CERC PETITION NO. 1/SM/2026

# Congestion Charges in Real-Time Operation

*Submissions on Behalf of the Indian Wind Power Association (IWPA)*

| Date of Order | Forum | Counsel |
| --- | --- | --- |
| **13 March 2026** | **Public Hearing. 11.05.2026** | |

# BACKGROUND & CERC PROPOSAL



**2009**

**Congestion Charge Regulations notified**

Effective 24.12.2009

**2010**

**Rate fixed at ₹5.45/kWh**

Based on UI Charges (max UI – UI@50Hz)

**2013**

**Detailed Procedure approved**

Under Regulation 4(2)

**2026**

**CERC proposes rate revision**

Petition No. 1/SM/2026, dated 13.03.2026

### CERC'S REVISED PROPOSAL

**Rate Formula**
1.5× applicable DSM rate
(RR / Contract / Normal Rate)

**Floor**
₹ 3.00 / unit

**Ceiling**
₹ 10.00 / unit

**Applicability**
ALL entities including
RE generators

**Exemption**
Forced outage cases only

## IWPA'S PLEA

*The proposed framework is legally untenable, technically unsound, and commercially destructive for wind generators.*

**01 — Double Levy**

Congestion charges atop DSM = dual penalty for single event

**02 — Non-Dispatchability**

Wind cannot be controlled — no ability to relieve congestion

**03 — No Mitigation Mechanism**

Unlike buyers/conventional gen, wind has no corrective option

**04 — DSM Band Nullified**

Charges levied even within ±10% tolerance — regulatory contradiction

**05 — No Causal Nexus**

Meteorological variability ≠ intentional congestion causation

**06 — Statutory Conflict**

Violates EA 2003 §61(h) & §86(1)(e) — promotion of RE

**07 — State's Duty — Grid Infrastructure Default**

**CTU/STU bear statutory duty (EA 2003 §38/§39) to provide adequate transmission. Congestion caused by planning failure cannot be shifted onto generators as a financial penalty.**

**PRAYER: Exempt wind generators from congestion charges | Alternatively, provide differentiated/nil rate for non-dispatchable RE sources**

## GROUND 1: DOUBLE LEVY — DUAL PENALTY FOR A SINGLE EVENT

| DSM CHARGE | + | CONGESTION CHARGE | = | TOTAL EXPOSURE |
|---|---|---|---|---|
| Deviation Settlement Mechanism Penalty | | 1.5× DSM Rate (₹3–₹10/unit) | | **₹10–₹15 / unit for ONE deviation event** |

**SAME UNDERLYING EVENT: A single deviation from scheduled injection/drawal**

### DSM is a complete code

The DSM Regulations constitute a comprehensive framework governing deviations. Superimposing a separate congestion charge for the same deviation is beyond the regulatory scheme.

### Doctrine of proportionality

Dual levy for a single event is ex facie arbitrary, excessive, and violative of the principle of proportionality — liable to be set aside.

### No double jeopardy

An entity already penalised under DSM cannot be subjected to an additional financial levy for the same act or omission, without clear statutory authority.

## GROUND 2 & 3: NON-DISPATCHABILITY & ABSENCE OF MITIGATION MECHANISMS

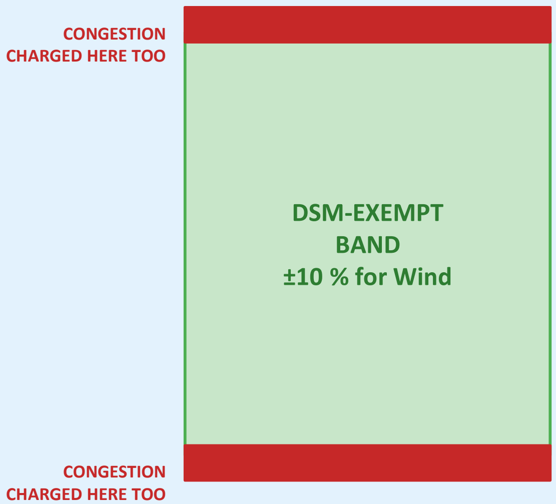
***Wind Generators vs. Other Entities — Ability to Respond to Congestion***

| Attribute | Wind Generators | Conventional Generators | Buyers / DISCOMs |
|---|---|---|---|
| Control over output | ✗ **Little — weather-dependent** | ✓ **Full dispatchability** | ✓ **Can curtail drawal** |
| Can ramp up/down on instruction | ✗ **Can ramp Down but not Up** | ✓ **Yes** | ✓ **Yes** |
| Access to RTM to offset deviation | ✗ **IEGC prohibits** | ~ **Limited** | ✓ **Yes — since Jun 2020** |
| Can revise TGNA contracts | ✗ **Not permitted** | ✓ **Yes** | ✓ **Yes** |
| Must-run status | ✓ **Mandated by law** | ✗ **No** | N/A |

⚖ **Article 14, Constitution of India:**
Unequals cannot be treated as equals. Uniform liability across non-dispatchable RE and fully-dispatchable conventional generators violates the guarantee of equality before law.

# GROUNDS 4 & 5: DSM BAND NULLIFIED | NO CAUSAL NEXUS

## GROUND 4: DSM TOLERANCE BAND NULLIFIED




**DSM expressly exempts deviations within ±10 % for wind.**

Applying congestion charges within this same band:

- Indirectly nullifies DSM protections
- Creates internal regulatory contradiction

## GROUND 5: NO CAUSAL NEXUS

**Congestion in corridor**

*Arises from*

**Network & planning constraints**
**+ System-level conditions**

≠

**Wind deviation (meteorological)**

**Legal principle:** Liability requires a proximate causal connection between the act and the harm. Meteorological variability is not a voluntary or controllable action — congestion charges cannot be imposed without establishing this nexus.

## GROUND 7 [NEW]: STATE'S DUTY — GRID INFRASTRUCTURE FAILURE CANNOT BE SHIFTED TO GENERATORS

### STATUTORY DUTY OF CTU / STU

**§ 38, EA 2003** **Central Transmission Utility**

CTU shall build, maintain and operate an efficient, coordinated and economical system of inter-State transmission — including ensuring adequate ATC across corridors.

**§ 39, EA 2003** **State Transmission Utility**

STU bears the identical obligation for intra-State transmission — ensuring that generation capacity can be absorbed by the grid without systemic, recurring congestion.

**§ 3, EA 2003** **National Electricity Policy**

The Government shall ensure transmission capacity keeps pace with planned generation additions, including ambitious RE capacity targets set under national policy.

### THE STRUCTURAL ARGUMENT

1. **Congestion = planning failure**

   Recurring congestion notices (Jun–Aug 2025: WR/NR/SR corridors) signal a systemic capacity shortfall, not isolated generator misbehaviour. Root cause: transmission build-out has not kept pace with RE additions.

2. **Generators connect at designated POC**

   Wind generators inject at their designated Point of Connection (POC). Congestion in inter-State corridors beyond the POC lies within CTU/STU jurisdiction — generators have zero ability to remedy it.

3. **Cannot penalise for another's default**

   A generator that has met its own obligations cannot bear the financial consequences of CTU/STU's failure to discharge their statutory duty of adequate transmission planning and network development.

4. **RE growth has outpaced grid development**

   Since 2009, India's installed RE capacity has grown many-fold. Transmission planning has demonstrably not kept pace. Congestion charges effectively tax generators for a gap State agencies were bound to fill.

## GROUND 6: STATUTORY CONFLICT & FINANCIAL IMPACT

### FINANCIAL IMPACT ON WIND GENERATORS

DSM Penalty (max)
**~₹5–7/unit**

+ Congestion Charge (1.5× DSM)
**~₹4–10/unit**

= Total Exposure
**₹10–15/unit**

Market price of wind power
~₹3–5/unit

***Penalty can EXCEED revenue from wind generation, making exchange-based participation commercially unviable.***

### ELECTRICITY ACT, 2003 — STATUTORY MANDATE

**§ 61(h)** **Principles for Tariff Regulation**

***The Commission shall be guided by the promotion of cogeneration and generation of electricity from renewable sources of energy.***

**§ 86(1)(e)** **Functions of State Commission**

***Promote cogeneration and generation of electricity from renewable sources of energy, and specify percentage of energy purchased from such sources.***

**Existing RE protections —**
Must-run status • DSM relaxations (±15%) • Transmission charge waivers
*Adding congestion charges contradicts all of the above.*

# PRAYER & RELIEF SOUGHT

## Summary of IWPA's Submissions

1. Double levy for a single deviation — ex facie arbitrary & disproportionate
2. Wind is non-dispatchable — no capacity to relieve congestion on instruction
3. No mitigation mechanism exists for wind — unlike buyers/conventional generators
4. Charges within DSM tolerance band nullify regulatory protection for RE
5. No proximate causal nexus between meteorological variability and congestion
6. Framework contradicts EA 2003 mandate to promote renewable energy
7. **CTU/STU infrastructure default — congestion cost cannot be shifted to generators**

## PRAYER

**(a) Primary**

**Hold and declare that the proposed congestion charge framework shall NOT apply to wind power generators being non-dispatchable RE sources.**

**(b) Alternative**

**If charges are retained, provide a nil or differentiated rate for non-dispatchable generators, with an appropriate mitigation mechanism.**

**(c) Further Relief**

**Pass such other order(s) as this Hon'ble Commission deems fit in the interest of justice, RE growth, and grid stability.**