

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 184/MP/2019

(On remand)

Coram:

Shri Jishnu Barua, Chairperson

Shri Ramesh Babu V., Member

Shri Harish Dudani, Member

Shri Ravinder Singh Dhillon, Member

Date of Order: 28th November, 2025

IN THE MATTER OF:

Petition under Regulation 44(6), (7) & (8) of The Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2019 for recovery of unrecovered energy charges due to shortfall in energy generation for reasons beyond the control of the generating station during the FY 2018-19 in respect of Karcham Wangtoo HEP.

AND

JSW Hydro Energy Ltd.

(Formerly Himachal Baspa Power Company Limited)

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

Qutub Institutional Area, New Delhi 110067

Petitioner

Versus

1. PTC India Ltd.

2nd Floor, NBCC Tower, 15,

Bhikaji Cama Place, New Delhi 110066

Respondent No. 1

2. Ajmer Vidyut Vitran Nigam Limited
Through Chairman & Managing Director, Hathi Bhata,
City Power House, Ajmer, 305001, Rajasthan **Respondent No. 2**
3. Jaipur Vidyut Vitran Nigam Limited
Through Chairman & Managing Director,
Vidyut Bhawan, Jaipur, 302005, Rajasthan **Respondent No. 3**
4. Jodhpur Vidyut Vitran Nigam Limited
Through Chairman & Managing Director, New Power House,
Industrial Area Jodhpur, 342003, Rajasthan **Respondent No. 4**
5. Haryana Power Purchase Centre
Through its Chairman, Shakti Bhawan, Sector 6,
Panchkula 134109 Haryana **Respondent No. 5**
6. Punjab State Power Corporation Ltd.
Through its Chairman, The Mall, Patiyala, 147001 **Respondent No. 6**
7. Uttar Pradesh Power Corporation Ltd
Through Superintending Engineer, SPAT Circle,
Shakti Bhawan, 14, Ashok Marg, Lucknow 226001 UP **Respondent No. 7**

Parties Present:

1. Shri Aman Anand, Advocate, JSWHEL
2. Shri Aman Dixit, Advocate, JSWHEL
3. Ms. Natasha Debroy, Advocate JSWHEL
4. Ms. Srishti Gupta, Advocate JSWHEL
5. Shri Anurag Agarwal, JSWHEL
6. Shri Anand Ganesan, Advocate, PSPCL
7. Shri Amal Nair, Advocate, PSPCL
8. Ms. Shivani Verma, Advocate, PSPCL

ORDER

The Petitioner, JSW Hydro Energy Ltd. (hereinafter referred to as the Petitioner) has filed this petition for recovery of unrecovered energy charges due to a shortfall in energy generation for reasons beyond the control of the generating station during the FY 2018-19 in respect of Karcham Wangtoo HEP, seeking the following relief(s):

- 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.

2. The Commission vide order dated 04.02.2020 in the petition no. 184/MP/2019 considered that the shortfall in energy generation of 152.80 MUs was beyond the control of the Petitioner against the Saleable design energy of 3591.71 MUs, with Saleable schedule at 3438.91 MUs. The main reasons identified were less inflows, excessive spillage, silt flushing, unit outages, and forced outages. Thereafter, the Commission approved recovery of Rs. 2663.30 lakh towards energy charge shortfall, payable in six monthly instalments, under Regulation 44 of the 2019 Tariff Regulations.

3. The Commission, while allowing the above shortfall in energy charges, did not consider the energy accounted under DSM. The relevant portions of the said order dated 4.2.2020 with respect to DSM energy are reproduced below:

“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	(in MU) 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)-(E)	3591.71	3437.50	3438.91
Shortfall with respect to saleable design energy		154.21	152.80

52. In view of the above deliberations, the 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 (C)	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 (E)	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."*

4. The said order of the Commission was appealed against by the Respondent, PSPCL, in Appeal No. 13 of 2022 before APTEL. The APTEL, by the judgment dated 2.4.2025 in the above appeal, and the said judgment has remanded Petition No. 184/MP/2019 by referring to the Commission's following orders:

- a. Petition No. 550/MP/2020, order dated 26.5.2023
- b. Petition No. 98/MP/2022, order dated 26.9.2023
- c. Petition No. 464/MP/2019, order dated 1.1.2024

5. The APTEL in the order dated 02.04.2025 has observed that the Respondent's submissions in Petition No. 184/MP/2019 for adjusting the unscheduled energy of 35.97 MU should be adjusted against the Petitioner's claimed shortfall. However, in the other orders of the Commission, the adjustment of energy charges corresponding

to DSM energy has been made. The relevant part of the APTEL judgment is reproduced below:

"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, 14(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 gain said 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.

6. In compliance with the APTEL order dated 02.04.2025 in appeal no. 13 of 2022, the Petitioner, in its written submissions dated 13.06.2025, has proposed a calculation wherein it has indicated an amount of Rs. 321.96 lakh payable by PSPCL, while PSPCL, in its reply dated 28.07.2025, have submitted the counter calculations.

7. The Respondent no. 6, PSPCL, in its reply dated 28.7.2025, has submitted that the Commission, in its order dated 12.02.2019 (Petition No. 205/MP/2018), held that beneficiaries such as PSPCL have the first right of refusal for overload capacity. PSPCL exercised this right but did not schedule the overload capacity, which was instead scheduled by Haryana Discoms. Consequently, PSPCL did not pay capacity charges for the unused overload. JSW Hydro's Petition No. 439/MP/2019, seeking clarification on the order dated 12.2.2019 in Petition No. 205/MP/2018, was dismissed on 30.06.2021, affirming the finality of the first right of refusal. Subsequently, JSW Hydro filed Petition No. 184/MP/2019 to recover shortfall charges for FY 2018-19, which was allowed by order dated 04.02.2020 and appealed by PSPCL.

It has been stated that after adjusting for the DSM units (35.97 MUs), the net shortfall comes to 116.83 MUs (i.e., 152.8 MUs – 35.97 MUs). The correct computation shows PSPCL's share as ₹462.80 lakh ($116.83\text{MUs} \times 22.727\%(\text{PSPCL share}) \times 1.743(\text{Energy charge rate}) \times 10$), while it has already paid ₹605.29 lakh ($152.8\text{MUs} \times 22.727\%(\text{PSPCL share}) \times 1.743(\text{Energy charge rate}) \times 10$). Therefore, PSPCL asserts that JSW Hydro should refund ₹142.49 lakh (605.29 - 462.80).

8. PSPCL submitted that JSW Hydro's revised computation of shortfall charges, particularly the adjustment of Haryana Discoms' share against overload capacity, is incorrect and impermissible. Earlier Commission orders had confirmed that PSPCL had the first right of refusal for overload power, which it did not exercise; instead, Haryana Discoms availed the overload. JSW Hydro's attempt to adjust the Haryana share artificially inflates other beneficiaries' shortfall and violates the consistent methodology established in previous orders.

9. The Respondent no. 5, Haryana Power Purchase Centre (HPPC), in its reply dated 22.8.2025, submitted that the present submissions are being filed in response to the afresh issues raised by Respondent no. 6 (PSPCL) in its reply dated 28.07.2025, which are incorrect, misconceived, misrepresented and wholly outside the scope of the present remand back matter. PSPCL submitted its reply in the remand proceedings as directed by the Hon'ble APTEL, asserting that the fresh issues raised by Respondent No. 6 (PSPCL) are incorrect, beyond the scope of the remand, and meritless. PSPCL emphasised that its first right of refusal on overload capacity was exercised, and any power not availed by other beneficiaries was scheduled by Haryana Discoms. The Commission's earlier orders had consistently computed shortfall charges based on this methodology, which Respondent No. 6 now impermissibly challenges. PSPCL contended that attempts to change the methodology for shortfall computation are an afterthought and barred by the principle of estoppel, given prior acquiescence. The correct calculation shows that the shortfall adjustment was valid, and the new claims by Respondent No. 6 are baseless and should be rejected.

Analysis and Decision

10. Before proceeding further, it is pertinent to note that the Petitioner, vide affidavit dated 21.08.2025, submitted that there was an error in the calculations annexed to its written submissions dated 13.06.2025, relating to the computation of the amount to be payable by the Respondent, PSPCL. The Petitioner requested that the shortfall in energy generation be considered as 116.83 MUs and that the total recoverable amount be Rs. 2036.30 lakh. The Petitioner further requested that the recoverable amount be apportioned among the four beneficiaries in accordance with the

Commission's earlier orders and that a final order be passed directing the necessary adjustments.

11. In view of the above, since the Petitioner has revised the calculations and the same have also been submitted by the Respondent, PSPCL, the comments of the parties on the methodology of the claim have not been considered in this order. It is further clarified that the scope of the remand is limited to the adjustment of energy accounted for under DSM, and this is dealt with in the following paragraphs.

12. The matter has been examined. The instant petition was the first to claim an energy shortfall for the year 2018-19, which was the last year of the tariff period 2014-19. The petition for recovery of unrecovered energy charges due to a shortfall in energy generation was filed in terms of Regulations 44(6), (7) and (8) of the Tariff Regulation 2019. In Tariff Regulation 2014, the energy shortfall was calculated as difference between the design energy and the actual total energy generated by a hydro generating station during the year whereas in Tariff Regulation 2019, the energy shortfall is calculated as difference between saleable design energy (ex-bus) and the saleable scheduled energy (ex-bus) by a hydro generating station during the year, for reasons beyond the control of the generating station. The method for calculating energy shortfall changed during the 2019-24 period compared to the 2014-19 period. Subsequently, the commission has factored in the DSM energy while accounting for the energy shortfall.

13. Accordingly, in compliance with the APTEL order dated 02.04.2025 in appeal no. 13 of 2022 the para 50,51,52 and 53 of the order dated 4.2.2020 in petition no. 184/MP/2019 are revised as under:

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. The, 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.

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
<i>Design Energy/ Maximum possible generation at generator terminal (A)</i>	4131.06	3968.69	3970.3
<i>Auxiliary Energy consumption (AEC) (B)</i>	49.57	26.47	26.48
	(@ 1.2)	(actual AEC @ 0.67%)	(actual AEC @ 0.67%)
<i>Saleable energy at ex-bus (C)=(A)-(B)</i>	4081.49	3942.22	3943.82
DSM/ UI on account of grid requirement (D)		35.97	35.97
<i>Free power to GoHP @12% of saleable energy (FEHS) (E)=[(C)-(D)]x0.12</i>	489.78	468.75	468.94
<i>Net Saleable energy (F)=(C)-(D)-(E)</i>	3591.71	3437.50	3438.91
<i>Net Saleable energy (G)=(C)-(E) including DSM energy considered in this order</i>			3474.88
Shortfall with respect to saleable design energy		154.21	116.83

52. In view of the above deliberations, the Commission is of the view that energy shortfall of 116.83 MUs 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 (C)	MUs	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 (E)	MUs	116.83
Energy charges allowed to be recovered (F)=(D)*(E)*10	Rs. (in lakh)	2036.34

*53. Accordingly, in terms of Regulation 44(7) of the 2019 Tariff Regulations, we allow the energy charge shortfall of Rs. **2036.34 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."*

14. In view of the above, the Petitioner is directed to refund the differential amount of Rs. 626.95 lakh (difference of Rs. 2663.30 lakh allowed vide order 4.2.2020 and Rs. 2036.34 lakh allowed in this order) within one week of issuance of this order.

15. All other paragraphs of the order dated 4.2.2020 remain the same.

16. Petition No.184/MP/2019 (On remand) is disposed of in terms of the above.

Sd/-	Sd/-	Sd/-	Sd/-
(Shri Ravinder Singh Dhillon)	(Shri Harish Dudani)	(Shri Ramesh Babu V.)	(Jishnu Barua)
Member	Member	Member	Chairperson