

In the Appellate Tribunal for Electricity, New Delhi
(Appellate Jurisdiction)

Appeal No. 219 of 2015 &
IA No. 358 of 2015

Dated: 5th December, 2016

Present: Hon'ble Mrs. Justice Ranjana P. Desai, Chairperson
Hon'ble Mr. I.J. Kapoor, Technical Member

In the matter of:

Chhattisgarh State Load Despatch Centre
Chhattisgarh State Power Transmission
Company Ltd.
P.O. Daganiya, Raipur – 492 010

... Appellant

Versus

1. M/s. Arasmeta Captive Power Co.
Pvt. Ltd., (ACPCL)
8-2-293/82/A/431/A, Road No. 22
Jubilee Hills, Hyderabad – 500 033
Telangana

...Respondent No.1

2. M/s. Chhattisgarh State Power Distribution
Co. Ltd. (CSPDCL)
4th Floor Vidhyut Sewa Bhawan
Daganiya, Raipur – 492 013

...Respondent No.2

3. Chhattisgarh State Electricity Regulatory
Commission (CSERC)
Irrigation Colony, Shanti Nagar
Raipur – 492 001

...Respondent No.3

Counsel for the Appellant(s): **Mr. Apoorv Kurup**
Mr. A.C. Boxipatro
Mr. Girish Gupta
Mr. Abhik

Counsel for the Respondent(s): **Mr. Anand K. Ganesan**
Ms. Swapna Seshadri
Ms. Neha Garg
Ms. Aditi Mohapatra
Mr. Ishaan Mukherjee for R-1

Ms. Suparna Srivastava
Mr. Manu Dev Sharma
Ms. Aditi Sharma
Mr. Raghav Kapoor
Mr. Arvind Banerjee
Ms. Anushka Arora for R-2

Mr. C.K. Rai
Mr. Paramhans
Mr. Umesh Prasad
Mr. Vivek Ganodwala for R-3

JUDGMENT

PER HON'BLE MR. I. J. KAPOOR, TECHNICAL MEMBER

1. The present Appeal No. 219 of 2015 has been filed by Chhattisgarh State Load Despatch Centre (hereinafter referred to as the “**Appellant**”) under Section 111 of the Electricity Act, 2003 against the Order dated 07.05.2015 (“**Impugned Order**”) passed by the Chhattisgarh State Electricity Regulatory Commission (hereinafter referred to as the “**State Commission**”) in Petition No. 06 of 2015 filed by M/s. Arasmeta Captive Power Co. Pvt. Ltd. (hereinafter referred to as the “**Respondent No.1**”) under the provisions of the Chhattisgarh State Electricity Regulatory Commission ‘Connectivity and Intra-State Open Access Regulations, 2011’ and Regulation 5 and 13 of the DSM Regulations. M/s. Chhattisgarh State Power Distribution Company Limited, Chhattisgarh

(hereinafter referred to as the “**Respondent No.2**”) is the state power distribution company in the State of Chhattisgarh.

2. M/s. Arasmeta Captive Power Co. Pvt. Ltd. (“**Respondent No. 1**”) operates an 86 MW coal based thermal power plant at Gopal Nagar, District Janjgir-Champa, Chhattisgarh.

Facts of the Appeal

3. (i) Respondent No. 2 started receiving power from 07.09.2013 from the Respondent No. 1 and entered into a Power Purchase Agreement dated 09.12.2013 with the Respondent No.1 for the supply of 75 MW power.
- (ii) The State Commission in Suo Motu Petition No. 32 of 2014 (M) passed an Order dated 09.10.2014 adopting DSM Regulations of the Central Commission notified on 06.01.2014. The said DSM Regulations issued by the Central Commission were to come into with effect from 17.02.2014.
- iii) On 14.10.2014, the Appellant sent to Respondent No. 1 an invoice for Rs. 1,68,92,496/- towards the electricity supplied during the period from 07.09.2013 to 16.02.2014 and 17.02.2014 to 28.09.2014. This invoice included deviation charges that were payable by the Respondent No. 1 in terms of the DSM Regulations for the period from 17.02.2014 to 28.09.2014 as the Respondent No.1 had over-injected power during that period necessitating the application of settlement mechanism. As per the prevailing

- Regulations, the consumers had to pay deviation charges for over-injection and rightly these charges were claimed by the Appellant.
- iv) Respondent No.1 challenged the invoice dated 14.10.2014 in Petition No. 6 of 2015 before the State Commission claiming that as per the DSM Regulations, the generator engaging in over injection is to receive the deviation charges.
 - v) The State Commission ruled in favour of the Respondent No.1 vide its Impugned Order dated 07.05.2015 and held that since the Central Commission had replaced the word “payable” in Para A Annexure - II of DSM Regulations with that the word “receivable” and also acknowledged the fact that the billing carried out as per the illustration in the Annexure - II was not according to the spirit of prevailing Regulations. The Central Commission also cited a clarification of WRPC billing wherein it is said that WRPC is billing DSM charges for the buyers for under drawal condition as receivable right from 17.02.2014, the date of applicability of DSM Regulations and concluded that the word “payable” appearing in Para A of Annexure – II of the Principal Regulations, appears to be inadvertent error.
 - vi) The State Commission accordingly directed the Appellant to implement the same without any discrimination amongst sellers and buyers.
 - vii) As a result of the Impugned Order, the Appellant and the Respondent No. 2 now face a liability of Rs. 17,03,62,514/- towards all similarly placed sellers.
4. Aggrieved by the Impugned Order dated 07.05.2015 passed by the State Commission, the Appellant has filed this present Appeal.

5. The Appellant has raised in this Appeal the following questions of law;
- a) **Whether the Appellant was correct in requiring the seller (i.e. the Respondent No. 1 herein) to pay deviation charges for over-injection in terms of Regulation 5, read with Regulation 7(5) and clause – A of Annexure II, of the DSM Regulations as those provisions existed between 17.02.2014 (i.e. the date on which the DSM Regulations came into force) and 30.12.2014 (i.e. the date immediately prior to an amendment in the DSM Regulations which is described below)?**
 - b) **Whether the amendment introduced by the CERC in clause – A of Annexure II of the DSM Regulations with prospective effect from 31.12.2014, clarifying that sellers were entitled to receive deviation charges for over-injection, could be retrospectively applied by the CSERC from the date on which the DSM Regulations came into force?**
 - c) **Whether the CSERC/Respondent No.3, which adopted the DSM Regulations vide order dated 09.10.2014 passed in suo motu Petition No. 32 of 2014, was competent to interpret and apply those regulations and the amendment thereto in a manner contrary to that intended by the CERC?**
6. We have heard at length Mr. Apoorv Kurup, the learned counsel for the Appellant, Mr. Anand K. Ganesan, the learned Counsel for the Respondent No. 1 and Mr. C.K. Rai, the learned counsel for the State Commission and considered their written submissions and the

arguments put forth by the rival parties. Gist of the same is discussed hereunder;

7. The learned counsel for the Appellant has made the following submissions for our consideration;
- (i) The amendment introduced in Clause – A of Annexure – II of the DSM Regulations became effective prospectively from 31.12.2014 i.e. the date of its publication in Official Gazette. The Central Commission consciously chose not to make the amendment retrospective from 17.02.2014 i.e. the date on which the DSM Regulations came into force. In such circumstances, the State Commission which had adopted the DSM Regulations of the Central Commission could not have applied the said amendment retrospectively with effect from 17.02.2014 or to an invoice that was raised prior in time on 14.10.2014. In any case, the State Commission could not have held that the amendment applied retrospectively with effect from 17.12.2014 when the State Commission itself adopted those Regulations only on 09.10.2014.
 - ii) The Central Commission replaced the word “payable” in Clause – A of Annexure - II of the DSM Regulations with the word “receivable” by way of an amendment and not a clarification or corrigendum.
 - iii) The Central Commission’s decision to introduce an amendment and that too with prospective effect was deliberate. The Central Commission’s intent that the applicable Regulation was being changed so that sellers would be entitled to receive deviation charges for over injection which is less than 12% from the effective date of that amendment. In contrast, a corrigendum or a clarification would have meant that the Principal Regulations also entitled sellers to receive deviation charges for over-

injection and that Clause – A of Annexure - II of the DSM Regulations was to be read in that light.

- iii) It is well settled that when legislation is incorporated, any subsequent amendment in the original legislation would not affect the provisions as incorporated.
- iv) It is apparent that prior to the aforesaid amendment, Regulation 5 read with Regulation 7(5) and Clause - A of Annexure - II of the DSM Regulations did not entitle sellers to receive deviation charges for over-injection. The State Commission incorrectly relied upon clarification of WRPC billing wherein it is said that WPRC is billing DSM charges for buyer for under drawal condition as receivable right from 17.12.2014 (the date of applicability of DSM Regulations). WRPC had given a limited clarification in its letter dated 12.03.2015 to Respondent No.2 in the context of Regulation 7(3) and 7(7) of the DSM Regulations which pertains to over-drawals and under-injections, which is not the case here. In letter dated 12.03.2015, WRPC stated as follows;

“(i) For States (beneficiaries/buyers), the charges for deviation are computed as per Regulation 5 of CERC (Deviation Settlement Mechanism and related matters) Regulations, 2014, before the amendment issued by CERC’s Order dated 18.12.2014.

(ii) The additional charge for deviation is computed in accordance with clause (3) and (7) of regulation 7 of CERC (Deviation Settlement Mechanism and related matters) Regulations, 2014, before the amendment issued by CERC vide order dated 18.12.2014.

(iii) Since there is no amendment in the relations cited at (i) & (ii), there is no change in accounting mechanism of WRPC, after the amendment issued by CERC vide order dated 18.12.2014.

Since the methodology depicted in Annex-II was not in line in our opinion with Clause (3) of Regulation – 7, the DSM A/C's were prepared as per Regulation 7(3) & (7).”

v) In view of the facts submitted above, the Appellant prays for the following reliefs in this Appeal

“(a) Set-aside the impugned order dated 07.05.2015 passed by the CERC in Petition No. 06 of 2015;

(b) Declare that the word ‘Payable’ in Para A of Annexure-II of the Central Electricity Regulatory Commission (Deviation Settlement Mechanism and Related Matters) Regulation 2014 should be read and applied as such for invoices with respect to the over-injection of electricity prior to 31.12.2014;

(c) Direct Respondent No.1 to pay the pending dues of Rs. 13,46,479/- in connection with the invoice dated 14.10.2014 raised by the Appellant; and

(d) Pass such other order as this Hon’ble Tribunal may deem necessary in the interest of justice and equity.”

8. The learned counsel for the Respondent No.1 has made the following submissions for our consideration.

- i) The Petition No. 06 of 2015 was filed by the Respondent No. 1 under the State Commission's (Connectivity and Intra-State Open Access) Regulations, 2011 ("**Open Access Regulations**") read with the Central Commission (Deviation Settlement Mechanism and related matters) Regulations, 2014 ("**DMS Regulations**").
- ii) The Appellant is Chhattisgarh State Load Despatch Centre which is a statutory authority responsible for scheduling and dispatch functions, settling the energy accounts and ensure safety of the State Grid. The Appellant is not a financial beneficiary of any transactions of power purchase and sale and is only a facilitator or a statutory body which should perform its functions in a fair and transparent manner. It is not understood as to how the Appellant can even be aggrieved person under Section 111 of the Electricity Act, 2003.
- iii) The object of the DSM Regulation, 2014 is to maintain grid discipline and grid security as envisaged under the Grid Code through drawal and injection of electricity by the users of the grid. The principle is that the grid frequency is to be maintained at 50 Hz at all times. In case the grid frequency falls below 50 Hz, to bring the same to 50 Hz, two methods are available (i) increasing generation (ii) reducing drawal. Similarly, if the grid frequency is much above 50 Hz, then to bring it down to 50 Hz, two methods are available (i) decreasing generation (ii) increasing drawal. Regulation 5 of the DSM Regulations provide that a generator who over injects/generate when the grid frequency is low receives the deviation charges and a generator who engages in under injection/generation when the grid frequency is low will pay the deviation charges. Accordingly the Regulation 5 reads as under;

“(1) The charges for the Deviations 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-inejction 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:”

- iv) Annexure – II of the DSM Regulations provides for the methodology for computation of charges and additional charges for deviation for each regional entity for crossing the volume limits specified for the under/over injection by the buyer/seller. This is clarified in Regulation 7(5) of the DSM Regulation is as under;

“7. Limits on Deviation volume and consequences of crossing limits

(5) Methodologies for the computation of Charges for Deviation and Additional Charges for deviation for each regional entity for crossing the volume limits specified for the under-drawal/over-injection and for over-drawal and under-injection in clause ()3) of this regulation shall be as per Annexure-I and II of these Regulations respectively.”

- v) However in Annexure II after explaining the methodology in Clause C, the word “Payable” only has been used. The same reads as under;

“Methodologies for the computation of Charges of Deviation and Additional Charges for deviation for each regional entity for crossing the volume limits specified for the under drawal/over-injection by buyer/seller

- A. *When Dtb i.e. Deviation from schedule in a time block in MW is less than (+/-) 12% of the schedule in MW or 150 MW, whichever is lower in each time block, Dtb to be payable by the regional entity at normal Charges for Deviation;*
- B. *When Dtb i.e. Deviation from schedule in a time block in MW is more than (+/-) 12% of the schedule in MW or 150 MW, whichever is lower in each time block*
- (i) $Dtb = D0 + D12/150$
Where
 $D0 = (+/-) 12\%$ of SG or 150 MW whichever is lower,
 $D12/150 =$ Deviation in excess of $(+/-) 12\%$ of SG or 150 MW whichever is lower in each time block
- (ii) $D12/150 = Dtb - D0$
- (iii) *The Charges for Deviation corresponding to D0 shall be receivable by the regional entity at normal Charges of Deviation or the ceiling rate whichever is lower; the regional entity shall not be entitled to any receivable for D12/150.*
- C. *Additional Charges for the Deviation D12/150 shall be payable by the regional entity for under drawal/over injection when grid frequency is 50.10 Hz or above in accordance with clause 7 (4) of this Regulation.”*
- vi) The issue arose before the State Commission as to the term “payable” used in Annexure II instead of the word “receivable” when the main Regulation 7 uses the word “receivable”. The above is an inadvertent aberration in place of the word “receivable”. Otherwise, Annexure II will be in discord with the objective and intent of the DSM Regulations. In

any case, the main Regulation is very clear of the entity who is to pay the charges and who is to receive the charges. The Annexure is only to quantify the charges and cannot go contrary to the very basis of the Regulations.

- vii) As such the State Commission has held that such inadvertent error should not affect the object of the DSM Regulations which is for the betterment of the grid management.
- viii) By seeking deviation charges from the Respondent No.1, the Appellant has penalised the Respondent No.1 for having helped the grid safety and stability.
- ix) The Appellant has sought to project as if it has correctly applied the DSM Regulations since the error in Annexure II only got corrected by an amendment dated 18.12.2014. However, the Principal Regulation 5 has remained the same and only the inadvertent error in Annexure II has been corrected. The Statement of objects reasons for the amendment reads as under;

“6.4 The Salasar Steel and Power Ltd, Vandna Global Ltd. and Rotocast India Ltd. has submitted as follows:

(a) There seems to be contradiction between the Methodology proposed under Annexure – II Clause (A) for Under drawal by Buyer or Over injection by Seller and the contents of the main body under Clause 5(1). Annexure – II Clause (A) provide as follows:

“(A) When D tb i.e. Deviation from schedule in a time block in MW is less than (+/-) 12% of the schedule in MW or 150 MW, whichever is

lower in each time block, D to be payable by the regional entity at normal Charges for Deviation”

(b) This clause clearly seems to indicate that when a Seller over injects power upto 12% [or 150 MW whichever is lower] of his schedule then he is liable to PAY an amount. Similarly a Buyer is liable to PAY an amount if his under drawal of power is within the 12% band.

(c) This is in direct contradiction to the principle laid out in Clause 5[1] of the Notification which indicates that in the event of Underdrawal by Buyer or Over injection by Seller the Buyer or Seller is supposed to RECEIVE an amount. Clause 5[1] is reproduced below for your reference:

“5 Charges for Deviations: The Charges for the Deviations for all the time-block 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”.

6.4 The Rotocast India Ltd. has further, submitted that due to above inconsistency in the Methodology published in the said Regulation SLDC, Chhattisgarh is billing Sellers for Over injection at Frequency linked rates leading to huge payable amounts for over injection by sellers. Thus amounts which ideally should have been receivable in the

hands of the Seller are becoming payable. This is when the said injection is within the 12% permitted band and Frequencies are below 50.10 Hz.

6.5 This inconsistency seems to suggest on illogical conclusion wherein Sellers should always inject more than 12% of the schedule in order to avoid the billing of PAYABLE amounts for the over injection.

Analysis and Decision

6.6 Though the above, illustration 'A' of Annexure – II was not proposed to be amended but there is merit in the submission of the Salasar Steel and Power Ltd, Vandna Global Ltd, and Rotocast India Ltd. Accordingly it is decided that the work 'payable' be replaced with word 'receivable' in illustration 'A' of Annexure – II."

- x) The billing method to adopted by the Appellant is completely erroneous and in contravention with the prevailing DSM Regulations. The State Commission has therefore correctly directed the Appellant to rectify the Respondent No.1's bills and refund the dues payable along with interest at the earliest.
- 9. The learned counsel for the Respondent No. 2 has made the submissions in support of the Appellant and prayed for allowing the Appeal.
- 10. The learned counsel of the State Commission has made the following submissions for our consideration;
 - i) Petition No. 06 of 2015 (D) was filed before the State Commission by the Respondent No.1 challenging the Appellant's bill dated 14.10.2014 for Rs. 1,68,92,496/- issued for over injecting to the State Grid. In this Petition, the Respondent No.1 has prayed the State Commission to

- issue necessary clarification on methodology and to direct the Appellant to follow strictly Regulation 5 of the Central Commission (Deviation Settlement Mechanism and Related Matters) Regulations, 2014 (DSM Regulations) and further to pay charges to the Respondent No. 1 for over injection as stipulated in the DSM Regulations.
- ii) The State Commission by its Impugned Order dated 07.05.2015 allowed the petition filed by the Respondent No. 1 and interalia held that the objective of DSM Regulations is to maintain the grid discipline and grid security as envisaged in the Grid Code through the commercial mechanism for deviation settlement through drawal and injection of electricity by the users of the grid. The State Commission further held that the word “payable” appears in Para A of Annexure II of the Principal Regulations, appears to be inadvertent error and WRPC has correctly billed deviation charges as per the intentions of the Regulations whereas the bill dated 14.10.2014 issued by the Appellant to the Resplendent No. 1 is erroneous and therefore to be rectified.
- iii) It is further submitted that the said Petition No. 6 of 2013 was filed by the Respondent No. 1 before the State Commission under Section 86 (i)(f) of the Electricity Act, 2003 read with the provisions of Chhattisgarh State Electricity Regulatory Commission (Connectivity and Intra-State Open Access) Regulations, 2011 and Regulation 5 and 13 of the Central Commission’s DSM Regulations and Annexure II thereof as adopted by the State Commission.
- iv) It is submitted that during the proceedings of the case before the State Commission, the Appellant has informed the State Commission that when deviation from schedule in a time block in MW is less than (+/-) 12% of the schedule in MW or 150 MW, whichever is lower in each time

block, generating stations are required to pay charges irrespective of the fact that it is over injection or under injection. That this submission of the Appellant was rejected by the State Commission on the ground that even if the grid situation permits a generator to over inject it cannot be asked to pay for over injection. It is also matter of fact that Central Commission has issued an amendment in Principal Regulations. Para 6 of Statement of Reasons dated 05.01.2015 of the Amendment issued by Central Commission is reproduced below:

“6. Amendment of Annexure-II of the Principal Regulations

6.1 The Commission had also proposed to amend the illustration in Annexure–II at Para 'C' of the Principal Regulations, in order to align the same with clause 4 of Regulation 7 of the Principal Regulations. Accordingly, the letter and figure "D12/150" appearing in Para 'C' of Annexure-II of the Principal Regulations has been proposed to be substituted by the letter "Dtb".

6.2 The WRPC has submitted as follows:

(a) The clause 4 of Regulation 7, of Principal regulations clearly states that “Additional Charge for Deviation shall be applicable for over-injection/under drawal of electricity for each time block by a seller / buyer as the case may be when grid frequency is "50.10 Hz and above” at the rates equivalent to charges of deviation corresponding to the grid frequency of “below 50.01 Hz but not below 50.0 Hz”. However, the

illustration given in Para C of Annexure-II of the Principal Regulations was not in line with the clause 4 of Regulation.

Therefore instead of amendment in Para C of Annexure – II, the above proposed amendment may be brought up in the form of corrigendum/ clarification/ errata to the Para C of Annexure – II of Principal Regulations.

(b) WRPC is preparing the DSM statement based on clause 4 of Regulation 7, of principal regulations and other RPCs may also be preparing the DSM statement based on clause 4 of Regulations 7 of Principal Regulations.

(c) Utilities affected due to reason mentioned at (ii) above, may seek revision in the DSM statements already issued w.e.f. 17.02.2014 till the date of effect of the amendment (which is not required due to clarity in clause 4 of Regulation 7 of Principal regulations), in case the above amendment is incorporated in the Central Electricity Regulatory Commission (Deviation Settlement Mechanism and Related Matters) (First Amendment) Regulations, 2014.

(d) WRPC has requested that the above proposed amendment in the draft regulation be deleted and the same may be brought out in the form of corrigendum/ errata/ clarification to the principal regulations rather than as an amendment of the Principal Regulations.

Analysis and Decision

6.3 *It is noted that none of the stakeholders has objected to the proposed amendment/ correction in the illustration 'C' of Annexure –II. WRPC has however, suggested to issue the proposed amendment as corrigendum. We agree with WRPC and clarify that the correction is in the nature of corrigendum to bring it in conformity with the Principal Regulation. We accordingly, advise staff of the Commission to issue a corrigendum.*

6.4 *The Salasar Steel and Power Ltd, Vandna Global Ltd. and Rotocast India Ltd. has submitted as follows:*

(a) There seems to be contradiction between the Methodology proposed under Annexure – II Clause (A) for Under drawal by Buyer or Over injection by Seller and the contents of the main body under Clause 5 (1). Annexure – II Clause (A) provide as follows:

“(A) When D tb i.e. Deviation from schedule in a time block in MW is less than (+/-) 12% of the schedule in MW or 150 MW, whichever is lower in each time block, D tb to be payable by the regional entity at normal Charges for Deviation”

(b) This clause clearly seems to indicate that when a Seller over injects power upto 12% [or 150 MW whichever is lower] of his schedule then he is liable to PAY an amount. Similarly a Buyer is liable to PAY an amount if his under drawal of power is within the 12% band.

(c) This is in direct contradiction to the principle laid out in Clause 5 [1] of the Notification which indicates that in the event of Underdrawal by Buyer or Over injection by Seller the Buyer or Seller is supposed to RECEIVE an amount. Clause 5(1) is reproduced below for your reference:

“5 Charges for Deviations: The Charges for the Deviations for all the time-block 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”

6.4 The Rotocast India Ltd. has further, submitted that due to above inconsistency in the Methodology published in the said Regulation SLDC, Chhattisgarh is billing Sellers for Over injection at Frequency linked rates leading to huge payable amounts for over injection by sellers. Thus amounts which ideally should have been receivable in the hands of the Seller are becoming payable. This is when the said injection is within the 12% permitted band and Frequencies are below 50.10Hz.

6.5 This inconsistency seems to suggest an illogical conclusion wherein Sellers should always inject more than 12% of the schedule in order to avoid the billing of PAYABLE amounts for over injection.

Analysis and Decision

6.6 Though the above, illustration 'A' of Annexure – II was not proposed to be amended but there is merit in the submission of the Salasar Steel

and Power Ltd, Vandna Global Ltd. and Rotocast India Ltd. Accordingly it is decided that the word 'payable' be replaced with word 'receivable' in illustration 'A' of Annexure – II”.

- v) It is clear from the above that the Central Commission through the above amendment has acknowledged the fact that the billing carried out due to above illustration is not according to the spirit of the clause 5 of the Regulations and it has replaced the word “payable” with word “receivable”.
- vi) Since the State Commission has adopted the Central Commission’s DSM Regulations and charges for deviations had to be billed in accordance with spirit of the Regulations, the State Commission in its Impugned Order has clarified that in Para A of Annexure II of the Principal Regulations, the word “payable” shall be read as word “receivable” from the effective date of the Principal Regulations and directed the bills issued to the Respondent No. 1 to be rectified accordingly.
- vii) The contention of the Appellant that the State Commission which has adopted the DSM Regulations vide Order dated 09.10.2014 in suo motu Petition No. 32 of 2014 was not competent to interpret the DSM Regulations is not tenable and liable to be rejected as DSM Regulations once adopted by the State Commission it becomes the part of the State Regulations and as per Clause 13 of the said Regulations, it is the State Commission who is competent and authorised to pass such directions as may be considered necessary in furtherance of the objective and

purpose of the Regulations. Besides it is the Appellant itself vide its letter dated 19.02.2014 requested the State Commission for issuance of detailed guidelines on Deviation Settlement Regulations, 2014 for billing charges for deviation to embedded generator located within the ambit of Respondent No.2. The relevant portion of the letter dated 19.02.2014 issued by the Appellant to the State Commission is reproduced below;

“The Central Electricity Regulatory Commission has notified the Deviation Settlement Mechanism and related matters Regulations, 2014, which has replaced the existing UI Charges and related matters Regulation 2009, w.e.f. 17-Feb-14.

There are many changes in the methodology of billing of the CFD (Charges for Deviation) as compared to the existing methodology of billing to the UI Charges.

In absence of Intra-State ABT (deviation and settlement) regulation, the SLDC is facing difficulties in billing of CFD (Charges for Deviation)/UI to Embedded Generator located within the ambit of CSPDCL.

So, it is requested with the honourable commission to kindly issue the detailed guidelines for billing of the CFD (Charges for Deviation) to the Embedded Generator located within the ambit of CSPDCL. Required if any...”

viii) As such, it is submitted that the Impugned Order does not deserve any interference by this Tribunal.

11. After careful perusal of the above issues brought out for our consideration, our observations are as follows;

- i) Since the State Commission adopted the Central Commission's DSM Regulations with subsequent amendments, the sole issue needing our decision is limited to the aspect that whether the Substantive Regulations contained in the DSM Regulations of the Central Commission duly adopted by the State Commission are to be considered or the Annexure II of the DSM Regulations thereof providing the methodology for computation of charges and additional charges for deviation need to be considered. In an ideal case, the methodology for computation of charges and additional charges has to be in tune with the Substantive Regulations.
- ii) Under the provisions of Section 32 of the Electricity Act, 2003, the Appellant is the apex body to ensure integrated operation of the power system in the State and is responsible for the supervision and control over the Intra-State transmission system and is further empowered to levy such fee and charges from the generating companies and licensees engaged in Intra-State transmission of electricity as may be specified by the State Commission.
- iii) As per the provisions of Section 33 of the Electricity Act, 2003, the directions given by the Appellant are to be complied with by every entity which is engaged with the operation of the power system in the State including the licensees.
- iv) We have noted that the DSM Regulations issued by the Central Commission on 06.01.2014 and the same were made effective with effect from 17.02.2014 with an objective to ensure grid discipline and grid security as envisaged under the grid code through the commercial

mechanism for deviation settlement through drawal and injection of electricity by the users of the grid and these Regulations were made applicable to sellers and buyers involved in the transaction facilitated through Short Term Open Access or Medium Term Open Access or Long Term Open Access.

- v) Let us now examine the relevant extracts of DSM Regulations as notified on 06.01.2014 by the Central Commission which are reproduced as under;

“ 1. Short title and commencement

(1)

(2) *These regulations shall come into force on 17.2.2014.*

.....

.....

3. Objective

The objective of these regulations is to maintain grid discipline and grid security as envisaged under the Grid Code through the commercial mechanism for Deviation Settlement through drawal and injection of electricity by the users of the grid.

4. Scope

These regulations shall be applicable to sellers and buyers involved in the transactions facilitated through short-term open access or medium-term open access or long-term access in inter-State transmission of electricity.

5. Charges for Deviations:

- (1) *The charges for the Deviations 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:"*

.....

.....

7. Limits on Deviation volume and consequences of crossing limits

- (4) *In addition to Charges for Deviation as stipulated under Regulation 5 of these regulations, Additional Charge for Deviation shall be applicable for over-injection/under drawal of electricity for each time block by a seller/buyer as the case may be when grid frequency is "50.10 Hz and above" at the rates equivalent to charges of deviation corresponding to the grid frequency of "below 50.01 Hz but not below 50.0 Hz".*
- (5) *Methodologies for the computation of Charges for Deviation and Additional Charges for deviation for each regional entity for crossing the volume limits specified for the under-drawal /over-injection and for over-drawal and under-injection in clause (3) of this regulation shall be as per Annexure-I and II of these Regulations respectively.*
- (6) *In addition to Charges for Deviation as stipulated under Regulation 5 of these Regulations, Additional Charge for Deviation shall be applicable for over-drawal or under-injection of electricity when grid*

frequency is "below 49.70 Hz" in accordance with the methodology specified in clause (8) of this regulation and the same shall be equivalent to 100% of the Charge for Deviation of 824.04 Paise/kWh corresponding to the grid frequency of "below 49.70 Hz".

Provided further that Additional Charge for Deviation for under-injection of electricity by a seller, during the time-block when grid frequency is "below 49.70 Hz", by the generating stations regulated by CERC using coal or lignite or gas supplied under Administered Price Mechanism (APM) as the fuel in accordance with the methodology specified in clause 8 of this regulation shall be equivalent to 100% of the Cap Rate for Deviations of 303.04 Paise/kWh.

Explanation: Additional Charges for Deviation shall not be applicable for net over draws by a region as a whole from other regions.

- (7) The Additional Charge for Deviation for over-drawal and under-injection of electricity for each time block in excess of the volume limit specified in clause (1) and (2) of this Regulation when grid frequency is "49.70 Hz and above" shall be as specified by the Commission as a percentage of the charges for the Deviation corresponding to average grid frequency of the time block with due consideration to the behavior of the buyers and sellers towards grid discipline:

Provided that the Commission may specify different rates for additional Charges for Deviation for over drawals and under injections depending upon different % deviation from the schedule in

excess of the volume limit specified in clause (1) and (2) of this Regulation.

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Annexure-II

Methodologies for the computation of Charges of Deviation and Additional Charges for deviation for each regional entity for crossing the volume limits specified for the under drawal/ over-injection by buyer/Seller

- A. When D_{tb} i.e. Deviation from schedule in a time block in MW is less than (+/-)12% of the schedule in MW or 150 MW, whichever is lower in each time block, D_{tb} to be payable by the regional entity at normal Charges for Deviation;
- B. When D_{tb} i.e. Deviation from schedule in a time block in MW is more than (+/-)12% of the schedule in MW or 150 MW, whichever is lower in each time block
- (i) $D_{tb} = D_0 + D_{12/150}$
Where
 D_0 = (+/-)12% of SG or 150 MW whichever is lower,
 $D_{12/150}$ = Deviation in excess of (+/-)12% of SG or 150 MW whichever is lower in each time block
- (ii) $D_{12/150} = D_{tb} - D_0$
- (iii) The Charges for Deviation corresponding to D_0 shall be receivable by the regional entity at normal Charges of Deviation or the ceiling rate whichever is lower; the regional entity shall not be entitled to any receivable for $D_{12/150}$.
- C. Additional Charges for the Deviation $D_{12/150}$ shall be payable by the regional entity for under drawal/over injection when grid frequency is 50.10 Hz or above in accordance with clause 7 (4) of this Regulation.”

We observe that keeping in view the above scope and objective, Regulation 5 of the DSM Regulations provides that a generator who over-injects/generates when the grid frequency is low receives the deviation charges and a generator who engages in under injection/generation when grid frequency is low will pay the deviation charges. However, the Annexure – II of the DSM Regulations providing the methodology for computation of charges and additional charges for deviation for each regional entity for crossing the volume limits specified for the under/over injection by buyer/seller, is not reflecting the intent and spirit of the main Regulation 5 and 7 of the DSM Regulations.

- vi) Now let us examine the relevant provisions contained in the Amendment notified on 18.12.2014 in respect of the DSM Regulations issued by the Central Commission and the relevant extracts of the same are reproduced as under;

“5. Amendment of Annexure-II of the Principal Regulations:

(1) In Para A of Annexure-II of the Principal Regulations, the word “Payable” shall be substituted by the word “Receivable”.

(2) In Para C of Annexure-II of the Principal Regulations, the letter and figure “D 12/150” shall be substituted by the letter “Dtb”.

It is now clear that the methodology in Annexure – II as now put in place through the above amendment is in the line with the Substantive Regulations.

- vii) The Appellant's main contention is that the amendment issued in respect of Annexure - II of DSM Regulations interalia replacing the word "payable" by "receivable" should be made effective prospectively only from the date of its issuance of the amendment and in the intervening period i.e prior to the date of issuance of amendment to DSM Regulations it should be strictly computed as per the methodology given in Annexure II during that period.
- viii) Now let us examine how the State Commission dealt with this issue in its Impugned Order. The relevant extract of the Impugned Order is as under;

"17. It appears that Central Commission has acknowledged the fact the billing carried out due to above illustration is not according to the spirit of clause 5 of the Regulations and it has replaced the word "payable" with word "receivable". CSPDCL has submitted a clarification of WRPC billing wherein it is said that WRPC is billing DSM charges for buyer for under drawal condition as receivable right from 17.02.2014 (the date of applicability of DSM Regulations). Letter dated 20.03.2015 of WRPC shows that WRPC has pointed out about this conflicting provisions in Annexure II to Central Commission. It is interesting that if the sellers inject more than 12% of the schedule DSM charges is receivable but if deviation from schedule in a time block in MW is less than (+/-) 12% of the schedule in MW or 150 MW, whichever is lower in each time block, deviation charges is to be payable by the intra state entity at normal Charges for Deviation irrespective of whether it is over injection or under injection. WRPC had pointed out about this provision in annexures to

Central Commission but the SLDC did not seek any directions from this State Commission. The normal rule of interpretation is that the words used by the legislature are generally a safeguard to its intention. Lord Reid in Westminster Bank Ltd. v. Zang (3) observed that "no principle of interpretation of statutes is more firmly settled than the rule that the Court must deduce the intention of Parliament from the words used in the Act. The objective of DSM regulations is to maintain grid discipline and grid security as envisaged under the Grid Code through the commercial mechanism for deviation settlement through drawal and injection of electricity by the users of the grid. The word "Payable" appearing in Para A of Annexure-II of the Principal Regulations, appears to be inadvertent error and WRPC billed deviation charges as per intentions of the Regulations. The same was pointed by WRPC to Central Commission and it has not been objected by Central Commission. Since the Commission has adopted the Central Commission's DSM Regulations, and charges for deviations had to be billed in accordance with spirit of the Regulations, it is clarified that in Para A of Annexure-II of the Principal Regulations, the word "Payable" shall be read as word "Receivable" from the effective date of Principal Regulations and the bills of the petitioner be rectified accordingly."

On perusal of the Impugned Order dated 07.05.2015 issued by the State Commission, we have noted that the State Commission considers this as an inadvertent error, in light of its noting that the normal rule of interpretation is that the words used by the legislature are generally a safeguard to its intention especially in light of the objective of DSM Regulations to maintain grid discipline and grid security through the

commercial mechanism for deviation settlement and as such, the word “payable” appearing in Para A of the Annexure II of the DSM Regulations appears to be an inadvertent error. Further the State Commission stated that the word “payable” shall be read as word “receivable” from the effective date of the Principal Regulations i.e. from 17.02.2014 and therefore, it directed that the bills of the Respondent No.1 be rectified accordingly.

- ix) We are of the considered opinion that deviation settlement mechanism is predominantly significant to facilitate the grid discipline and grid security and it has been yielding good outcome through DSM Regulations ever since its implementation.
- x) The amendment issued in respect of Annexure II was in fact to bring out the right spirit of the Main Regulations.
- xi) When there is Substantive Regulation and as an offshoot of these Substantial Regulations, a methodology for computation of the commercial settlements is considered to the extent it is in tune with the Substantive Regulations. We have also observed that the Central Commission has rightly issued an amendment to bring in the consistency in line with its Substantive Regulations of the DSM Regulations. If such an interpretation as contemplated by the Appellant is considered, a generator would not generate electricity and supply to the grid to help the grid frequency as any such injection would be penalized rather than being incentivized. The provisions in the Annexure are only in aid of the parent Regulations and cannot over-ride

the main provisions of the Regulations. We do not have any doubt in our mind that in line with the spirit and the intention of the Main Regulations which would facilitate grid discipline and grid security, the error so alleged in the Annexure II of the DSM Regulations by the Appellant which was subsequently rectified through amendment is only considered to be an inadvertent error. The main intention to ensure grid discipline and grid security is abundantly clear in the Substantive Regulations and any application which is in contradiction with the spirit and intention intended in this Substantive Regulations which in this case is Annexure II has to be in line with the spirit of the Substantive Regulations, irrespective of the error in Annexure – II as alleged by the Appellant and this has been rightly contemplated by the WRPC while computing billing deviation charges.

- xii) The amended provision of the Annexure does nothing but removes an error, or contradiction in the earlier Annexure, which was contradictory to the parent provision. As submitted hereinabove, even if the earlier provision is to be applied without any amendment, the Annexure cannot be read alone, but has to be in the context of and subject to the main controlling provision. The intent and object of the Regulations also support the plain language of Regulation 5.

- xiii) In our view, the amendment issued subsequently to DSM Regulations is only to rectify the inadvertent error and the same has been rightly made effective from 17.02.2014 from the date of issuance of Principal Regulations by the State Commission in its Impugned Order. We do not observe any infirmity in the Impugned Order.

ORDER

We are of the considered opinion that there is no merit in the present Appeal and the Appeal is hereby dismissed as devoid of merit.

The Impugned Order dated 07.05.2015 passed by the State Commission is hereby upheld.

No order as to costs.

Pronounced in the Open Court on this **5th day of December, 2016.**

(I.J. Kapoor)
Technical Member

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(Mrs. Justice Ranjana P. Desai)
Chairperson

REPORTABLE/NON-REPORTABLE
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