

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 563/MP/2014

Coram:

Shri Gireesh B. Pradhan, Chairperson

Shri A.K.Singhal, Member

Shri A.S. Bakshi, Member

Dr. M.K.Iyer, Member

Date of Order: 10th of March, 2017

In the matter of

Petition under Regulations 12 and 13 of the Central Electricity Regulatory Commission (Deviation Settlement Mechanism and Related Matters) Regulations, 2014.

And

In the matter of

Monnet Ispat and Energy Ltd.
11, Masjid Moth,
Greater Kailash, Part-II,
New Delhi-110048

.....**Petitioner**

Vs

1. Chhattisgarh State Load Despatch Centre
Chhattisgarh State Power Transmission Co. Ltd.
Vidyut Sewa Bhawan,
P.O. Danganiya, Raipur- 492010

2. Chhattisgarh State Power Distribution Co. Ltd.
Vidyut Sewa Bhawan,
P.O. Danganiya, Raipur- 492010

3. Power System Operation Corporation (POSOCO),
B-9, Qutub Institutional Area,
Katwaria Sarai, New Delhi- 110016

.....**Respondents**



The following were present:

Shri M.G. Ramachandran, Advocate for the petitioner
Ms. Ranjeetha Ramachandran, Advocate for the petitioner
Shri Shubham Arya, Advocate for the petitioner
Ms. Suparna Srivastava, Advocate, CSPDCL
Ms. Abiha Zaidi, POSOCO

ORDER

The petitioner, Monnet Ispat and Energy Ltd. (MIEL), has filed the present petition seeking direction to the respondents to allow the petitioner to receive deviation charges in case of over injection being less than 12% of the schedule in MW or 150 MW whichever is lower in each time block when the frequency in the grid is less than 50 Hz and such over injection benefits the grid.

2. The petitioner has submitted that the following facts have led to the filing of this petition:

(a) The petitioner has set up a 60 MW and 170 MW power plants at Raipur District and Raigarh District in the State of Chhattisgarh, respectively.

(b) Regulation 5 of the Central Electricity Regulatory Commission (Deviation Settlement Mechanism and Related Matters) Regulations, 2014 (hereinafter referred to as 'DSM Regulations') *inter-alia* provides for 'charges for deviations' for all the time-blocks payable for over drawal by the buyer and under-injection by the seller and receivable for under-drawal by the buyer and over-injection by the seller.

(c) Regulation 7 of the DSM Regulations lays down the limits on deviation volume and the consequence of crossing limits.



(d) Annexure II of the DSM Regulations provides for the methodology of determination of the deviation entitled to deviation Charges in the implementation of Regulations 5 and 7 of the DSM Regulations which needs to be interpreted and applied consistent with the scheme, objective and purpose of the DSM Regulations.

(e) In accordance with the above, if a generating company during under frequency (i.e. less than 50 Hz) over injects the power not exceeding 12% or 150 MW limit provided for in Regulation 7 of the DSM Regulations, the generating company shall become eligible for the applicable deviation charges as provided in the DSM Regulations. If such over injection is to the extent of 12%, the deviation charges would be payable for such 12% (provided the total quantum does not exceed 150 MW). However, if such over-injection is to the extent of 6% (not exceeding 150 MW), the deviation charges would be payable to the generating station to the extent of 6%.

(f) Keeping in view the objective and purpose of the DSM Regulations, there cannot be any issue on the entitlement of the generating station helping the grid during under frequency to receive the deviation charges to the extent of over injection subject to the limit of 12% or 150 MW, whichever is less.

(g) SLDC, Chhattisgarh has been wrongly interpreting and applying the provisions of DSM Regulations to the effect that no deviation charges are payable to a generating company injecting electricity to help the grid as well as no commercial mechanism for settlement of deviation injection by the generating station in case of under frequency till the quantum of injection is 12%. Such an interpretation is



contrary to the object of the scheme of the DSM Regulations which entitles the generating station helping the grid during under frequency to receive the deviation charges to the extent of over injection subject to the limit of 12% of the scheduled generation or 150 MW, whichever is less.

(h) SLDC, Chhattisgarh has been demanding deviation charges from the petitioner, calculating the deviation charges payable/receivables as per its erroneous interpretation. The petitioner opposed the above methodology adopted by SLDC, Chhattisgarh and CSPDCL. The stand taken by SLDC, Chhattisgarh would frustrate the objective and purpose of providing for deviation as a commercial mechanism to stabilize the grid. There will be no incentive for any generating station to inject more power in the grid and suffer consequences if the over injection is less than 12%.

3. In the light of the above, the petitioner has made the following prayers:

(a) Declare that a generating station operating its generating units during under frequency to over inject the power within the limits of 12% of the scheduled generation or 150 MW whichever is lower shall be entitled to deviation charges settlement in accordance with the DSM Regulations to the extent of actual over injection, notwithstanding that such over injection may be less than 12%;

(b) Pass ad-interim ex-parte order to stay the recovery of money from the petitioner in respect of the invoices raised by the Respondent No.1 and Respondent No. 2 on the basis that the deviation charges is payable to the generating station only if the over injection is more than 12% of the scheduled generation;

(c) Instruct/direct the Respondent No. 1 and Respondent No. 2 to refund the already paid amount by the petitioner to the Respondent No. 1 and



Respondent No. 2 since February 2014 onwards along with interest at the rate of 18%.”

4. The matter was heard on 26.2.2015 and notices were issued to the respondents to file their replies.

5. Power System Operation Corporation Limited (POSOCO), vide its reply dated 24.3.2015, has submitted that since, the scheduling and accounting of energy at the inter-State level is done by the RLDCs, the over-drawls and under-drawls or over-injection and under-injections by the State or Regional entity lie within the purview of RLDCs. POSOCO has further submitted that as per Regulation 20 of the Central Electricity Regulatory Commission (Open Access in inter-State Transmission) Regulations, 2008 deals with the procedure for accounting of transactions by the State Utilities and the manner of settlement of deviation in respect of such entities in the course of availing inter-State short term open access. POSOCO has submitted that the issue has also been settled by the Commission in its order dated 30.10.2014 in Petition No. 134/MP/2014 titled as Bharat Aluminum Company Ltd. v. Chhattisgarh State Power Transmission Company Ltd. & Ors. POSOCO has submitted that since the petitioner in the present case is an embedded entity within the State of Chhattisgarh and scheduling and accounting of the energy is therefore, the responsibility of the State concerned, the Commission may give necessary directions as deemed fit in the circumstances of the case.

6. SLDC, Chhattisgarh and Chhattisgarh State Power Distribution Co. Ltd., vide their joint reply dated 19.5.2015, have submitted as under:



(a) There is no merit in the petitioner's contention that in view of the objective and purpose of the DSM Regulations, there cannot be any issue on the entitlement of the generating station helping the grid during under frequency to receive UI charges to the extent of over injection to the limit of 12% or 150 MW whichever is less. Infact, as per the DSM Regulations, no deviation charges are payable to the generation company injecting electricity to help the grid in case under frequency till the quantum of injection is 12%.

(b) The present petition is not maintainable before the Commission for want of necessary jurisdiction and as such, is liable to be dismissed by the Commission. The controversy for adjudication before the Commission relates to injection of power by the petitioner during the course of inter-State open access transactions undertaken by it from time to time. The petitioner is an embedded generator in the State having connectivity with the State network only and is falling under the control area of the State Load Despatch Centre. The connectivity to the petitioner's power plant with the State Grid has been given under the terms and conditions of the Chhattisgarh State Electricity Regulatory Commission (Connectivity and intra-State Open Access) Regulations, 2011. The injections being done by the petitioner during the course of open access transaction are within the territory of the State and at the time of using the State Grid.

(c) When an intra-State entity such as a generator having connectivity with the State grid proposes to undertake inter-State open access transactions, it is required to make an appropriate application to the concerned RLDC after



obtaining prior approval for the same from SLDC. Therefore, the present petition is not maintainable.

(d) When for reason of transmission constraints or to maintain grid security it becomes necessary to curtail power flow on a transmission corridor, the transactions already scheduled can be curtailed in the manner decided by the RLDC if in its opinion, such curtailment is likely to relieve the transmission constraint or is likely to improve grid security. Wherever the State network is used in the course of inter-state transactions are liable to additionally pay transmission charges for use of State network.

(e) In the mechanism of scheduling and dispatch provided in Regulation 20, the parties involved are the intra-State entity and the State utility and the over-injection is taking place within the state. That being so, when the open access customers embedded in the State (i.e. intra-State entities) undertake inter-State transactions in which the intra-State transmission network is also used, then the 2008 Regulations have prescribed that any issue as regards mismatch between the scheduled injection and actual injection is to be decided by that SLDC where the said intra-State entities are situated. It follows as a natural corollary that the Regulatory Commission having jurisdiction over any issue arising in this behalf would also be the State Commission. Therefore, the Commission does not have jurisdiction to entertain and adjudicate upon the present petition and consequently, the same is liable to be dismissed by the Commission. The order of the State Commission holding that it has jurisdiction to entertain such petitions is under challenge before APTEL in Appeal No. 89/2014 titled as M/s. Vandana



Vidyut Ltd. & Ors. Vs. Chhattisgarh State Electricity Regulatory Commission
&Ors.

(f) As per Regulation 5 (1) of the DSM Regulations, the charges for Deviation for all times blocks would be payable for over-drawal by the buyer and under injection by the seller and receivable for under-drawal by the buyer and over injection by the seller.

(g) As per Regulation 7 (5) of the DSM Regulations, methodology for computation of charges for deviation and additional charges for deviation for each regional entity for crossing volumes limits specified for the under-drawal/over-injection and for over-drawal and under-injection should be as per Annexure-I and II of the Regulations.

(h) As per Annexure-II, whenever there is a Deviation in schedule in a time block which is less than +/- 12% of the schedule in MW or 150 MW, whichever is lower, the Deviation charges are "receivable" by the regional entity at normal charges. After the perusal of the DSM charges statements annexed by the petitioner along with the petition, the deviations in a time block which have been less than +/- 12% of the schedule in MW, the billing would be done as per the DSM Regulations which prescribe Deviation charges to be "payable by regional entities at normal charges. The DSM Regulations have been adopted by the State Commission for their applicability to open access transactions undertaken by intra-State entities such as the petitioner located in the State.



(i) The Commission has amended the DSM Regulations and the same have been notified in the Official Gazette on 31.12.2014 and have come into effect from the said date. In para A of Annexure II of the amended DSM Regulations, the word 'Payable' has been substituted by the word 'Receivable'. Since, there is no retrospective applicability of the above amendment Regulations, the deviation charges on the petitioner are being raised on the manner set out in the unamended Annexure-II of the DSM Regulations and thereafter in manner set out in the amended Annexure-II of the DSM Regulations. There is no merit in the present petition and the same is liable to be dismissed by the Commission.

7. The petitioner, vide its rejoinder dated 24.6.2015 to the reply of SLDC, Chhattisgarh and CSPDCL, has submitted that Regulation 5(1) provides that charges for the deviation shall be receivable in the event of under-drawal by the buyer and over-injection by the Seller, whereas Annexure-II provides that when a seller over injects power upto 12% or 150 MW, whichever is lower, or when the buyer under-draw the power upto 12% or 150 MW, whichever is lower, then the seller or buyer are liable to pay the charges for deviation.

Analysis and Decision:

8. We have considered the submissions of the petitioner and the Respondents. The petitioner has filed the present petition seeking direction to the respondents to allow the petitioner to receive deviation charges in case of over-injection being less than 12% of the schedule in MW or 150 MW whichever is lower in each time block when the frequency in the grid is less than 50 Hz. The Respondents have challenged the maintainability of the petition on the ground of want of jurisdiction of this Commission to



deal with the dispute. The respondents have submitted that the petitioner is embedded generator in the State of Chhattisgarh having connectivity with the State network and is falling under the jurisdiction of the CSERC. The respondents have also submitted that the order of the State Commission holding that CSERC has the jurisdiction to entertain such petition is under challenge before the APTEL in Appeal No. 89/2014 (Vandana Vidyut Limited and other Vs. Chhattisgarh State Electricity Regulatory Commission and others). The petitioner has submitted that the issue relates to the interpretation of the DSM Regulations which can only be done by this Commission.

9. We have considered the submissions of the petitioner and the respondents. The respondents in Para 13 of its reply has submitted that the DSM Regulations have been adopted by the State Commission for their applicability to open access transactions undertaken by intra-State entities such as the petitioner located in the State. Further, the Respondents have relied on the order of the State Commission dated 6.2.2014 in Petition No. 33 of 2012 (Vandana Vidyut Ltd. Vs. CSPDCL) where in the State Commission has decided that it has the jurisdiction to adjudicate the dispute between the intra-State generator like Vandana Vidyut Ltd. in respect of non-compliance of the provisions of the UI Regulations of the Central Commission. The order was challenged in Appeal No. 89/2014. The Appellate Tribunal by order 7.10.2015 has decided that the Central Commission has the jurisdiction to deal with the cases of utilities under Regulations 7 (2) of the CERC UI Regulations. The relevant portion of the judgment is reproduced below:



“8. We have carefully and cautiously studied the Central as well as State Commissions various regulations on the point in controversy before us and collated them. We find that in the case in hand it is the Central Commission which is legally competent to take action under Section 142 of the Electricity Act, 2003 against the appellants for the violation of Regulation 7 (2) of CERC (UI Charges and related matters) Regulations 2009 if any violation thereof is established. The learned State Commission is not legally competent to adjudicate upon the matter just on the ground that both the parties are situated within the territorial jurisdiction of the State of Chhattisgarh. No State Commission can be bestowed with the jurisdiction just on the ground that both the parties are situated within the territorial jurisdiction of the concerned State Commission. Even the State Commission cannot be held entitled to hold jurisdiction just on the ground that the short term inter-State open access consumers like the appellants are governed by the State Grid because such short term open access consumers first, use the intra-State transmission system, for which they pay the relevant charges to the concerned STU or State Grid utility. In the case in hand, the appellants are CPPs/lpps undertaking short term inter-State open access transmission of electricity generated by them to be exported to other States of the country beyond the State of Chhattisgarh, hence, they are liable to be governed by the relevant regulations of the Central Commission.

(9) In view of the above discussions, we are of the firm view and hold that the learned Central Electricity Regulatory Commission is legally competent and has jurisdiction to take action under Section 142 of the Electricity Act, 2003 against the appellants for violation (if any) of Regulation 7 (2) of the CERC (UI Charges and related matters) Regulations 2009. We further hold that the learned State Commission does not have any jurisdiction to take action under section 142 of the Electricity Act, 2003 for the said violation of regulation 7 (2) of the CERC (UI Charges and related matters) Regulations, 2009. All the findings recorded in the impugned order, being against law and absurd, are liable to be set aside and appeal is liable to be allowed. Consequently, the sole issue related to the jurisdiction is decided in favour of the appellants and against the respondents.”

10. The UI Regulations have been repealed and replaced by DSM Regulations. The issue involved in the present petition relates to interpretation of the provisions of the Regulation 5 and 7 of the DSM Regulations and their applicability in case of the petitioner. In light of the decision of the Appellate Tribunal in Appeal No. 89/2014, this Commission has a jurisdiction to interpret the provisions of the DSM Regulations and its



applicability to the intra-State entities availing inter-State open access. Accordingly, the objection of the Respondent is overruled.

11. After filing of the present petition, some of the utilities pointed out that in the methodology published in DSM Regulations, SLDCs are billing Sellers for over-injection at frequency linked rates leading to huge payable amounts for over injection by sellers which ideally should have been receivable in the hands of the Seller but are becoming payable. This is when the said injection is within the 12% permitted band and Frequencies are below 50.10Hz. Considering the submissions of the stakeholders, the Commission by amending the Para A of Annexure-II of the DSM Regulations on 18.12.2014, substituted the word “Payable” by word “Receivable”. As per the above amendment, the deviation charges are receivable by a generator/seller for over injection during under frequency of the grid. During the course of hearing, learned counsel for the petitioner submitted that the issues raised in prayers (a) and (b) of the petition have been resolved after issue of the Central Electricity Regulatory Commission (Deviation Settlement Mechanism and related matters) (First Amendment) Regulations, 2014. Since prayers (a) and (b) have been addressed, we do not consider it necessary to further deal with the said prayers of the petitioner.

12. The petitioner in prayer (c) has prayed that the respondents be directed to refund the already paid amount by the petitioner to the respondents since February, 2014 onwards along interest at the rate of 18%. The Respondents in the reply have submitted that the Commission has notified the first amendment under which the word ‘payable’ has been replaced with the word ‘receivable’ in para A of Annexure II of the DSM



Regulations. The respondents have submitted that the above amendment have been notified on 31.12.2014 and have come into effect from the said date. The respondents have submitted that in accordance with the amended provisions, the deviation charges on the petitioner are being raised on a manner that for all deviations in schedules in a time block which have been less than +/-12% of the schedule in MW, the deviation charges are 'receivable' by the petitioner at normal charges. The respondents have submitted that there is no retrospective applicability of the amendment to the DSM Regulations specified by this Commission and accordingly, the deviation charges upto the date of amendment are necessarily to be carried out in the manner set out in the unamended Annexure-II occurring in the DSM Regulations and thereafter in the manner set out in the amended Annexure-II. The petitioner has submitted that the first amendment to the DSM Regulations clarifies the methodology by removing the inconsistency between the body of the DSM Regulations and the Annexure-II. The petitioner had submitted that this is clear from the Statement of Reasons to the first amendment wherein the Commission had accepted the contention of various parties in regard to the above inconsistency. Therefore, such clarification would apply from the date of the DSM Regulations and not merely from the date of the first amendment. The petitioner has submitted that in any event, even prior to the first amendment, the interpretation sought by the petitioner would be applicable, as otherwise the purpose and object of the DSM Regulations would be defeated.



13. We have considered the submissions of the parties. Regulation 5 (1) of the DSM

Regulations provides as under:

“5(1) The charges for the Deviation for all the time-blocks shall be payable for over drawal by the buyer and under-injection by the seller and receivable for under-drawal by the buyer and over-injection by the seller and shall be worked out on the average frequency of a time-block at the rates specified in the table below as per the methodology specified in clause (2) of this regulation.

(iii) the charges for the Deviation for the under drawals by the buyer in a time block in excess of 12% of the schedule or 150 MW, whichever is less, shall be zero.

(iv) the charges for the Deviation for the over-injection by the seller in a time block in excess of 12% of the schedule or 150 MW, whichever is less, shall be zero, except in case of injection of infirm power, which shall be governed by the clause (5) of this Regulation.”

Further, Regulation 7 of the DSM Regulations provides as under:

“(1) The overdrawal/underdrawal of electricity by any buyer during the time block shall not exceed 12% of its scheduled drawal or 150 MW, whichever is lower, when grid frequency is “49.70 Hz and above”:

Provided that no overdrawal of electricity by any buyer shall be permissible when grid frequency is “below 49.70 Hz”.

(2) The under-injection / over-injection of electricity by a seller during a time-block shall not exceed 12% of the scheduled injection of such seller or 150 MW, whichever is lower when grid frequency is “49.70 Hz and above and below 50.10 Hz” :

Provided that

(1) No under injection of electricity by a seller shall be permissible when grid frequency is “below 49.70 Hz” and no over injection of electricity by a seller shall be permissible when grid frequency is “50.10 Hz and above”.

(2) Any infirm injection of power by a generating station prior to COD of a unit during testing and commissioning activities shall be exempted from the volume limit specified above for a period not exceeding 6 months or the extended time allowed by the Commission in accordance with Connectivity Regulations.

(3) Any drawal of power by a generating station prior to COD of a unit for the start up activities shall be exempted from the volume limit specified above when grid frequency is “49.70 Hz and above”.



As per the above provisions, the deviation charges are receivable by the seller for over-injection at under frequency subject to maximum limits for such 12% of the scheduled generation or 150 MW, whichever is lower. However, in Para A of Annexure-II, the word 'payable' had crept inadvertently which was subsequently corrected by substituting word "receivable" vide notification dated 31.12.2014. The intent in the DSM Regulations was that deviation charges shall be receivable by seller/generator for over-injection during under-frequency within the limit of 12% of the scheduled generation or 150 MW, whichever is lower.

14. The petitioner has sought direction against the respondents to refund the already paid amount by the petitioner to them since February, 2014 alongwith interest. The question which arises for our consideration is that whether the petitioner is entitled to receive an amount already paid by it for the period from the date of enactment of DSM Regulations i.e. 17.2.2014 to till date of notification of amendment of DSM Regulations i.e. 18.12.2014. The intent of Regulation 5 of the DSM Regulations was to encourage the generator to over-inject upto 12% of schedule or 150 MW, whichever is lower, at the time of frequency below 50 Hz. The appearance of the word 'payable' in Part A of Annexure-II has led to a situation whereby the Regulation 7 cannot be given full effect. Therefore, both the provisions of Regulation 7 and Part A of Annexure-II have to be read harmoniously to advance the objective of the Regulations. The purpose of the first amendment is to bring abundant clarify to the provisions of the Regulations. This amendment being in the nature of clarification in order to remove the inconsistency between the main body of the Regulations and the Annexure shall have applicable from the date of the original notification. Therefore, we are not in agreement with the



contention of CSPDCL that the receivable by the generator due to over injection from would be applicable from the date of notification of the amendment. The Hon`ble Supreme Court in the case of M/s Alphli Pharmaceuticals Ltd. Vs. State of Maharashtra and others [(1989) 4SCC 378] has held that “the schedule may be used in construing provisions in the body of the Act. It is as much an act of Legislature as the Act itself and it must be read together with the Act for all purposes of construction. Expressions in the schedule cannot control or prevail against the express enactment and in case of any inconsistency between the Schedule and the enactment, the enactment is to prevail and if any part of the schedule cannot be made to correspond it must yield to the Act.” It is clear from the above that in case of conflict between the main body of the Regulation i.e Regulation 5 of the DSM Regulations and Schedule or Annexure thereof, the principal regulations shall prevail. In the light of the above discussion, SLDC, Chhattisgarh is directed to refund the amount already paid by the petitioner for the period from 17.2.2014 to 17.12.2014 within one month from the issue of the order and the respondents shall modify the deviation accounts accordingly. However, in the peculiar circumstances of the case where the SLDC, Chhattisgarh has gone strictly by the letter of the regulations, we are not inclined to allow any interest on the amount to be refunded in terms of the regulations.

15. The petition is disposed of in terms of the above.

Sd/-	sd/-	sd/-	sd/-
(Dr. M.K.Iyer) Member	(A.S.Bakshi) Member	(A.K. Singhal) Member	(Gireesh B. Pradhan) Chairperson

