis Supplied)

24. It is evident from perusal of these orders that the shortfall in saleable schedule energy in these three cases also pertains to the controlled period of tariff Regulations, 2019 and accordingly, 44(6) (7) & (8) of these Regulations were invoked and discussed. We further note that in the order dated 26th May, 2023 passed in petition No. 550/MP/2020, the Commission has referred to the order dated 4th February, 2020 in Petition No. 184/MP/2019 which is the order impugned in the instant appeal, but on some other context. Therefore, it cannot be said, as argued on behalf of the 2nd Respondent, that the order impugned in this appeal had not been brought to the notice of the Commission at the time of passing the above subsequent orders.

25. It is further argued on behalf of the 2nd Respondent that these three subsequent orders of the Commission are not binding on this Tribunal and cannot be treated as precedents to be followed by this Tribunal. It cannot be gainsaid that the orders of the Commission are not binding upon this Tribunal. Having said that, we are constrained to note that an adjudicatory forum like the Electricity Regulatory

Commission is not only expected but also required to be consistent and uniform in its approach in order to avoid regulatory uncertainty. Even after referring to the order impugned in this appeal, the Commission took a contrary view in order dated 26th May, 2023 passed in Petition No. 550/MP/2020 as well as the two subsequent orders without explaining any reason to deviate from the view taken in the order dated 4th February, 2020 which has been challenged in this appeal. In case, according to the Commission, the interpretation given to Regulation 44(6) of 2019 Tariff Regulations in the subsequent three orders dated 26.05.2023, 26.09.2023 and 01.01.2024 is correct, then the order dated 04.02.2020 which has been assailed in this appeal also needs a relook.

26. Having regard to such inconsistent approach adopted by the Commission, we are of the view that the case at hand requires reconsideration by the Commission. The impugned order as such, cannot be sustained. The same is hereby set aside. The appeals stands allowed.

27. The case is remanded back to the Commission for fresh consideration in line with its subsequent orders dated 26th May, 2023, 26th September, 2023 and 1st January, 2024 passed by the Commission in Petition Nos. 550/MP/2020, 98/MP/2022 and

464/MP/2019 respectively.

28. Needless to say that the Commission shall conclude the exercise within three months from the date of this judgement.

Pronounced in the open court on this 2nd day of April, 2025.

(Virender Bhat)
Judicial Member

(Sandesh Kumar Sharma)
Technical Member (Electricity)

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