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Ref.: RA/2019-20/01/A/ 73

Date: 16.05.2019

To,
The Secretary,
Central Electricity Regulatory Commission
Third floor, Chanderlok Building,
36, Janpath
New Delhi-110001

Subject: Submission of comments/suggestions/objections to the Draft Central Electricity Regulatory Commission (Deviation Settlement Mechanism and Related Matters) (Fifth Amendment) Regulations, 2019

Ref:-

- (i) Order dated 27.03.2019, passed by the Hon'ble High Court of Delhi W.P. (C) No. 13972/2018 [WBSEDL v CERC] and connected matters;
- (ii) Public Notice No. L-1/132/2013-CERC dated 18.04.2019;
- (ii) Draft Central Electricity Regulatory Commission (Deviation Settlement Mechanism and Related Matters) (Fifth Amendment) Regulations, 2019.

Dear Sir,

1. On 18.04.2019, Central Electricity Regulatory Commission ("**Hon'ble Commission**") on its website has published Public Notice No. L-1/132/2013-CERC enclosing Draft Central Electricity Regulatory Commission (Deviation Settlement Mechanism and Related Matters) (Fifth Amendment) Regulations, 2019 ("**Draft 5th Amendment Regulations**"). By the said Public Notice Hon'ble Commission has invited comments / suggestions / objections from the stakeholders to be provided latest by 17.05.2019.

2. Pursuant to the aforesaid Public Notice, BSES Rajdhani Power Limited ("**BRPL**"), the distribution utilities in the NCT of Delhi are filing their comments / suggestions / objections on the Draft 5th Amendment Regulations.

3. It is pertinent to note that BRPL has already filed a Writ Petition bearing W.P (C.) No. 5249 of 2019 before the Hon'ble High Court of Delhi challenging clause 4.4, Clause 4.19 and Clause 4.20 CERC (Deviation Settlement Mechanism and Related Matters) (Fourth Amendment) Regulations, 2019 ("**4th Amendment**") which have amended/substituted Regulation 7(1), 7(10) and 7(11) of the CERC (Deviation Settlement Mechanism and Related Matters) Regulations, 2014 ("**Principal Regulations**").

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4. The challenge of BRPL in the aforesaid Writ Petition is *interalia* based on the following grounds:

- (a) 4th Amendment has been notified without any rationale / cogent, discernible reasoning, without considering the fact that there are several system constraints for implementation. Hence, Impugned Regulations do not stand the test of Article 14 of the Constitution of India and is arbitrary.
- (b) Presentation given by BRPL during public hearing held on 21.08.2018, for Draft 4th Amendment has not been considered by the Hon'ble Commission.
- (c) While notifying the Impugned Regulations, Hon'ble Commission did not provide any reasoning for rejecting the objections of the BRPL.
- (d) Hon'ble Commission, while notifying the 4th Amendment has mechanically provided reasoning which was not even related to the issue at hand and provided same reasoning for two different issues.
- (e) Hon'ble Commission has violated Rule 3(4) of the Electricity (Procedure for Previous Publication) Rules, 2005, which provides that Hon'ble Commission has to "**consider any objection or suggestion which may be received by the Authority or the Appropriate Commission from any person with respect to the draft before the date so specified.**"
- (f) SLDC (i.e., nodal agency for implementing the DSM in Delhi at intra state level) in (i) MOM dated 21.12.2018 and (ii) Agenda for 41st TCC and 44th NRPC meetings held on 18.03.2019 and 19.03.2019 has admitted the difficulties in the implementation of 4th Amendment.

5. BRPL has been burdened with the arbitrary penalty of additional charge of 20% for sustained deviation. However, they have no control over demand and the network from where the power has to be procured. Further:

- (a) BRPL's demand and drawal depends upon load forecasting, weather forecasting, actual drawal, generation companies, consumers' demand, market forces, etc. Thus BRPL cannot be held liable for something which is uncontrollable at its end.
- (b) Forcing BRPL to abide by the 4th Amendment Regulations will lead to inconvenience and load shedding, increased tariff which will impact consumers of NCT Delhi, may even attract violation of other Regulations and mandates of DERC especially the direction dated 21.10.2009 issued by DERC to the BRPL to ensure long term round the clock power to its consumers and limit the load shedding to only 1%.
- (c) Practical difficulties with the Implementation of Impugned Regulations:
 - (i) Demand forecast is not within BRPL's control and is dependent on the real time market demand from the consumers.
 - (ii) As per the prevailing market conditions, a clear gap of four hours is required for the distribution licensee to arrange power in case of over drawal by the consumers.

- (iii) Due to the aforesaid time lag of at least 4 hours, the BRPL have to either allow over drawl from the schedule resulting in deviation or resort to load shedding.
- (iv) There are multiple occasions when the deviation from the schedule is above the threshold of 3% specified in the 4th Amendment which will attract an additional charge of 20% for each violation beyond the deviation threshold of 3% - which is not proportional to the deviation – excess penalty.

6. Arbitrary and exorbitant imposition of an additional charge of 20% of the daily base DSM for any violation of the deviation norm of 3% - Disproportionate levy is hit by following doctrines:

- (a) Doctrine of *Lex non cogit ad impossibilia*, i.e., the law does not compel a man to do the impossible – as BRPL has no control over demand and it is impossible to limit deviation within 3% and change sign after every 6-time blocks.
- (b) Doctrine of *Actus curiae neminem gravabit*, i.e., the act of court shall prejudice no man, and the doctrines of reasonableness and proportionality.

7. The Hon'ble Commission has proposed the Draft 5th Amendment, in terms of the order dated 27.03.2019 passed in W.P. (C) No. 13972/2018 [*WBSEDL v CERC*] and connected matters ("*DSM Writs*"). Hon'ble Commission by the Draft 5th Amendment has *interalia* sought to:-

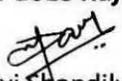
- (a) Delete Clause 4.4 of 4th Amendment (i.e., amended Regulation 7(1)) by proposed Clause 4.1 of Draft 5th Amendment.
- (b) Substitute Clause 4.19 of 4th Amendment with proposed Clause 4.5 of the Draft 5th Amendment. There by amending Regulation 7(10) of the Principal Regulations.
- (c) Substitute Clause 4.20 of 4th Amendment with proposed Clause 4.6 and 4.7 of the Draft 5th Amendment, i.e., proposal to delete Regulation 11(a) and substituting Regulation 7(11) with new Regulation.

8. As such Hon'ble Commission has *interalia* suggested to delete and delay the implementation of the penalties imposed by 4th Amendment. However, the fact that the proposed amendment would satisfy the tests of challenge to Delegated legislation, have to be tested as and when the proposed Draft 5th Amendment is finally notified by the Hon'ble Commission.

9. Without Prejudice to the rights and contentions of BRPL in W.P (C.) 5249 of 2019, BRPL hereby submit Clause wise comments/objections and suggestions in Chart enclosed with the present letter.

Thanking You,

For BSES Rajdhani Power Ltd.


Ravi Shandilya
Sr. Manager- Regulatory Affairs

Encl. A chart providing detailed comments on the proposed amendments.

Comments to Draft CERC (Deviation Settlement Mechanism and related matters) (Fifth Amendment) Regulations, 2019

Draft Regulations	Comments/Rationale
<p>1.SHORT TITLE AND COMMENTS (1) These regulations may be called the Central Electricity Regulatory Commission (Deviation Settlement Mechanism and related matters) (Fifth Amendment) Regulations, 2019. (2) These regulations shall come into force with effect from the date of notification in the official gazette.</p>	
<p>4. AMENDMENT OF REGULATION 7 (LIMITS ON DEVIATION VOLUME AND CONSEQUENCE OF CROSSING LIMITS) OF THE PRINCIPAL REGULATION:</p> <p>4.1 The following proviso under Regulation 7(1) of the Principal Regulations shall be deleted:</p> <p><i>‘Provided also that from a date not earlier than one year as may be notified by the Commission, the total deviation from schedule in energy terms during a day shall not be in excess of 3% of the total schedule for the drawee entities and 1% for the generators and additional charge of 20% of the daily base DSM payable / receivable shall be applicable in case of said violation.’</i></p> <p>4.2 In Table-II of Regulation 7(3) of the Principal Regulations, the words “Cap Rate being equivalent to the energy charges as billed for the previous month” wherever they occur, shall be substituted by the words “Cap Rate for Deviation of 303.04 Paise/kWh”.</p> <p>4.3 The clause 4 of regulation 7 of the principal regulations shall be substituted as under:</p> <p><i>“(4) In addition to Charges for Deviation as stipulated under Regulation 5 of these regulations, Additional Charge for Deviation</i></p>	<p>Clause 4.1: BRPL have challenged Clause 4.4 of the 4th Amendment Regulations <i>inter alia</i> being arbitrary, unreasonable and unimplementable by way of Writ Petition (C) No. 5249 of 2019 before the Hon’ble High Court of Delhi. In terms of the order dated 27.03.2019 passed in a connected matters, CERC by way of Clause 4.1 of the present Draft Amendment has proposed to delete the said clause. BRPL is in agreement with the said proposal.</p>

Comments to Draft CERC (Deviation Settlement Mechanism and related matters) (Fifth Amendment) Regulations, 2019

Draft Regulations	Comments/Rationale
<p><i>shall be applicable for over-injection/under-drawal of electricity for each time block by a buyer/seller 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', or cap rate for deviation of 303.04 Paise/kWh whichever is lower."</i></p> <p>4.4 In Proviso to clause (6) of Regulation 7 of the Principal Regulations, the words "Cap Rate equivalent to the energy charges as billed for the previous month" shall be substituted by the words "Cap Rate of 303.04 Paise/kWh".</p> <p>4.5 Clause (10) of Regulation 7 of the Principal Regulations shall be substituted as under:</p> <p><i>"In the event of sustained deviation from schedule in one direction (positive or negative) by any regional entity (buyer or seller), such entity shall correct its position in the manner as specified under clauses (a) and (b) of this Regulation.</i></p> <p><i>(a) Up to 31.03.2020, if the sustained deviation from schedule continues for 12 time blocks, the regional entity (buyer or seller), shall correct its position by making the sign of its deviation from schedule changed or by remaining in the range of +/- 10 MW with reference to its schedule, at least once, latest by 13th time block.</i></p> <p><i>Provided that each violation of the requirement under this clause shall attract an additional charge of 10% on the time block DSM payable / receivable as the case may be.</i></p> <p><i>(b) From 01.04.2020, if the sustained deviation from schedule continues for 6 time blocks, the regional entity (buyer or seller),</i></p>	<p>Clause 4.5:</p> <p>1. Hon'ble Commission by the present Clause has proposed to levy penalties on the utilities for not being able to change sign of deviation in the specified time period. BRPL have already file a Writ Petition before the Hon'ble High Court of Delhi challenging the illegality of the same. It is submitted that without prejudice to the same, the proposed Regulation is not implementable in the present scenario since:</p> <p>(a) Discrepancy in billing on account of inconsistency between SEM and SCADA: Scheduling of power is done on real-time basis which is based on SCADA data and the commercial settlement is based on SEM data. As such there exists two different point of reference for scheduling purpose (real-time) and for Commercial settlement purpose (post facto). There cannot be any uniformity to settle the above mechanism to address the sign change issues unless the entities do the accounting based on either SEM /SCADA or SEM data is made available real time so as to manage the sign change and avoid penalties. However, unless the either of the above is done, the Regulations is not implementable.</p>

Comments to Draft CERC (Deviation Settlement Mechanism and related matters) (Fifth Amendment) Regulations, 2019

Draft Regulations		Comments/Rationale								
<p><i>shall correct its position, by making the sign of its deviation from schedule changed or by remaining in the range of +/- 10 MW with reference to its schedule, at least once, latest by 7th time block.</i></p> <p><i>Provided that violation of the requirement under this clause shall attract an additional charge as specified in the table below:</i></p> <table border="1"> <thead> <tr> <th align="center">No. of violations in a Day</th> <th align="center">Additional Charge Payable</th> </tr> </thead> <tbody> <tr> <td><i>From first to fifth violation</i></td> <td><i>For each violation, an additional charge @ 3% of daily base DSM payable / receivable</i></td> </tr> <tr> <td><i>From sixth to tenth violation</i></td> <td><i>For each violation, an additional charge @ 5% of daily base DSM payable / receivable</i></td> </tr> <tr> <td><i>From eleventh violation onwards</i></td> <td><i>For each violation, an additional charge @ 10% of daily base DSM payable / receivable</i></td> </tr> </tbody> </table> <p><i>Provided further that counting of number of sign change violations under clauses (a) & (b) of this Regulation shall start afresh at 00.00 Hrs. for each day.</i></p> <p><i>Provided also that payment of additional charge for failure to adhere to sign change requirement as specified under clauses (a) & (b) of this regulation shall not be applicable to:</i></p> <p><i>a. renewable energy generators which are regional entities</i></p> <p><i>b. run of river projects without pondage</i></p>		No. of violations in a Day	Additional Charge Payable	<i>From first to fifth violation</i>	<i>For each violation, an additional charge @ 3% of daily base DSM payable / receivable</i>	<i>From sixth to tenth violation</i>	<i>For each violation, an additional charge @ 5% of daily base DSM payable / receivable</i>	<i>From eleventh violation onwards</i>	<i>For each violation, an additional charge @ 10% of daily base DSM payable / receivable</i>	<p>(b) SLDC (i.e., nodal agency for implementing the DSM in Delhi at intra state level) in (i) MOM dated 21.12.2018 and (ii) Agenda for 41st TCC and 44th NRPC meetings held on 18.03.2019 and 19.03.2019 has admitted the difficulties in the implementation of 4th Amendment, in terms of which it has stated it requires time to update the infrastructure including meters etc. As such the present provision assumes that by extending time blocks (i.e., change of reversal in 6th block to 12th block) till 31.03.2020, that task of bridging the gap between SEM and SCADA or making ABT data online would be completed.</p> <p>(c) However, in case the gap persists after the said date, the same will lead to a situation that BRPL and BYPL would be penalized for no fault of its own would be paying some other agency's fault.</p> <p>(d) Open Access consumers: Also, with increasing number of Open Access consumers moving into long term open access, where frequent revisions in schedule is allowed the permissible range of ± 10 MW is not going to help. Instead of exemption ± 10 MW, penalty for sustained deviation in one direction, exemption should be made till the entity draws within its specified limit (DERC has specified ± 57 MW and ± 35 MW for BYPL).</p> <p>(e) Also, the open access consumers are increasing and the same are not considered as a part of DSM Regulations, which in turn puts a lot of burden on the utilities such as BRPL and BYPL in the NCT of Delhi.</p> <p>(f) Change in Weather: As of now utilities are facing big challenge in forecasting the impact of extreme weather conditions (rainy season). Any violation in such situations (say if demand drops by more than 100MW per slot or any number as may be found suitable) should not be considered for calculating penalty under force majeure.</p>
No. of violations in a Day	Additional Charge Payable									
<i>From first to fifth violation</i>	<i>For each violation, an additional charge @ 3% of daily base DSM payable / receivable</i>									
<i>From sixth to tenth violation</i>	<i>For each violation, an additional charge @ 5% of daily base DSM payable / receivable</i>									
<i>From eleventh violation onwards</i>	<i>For each violation, an additional charge @ 10% of daily base DSM payable / receivable</i>									

Comments to Draft CERC (Deviation Settlement Mechanism and related matters) (Fifth Amendment) Regulations, 2019

Draft Regulations	Comments/Rationale
<p><i>c. any infirm injection of power by a generating station prior to CoD of a unit during testing and commissioning activities, in accordance with the Connectivity Regulations.</i></p> <p><i>d. any drawal of power by a generating station for the start-up activities of a unit.</i></p> <p><i>e. any inter-regional deviations.</i></p> <p><i>f. forced outage of a generating station in case of collective transactions on Power Exchanges.</i></p> <p>Explanation:- For the purpose of this Regulation, sustained deviation means continuous deviation outside the range of +/- 10 MW from schedule, such range being a subset of the volume limit as specified in Regulation 7(1) & 7(2)). In other words, if the deviation is brought within the range of +/- 10MW or it remains within the range of +/- 10MW, it will not be considered as sustained deviation.</p> <p>Illustrations: -</p> <p><i>i. Illustration to 7(10)(a):-,</i></p> <p><i>a regional entity having a sustained deviation from time blocks t1 to t12, should correct its position either by changing the sign of its deviation (from positive to negative or negative to positive as the case may be) or come back in the range of +/- 10 MW with reference to its schedule latest by the end of time block t13. In case, such sign change does not take place or it fails to come back in the range of +/- 10 MW by the end of time block t13, but such correction of position takes place from time block t14 up to time</i></p>	<p>(g) Demand forecast is not within BRPL and BYPL's control and is dependent on the real time market demand from the consumers.</p> <p>(h) As per the prevailing market conditions, a clear gap of four hours is required for the distribution licensee to arrange power in case of over drawal by the consumers.</p> <p>(i) Due to the aforesaid time lag of at least 4 hours, the BRPL and BYPL have to either allow over drawl from the schedule resulting in deviation or resort to load shedding.</p> <p>(j) This will lead to inconvenience and load shedding and even attract violation of other Regulations and mandates of Hon'ble DERC especially the direction dated 21.10.2009 issued by Hon'ble DERC to the BRPL and BYPL to ensure long term round the clock power to its consumers and limit the load shedding to only 1%.</p> <p>2. In terms of the above it is suggested that:</p> <p>(a) The long-term open access consumers should be considered as grid entities and accordingly they shall be liable for DSM regulations compliance for their quantum.</p> <p>(b) A clear instruction for making all the ABT meters online to the LDCs with correct mapping of load points to the utilities (in case of multiple utilities) and there 100% availability in real time should be the basic criteria for withdrawing these amendments in future</p> <p>(c) Penalizing any utility for sustained deviation on the basis of daily base DSM is not at all justified. Penalty should only be calculated on the basis of Time Block based DSM (10% of Time Block DSM) or it should be based on sum of Time Block DSM of last 6 blocks in which violation has occurred (10% of Sum of Time Block DSM of last 6 slots in which violation has occurred).</p> <p>In the alternative,</p>

Comments to Draft CERC (Deviation Settlement Mechanism and related matters) (Fifth Amendment) Regulations, 2019

Draft Regulations	Comments/Rationale
<p><i>block t24, then the additional charge shall be levied equivalent to one violation. The above violation shall attract an additional charge at the rate of 10% of the time block DSM for t13. Further, in case, sign change does not take place or it fails to come back to the range as aforesaid even latest by the end of t25, but correction of position takes place from time block t26 up to time block t36, then the additional charge shall be levied equivalent to two violations. The above violation shall attract an additional charge at the rate of 10% of the time block DSM for t13 &t25, and so on.</i></p> <p><i>ii. Illustration to 7(10)(b):-,</i></p> <p><i>After 01.04.2020, if a regional entity having a sustained deviation from time blocks t1 to t7, should correct its position either by changing the sign of its deviation (from positive to negative or negative to positive as the case may be) or come back in the range of +/- 10 MW with reference to its schedule latest by the end of time block t7. In case, such sign change does not take place or it fails to come back in the aforesaid range by the end of time block t7, but such correction of position takes place from time block t8 up to time block t12, then additional charge shall be levied equivalent to one violation. Further, in case, sign change does not take place or it fails to come back in the range as aforesaid latest by the end oft13, but correction in position takes place from time block t14 up to time block t18, then the additional charge shall be levied for two violations and so on. The additional charge shall be at the rate as specified in clause (b) of this Regulation.</i></p> <p>4.6 The Clause 11 of the Regulation 7 of the Principal Regulations shall be substituted as follows:</p>	<p>it is suggested that the deadline for implementing proposed Regulations should be increased by another year and the penalties should be subject to the percentage difference between the SCADA data and SEM data. i.e., in case where the difference between the SCADA and SEM is not within the notified benchmark there should not be any penalties on BRPL.</p> <p>3. Apart from the above, as the situation of BYPL is slightly different from BRPL, BYPL seeks to file further comments in addition to the above as under:</p> <p>(a) That Delhi periphery has been allocated a bandwidth of 150 Megahertz which has been divided in various entities like the BRPL, TPDDL, the Gencos and the Transcos.</p> <p>(b) Delhi is fed by the generating units of 250 / 500 MW sizes and outage of even single unit of 250 MW would immediately result in a huge deviation in existing schedule. Even if Hon'ble Commission provides a tolerance band of +/- 10 MW to each intra-state utility (generator / Discom), the same being very tight and thin tolerance band, shall not be enough to absorb the sudden glitch pushing the Discom beyond the permissible range of +/- 10 MW.</p> <p>(c) As per the Para No. 2.13 of SOR, Hon'ble Commission has clearly exempted sign change requirement for the generation from RE sources.</p> <p>(d) Schedule is bound to change / deviate due to the contribution of Non-Conventional energy sources (Solar, WTE etc.) within the area of service of distribution licensee i.e. BYPL in this case, their actual generation is deemed to be treated as Schedule. The impact of Open Access consumers and Net Metering is actualized on post facto basis and under no circumstances the provision of sign change can be</p>

Comments to Draft CERC (Deviation Settlement Mechanism and related matters) (Fifth Amendment) Regulations, 2019

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<p><i>"Payment of Charges for Deviation under Regulation 5 and the Additional Charges for Deviation under Clauses (3), (4) and (10) of this regulation, shall be levied without prejudice to any action that may be considered appropriate by the Commission under Section 142 of the Act for contravention of the provisions of the said regulations."</i></p> <p>4.7 The Clause 11(a) of the Regulation 7 of the Principal Regulations shall be deleted.</p>	<p>adhered to and analyzed for managing the real-time Schedule / Demand gap.</p> <p>(e) State Regulator of Delhi/Hon'ble DERC has exempted WTE plant from the scope of DSM mechanism and as on date 52 MW capacity of WTE plants are operational which shall increase to 76 MW by FY 2020-21.</p> <p>(f) BYPL share is 18 MW and in case of EDWPCL (WTE) plant in BYPL area, is supplying 51% power under Open Access. The methodology for deviation in OA has not yet been specified by Hon'ble DERC. The 18 MW and 6 MW from WTE are unmanageable and shall result in violation of sign change provisions.</p> <p>4. It is therefore submitted that, Hon'ble Commission may consider:</p> <p>(a) Deviation flexibility of 150 MW and shall be applicable at the inter-State boundary of the respective state as per clause (7)(1) and (7)(2) of the Principal Regulations. With the introduction of +/- 10 MW tolerance band, the scope of clause (7)(1) and (7)(2) of the Principal regulations loses its significance.</p> <p>(b) Provisions of more and more penalizing the Discoms needs to be abolished and provisions of rewarding the most efficient Discoms (monthly / quarterly / annual) basis shall be added on the basis of minimizing the instances of hindrance from Schedule Reliance is placed on para 8.1.1 of "Report of Expert Group to review and suggest measures for bringing power system operation closer to National Reference Frequency Volume I" November 2017.</p>