

**IN THE JHARKHAND STATE ELECTRICITY REGULATORY COMMISSION
AT RANCHI**

Case (Tariff) No. 09 of 2017, 13 of 2017 & 03 of 2022

Jharkhand Bijli Vitran Nigam Limited (JBVNL)..... Petitioner

CORAM: HON'BLE MR. MAHENDRA PRASAD, MEMBER (LAW)
HON'BLE MR. ATUL KUMAR, MEMBER (TECHNICAL)

For the Petitioner : Mr. Sanjay Singh, GM (Comm.), JBVNL and Ms. Anita Prasad, D.G.M., JBVNL

ORDER

Date : 7th October, 2025

1. The Petitioner, Jharkhand Bijli Vitran Nigam Limited (JBVNL) had filed a tariff Petition vide Case (Tariff) No.: 09 of 2017, in October 2017 for approval of *True-up of erstwhile JSEB for FY 2011-12 to FY 2013-14 (up to 5th Jan 2014) and JBVNL for FY 2013-14 (6th Jan 2014 to 31st Mar 2014) to FY 2015-16.*
2. The Petitioner also filed a tariff Petition vide Case (Tariff) No.: 13 of 2017 for approval of *APR for FY 2016-17* and determination of *Revised ARR and Tariff for FY 2017-18 and FY 2018-19.*
3. Further, the Petitioner filed a tariff Petition vide Case (Tariff) No.: 03 of 2022, dated November 30, 2021 for approval of *True up of FY 2020-21, Annual Performance Review for FY 2021-22, and Annual Revenue Requirement for FY 2022-23.*
4. Considering the submission of the Petitioner and facts available on record, the Commission passed the tariff order in Case (Tariff) No.: 09 of 2017 as well as in Case (Tariff) No.: 13 of 2017 on April 27, 2018, followed by order in Case (Tariff) No.: 03 of 2022 on February 28, 2024.
5. In the above mentioned orders, the Commission levied a penalty of 2% on ARR on account of non-compliance of various directives given by the Commission. The relevant excerpts from the Commission's order have been reproduced below.

Excerpts from Tariff Case No.: 09 of 2017

6.113 *The Commission in its earlier Order dated August, 2012 had directed the Petitioner to comply with the Standard of performance regulations as notified by the Commission and submit a progress report on the implementation of the same which the Petitioner has failed to.*

6.114 *Further, the Commission in its earlier Orders dated July 22, 2011, August 2, 2012 & December 14, 2015 had repeatedly directed the Petitioner to prepare a list of consumers who have not been paid "Interest on consumer security deposit" as per applicable Regulations and clear the dues pending on the Petitioner with immediate effect and submit a report to the Commission.*

6.115 *However, the Commission is of the view that the Petitioner has not taken any initiative to comply with the directives of the Commission. The Commission takes serious note of the non-compliance of the Petitioner in this regard. This shows that the Petitioner has taken the directives*

casually. In view of the same, the Commission has now decided to impose a penalty of 2% of the Aggregate Revenue Requirement (ARR) of the Petitioner for the FY 2015-16.

Excerpts from Tariff Case No.: 13 of 2017

6.124 The Commission in its earlier Orders dated December 14, 2015 and June 21, 2017 had expressed serious concern over the Petitioner's negligence with respect to meeting the RPO. Further, the Commission had mentioned that any non-compliance in the future may attract penalty. The relevant extracts of the Orders have been reproduced below:

Order dated December 14, 2015

"6.21 Further with respect to the purchase from renewable sources to meet the Renewable Purchase Obligation (RPO), the Commission notes with concern that the Petitioner has not taken any steps till date to meet its targets. In the past also, the Commission had directed the Petitioner to ensure RPO obligations are met. The Commission takes serious note of its non-compliance. Any non-compliance in future may attract penalty."

Order dated June 21, 2017

"RPO Obligation

12.19 The Commission directs the Petitioner to ensure that they procure renewable energy both solar & non-solar in accordance with JSERC (Renewable Energy Purchase Obligation and its compliance) Regulations, 2016. Failure to comply with RPO may attract penal action."

6.125 However, the Petitioner has not complied with the RPO till date. Further, the Commission in its earlier Order dated August, 2012 had directed the Petitioner to comply with the Standard of performance regulations as notified by the Commission and submit a progress report on the implementation of the same which the Petitioner has failed to comply with in spirit.

6.126 Also, the Commission in its earlier Order dated June 21, 2017 had directed the Petitioner to:

(a) Conduct a detailed technical study to ascertain voltage wise losses of the system.

(b) To prepare a list of consumers who have not been paid "Interest on consumer security deposit" as per applicable Regulations and clear the dues pending on the Petitioner with immediate effect.

(c) Undertake extensive consumer awareness programmes with an aim to apprise the consumers on various facets of power distribution

(d) Submit a report on the Employee performance appraisal system adopted.

(e) Make separate accounting for wheeling & retail supply business.

6.127 However, the Commission is of the view that the Petitioner has not taken any initiative to comply with the directives of the Commission, in spirit. The Commission takes serious note of the non-compliance of the Petitioner in this regard. This shows that the Petitioner has taken the directives casually. In view of the same, the Commission has now decided to impose a penalty of 2% of the Aggregate Revenue Requirement (ARR) of the Petitioner for the FY 2018-19.

Excerpts from Tariff Case No.: 03 of 2022

5.122 The Commission has observed that Petitioner in FY 2019-20 has not complied with the directions of the Commission. Further, the Petitioner has filed an appeal before the Hon'ble APTEL on the same matter in previous Order dated April 27, 2018. The Appeal in this case no 222 of

2018 and 223 of 2018 is pending before the Hon'ble APTEL and the case is sub-judice.

5.123 Further, the Commission again impose the penalty of 2% due to various reasons as summarized below: -

- The Commission on several occasion i.e. nearly seven years has directed the Petitioner to submit the Fixed Asset Register. But, the Petitioner on one pretext or other has not submitted the Fixed Asset Register despite lapse of seven years.
- The Petitioner on several occasions had failed to comply with Renewable Power Purchase Obligation.
- The Commission has observed during hearing; the petitioner has not complied with standard of performance.
- The Commission on various occasions had directed the Petitioner to submit the discrepancies outlined in the petition. But, the Petitioner has not complied with the direction and not submitted the data vis-à-vis the discrepancies pointed out.

6. Accordingly, penalties amounting to Rs. 115.83 Cr. in Case (Tariff) No.: 09 of 2017, Rs. 124.44 Cr. in Case (Tariff) No.: 13 of 2017 and Rs. 105.28 Cr. in Case (Tariff) No.: 03 of 2022 were imposed amounting to 2% of approved Aggregate Revenue Requirement for FY 2015-16, FY 2018-19 and FY 2020-21 respectively.
7. Aggrieved by the decision of the Commission, the Petitioner filed an appeal at the Hon'ble APTEL vide Appeal No. 222 of 2018 against Case (Tariff) No.: 09 of 2017, Appeal No. 223 of 2018 against Case (Tariff) No.: 13 of 2017 and Appeal No. 364 of 2024 against Case (Tariff) No.: 03 of 2022.
8. Hon'ble APTEL, in its Order/Judgement dated January 02, 2025 passed in Appeal No. 364 of 2024/IA No. 1274 of 2024, Appeal No. 365 of 2024/IA No. 1276 of 2024 and Appeal No. 367 of 2024/IA No. 1275 of 2024 made following observations: -

"In the light of the law, declared in the judgment of this Tribunal, on Maharashtra State Electricity Distribution Company Limited Vs. MERC (Judgment in Appeal No. 71 of 2007 dated 04.05.2019) wherein this Tribunal, while considering a similar issue whereby penalty of reduction in the ARR was imposed. It does appear that the Respondent-Commission has exceeded its jurisdiction in imposing a penalty of reduction of 2% of the ARR of the Appellant for their failure to comply with their Solar Power RP obligations.

We cannot, however, ignore the fact that among the functions, which the State Commission is obligated to discharge under Section 86(1)(e) of the Electricity Act, is to promote generation of electricity from renewable sources of energy, and also to specify, for purchase of electricity from such sources, a percentage of the total consumption of electricity in the area of supply of a distribution licensee. Further, Section 61(h) of the Electricity Act requires the Appropriate Commission, while specifying the terms and conditions for determination of tariff, to be guided by the need to promote generation of electricity from renewable sources of energy.

In the exercise of its powers under Section 61, 66 and 86(1)(e) read with Section 181 of the Electricity Act, the JSERC made the JSERC (Renewable Energy Purchase Obligation and its Compliance) Regulations, 2016, and thereafter the JSERC (Renewable Energy Purchase Obligation and its Compliance) Regulations, 2020. Regulation 10 of both the 2016 and 2020 Regulations provides for the effect of default It would suffice, therefore, to refer to clause 10.1 to 10.7 of the 2020 Regulations which reads as under:

"10.1 The Obligated Entity(ies) shall submit the details of their compliance of RPO to the State Agency on a quarterly basis. The final

accounts shall be submitted by 31st July of the Assessment Year along with the detailed statement of energy procurement from renewable energy sources and RECs purchases (if any), duly certified by the auditors. In case of delay by any Obligated Entity(ies), the State Agency may issue notice to such Obligated Entity(ies) to submit the same at the latest by 31st of August of the Assessment Year.

10.2 After receiving the compliance from the obligated entities as per Clause 10.1 above, the State Agency shall assess the shortfall, if any, in meeting the RPO by the obligated entities in the State for the relevant Financial Year along with the RPO charge as per Clause 10.4 and submit the Annual Compliance Report by 30th September of the Assessment Year. In case of default by any of the obligated entities, the Commission may suo-moto initiate proceedings against the Obligated Entity(ies) in default under Section 142 of the Act.

10.3 The Commission shall serve the notices to the Obligated Entity(ies) identified as defaulter(s) in the assessment done under Clause 10.2 above by 30th October of the Assessment Year requiring them to create an RPO fund based on the charges determined in the manner mentioned under Clause 10.4.

10.4 The Obligated Entity(ies) in default shall pay, by 30th November of the Assessment Year, the RPO charge determined on the basis of the shortfall in units of renewable energy purchase obligation and the forbearance price decided by the Central Commission to the fund created.

Provided that the fund so created shall be utilised, as may be directed by the Commission, from time to time; Provided that the details of such fund created and the compliance using the same shall be submitted by the Obligated Entity(ies) which are Licensees in the Tariff Orders of the respective year;

10.5 An obligated entity shall be allowed to comply with the RPO targets through procurement of certificates by 1st quarter of the year following the Assessment Year.

10.6 Where any Obligated Entity(ies) still fail to comply with the obligation to purchase the required percentage of power from renewable energy sources or the renewable energy certificates by 1st quarter of the year following the Assessment Year, they shall also be liable for penalty as may be decided by the Commission under section 142 of the Act:

Provided that in case of genuine difficulty in complying with the renewable energy purchase obligation because of non-availability of Certificates, the Obligated Entity can approach the Commission for appropriate relief; Provided that where the Commission provides relief to the Licensee in terms of Clause 10.6 of these Regulation or the penal action under section 142 of the Act shall not be invoked for that specific year.

10.7 The penalty enforced by the Commission on the Obligated Entity shall not be a pass through in the Aggregate Revenue Requirement in case the Obligated Entity is a Distribution Licensee.”

It is evident from Regulation 10.6, as afore-extracted, that, if any obligated entity fails to comply with the obligation to purchase the required percentage of power from renewable energy sources or the renewable energy certificates, it shall also be liable for penalty as may be decided by the Commission under Section 142 of the Electricity Act. Besides imposition of penalty under Section 142 of the Electricity Act, Clause 10.4 confers power on the Commission to require the obligated entity(ies) in default to pay the RPO charges as the Commission may determine on the basis of the shortfall in units of renewable energy purchase obligations and the forbearance price decided by the Central

Commission to the State agencies which would deposit the amount in a separate fund.

Section 142 of the Electricity Act enables the Commission, if it is satisfied that any person has contravened any of the provisions of the Electricity Act or the rules or regulations made thereunder, or any direction issued by the Commission, to pass an order in writing directing that, without prejudice to any other penalty to which such person may be liable under this Electricity Act, such person shall pay, by way of penalty, which shall not exceed one lakh rupees for each contravention and in case of a continuing failure with an additional penalty which may extend to six thousand rupees for every day during which the failure continues after contravention of the first such direction. The definition of a “person”, in Section 2(49) of the Electricity Act, is an inclusive definition and, consequently, would bring within its ambit not only the Appellant company but also its officers responsible for such lapses, if any.

While the need for the appellant to ensure compliance, with its Solar Power RP obligations, cannot be over-emphasised, the mode and manner in which action should be taken, for the Appellant’s default in fulfilling its solar RP obligations for these three years, is not by way of reduction by 2% of the ARR but in terms of Section 142 of the Electricity Act and Regulation 10 of the RPO regulations as extracted hereinabove.

During the course of hearing of these appeals, we had called for an affidavit to be filed by the Appellant to ascertain whether any steps had been taken by them to ensure compliance with its statutory obligations under the RPO Regulations. The affidavit, as filed, does not even reflect any time frame within which the Appellant would ensure compliance in this regard. While certain efforts being taken by them are indicated in the said affidavit, what is left unsaid is why the Appellant chose not to purchase renewable energy certificates for the shortfall in fulfilment of its RPO obligations, though such purchase of certificates is stipulated in the Regulations itself.

While we find force in the submission, urged on behalf of the Appellant by Mr. Shri Venkatesh, Learned Counsel, that the JSERC had acted beyond its jurisdiction in imposing a penalty of 2% reduction in their ARR for the Appellant’s failure to discharge its solar RPO, we cannot also ignore the fact that the Appellant has been recalcitrant in fulfilling its Solar Power RP obligations which the afore-said Regulations mandated that they comply.

Section 121 of the Electricity Act confers power on this Tribunal to issue appropriate directions to the concerned Commissions for performance of its statutory functions under the Electricity Act. Since the Regulations made under the Electricity Act must also be read as part and parcel of the said Act, the JSERC has the statutory obligation to ensure compliance by the Appellant of the RPO Regulations. While the action of the Respondent Commission in imposing a 2% reduction in the Appellant’s ARR is set aside as it is an order passed without jurisdiction, we expect the JSERC to take appropriate action, for non-compliance by the Appellant of its Solar Power RP obligations, in terms of Section 142 of the Electricity Act read with Clause 10 of the RPO Regulations. The JSERC shall take necessary action with utmost expedition and, in any event, within six months from the date of receipt a copy of this order. The Respondent Commission shall submit an action taken report to this Tribunal, latest by 1st July, 2025.

The impugned order, to the extent indicated hereinabove, is set aside, and the matter is remanded to the JSERC to pass an order afresh adding the 2%, deducted by it earlier, to the Annual Revenue Requirement of the Appellant. Since several other contentions are raised in these Appeals,

suffice it, while disposing of all these appeals, to grant the Appellant liberty to file appeals afresh with respect to the other contentions which they had raised in the present appeals. All the three appeals are, accordingly, disposed of. All associated IAs, if any, shall also stand disposed of."

9. Accordingly, in compliance of the order of Hon'ble APTEL in Appeal No 364 of 2024, as mentioned above, the Commission listed the case for hearing on July 11, 2025.
10. In the meantime, the Hon'ble APTEL, vide its judgment dated May 01, 2025, passed in Appeal Nos. 222 of 2018 and 223 of 2018, also remanded the matter to the Commission, making the following remarks: –

After hearing Learned counsel for the contesting parties for some time, it is observed that the issues are covered by the order dated 02.01.2025 in Appeal Nos. 364, 365 & 367 of 2024 and dated 24.02.2025 in Appeal No. 23 of 2025 passed by this Tribunal. The same is as agreed to by all the contesting parties. It is seen from the said orders that the matter is remanded to the State Commission for re-consideration.

The relevant orders of this tribunal are quoted as under: -

"Order dated 02.01.2025 in Appeal Nos.364,365 & 367 of 2024

The impugned order, to the extent indicated hereinabove, is set aside, and the matter is remanded to the JSERC to pass an order afresh adding the 2%, deducted by it earlier, to the Annual Revenue Requirement of the Appellant. Since several other contentions are raised in these Appeals, suffice it, while disposing of all these appeals, to grant the Appellant liberty to file appeals afresh with respect to the other contentions which they had raised in the present appeals. All the three appeals are, accordingly, disposed of. All associated IAs, if any, shall also stand disposed of."

"Order dated 24.02.2025 in Appeal No. 23 of 2025

The impugned order, to the extent indicated in the order dated 02.01.2025, is set aside, and the matter is remanded to the JSERC to pass an order afresh adding the 2%, deducted by it earlier, to the Annual Revenue Requirement of the Appellant. Since several other contentions are raised in this Appeal, suffice it, while disposing of all these appeals, to grant the Appellant liberty to file an appeal afresh with respect to the other contentions which they had raised in the present appeal. The Appeal is, accordingly, disposed of. All associated IAs, if any, shall also stand disposed of."

The Appeal is disposed of in above terms, remanding the matter to the State Commission for re-consideration.

11. After the case been registered, on repeated call, none appeared on behalf of the Petitioner. Hence, after multiple hearings, the order was reserved on May 16, 2025 on the basis of materials available on records.

Commission's Observations and findings

12. The Commission has observed and this is pertinent to mention that 2% penalty on ARR was imposed by the Commission in the True-up orders for FY 2015-16 and from FY 2018-19 to FY 2022-23. Aggrieved by which the Petitioner moved to Hon'ble APTEL.
13. The Commission further observed that Hon'ble APTEL, vide its order dated January 02, 2025 passed in Appeal No. 364, 365 & 367 of 2024 (regarding True-up order of FY 2020-21, FY 2021-22 and FY 2019-20 respectively), remanded the matter to the Commission directing to pass an order afresh adding the 2% to the ARR of the Appellant deducted earlier.
14. Subsequently, Hon'ble APTEL issued order in Appeal No. 23 of 2025 (regarding True-up order of FY 2022-23) on Feb 24, 2025, followed by order in

Appeal No. 222 of 2018 & Appeal No. 223 of 2018, on May 01, 2025. Where Hon'ble APTEL remanded the matter to the Commission with a direction to pass an order in line with its earlier order passed in Appeal No. 364 of 2024.

15. It is also observed by the Commission that no penalty was levied on ARR on the said matter for FY 2016-17 and FY 2017-18.
16. The Commission further observed that Case (Tariff) No.: 13 of 2017 pertains to Annual Performance Review for FY 2016-17 and determination of Revised ARR and Tariff for FY 2017-18 and FY 2018-19. That is the said case doesn't pertain to the true-up of any particular year.
17. Above excerpts (pt. no. 12 to 16) have been tabulated in Table 1 for better clarity.
18. Accordingly, the Commission has considered the judgement of Hon'ble APTEL and the 2% penalty on ARR, deducted earlier, is reversed to the Petitioner as shown in Table 2 and 3 below.

Table 1 Summary of various cases regarding deduction of 2% in ARR (in Rs. Cr.)

True-up Year	Case (T) No.	Respective Case in APTEL	Remarks
FY 2015-16	09 of 2017	APL No 222/2018	Remand Order issued on May 01, 2025 by Hon'ble APTEL for refund of the Penalty
FY 2016-17			No Penalty levied
FY 2017-18			No Penalty levied
FY 2018-19*	13 of 2017	APL No. 223/ 2018	The case pertains to APR for FY 2016-17, Revised ARR and Tariff for FY 2017-18 and FY 2018-19 which is overwritten by the true up order issued in later year
FY 2019-20	04 of 2020	APL No. 367/ 2024	Remand Order issued on Jan 02, 2025 by Hon'ble APTEL for refund of the Penalty
FY 2020-21	03 of 2022	APL No. 364/2024	Remand Order issued on Jan 02, 2025 by Hon'ble APTEL for refund of the Penalty
FY 2021-22	15 of 2022	APL No. 365/2024	Remand Order issued on Jan 02, 2025 by Hon'ble APTEL for refund of the Penalty
FY 2022-23	10 of 2023	APL No. 23/2025	Remand Order issued on Feb 24, 2025 by Hon'ble APTEL for refund of the Penalty

**Penalty in ARR deducted in the True-up order of FY 2018-19 is also reversed in the instant order*

Table 2 Total Penalty levied on ARR in True-up for FY 2015-16 to FY 2022-23 (in Rs. Cr.)

Financial years	Penalty @2% of ARR
FY 2015-16	115.83
FY 2016-17	0
FY 2017-18	0
FY 2018-19	117.05
FY 2019-20	135.2
FY 2020-21	105.28
FY 2021-22	119.85
FY 2022-23	140.48
Total Penalty for FY 2015-16 to FY 2022-23	733.69

Table 3 Revised Revenue Gap/Surplus for FY 2023-24 (in Rs. Cr.)

Particulars	FY 2023- 24
Opening Gap / (Surplus)	3315.47
Revenue Gap / (Surplus) created during the Year	942.51
Reversal of Penalty	733.69
Total Revenue Gap/(Surplus)	4991.67

C O N C L U S I O N

19. In view of the aforesaid discussion and in compliance with Hon’ble APTEL order, 2% penalty earlier imposed on ARR for True-up of FY 2015-16 (in Case (Tariff) No.: 09 of 2017) and subsequent years are reversed. Total penalty, thus occurred, is added to the total revenue gap/surplus of FY 2023-24 as shown in Table 3.
20. However, Case (Tariff) No.: 13 of 2017 pertains to Annual Performance Review for FY 2016-17 and determination of Revised ARR and Tariff for FY 2017-18 and FY 2018-19, which has been overwritten by the True up order issued in later year for FY 2018-19. So the Commission finds no merit in reversing the deducted penalty for the said year. Instead, the penalty deducted in the ARR in the True-up year of FY 2018-19 is reversed to the Petitioner.
21. The closing gap for FY 2023-24 as shown in Table 3 shall form the opening gap for FY 2024-25 as and when the true-up for the same year is issued.
22. In terms of order of Hon’ble APTEL vide Appeal No 364 of 2024, in place of deducting 2% from ARR, action U/s 142 of the Act ought to have been taken and hence a separate case is registered for their default and non-compliance of Renewable Purchase Obligation.

Sd/-
Member (Tech)

Sd/-
Member (Law)