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NEW DELHI

याचिका संख्या./ Petition No. 131/MP/2021

श्री जिष्णु बरुआ, अध्यक्ष/Shri Jishnu Barua, Chairperson  
श्री आई. एस. झा, सदस्य/ Shri I. S. Jha, Member  
श्री अरुण गोयल, सदस्य/ Shri Arun Goyal, Member  
श्री पी. के. सिंह, सदस्य / Shri P. K. Singh, Member

आदेश दिनांक/ Date of Order: 29<sup>th</sup> of December, 2023

**IN THE MATTER OF:**

Petition under Section 79(1)(b) along with Section 79(1)(f) of the Electricity Act, 2003 read with Central Electricity Regulatory Commission (Deviation Settlement Mechanism and related matters) Regulations, 2014 for declaring that Article 10.2.1 of the PPA dated 25.1.2012 and 15.10.2010 along with its amendments, if any, between the Petitioners, respectively and Respondents stands superseded by Regulation 5(1) (v) and (vi) of the DSM Regulations and for consequent direction on the Respondent to proceed accordingly for payment of tariff under the PPA.

**AND IN THE MATTER OF:**

- M/s Solar Field Energy Two Private Limited**  
21 Sethi Mansion, Third Floor,  
Kumtha Street, Ballard estate  
Mumbai- 400038
- Refex Industries Limited**  
20, Mooker Nallamuthu Street,  
Chennai – 600 001

...Petitioners

## Versus

### **NTPC Vidyut Vyapar Nigam Limited**

Core-7, Scope Complex, 7,  
Institutional Area, Lodi road,  
New Delhi- 110003

**...Respondent**

**Parties Present:** Shri Sakya Singha Chaudhuri, Advocate, SFETPL  
Ms. Nithya Balaji, Advocate, SEFTPL  
Ms. Shriya Gambhir, Advocate, SEFTPL  
Ms. Anushree Bardhan, Advocate, NVVNL  
Ms. Surbhi Kapoor, Advocate, NVVNL  
Ms. Srishti Khindaria, Advocate, NVVNL  
Shri Aneesh Bajaj, Advocate, NVVNL

## आदेश/ ORDER

The Petitioners, Solar Field Energy Two Private Limited (SFETPL) and Refex Industries Ltd (RIL) are generating companies engaged in the development of solar power projects, and the generation and sale of solar power. The Petitioners have filed the present petition under Section 79 (1) (b) and (f) of the Electricity Act, 2003, read with *Central Electricity Regulatory Commission (Deviation Settlement Mechanism and Related Matters) Regulations, 2014* as amended from time to time (*CERC DSM Regulations, 2014*) for declaring that Article 10.2.1 of the power purchase agreements dated 25.01.2012 and 15.10.2010 along with its amendments (if any), between the Petitioners and the Respondent, stands superseded by Regulation 5(1) (v) and (vi) of the *CERC DSM Regulations, 2014* and for consequent direction on the Respondent to proceed accordingly for payment of tariff under the PPAs.

2. Respondent, NTPC Vidyut Vyapar Nigam Limited (NVVN) is a company identified by the Government of India as the nodal agency for facilitating the purchase and sale of 33kV and above grid-connected solar PV power under the Jawaharlal Nehru National Solar Mission of Government of India (National Solar Mission).
3. The Petitioners have made the following prayers:
  - a) *Declare and hold that the mandate of payment of tariff on scheduled generation in Regulation 5 (1)(v) and (vi) of the CERC DSM Regulations is applicable to the Petitioners as an inter-state supplier of power;*

- b) *Declare and hold that the mandate of payment of tariff on scheduled generation in Regulation 5 (1)(v) and (vi) of the CERC DSM Regulations supersedes the provision of the PPAs, and that Petitioners will henceforth, be entitled to payment of tariff on scheduled generation as an inter-state supplier of power;*
- c) *Consequentially, direct that the manner of payment under Article 10.2.1 of the PPAs be amended henceforth to comply with the provisions of tariff payment under Regulation 5 (1)(v) and (vi) of the CERC DSM Regulations; and*
- d) *Pass such other and further order or orders as this Hon'ble Commission may deem appropriate.*

**Submissions of the Petitioners:**

4. Briefly, the Petitioners have submitted as under:
- a) NVVN, under the National Solar Mission, invited proposals for the development of a solar power project, generation, and sale of solar power, issuing a Request for Selection (RfS) on 24.08.2011. The Request for Proposal (RfP) was subsequently issued to SFETPL (Petitioner no. 1) on 17.11.2011. SFETPL submitted its bid in response to the RfP and RfS, and the same was opened on 02.12.2011. NVVN issued a Letter of Intent to SFETPL on 28.12.2011. Power Purchase Agreement (PPA) was entered into with the Respondent. SFETPL and NVVN, via PPA, dated 25.01.2012, under which the SFETPL agreed to sell 20 MW of solar power @ ₹ 9.34/kWh.
  - b) Pursuant to the Memorandum of Understanding (MoU) signed between RIL (Petitioner no. 2) and NVVN RIL was selected for migration of the Project. PPA was signed between Respondent and RIL, via PPA dated 15.01.2010, under which RIL agreed to sell 5 MW of solar power @ ₹ 17.91/kWh.
  - c) NVVN agreed to purchase solar power from the petitioners as an intermediary seller and to sell 52.99% of power purchased from the Petitioners to the State of Rajasthan and the remaining 47.01% of power to other beneficiary States / Utilities such as Punjab, Uttar Pradesh, Karnataka, Orissa, Damodar Valley Corporation, West Bengal, Assam and Chhattisgarh after bundling it with Central unallocated power from coal-based projects of NTPC Limited.
  - d) To facilitate power supply, both SFETPL and RIL's projects are connected to the grid substations of the State Transmission Utility (STU) at Bap and 220 kV Balotra PSS, respectively. Of the power purchased by the Respondent from the petitioners, 52.99% is being sold intra-State to the State of Rajasthan itself, while the remaining 47.01% of power is being sold to other beneficiary States / Utilities such as Punjab, Uttar Pradesh, Karnataka, Orissa, Damodar Valley Corporation, West Bengal, Assam and Chhattisgarh.

- e) The billing and payment mechanism is provided under Article 10.2.1 of the PPAs as reproduced below:

*“10.2.1 The SPD shall issue to NVVN a signed Monthly Bill/ Supplementary Bill for the immediately preceding Month between the 5<sup>th</sup> day upto the 15<sup>th</sup> day of the next Month. In case the Monthly Bill/ Supplementary Bill for the immediately preceding Month is issued after the 15<sup>th</sup> day of the next Month, the Due Date for payment of such Monthly Bill/ Supplementary Bill shall be as detailed of Article 10.3.1 below. Each Monthly Bill shall include all charges as per this Agreement for the energy supplied for the relevant Month based on Energy Accounts issued by RLDC/SLDC or any other competent authority which shall be binding on both the Parties. **The Monthly Bill amount shall be the product of the energy metered and the applicable tariff.**”*

- f) The Commission notified the Framework on Forecasting, Scheduling and Imbalance Handling for Variable RE Sources (Wind and Solar) on 07.08.2015 (CERC Framework). Further, as per *CERC DSM Regulations, 2014*, the renewable energy (RE) generators supplying power on inter-State basis are required to pay deviation charges/penalty for any deviation from the generation scheduled by them as prescribed in the DSM Regulations. Regulation 5 (1) (v) and (vi) of the CERC DSM Regulations, 2014 is extracted hereinbelow:

*“[(v) The wind or solar generators which are regional entities shall be paid as per schedule. In the event of actual generation being less than the scheduled generation, the deviation charges for shortfall in generation shall be payable by such wind or solar generator to the Regional DSM Pool as given in Table-I below:*

***Table-I : Deviation Charges in case of under injection***

<i>Sr. No.</i>	<i>Absolute Error in the 15-minute time block</i>	<i>Deviation Charges payable to Regional DSM Pool</i>
	<i>&lt; = 15%</i>	<i>At the Fixed Rate for the shortfall energy for absolute error upto 15%</i>
	<i>&gt;15% but &lt;= 25%</i>	<i>At the Fixed Rate for the shortfall energy for absolute error upto 15% + 110% of the Fixed Rate for balance energy beyond 15% and upto 25%</i>
	<i>&gt;25% but &lt;=35%</i>	<i>At the Fixed Rate for the shortfall energy for absolute error upto 15% + 110% of the Fixed Rate for balance energy beyond 15% and upto 25% + 120% of the Fixed Rate for balance energy beyond 25% and upto 35%</i>

	> 35%	At the Fixed Rate for the shortfall energy for absolute error upto 15% + 110% of the Fixed Rate for balance energy beyond 15% and upto 25% + 120% of the Fixed Rate for balance energy beyond 25% and upto 35% + 130% of the Fixed Rate for balance energy beyond 35%
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Where the Fixed Rate is the PPA rate as determined by the Commission under section 62 of the Act or adopted by the Commission under section 63 of the Act. In case of multiple PPAs, the weighted average of the PPA rates shall be taken as the Fixed Rate. The wind and solar generators shall furnish the PPA rates on affidavit for the purpose of Deviation charge account preparation to respective RPC supported by copy of the PPA.

Fixed Rate for Open Access participants selling power which is not accounted for RPO compliance of the buyer, and the captive wind or solar plants shall be the Average Power Purchase Cost (APPC) rate at the National level, as may be determined by the Commission from time to time through a separate order. A copy of the order shall be endorsed to all RPCs.

(vi) The wind or solar generators which are regional entities shall be paid as per schedule. In the event of the actual generation being more than the scheduled generation, the Deviation Charges for excess generation shall be payable to the wind or solar generators which are regional entities from the Regional DSM Pool as given in Table-II below:

**Table-II: Deviation Charges in case of over injection**

Sr. No.	Absolute Error in the 15-minute time block	Deviation Charges payable to Regional DSM Pool
	$\leq 15\%$	At the Fixed Rate for excess energy upto 15%
	$>15\%$ but $\leq 25\%$	At the Fixed Rate for excess energy upto 15% + 90% of the Fixed Rate for excess energy beyond 15% and upto 25%
	$>25\%$ but $\leq 35\%$	At the Fixed Rate for excess energy upto 15% + 90% of the Fixed Rate for excess energy beyond 15% and upto 25% + 80% of the Fixed Rate for excess energy beyond 25% and upto 35%
	$> 35\%$	At the Fixed Rate for excess energy upto 15% + 90% of the Fixed Rate for excess energy beyond 15% and upto 25% + 800% of the Fixed Rate for excess energy beyond 25% and upto 35% + 70% of the Fixed Rate for excess energy beyond 35%

Where the Fixed Rate is the PPA rate as determined by the Commission under section 62 of the Act or adopted by the Commission under section 63 of the Act. In case of multiple PPAs, the weighted average of the PPA rates shall be taken as the Fixed Rate. The wind and solar generators shall furnish the PPA rates on affidavit for the purpose of Deviation charge account preparation to respective RPC supported by copy of the PPA.

*Fixed Rate for Open access participants selling power which is not accounted for RPO compliance of the buyer, and the captive wind or solar plants shall be the Average Power Purchase Cost (APPC) rate at the National level, as may be determined by the Commission from time to time through a separate order. A copy of the order shall be endorsed to all RPCs.”*

- g) On 14.09.2017, the Rajasthan Electricity Regulatory Commission (RERC) issued the *Rajasthan Electricity Regulatory Commission (Forecasting, Scheduling, Deviation Settlement and Related Matters of Solar and Wind Generation Sources) Regulations, 2017 (RERC F&S Regulations, 2017)* providing inter alia for forecasting & scheduling and providing commercial mechanism for deviation settlement of renewable generators. The same came into force on 01.02.2018. *CERC DSM Regulations, 2014* has been adopted by Regulation 15 of the RERC F&S Regulations, 2017, as has been indicated below:

*“15. The wind or solar generators connected to the State grid and selling power within the State shall be paid by the buyer as per actual energy supplied irrespective of quantum of energy scheduled by it. **However, the wind and solar generators connected to the State Grid and selling power outside the State shall be paid by the buyer as per scheduled generation.**”*

- h) Both RERC F&S Regulations, 2017 and *CERC DSM Regulations, 2014* have adopted the same position with regard to inter-State generators, which is in line with Section 79(1)(b) of the Electricity Act, 2003.
- i) The PPAs entered into involve a composite scheme of supply of power to more than one State, the tariff in relation to such transaction, payable under the PPAs, is subject to regulation by this Commission under Section 79 (1) (b) of the Electricity Act, 2003.
- j) In accordance with Article 10.2.1 of the PPA, the Respondent is making payment to the Petitioners for the power supply based on actual energy generated and not scheduled energy. However, the terms of Article 10.2.1 of the PPAs stand superseded by Regulation 5(1)(v) and (vi) of the *CERC DSM Regulations, 2014* that mandate the terms of payment of tariff by procurers to inter-State generators, limited only to regional entities as per their schedule. The Petitioner’s PPAs provide for payment of tariff on the energy supplied by the Petitioners. On the other hand, the *CERC DSM Regulations, 2014* mandate payment of tariffs based on schedule.
- k) The Petitioners have no issue with the DSM charges that are levied under the *CERC DSM Regulations, 2014*, for the inter-State supply carried out by it, outside the State of Rajasthan. However, the Petitioners are entitled to be treated at par with other regional entities referred to in Regulation 5 (1) (v) and (vi) of the *CERC DSM Regulations, 2014*

for the purpose of mandating the terms of payment. Regional entities are defined under Regulation 2 (1) (kkk) of the *Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations 2010 (as amended till date)* as such persons who are in RLDC control area and whose metering and energy accounting is done at the regional level.

- l) The Petitioners are involved in the inter-State supply of power under the PPA and are connected to the State grid and fall under the control of SLDC and not RLDC. However, the mere fact that the Petitioners' Projects are connected to the STU and fall under the control of SLDC, the treatment of tariff of Petitioner project Petitioner cannot differentiate vis-à-vis projects that are treated as regional entities as the Petitioners are under composite scheme and supplying power on inter-State basis. Thus, the Petitioner project should also be subject to the provisions of *CERC DSM Regulations, 2014*.
- m) To date, the payment for inter-State supply of power is being made to the Petitioners on the basis of the actual generation of power, the deviation charges are being calculated by the SLDC based on the assumption that payment is being made to the Petitioner on the basis of scheduled generation of power based on the mandate of *CERC DSM Regulations, 2014*. Due to such wrongful assumption, the Petitioners have suffered an adverse financial impact. The net revenue being earned by the Petitioners is severely affected, and at times even in negative when payment is made based on actual generation of power vis-a-vis inter-state deviation charges, when compared to payment of tariff based on scheduled generation of power.
- n) The generators approached RERC vide Petition No. RERC-1382/18, 1406/18, 1431/18, 1495/19, 1511/19 and 1531/19 filed under Section 86 (1), (c), (e), (f) and (h) of the Act and Regulations 24 and 25 of the *RERC F&S Regulations, 2017* for adjudication of disputes. RERC vide its order dated 27.09.2019 (Order dated 27.09.2019) held that:

*“As regards payment of Energy to Generators in case of interstate transactions, the Commission is of the view that the NVVN and such interstate traders should make payment strictly as per Regulations of appropriate Commission and in case of non-compliance of Regulation by the inter-state traders, the Generator may raise dispute before appropriate Commission.”*
- o) The mandate of payment of tariff on the basis of scheduled generation is fair and appropriate given the fact that the deviation charges provided under the *CERC DSM Regulations, 2014*, are based on the PPA tariff of the concerned generator. Further, Regulation 5 (1) of the *CERC DSM Regulations, 2014* is applicable to all wind and solar

generators involved in the inter-state supply of power, including Petitioners, irrespective of whether they fall under the control of RLDC or SLDC so that payment for inter-state supply of power by all wind and solar generators is made on scheduled generation of power.

- p) As per the Order dated 27.09.2019, RERC has provided relaxation in the quantum of deviation charges payable by generators till 01.04.2020. However, from 01.04.2020 onwards, the generators, including the Petitioners herein, would be liable to make payment of full applicable charges as per the applicable *RERC F&S Regulations, 2017*.

**Hearing dated 13.06.2023:**

5. During the hearing held on 13.06.2023, the contracting parties submitted as under:

*Learned counsel for the Petitioners submitted that the present Petition has been filed, inter alia, for declaration that Article 10.2.1 of the Power Purchase Agreements ('PPAs') dated 25.1.2012 and 15.10.2010 along with their amendments, between the Petitioners and the Respondent stand superseded by Regulation 5(i)(v) and 5(i)(vi) of the Central Electricity Regulatory Commission (Deviation Settlement Mechanism and related matters) Regulations, 2014, as amended from time to time, and for consequent direction on the Respondent to proceed accordingly for payment of tariff under the PPAs. Learned counsel further submitted that **the present case is squarely covered by the earlier order of the Commission dated 21.1.2022 in Petition No. 269/MP/2019 (Lexicon Vanijya Private Limited and Anr. v. NVVN & Anr.) and a similar order may also be passed in the present case.** Learned counsel also submitted that, insofar as the data pertaining to the generation schedule is concerned, the Petitioners are willing and ready to co-ordinate with the Qualifying Coordination Agency (QCA) and to provide the bifurcated intra-State and inter-State schedules.*

*2. Learned counsel for the Respondent, NVVNL, however, pointed out **that despite the direction of the Commission vide order dated 21.1.2022 in Petition No. 269/MP/2019, neither the Rajasthan – SLDC nor the QCA is separately providing the schedule of such generating stations corresponding to the inter-State transactions.** Learned counsel further submitted that **while the Petitioners herein have indicated their willingness to coordinate with the QCA in providing such data, the Respondent has agreements with approximately 50 such similarly placed generating stations, who may not be ready to do so, and thus, the Commission may issue the appropriate directions or devise a suitable mechanism in this regard.** Learned counsel also added that **neither Rajasthan SLDC nor Western Regional Load Despatch Centre is as such a party to the present Petition.***

*3. After hearing the learned counsel for the parties, the Commission reserved the matter for order.*

**Analysis and Decision:**

6. We have gone through the submission made by the Petitioner. It is a matter of record that the Respondent has not submitted any reply against the petition.



7. During the hearing held on 13.06.2023, the learned counsel of the Petitioner submitted that the present case is squarely covered by the earlier order of this Commission dated 21.1.2022 in Petition No. 296/MP/2019 filed by Lexicon Vanijya Private Limited. The Petitioner has also suggested that a similar order may also be passed in the present case and that insofar as the data pertaining to the generation schedule is concerned; the Petitioners are willing and ready to co-ordinate with the Qualifying Coordination Agency (QCA) and to provide the bifurcated intra-State and inter-State schedules. Whereas, NVVN submitted that despite the direction of the Commission vide order dated 21.01.2022 in Petition No. 296/MP/2019, neither the Rajasthan SLDC nor the QCA is separately providing the schedule of such generating stations corresponding to the inter-State transactions. NVVN further submitted that while the Petitioners have indicated their willingness to coordinate with the QCA in providing such data, NVVN has agreements with approximately 50 such similarly placed generating stations, who may not be ready to do so, and thus, the Commission may issue the appropriate directions or devise a suitable mechanism in this regard. NVVN also added that neither Rajasthan SLDC nor Western Regional Load Despatch Centre is as such a party to the present Petition.

8. The billing and payment mechanism provided under Article 10.2.1 of the PPAs dated 15.10.2010 and 25.01.2012 stipulates as under:

*“10.2.1 The SPD shall issue to NVVN a signed Monthly Bill/ Supplementary Bill for the immediately preceding Month between the 5<sup>th</sup> day upto the 15<sup>th</sup> day of the next Month. In case the Monthly Bill/ Supplementary Bill for the immediately preceding Month is issued after the 15<sup>th</sup> day of the next Month, the Due Date for payment of such Monthly Bill/ Supplementary Bill shall be as detailed of Article 10.3.1 below. Each Monthly Bill shall include all charges as per this Agreement for the energy supplied for the relevant Month based on Energy Accounts issued by RLDC/SLDC or any other competent authority which shall be binding on both the Parties. **The Monthly Bill amount shall be the product of the energy metered and the applicable tariff.**”*

9. We observe that Regulation 5 (1) (v) and (vi) of the CERC DSM Regulations, 2014 stipulates as under:

*“[(v) **The wind or solar generators which are regional entities shall be paid as per schedule.** In the event of actual generation being less than the scheduled generation, the deviation charges for shortfall in generation shall be payable by such wind or solar generator to the Regional DSM Pool as given in Table-I below:*

10. Regulation 15 of the RERC F&S Regulations, 2017 stipulates as under:

*“15. The wind or solar generators connected to the State grid and selling power within the State shall be paid by the buyer as per actual energy supplied irrespective of*

quantum of energy scheduled by it. **However, the wind and solar generators connected to the State Grid and selling power outside the State shall be paid by the buyer as per scheduled generation.**”

11. From the above, we observe that Article 10.2.1 of the PPAs dated 15.10.2010 and 25.01.2012 stipulates that the Monthly Bill amount shall be the product of the energy metered and the applicable tariff. Subsequently, the Commission vide Regulation 5(1) (v) and (vi) of the CERC DSM Regulations, 2014, mandated that the wind or solar generators, which are regional entities shall be paid as per schedule. Further, RERC with regard to inter-State generators, adopted *CERC DSM Regulations, 2014, and aligned Regulation 15 of the RERC F&S Regulations, 2017 with CERC DSM Regulations, 2014*. Regulation 15 of the RERC F&S Regulations, 2017 stipulates that the wind and solar generators connected to the State Grid and selling power outside the State shall be paid by the buyer as per scheduled generation.

12. The generators approached RERC vide Petition No. RERC-1382/18, 1406/18, 1431/18, 1495/19, 1511/19 and 1531/19 filed under Section 86 (1), (c), (e), (f) and (h) of the Act and Regulations 24 and 25 of the *RERC F&S Regulations, 2017* for adjudication of disputes. RERC vide its order dated 27.09.2019 (Order dated 27.09.2019) held that:

*“As regards payment of Energy to Generators in case of interstate transactions, the Commission is of the view that the NVVN and such interstate traders should make payment strictly as per Regulations of appropriate Commission and in case of non-compliance of Regulation by the inter-state traders, the Generator may raise dispute before appropriate Commission.”*

13. We observe that the Hon’ble Supreme Court vide its Order dated 15.03.2010 in Civil Appeal No. 3902 OF 2006 in a case titled *PTC India Ltd. v. Central Electricity Regulatory Commission, (2010) 4 SCC 603* has held as under:

*40. As stated above, the 2003 Act has been enacted in furtherance of the policy envisaged under the Electricity Regulatory Commissions Act, 1998 as it mandates establishment of an independent and transparent Regulatory Commission entrusted with wide ranging responsibilities and objectives inter alia including protection of the consumers of electricity. Accordingly, the Central Commission is set up under Section 76(1) to exercise the powers conferred on, and in discharge of the functions assigned to, it under the Act. On reading Sections 76(1) and 79(1) one finds that Central Commission is empowered to take measures/steps in discharge of the functions enumerated in Section 79(1) like to regulate the tariff of generating companies, to regulate the inter-State transmission of electricity, to determine tariff for inter-State transmission of electricity, to issue licenses, to adjudicate upon disputes, to levy fees, to specify the Grid Code, to fix the trading margin in inter-State trading of electricity, if considered necessary, etc.. These measures, which the Central Commission is*

empowered to take, have got to be in conformity with the regulations under Section 178, wherever such regulations are applicable. Measures under Section 79(1), therefore, have got to be in conformity with the regulations under Section 178. To regulate is an exercise which is different from making of the regulations. However, making of a regulation under Section 178 is not a pre-condition to the Central Commission taking any steps/measures under Section 79(1). As stated, if there is a regulation, then the measure under Section 79(1) has to be in conformity with such regulation under Section 178. This principle flows from various judgments of this Court which we have discussed hereinafter. For example, under Section 79(1)(g) the Central Commission is required to levy fees for the purpose of the 2003 Act. An Order imposing regulatory fees could be passed even in the absence of a regulation under Section 178. If the levy is unreasonable, it could be the subject matter of challenge before the Appellate Authority under Section 111 as the levy is imposed by an Order/decision making process. Making of a regulation under Section 178 is not a pre-condition to passing of an Order levying a regulatory fee under Section 79(1)(g). However, if there is a regulation under Section 178 in that regard then the Order levying fees under Section 79(1)(g) has to be in consonance with such regulation. Similarly, while exercising the power to frame the terms and conditions for determination of tariff under Section 178, the Commission has to be guided by the factors specified in Section 61. It is open to the Central Commission to specify terms and conditions for determination of tariff even in the absence of the regulations under Section 178. However, if a regulation is made under Section 178, then, in that event, framing of terms and conditions for determination of tariff under Section 61 has to be in consonance with the regulation under Section 178. One must keep in mind the dichotomy between the power to make a regulation under Section 178 on one hand and the various enumerated areas in Section 79(1) in which the Central Commission is mandated to take such measures as it deems fit to fulfil the objects of the 2003 Act. Applying this test to the present controversy, it becomes clear that one such area enumerated in Section 79(1) refers to fixation of trading margin. Making of a regulation in that regard is not a pre-condition to the Central Commission exercising its powers to fix a trading margin under Section 79(1)(j), however, if the Central Commission in an appropriate case, as is the case herein, makes a regulation fixing a cap on the trading margin under Section 178 then whatever measures a Central Commission takes under Section 79(1)(j) has to be in conformity with Section 178. One must understand the reason why a regulation has been made in the matter of capping the trading margin under Section 178 of the Act. Instead of fixing a trading margin (including capping) on a case to case basis, the Central Commission thought it fit to make a regulation which has a general application to the entire trading activity which has been recognized, for the first time, under the 2003 Act. Further, it is important to bear in mind that making of a regulation under Section 178 became necessary because a regulation made under Section 178 has the effect of interfering and overriding the existing contractual relationship between the regulated entities. A regulation under Section 178 is in the nature of a subordinate Legislation. Such subordinate Legislation can even override the existing contracts including Power Purchase Agreements which have got to be aligned with the regulations under Section 178 and which could not have been done across the board by an Order of the Central Commission under Section 79(1)(j).

14. From the above, we observe that the Constitutional Bench of the Hon'ble Supreme Court has laid down a well-established principle that regulation under Section 178, as a part of the regulatory framework, intervenes and even overrides the existing contracts between the regulated entities in as much as it casts a statutory obligation on the regulated entities to align their existing and future contracts with the said regulations. Therefore, the parties herein are bound by the principle enunciated in the judgments.
15. We note that the PPAs entered involve a composite scheme of supply of power to more than one State. In accordance with Article 10.2.1 of the PPAs, the Respondent is making payment to the Petitioners for the power supply based on actual energy generated. However, Regulation 5(1)(v) and (vi) of the *CERC DSM Regulations, 2014* and Regulation 15 of the RERC F&S Regulations, 2017, stipulate that the wind and solar generators connected to the State Grid and selling power outside the State shall be paid by the buyer as per scheduled generation. RERC, vide its Order dated 27.09.2019, has held that payment should be made strictly as per the Regulations of the appropriate Commission and in case of non-compliance with the Regulation by the inter-state traders, the Generator may raise a dispute before the appropriate Commission.
16. Further, during the hearing held on 13.06.2023, the Petitioner submitted that the present case is squarely covered by the earlier order of this Commission dated 21.1.2022 in Petition No. 296/MP/2019 filed by Lexicon Vanijya Private Limited. The Petitioner has also suggested that a similar order may also be passed in the present case and insofar as the data pertaining to the generation schedule is concerned. The Petitioners are willing and ready to co-ordinate with the Qualifying Coordination Agency (QCA) and to provide the bifurcated intra-State and inter-State schedules. Further, NVVN submitted that while the Petitioners have indicated their willingness to coordinate with the QCA in providing such data, NVVN has agreements with approximately 50 such similarly placed generating stations, who may not be ready to do so, and thus, the Commission may issue appropriate directions or devise a suitable mechanism in this regard.
17. In view of the above we observe that the contracting parties are in agreement for billing as per scheduled energy for inter-State transactions. The only difficulty indicated by NVVN is that it has agreements with approximately 50 such similarly placed generating stations, which may not be ready to do so. NVVN has submitted that the Commission may issue the appropriate directions or devise a suitable mechanism in this regard.

18. We observe that this Commission has, under its Order dated 21.1.2022 in Petition No. 296/MP/2019 observed as indicated below:

**“..... that the contracting parties are in agreement for billing as per scheduled energy for inter-State transactions and the RSLDC has also agreed to collect requisite data pertaining to generator-wise schedules along with bifurcation of intra-State and inter-State schedules from the QCA and separately provide schedule of generating stations corresponding to inter-State transactions.”**

19. We observe that it is a matter of record that the Rajasthan SLDC was a party in petition no. 296/MP/2019. We observe that Rajasthan SLDC had agreed in Petition No. 296/MP/2019, to collect requisite data pertaining to generator-wise schedules along with bifurcation of intra-State and inter-State schedules from the QCA and to separately provide schedule of generating stations corresponding to inter-State transactions. We are of the view that this submission of the SLDC being a statutory organisation can be taken to have universal applicability for all similarly placed generating stations including the Petitioners in the present case.

20. In view of the above, we hold that NVVN shall bill in accordance with Regulation 15 of the RERC Forecasting Regulations, 2017. Rajasthan SLDC is directed to collect requisite data pertaining to generator-wise schedules along with bifurcation of intra-State and inter-State schedules from the QCA and separately provide a schedule of generating stations corresponding to inter-State transactions. Rajasthan SLDC shall comply with the directions of this Commission meticulously.

21. Accordingly, Petition No. 131/MP/2021 is disposed of in terms of the above.

Sd/-

पी. के. सिंह  
सदस्य

Sd/-

अरुण गोयल  
सदस्य

Sd/-

आई. एस. झा  
सदस्य

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जिष्णु बरुआ  
अध्यक्ष