



**Ranjit Gupta**  
Chairman  
FICCI Renewable Energy CEOs Council



October 22, 2021

Mr Sanoj Kumar Jha  
Secretary  
Central Electricity Regulatory Commission (CERC)  
New Delhi

Dear Mr Jha,

**Comments/Suggestions on the Draft CERC (Deviation Settlement Mechanism and Related Matters) Regulations, 2021 and request for a stakeholder consultation**

I am writing with regards to the comments/suggestions solicited on the draft Deviation Settlement Mechanism and Related Matters Regulations, 2021. The comments/suggestions are enclosed with this letter for your kind consideration.

As these regulations will have huge financial implications especially on older projects of renewable energy, therefore, may I request CERC to have a stakeholder consultation before finalizing these regulations.

We look forward to your kind consideration on the above request.

With Best Regards,

Yours sincerely,

Ranjit Gupta

**Suggestions / Comments on Draft CERC (Deviation Settlement Mechanism and Related Matters) Regulations, 2021**

S. No.	Clause	Draft Clause	Comments/ Suggestions	Rationale/ Justification
1	<b>Clause 4:</b>	<p><b>4. Scope:</b></p> <p>These regulations shall be applicable to all grid connected regional entities and other entities engaged in inter-State purchase and sale of electricity.</p>	<p>We propose that, this Regulation should be made applicable only to the upcoming projects, whose bidding is yet to be concluded post notification of these regulations. For the existing and bid out RE projects, the existing DSM regulations should continue to be the same, with necessary amendments such as linking of penalties to the PPA tariff</p>	<p>Retrospective application of this Regulation on wind and solar (WS) generators will have huge financial implications. All existing WS generators, and WS projects for which bid has been completed before the notification of this regulations would have only considered existing Deviation Settlement Mechanism for arriving at bid tariff.</p> <p>At ISTS level, for which the proposed regulations are intended, almost 60,000 MW of WS projects are going to be adversely impacted.</p> <p>RE generators are heavily dependent upon weather conditions for their plant operation &amp; generation and accurate projection of their electricity generation and revenue cannot be ascertained. In such a scenario, reducing permissible band for deviation result in such projects being commercial unviable.</p> <p>Therefore, we propose that, this</p>

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				<p>regulation should be applicable to only to the upcoming projects whose bids is concluded post notification of these regulations and for existing WS generators current Deviation Settlement regulation should be applicable</p> <p>Doctrine of Promissory estoppel explicitly provides the principle that any proposed changes should be made applicable only for new projects, which in the current context would mean projects that get bid after the new regulations are finalized.</p>
2	Clause 7	<p><b>Normal Rate of Charges for Deviations</b></p> <p>(1) The normal rate of charges for deviation for a time block shall be equal to the Weighted Average Ancillary Service Charge (in paise/kWh) computed based on the total quantum of Ancillary Services deployed and the total charges payable to the Ancillary Service Providers for all the Regions for that time block:</p> <p>Provided that for a period of one year from the date of effect of these regulations or such further period as may be notified by the Commission, the normal rate of charges for deviation for a time block shall be equal to the highest of [the weighted average ACP of the Day Ahead Market segments of all the Power Exchanges; or the weighted average ACP of the Real Time Market segments of all the Power Exchanges; or the Weighted Average Ancillary Service Charge of all the regions] for that time</p>	<p>The base penalty rate which is Normal Rate in the draft petition should be fixed and not be linked with market rates which is Weighted Average Ancillary Service Charges.</p> <p>The normal rate of charges of deviation for Wind and Solar projects is requested to be linked to its PPA tariff rate.</p>	<p>Penalty based on market driven rates is unpredictable during the bid submission or auction while determining tariff. Developers need some certainty and visibility of penalty which they can take into consideration while bidding.</p> <p>Since Weighted Average Ancillary Service Charges vary and depend on lot of external factors like seasonality, availability of coal etc, on which renewable energy generator do not have any control. Linking penalty with such mechanism will impact developers negatively and put huge impact on the viability of these projects.</p> <p>Request CERC not to link with</p>

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		<p>block: Provided further that in case of non-availability of ACP for any time block on a given day, ACP for the corresponding time block of the last available day shall be considered:</p> <p>(2) The normal rate of charges for deviation shall be rounded off to the nearest two decimal places.</p>		<p>market driven price mechanism (Weighted Average Ancillary Service) and the penalty should be as per the percentage of the project tariff. This will place all the projects at the same position when it comes to penalty.</p>
3	Clause 8 (1)	<p><b>Charges for Deviation</b> Charges for deviation in a time block by a seller shall be payable by such seller as under:</p> <p>For WS seller <b>Deviation by way of over injection – Zero</b></p> <p><b>Deviation by way of under injection</b> (i) Zero up to 10% Deviation-WS seller (in %); (ii) @ 10% of the normal rate of charges for deviation beyond 10% Deviation-WS seller (in %):</p> <p>Provided that such seller shall pay back to the Deviation and Ancillary Service Pool Account for the total shortfall in energy against its schedule in any time block due to under injection, (a) at the contract rate at which it has been paid based on schedule, or (b) in the absence of a contract rate at the rate of the Area Clearing Price of the Day Ahead Market for the respective time block.</p>	<p><b>It is requested that the draft regulation should not be applicable on the renewable energy projects which are already operational and bid out.</b></p> <p><b><u>Modified clause for New projects/Bids /Tenders:</u></b></p> <p>For WS seller <b>Deviation by way of over injection –</b> (i) Up to 15% Deviation- At the Fixed Rate for the excess energy for absolute error upto 15% (ii) Beyond 15% Deviation - At the Fixed Rate for the excess energy for absolute error upto 15% + 90% of the Fixed Rate for balance energy beyond 15%</p> <p><b>Deviation by way of under injection</b> (i) Up to 15% Deviation- At the Fixed Rate for the shortfall energy for absolute error upto 15% (ii) Beyond 15% Deviation - At the Fixed Rate for the shortfall energy for absolute error upto 15% + 110% of the Fixed Rate for balance energy beyond 15%.</p> <p>Penalty should be over Fixed rate i.e. linked</p>	<p>The tariff determined for these operational and bid out projects are considering prevalent CERC Deviation Settlement Mechanism (DSM) Regulation. Any major changes in the DSM regulation will impact the viability of these projects as these changes are not considered at the time of bidding /auction.</p> <p>As per our understanding, with the charges for deviation being zero on over injection, the payment being received by seller for over injection of power will also be zero.</p> <p>If we take historical data for our operational projects to calculate DSM penalty as per draft regulation 2021, we see penalty on overall revenue increasing from 0.5-0.6% to 4-4.5% considering Zero payment in case of Over Injection from schedule. This will put viability of our projects on risk.</p>

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			to PPA tariff, to place deviation impact equally on all the projects.	<p>Also, the idea of Deviation Settlement Mechanism is to discipline all the generators in their Schedule and Actual generation. Curtailing anything above schedule is penalizing generators for which they have absolutely no control. Renewable energy sources in nature are unpredictable and should be treated accordingly. Therefore, there should be deviation band allowed both under injection and over injection. The commission may tighten the current band as suggested to get more discipline in the system, to more towards better grid stability and reliability.</p> <p>We request CERC not to impose draft regulation on already operational and bid out projects.</p>
4	<b>Clause 8 (Table 2)</b>	Buyer (being an RE Rich State), Deviation charge by way of under drawl is zero.	Buyer (being an RE Rich State), Deviation charge by way of under drawl should not be zero. We propose to allow 15% deviation by way of under drawl and any deviation more than 15% to be zero.	<p>Making no payments to an under-drawing RE rich state could lead to further commercial implications for such discoms / states.</p> <p>While highlighting that curtailment of RE generation for commercial reasons is illegitimate, some discoms do curtail RE when it comes to deciding between under-drawl and curtailing state gird connected RE projects. Such a provision could result in enhanced</p>

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				curtailment of RE, which though would be illegal, the generators would have to take a long route to get compensation for same.
5	<b>Clause 10 (1)</b>	The payment of charges for deviation shall have a high priority and the concerned regional entity shall pay the due amounts within 7 (seven) days of the issue of statement of charges for deviation by the Regional Power Committee, failing which late payment surcharge @0.04% shall be payable for each day of delay.	The settlement of charges for deviation shall have a high priority and the concerned regional entity shall settle the due amounts within 12 (Twelve) working days from the issuance of statement of charges for deviation provided that in case of any discrepancy in deviation charges the same shall be raised by the WS generator within 3 working days of issuance of statement of deviation charges and the discrepancy shall be resolved by the concerned Regional Power Committee before completion of 12 working days from issuance of statement of deviation charges, failing which late payment surcharge @0.04% shall be applicable for each day of delay.	Considering the involvement and huge amounts and complex calculations in Deviation settlement, 7-day timeline is very low.  Further since it has been observed that at times there are few discrepancies in Deviation charges declared by Regional Power Committee, thus a timeline should be fixed for resolution of the same before due date of payment
6	<b>Additional Clause</b>		Due to invariable nature of RE power and lack of 100% accuracy in weather forecasting, it is difficult for WS generators to follow injection schedule and avoid deviation. In order to accommodate these regulations despite the possibility of deviations, we propose that all upcoming RE Projects should be allowed to buy/sell power from power markets (using real time/ancillary markets) to settle down the deviation in injection schedules at any given time and reduce the impact of deviations on grid and optimize their portfolio.	
7	<b>Additional Clause</b>		Hydro projects that are not Run of the River, do not have a predictable water flow and therefore, they should also be allowed a	

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			higher deviation limit, in line with the limits sought for WS projects.	
8	<b>Additional Clause</b>		Wind power is more unpredictable than solar power and thus wind power has high variability. So, higher deviation limit for wind (15% without any charges) is requested	