CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI

Petition No. 220/MP/2019
and
Petition No. 267/MP/2019

Coram:
Shri Jishnu Barua, Chairperson
Shri Ramesh Babu V., Member
Shri Harish Dudani, Member

Date of Order: 18th March, 2025

Petition No. 220/MP/2019

In the matter of:

Application under Regulation 44 (7) & (8) of the CERC (Terms and Conditions of Tariff) Regulations, 2019, for recovery of shortfall in energy charges in comparison to fifty percent of the annual fixed cost for reasons beyond the control of generating station during the years 2017-18 and 2018-19 in respect of Indira Sagar Power Station (ISPS).

And

Petition No. 267/MP/2019

In the matter of:

Application under Regulation 44 (7) & (8) of the CERC (Terms and Conditions of Tariff) Regulations, 2019, for recovery of shortfall in energy charges in comparison to fifty percent of the annual fixed cost for reasons beyond the control of generating station during the years 2017-18 and 2018-19 in respect of Omkareshwar Power Station (OSPS).

And

In the matter of:

NHDC Limited,
NHDC Parisar, Shyamla Hills,
Bhopal (M. P.) - 462013. **…. Petitioner**

Vs

1. M.P. Power Management Company Limited,
Shakti Bhawan, Vidyut Nagar,
Jabalpur (M.P.) – 482008

2. Narmada Valley Development Department,
GoMP, Mantralaya, Vallabh Bhawan,
Bhopal (M. P.) - 462004. **…. Respondents**

Parties Present:

Ms. Suparna Srivastava, Advocate, NHDC
Ms. Divya Sharma, Advocate, NHDC
Shri Shashwat Dubey, NHDC
Shri Aditya Singh, Advocate, MPPMCL

ORDER

Background facts

Petition No.220/MP/2019 and Petition No.267/MP/2019 were filed by the Petitioner NHDC before this Commission, seeking the following relief(s):

Petition No. 220/MP/2019

a) Hon'ble Commission may kindly allow the petitioner to recover the shortfall in energy charges for the FY 2017-18 and FY 2018-19 amounting to Rs.156.08 Cr (corresponding to generation (Saleable Scheduled Energy) shortfall of 753.52 MU) as per regulation 44 (7 & 8) of CERC Tariff Regulations, 2019.

b) To allow further recovery/ adjustment of shortfall in energy charges on the basis revision of AFC to be determined by the Hon'ble Commission after truing up for FY 2017-18 and 2018-19 and issuance of water account by NCA for respective years.

c) Pass such other and further order / orders as are deemed fit and proper in the facts and circumstances of the case.

Petition No. 267/MP/2019

(a) Hon'ble Commission may kindly allow the petitioner to recover the shortfall in energy charges for the FY 2017-18 and FY 2018-19 amounting to Rs.87.02Cr (corresponding to generation (Saleable Scheduled Energy) shortfall of 289.49 MU) as per regulation 44 (7 & 8) of CERC Tariff Regulations, 2019.

(b) To allow further recovery/ adjustment of shortfall in energy charges on the basis revision of AFC to be determined by the Hon'ble Commission after truing up for FY 2017-18 and 2018-19, demonstration of Capacity at corresponding attained Reservoir Level (EL 191.0M & EL 193.0M) and issuance of water account by NCA for respective years.

(c) *Pass such other and further order / orders as are deemed fit and proper in the facts and circumstances of the case*.

2. The Commission, vide a common order dated 10.12.2023, disposed of the said petitions, as under:

"*57. Accordingly, in terms of Regulation 44(7) of the 2019 Tariff Regulations, we allow the energy charge shortfall of Rs. 109.69 Cr. and Rs. 19.84 Cr. in case of Petition No. 220/MP/2019 and of Rs. 81.33 Cr. and Rs. 32.92 Cr. in case of Petition No. 267/MP/2019, for the period 2017-18 and 2018-19, respectively. The same shall be recovered by the Petitioner in six equal interest free monthly installments starting within three months from the date of the order issued by the Commission.*

58. Commission vide its order dated 31.5.2016 in Petition No. 265/GT/2014 and order dated 6.1.2022 in Petition No. 106/GT/2020 has approved tariff and true-up order for ISPS for the period 2014-19. Similarly, Commission vide its order dated 26.5.2016 in Petition No. 264/GT/2014 and vide order dated 11.3.2022 in Petition No. 107/GT/2020 has approved the tariff and true-up order for OSPS. In these orders there is change in the Annual Fixed Charge and Design Energy in the true up order as compared to the tariff order for ISPS and OSPS. The energy shortfall has been approved based on the design energy and AFC as per the true-up orders. Accordingly, the Petitioner is directed to ensure that recovery of total energy charges including the shortfall in energy charges allowed in this order is restricted to 0.5xAFC allowed in truing-up orders for the years 2017-18 and 2018-19.

3. Aggrieved thereby, the Respondent MPPMCL filed separate appeals (Appeal No. 71/2024 and Appeal No. 72/2024) before the Appellate Tribunal for Electricity (in short 'APTEL') challenging the aforesaid order mainly related to the construction to be placed on Regulation 44(6) to (8) of the 2019 Tariff Regulations. Thereafter, APTEL, vide its judgment dated 16.5.2024, set aside the Commission's order dated 10.12.2023 and remanded the same to this Commission, as under:

xxxxxxx

"We consider it appropriate, in such circumstances, to set aside the impugned order, and remand the matter to the Commission with a direction that they record their findings on the interpretation to be placed on Clauses (6) to (8) of Regulation 44 of the 2019 Regulations. Counsel appearing for both the parties shall be afforded a reasonable opportunity of being heard and, if need be, to file their additional written submissions.

It is brought to our notice that the Appellant has already paid four of the six instalments in terms of the impugned order. Suffice it to make it clear that the Appellant's entitlement, to recover the amounts already paid by them, must await a final order being passed by the Commission afresh, and in accordance with law. We also make it clear that we have not expressed any conclusive opinion on the rival contentions urged on the construction to be placed on clauses (6) to (8) of Regulation 44 of 2019 Regulations, and the Commission shall consider the same uninfluenced by any observations made by us in the present order."

4. Pursuant to the remand order passed by APTEL vide its judgment dated 16.5.2024 as above, these petitions were listed for hearing on 28.10.2024. However, the Commission, based on the request of the parties, adjourned the hearing after permitting them to file their written submissions in the matter. Thereafter, the parties were heard at length on 26.11.2024, and the Commission adjourned the hearing after directing both parties to file their short note of arguments. During the hearing on

26.12.2024, the learned counsel for the Petitioner submitted that since pleadings and arguments have already been completed, the Commission may reserve its order in the petition. The learned counsel for the Respondent, MPPMCL, however, sought time to place on record a short note of arguments. Accordingly, the Commission, after permitting the Respondent, MPPMCL, to file its short note of arguments, reserved its order in these petitions.

Submissions of the Petitioner NHDC

5. The Petitioner, in its common written submissions vide affidavit dated 14.11.2024, mainly submitted as under:

(a) The present Petitions are to be adjudicated in terms of the remand, viz. findings on the interpretation to be placed on Clauses (6) to (8) of Regulation 44 of the 2019 Tariff Regulations.

(b)Prior to the coming into force of the 2019 Tariff Regulations, the 2014 Tariff Regulations were in force and have governed the tariff determination for the generation and supply of power from the Projects (ISP and OSP) of the Petitioner.

(c) As recorded in the order dated 10.12.2023, the ISPS and OSPS achieved full commissioning on 25.8.2005 and 15.11.2007, respectively. Since the shortfall (forming the subject matter of the present controversy) occurred in 2017-18 and 2018-19, i.e., after 10 years from the COD of the projects, it is Regulation 31(6)(b) which is relevant. A perusal of the said Regulation read with the explanation thereto (with the phrase “A1 being less than DE”) considers a case where the actual generated Design Energy (DE) is less than the annual Design Energy only in the “concerned first year,” i.e., 2017-18 in the present case. As per the provisions contained in the said Regulation, the Energy Charge Rate (ECR) is to be moderated in the third financial year, i.e., 2019-20 in the present case, which falls beyond the control period of the 2014 Tariff Regulations, it does not provide a situation where the energy shortfall has continued for the second year as well. Even if the provision is to be applied “on a rolling basis” for the energy shortfall in the following year, i.e., 2018-19, in the present case, there is no “A2” available for computing the ECR as the second financial year, i.e., 2019-20, as well as third financial year, i.e., 2020-21 in which ECR to be moderated, are beyond the control period of the 2014 Tariff Regulations, which is to end in 2019. Similarly, Regulation 7 also deals only with a situation where “in a year following a year in which total energy generated was less than the design energy” and, as such, does not cover the shortfall occurring in Energy charges in two consecutive

years. As such, the 2014 Tariff Regulations are not applicable to the Petitioner's case for the computation of energy shortfall charges.

(d) Regulation 44(8), thus provides that in case of any shortfall in the Energy charges on account of saleable scheduled energy being less than the saleable Design Energy during the tariff period 2014-19, which has been beyond the control of the Petitioner and has not been recovered during the said tariff period, is to be recovered in accordance with Regulation 44(7) which provides for recovery of such charges, in comparison to fifty percent of the annual fixed cost, in six equal monthly instalments. The said Regulation 44(7) requires the Petitioner to approach the CEA with relevant hydrology data for revision of Design Energy only in case the actual generation of Design Energy is less than the saleable Design Energy for a continuous period of four years.

(e) In the present case, the shortfall in Energy Charges on account of the saleable scheduled energy being less than the saleable Design Energy occurred during 2017-18 and 2018-19 (i.e. within the tariff period 2014-19); the said shortfall has been beyond the control of the Petitioner; and has not been recovered during the period 2014-19, in view of the non-applicability of the prescribed formula due to the change in the control period of the Tariff Regulations.

(f) As such, the Petitioner has sought the recovery of such charges in accordance with Regulation 44(7) of the 2019 Tariff Regulations in six equal monthly instalments. The Petitioner has not approached the CEA and has instead rightly approached this Commission, as the shortfall has occurred in only two consecutive years, whereas the provision for approaching the CEA [provided in the proviso of Regulation 44(7)] is applicable in case the shortfall continues for a period of four years.

(g) Respondent MPPMCL has contended that as per Regulation 44(8) of the 2019 Tariff Regulations, the shortfall in Energy charges has to be considered and calculated for the 'entire' tariff period 2014-19, and the same cannot be claimed for the shortfall in any respective year, as has been done by the Petitioner. The said contention of Respondent is completely misplaced as Regulation 44(8) nowhere provides that for the shortfall in recovery of Energy Charges, the Petitioner has to consider the Energy Charges recovered by it during the entire tariff period, whereas the said Regulation specifically uses the words 'any shortfall in energy charges ……. during the tariff period 2014-19 ……. which could not be recovered during the said tariff period' shall be recovered as per the 2019 Tariff Regulations, which clearly points out to the fact that in case of 'any' shortfall occurring in whichever year during the said tariff period, the same is recovered under the said Regulations as has been rightly done by the Petitioner.

(h) Further, Regulation 44(7) stipulates recovery of 50% of the 'annual' fixed cost towards shortfall in Energy Charges, and the same ought to correspond with the

'annual' Design Energy generated during each year of the tariff period, instead of the cumulative 5 years of the said tariff period. In other words, since the fixed cost is calculated and recovered annually, it follows as a natural corollary that the Energy Charges, which account for 50% of the AFC, also are to be recovered on an annual basis, and any shortfall occurring thereof is also to be recovered on an annual basis only. Respondent is, in effect, seeking to add words to the Regulations that do not exist and interpret the Regulations in a manner which do not support its operation.

(i) The eventuality of shortfall in energy charges occurred during 2017-18 and 2018-19, and the Petitioner filed Petitions during 2019, and it is only on 10.12.2023 (i.e., after the lapse of almost 4 years) that recovery has been permitted by the Commission in a fairest manner without permitting any interest thereon, and splitting the same into 6 monthly instalments. The Petitioner is a joint venture between NHPC Ltd. and the Government of Madhya Pradesh, and Respondent MPPMCL is an undertaking of the Government of Madhya Pradesh. As such, any non-recovery of charges by the Petitioner is to ultimately affect its own financial health and, in turn, affect the dividends payable by it to the Government of Madhya Pradesh.

(j) In view of the aforesaid regulatory position, the Petitioner submits that the order dated 10.12.2023 has rightly been passed by this Commission considering the applicable Regulations and is, therefore, liable to be sustained. Consequently, the misplaced grievances of Respondent MPPMCL are liable to be rejected.

6. The Respondent MPPMCL, in its written submissions vide affidavit dated 18.11.2024, mainly submitted the following:

(a) The specific objection is with regard to the non-application of Regulations 44(7) and 44(8) to the present case. Regulation 44(8) of the 2019 Tariff Regulations clearly provides that if there is a shortfall in the energy charges on account of the saleable scheduled energy being less than the saleable design energy during the tariff period 2014-19, then the said generating station, would be eligible to claim shortfall in the energy charges.

(b) Petitioner NHDC has earned the energy charges on account of the saleable scheduled energy being more than the energy charges recoverable on account of saleable design energy during the tariff period 2014-19 (5 years) and therefore, as per Regulation 44(8) mentioned above, the case of Petitioner does not qualify the mandate provided by the 2019 Tariff Regulations.

(c) During the period 2014-19, Petitioner NHDC earned more charges than the allowed energy charges. The saleable design energy for the tariff period 2014-19 was 7327.44 MU with energy charges of 1460.01 Crores, whereas, against

this, the saleable scheduled energy was 9802.66 MU with the corresponding energy charges of Rs. 1600.26 crores. This clearly shows that the present case is not a matter of shortfall in the recovery of charges.

(d) Apart from this, Petitioner NHDC has also recovered about Rs. 96.75 Cr approximately, as incentives, included in the capacity charges, during the said tariff period 2014-19 on the basis of the Plant Availability Factor. It is a case of over-recovery and not a shortfall in the recovery of charges by the Petitioner. The Commission should put the Petitioner to strict proof regarding the actual charges earned during 2014-19.

(e) The provisions under the 2019 Tariff Regulations were for the purposes of helping the generator in case of a shortfall in saleable scheduled energy in comparison to the saleable design energy during the previous tariff period, i.e.2014-19, which was beyond the control of the generating station and which could not be recovered during the said tariff period. It is noteworthy that Regulation 44(8) of the 2019 Tariff Regulations is merely a truing up exercise for the tariff period 2014-19.

(f) If all the above financial aspects are taken together, the cost becomes prohibitively high and seriously affects the general tariff, which is ultimately borne by the consumers. The financial implication of the entire scenario taken together is in clear violation of the express mandate of sections 61(b), (c) & (d) of the Electricity Act, 2003.

(g) The judgment of the Hon'ble Supreme Court in GUVNL v. Solar Semiconductor Power Company (India) Private Limited & anr (2017) 16 SCC 498 clearly stipulates that the Commission should safeguard the interests of the Consumers. Further, in All India Power Engineer Federation v. Sasan Power Ltd., (2017) 1 SCC 487, the Hon'ble Supreme Court held that recovery of the cost of electricity should be in a reasonable manner. The impugned order is totally at variance with this ruling.

(h) In view of the above, it is evident that this Commission factored the scenario regarding the 2019 Tariff Regulations, and the same was also allowed to the Petitioner in the tariff order. This Commission is under a statutory mandate to safeguard the interest of consumers and, at the same time, ensure recovery of the cost of electricity "in a reasonable manner."

(i) In case this Commission allows the prayer of the Petitioner, then it would amount to unjust enrichment of the Petitioner NHDC, thereby causing ultimate burden to the end consumers, which would be in clear infringement of the primary objective of the Electricity Act, 2003. In this regard, Clause 1.3 and 4.0 of the Tariff Policy, 2006, are noteworthy, envisaging that electricity should be supplied to all consumers at a reasonable rate.

(j) Thus, the Commission may reject the Petitions filed by the Petitioner, being devoid of merits and not in compliance with the mandate of Regulation 44(8) of the 2019 Tariff Regulations.

Analysis and Decision

7. As per the APTEL remand order dated 16.5.2024, the Commission has been directed to record its findings on the interpretation of Clauses (6) to (8) of Regulation 44 of the 2019 Tariff Regulations. Before proceeding, we take note that under the 2014 Tariff Regulations notified by the Commission for the period 2014-19, specific regulations were introduced with regard to the recoupment and recovery of the shortfall in energy charges in respect of the hydro generating stations. Accordingly, clauses (5) and (6) of Regulation 31 provide as under:

> "***31. Computation and Payment of Capacity charge and Energy Charge for Hydro Generating Stations:***
>
> *xxxxx*
>
> *31 (5) Energy charge rate (ECR) in Rupees per kWh on ex-power plant basis, for a hydro generating station, shall be determined up to three decimal places based on the following formula, subject to the provisions of clause (7):*
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> *ECR = AFC x 0.5 x 10 / {DE x (100 – AUX) x (100 – FEHS)}*
>
> *Where, DE = Annual design energy specified for the hydro generating station, in MWh, subject to the provision in clause (6) below. FEHS = Free energy for home State, in per cent, as defined in Regulation 42.*
>
> *(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:*
>
> *a) In case the energy shortfall occurs within ten years from the date of commercial operation of a generating station, the ECR for the year following the year of energy shortfall shall be computed based on the formula specified in clause (5) with the modification that the DE for the year shall be considered as equal to the actual energy generated during the year of the shortfall, till the energy charge shortfall of the previous year has been made up, after which normal ECR shall be applicable:*
>
> *Provided that in case actual generation form a hydro generating station is less than the design energy for a continuous period of 4 years on account of hydrology factor, the generating station shall approach CEA with relevant hydrology data for revision of design energy of the station.*
>
> *(b) In case the energy shortfall occurs after ten years from the date of commercial operation of a generating station, the following shall apply.*
>
> *Explanation: Suppose the specified annual design energy for the station is DE MWh, and the actual energy generated during the concerned (first) and the following*

(second) financial years is A1 and A2 MWh respectively, A1 being less than DE. Then, the design energy to be considered in the formula in clause (5) of these regulations for calculating the ECR for the third financial year shall be moderated as (A1 + A2 – DE) MWh, subject to a maximum of DE MWh and a minimum of A1 MWh.

(c) Actual energy generated (e.g. A1, A2) shall be arrived at by multiplying the net metered energy sent out from the station by 100 / (100 – AUX).”

8. Similar regulations were notified by the Commission, under clauses (6) to (8) of Regulation 44 of the 2019 Tariff Regulations, as under:

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

(5) xxxx
(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.

9. However, it is pertinent to mention that the methodology adopted for determining the shortfall in energy charges for reasons beyond the control of the generating station while dealing with petitions filed before this Commission on this issue remained unchanged across these two tariff periods. However, there are two key differences between the above-mentioned regulations in respect of these periods, as mentioned below:

During the period 2014-19

(a) Shortfall was calculated as the difference between the design energy and the actual generation at the generator terminal.

(b) In case the energy shortfall occurs within ten years from the date of commercial operation of a generating station, the shortfall was recovered on ‘a rolling basis’ in the next year by increasing the Energy Charge Rate (ECR) by modifying the design energy until full recovery,

(c) In case the energy shortfall occurs after ten years from the date of commercial operation of a generating station, the shortfall was recovered by increasing the Energy Charge Rate (ECR) for the third financial by modifying the Design Energy, considering the actual generation in first and second financial year.

During the period 2019-24

(a) Shortfall is calculated as the difference between the saleable design energy and the saleable scheduled energy, which is ex-bus. 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 the Regulation

(b) Recovery of shortfall in energy charges (in comparison to fifty percent of the annual fixed cost) is allowed in six equal monthly instalments; and

(c) Shortfall in energy charges on account of saleable scheduled energy (ex- bus) being less than the saleable design energy (ex-bus) during the period 2014-19 which was beyond the control of the generating station and which could not be recovered during the said tariff period to be recovered in accordance with clause (7) of the said regulations

10. Regulation 44 (6) of the 2019 Tariff Regulations, as quoted under para 8 above, provides that 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) due to reasons beyond the control of the generating station, the treatment shall be as per clause (7) of the said regulations, on an application filed by the generating company. On a plain reading of this regulations, it is evident that this clause would cover cases where the saleable scheduled energy of a hydro generating station during a year, meaning 'in any year or each year of the five year period 2019-24' is less than the saleable design energy (ex-bus) for reasons beyond the control of the generating station, then the said generating station, would be eligible to claim the shortfall in energy charges as per clause (7) i.e. recovery in six equal monthly instalments. In other words, this clause permits the computation of the difference between the saleable scheduled energy and saleable design energy, on a 'yearly basis' during the period 2019-24, and recovery is allowed in accordance with Regulation 44(7), which prescribes the recovery in six equal monthly installments.

11. The Respondent MPPMCL has, however, pointed out that contrary to the above, Regulation 44(8) of the 2019 Tariff Regulations, which deals with the shortfall in energy charges on account of the saleable scheduled energy being less than the saleable design energy, relates to the entire tariff period 2014-19, and not to each year of the said tariff period. It has also pointed out that usage of the words 'during the tariff period 2014-19' and the said tariff period in the said clause can only mean that it is applicable to the shortfall in cumulative saleable scheduled energy vis-a-vis the cumulative scheduled design energy for the entire tariff period 2014-19 and not the yearly shortfall in the saleable scheduled energy vis-a-vis the scheduled design energy, during this period. *Per contra*, the Petitioner NHDC, while pointing out that the said regulation nowhere provides for the Petitioner to consider the energy charges recovered by it during the entire period, has argued that the said clause, specifically, uses the words, '*any shortfall in the energy charges…', 'during the tariff period 2014-19', 'which could not be recovered during the said tariff period,'* clearly points out to the fact that in case of 'any' shortfall occurred in 'whichever year' during the tariff period and which could not be recovered 'during the said period,' the same is to be recovered in accordance with Regulation 44(7) of the said Regulations, as has been rightly done by the Petitioner.

12. We have examined the matter and are in complete agreement with the submissions of the Petitioner. In our view, Clause (8) of Regulation 44, which deals with the shortfall in energy charges on account of the saleable scheduled energy being less than the saleable design energy, relates to 'any or each year of the tariff period 2014-19', and not to the cumulative five-year period of 2014-19, as contended by the Respondent MPPMCL. The word 'any shortfall' read in conjunction with the word 'during the period 2014-19' used in the said regulation can be interpreted only to mean

that in case of 'any' shortfall in energy, charges occurred in whichever year of the tariff period 2014-19, for reasons beyond its control, has not been recovered during the said period, the same is recoverable in accordance with Regulation 44(7) of the 2019 Tariff Regulations. In short, clause (8) of Regulation 44 specifically deals with a shortfall in energy charges that occurred during the period 2014-19 but could not be recovered within that period. This regulation ensures that such unrecovered shortfalls from the previous tariff period are carried forward and recovered under Regulation 44(7) of the 2019-24 Tariff Regulations. The interpretation of the Respondent MPPMCL is, therefore, not acceptable. The Respondent cannot also be permitted to add words to the regulations, other than that which was intended and interpreted the same to say that Regulation 44(8) is only a truing-up exercise for the period 2014-19. To sum up, while Regulation 44(8) provides for the recovery of shortfall in energy charges for any year of the period 2014-19, Regulation 44(6) addresses the shortfalls occurring within any year of the period 2019-24. Since the shortfall in energy charges must be assessed on a year-on-year basis, Regulation 44(8) should also be applied accordingly.

13. In the present case, since the Petitioner could not recover the shortfall in energy charges during the period 2014-19, the claim filed by the Petitioner under clauses (7) and (8) of Regulation 44 of the 2019 Tariff Regulations, was considered and allowed by the Commission. As stated earlier, it is important to note that in the case of hydro-generating stations, the energy charges are determined and allowed annually by the Commission under Regulation 44 of the 2019 Tariff Regulations as 50% of the Annual Fixed Charges and is to be recovered when the generating station generates energy equal to the saleable design energy, which is also determined on an annual basis. This makes it clear that the shortfall in energy charges must be computed on 'an

annual basis.' For the period 2014-19, any shortfall in the energy charges is recovered based on the rolling recovery mechanism prescribed under the 2014 Tariff Regulations. If an energy shortfall occurs within ten years from the date of commercial operation of a generating station, the Energy Charge Rate (ECR) for the subsequent year shall be computed by modifying the Design Energy (DE). In such cases, the DE for the following year shall be considered equal to the actual energy generated during the year of the shortfall until the shortfall is fully recovered, after which the normal ECR shall apply. In case the energy shortfall occurs after ten years from the date of commercial operation of a generating station, the following explanation (under Regulation 31(6)(b) of the 2014 Tariff Regulations-as quoted above, shall apply:

> *Explanation: Suppose the specified annual design energy for the station is DE MWh, and the actual energy generated during the concerned (first) and the following (second) financial years is A1 and A2 MWh respectively, A1 being less than DE. Then, the design energy to be considered in the formula of these regulations for calculating the ECR for the third financial year shall be moderated as (A1 + A2 – DE) MWh, subject to a maximum of DE MWh and a minimum of A1 MWh.*

14. From the above example, it is evident that for the year of recovery of energy charge shortfalls during the period 2014-19, the shortfalls during the years 2017-18 and 2018-19 extend into the next control period, which is the tariff period 2019-24. Accordingly, the shortfall that could not be recovered during the period 2014-19 should be assessed and carried forward for recovery in accordance with clause (8) of Regulation 44 of the 2019 Tariff Regulations. The recovery methodology for the period 2014-19 requires re-computing the Design Energy (DE) and the ECR till the recovery of the energy charge shortfall was made good. It even required the rebilling for the whole year in which recovery was being affected. Accordingly, during the finalization of the 2019 Tariff Regulations, the Commission, in its prudence, changed the recovery mechanism by introducing Regulation 44(7), which states that "*shortfall in energy charges in comparison to fifty percent of the annual fixed cost shall be allowed to be*

recovered in six equal monthly instalments". This Regulation, with a simple recovery mechanism, was valid for the energy charge shortfall suffered by a generator during any individual year/s of the period 2019-24, as indicated in Regulation 44 (6) of the 2019 Tariff Regulations.

15. It is pertinent to mention that during the framing/finalization of the 2019 Tariff Regulations, a few petitions seeking the recovery of energy charge shortfall during the end years of the period 2014-19 were under consideration before this Commission, and it was expected that some more generators would approach the Commission with petitions, on this count, even after 1.4.2019. As such, in consideration of the fact that the recovery mechanism has been simplified for the period 2019-24 in terms of Regulation 44 (7), the Commission, by way of Regulation 44(8), retained the simplified methodology of recovery {under Regulation 44(7)} for the pending Petitions filed/to be filed by the generators towards the recovery of energy charge, on a yearly basis, relating to the period 2014-19. It can, therefore, be concluded that it was not the intention of the Commission to assess the energy shortfall for the entire tariff period 2014-19 by undoing the process adopted in the earlier Petitions, which was decided on a yearly basis.

16. The COD of the generating stations of the Petitioner are 25.8.2005 (ISPS) and 15.11.2007 (OSPS), respectively. Thus, the energy shortfall occurred after a period of 10 years. Accordingly, the recovery year of the allowed shortfall in the energy charges during the years 2017-18 and 2018-19, in terms of the explanation under Regulation 31(6)(b) of the 2014 Tariff Regulations, falls in the years 2019-20 and 2020-21, i.e., during the tariff period 2019-24. Accordingly, any unrecovered energy charge shortfall from the period 2014-19 that could not be recovered within the same period and which extends to the next tariff period due to the recovery mechanism prescribed in the 2014

Tariff Regulations is required to be processed under Regulation 44(7) of the 2019 Tariff Regulations. The recovery is to be made in six equal monthly installments, as per the mechanism specified under the 2019 Tariff Regulations applicable for the period 2019-24.

17. As regards the Respondent MPPMCL submission that the Petitioner earned more than the allowed energy charges during the period 2014-19, it is clarified that in the case of hydroelectric power generation, any energy generated in excess of the design energy of the ECR of the generating station is governed by Regulation 31(7) of the 2014 Tariff Regulations, which is as under:

> *"if the Energy Charge Rate (ECR) for a hydro generating station, computed as per clause (5), exceeds ninety paise per kWh, and the actual saleable energy in a year surpasses { DE × (100 – AUX) × (100 – FEHS) / 10,000 } MWh, the energy charge for the excess energy shall be billed at ninety paise per kWh only.*
>
> *Provided, if in a given year the total energy generated is less than the design energy due to reasons beyond the control of the generating company, the ECR shall be reduced to ninety paise per kWh after the energy charge shortfall of the previous year has been made up.*

18. These regulatory provisions ensure that any excess energy generated beyond the design capacity is fairly compensated by the beneficiaries, in line with Regulation 31(7) of the 2014 Tariff Regulations. Similarly, any shortfall in energy charges due to lower generation is addressed separately in accordance with Regulation 31(6) of the same tariff regulations. The contention of the Respondent is, therefore, not tenable.

19. Based on the above findings and discussions, we hold that the relief(s) granted to the Petitioner vide our order dated 10.12.2023 is liable to be sustained. We order accordingly. We note that APTEL, in its judgment dated 16.5.2024, while taking note that the Respondent MPPMCL has paid four of the six instalments, observed that the Respondent's entitlement to recover the said amounts paid must await the final order

of this Commission. In view of our decision above, based on the interpretation of Regulations 44(6) to 44(8) of the 2019 Tariff Regulations, we direct the Respondent MPPMCL to make the balance instalment amounts to the Petitioner within two months from the date of this order.

20. With the above, the directions of APTEL vide its judgment dated 16.5.2024 in Appeal Nos. 71/2024 and 72/2024 stand implemented.

21. Petition No. 220/MP/2019 and Petition No. 267/MP/2019 (on remand) stand to be disposed of in terms of the above.

Sd/	**Sd/**	**Sd/**
(Harish Dudani)	**(Ramesh Babu V.)**	**(Jishnu Barua)**
Member	**Member**	**Chairperson**