



नईदिल्ली
NEW DELHI

याचिकासंख्या./ Petition No. 90/MP/2019

कोरम/ Coram:

श्री पी. के. पुजारी, अध्यक्ष/ Shri P. K. Pujari, Chairperson
श्रीआई. एस. झा, सदस्य/ Shri I. S. Jha, Member
श्रीअरुण गोयल, सदस्य/ Shri Arun Goyal, Member
श्री पी. के. सिंह, सदस्य / Shri P. K. Singh, Member

आदेश दिनांक/ Date of Order: 15th of April, 2022

IN THE MATTER OF:

Waiver of Additional DSM/UI Charges and Sign Violation Additional Charges imposed by Western Regional Power Committee upon the Petitioner for the period 01.01.2019 to 06.01.2019.

AND IN THE MATTER OF:

M/S SKS Power Generation (Chhattisgarh) Limited,
B-501, Elegant Business Park,
Andheri East,
Mumbai-400059

...Petitioner

Versus

1. Western Regional Power Committee,
F-3, MIDC Area, Marol,
Opposite SEEPZ, Central Road, Andheri (East),
Mumbai - 400 093
2. Western Regional Load Despatch Centre,
Power System Operation Corporation Limited.
F-3, M.I.D.C. Area, Marol, Andheri (East),
Mumbai-400093

3. Power Grid Corporation of India Limited,
'Saudamini', Plot No. 2, Sector-29,
Gurgaon, Haryana-122007

...Respondents

Parties present: Shri M. G. Ramachandran, Senior Advocate, SKS PGL
Shri Mridul Chakravarty, Advocate, SKS PGL
Shri Lakshyajit Singh Bagdwa, Advocate, SKS PGL
Ms. S. Usha and Shri Aditya Das, WRLDC

आदेश/ ORDER

The Petitioner, SKS Power Generation (Chhattisgarh) Limited has set up a 1200 MW (4 x 300MW) power plant at Raigarh, Chhattisgarh and has a Power Purchase Agreement of 108 MW with Noida Power Company under medium-term agreement and 13.5 MW with Chhattisgarh State Power Transmission Company Limited (CSPTCL) under long-term arrangement. During non-peak hours, 44 MW was being sold by the Petitioner through IEX. The Petitioner has filed the present petition under Regulation 12 and Regulation 13 of the Central Electricity Regulatory Commission (Deviation Settlement Mechanism and Related Matters) Regulations, 2014 (the DSM Regulations) as amended from time to time read with Regulation 2(1) (ff) and Regulation 2 (1) (gg) of the Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2010 ("the Grid Code") for waiver of additional DSM charges and sign violation additional charges on account of Force Majeure for the period from 01.01.2019 to 06.01.2019.

2. The Respondent No. 1, Western Regional Power Committee ("WRPC"), is a statutory body established under Sec 2(55) of the Electricity Act, 2003 ("the Act") and functions as per its role specified in Regulation 2.4 of the Grid Code.
3. The Respondent No. 2, Western Regional Load Despatch Centre ("WRLDC") is a statutory body set up under Section 27 of the Act and performs its functions specified in Section 28 of the said Act and various regulations of the Commission. As per the Grid Code, the Respondent is responsible for scheduling and dispatch of the power generated by the Petitioner's generating station.

4. The Respondent No.3, Power Grid Corporation of India Ltd. (PGCIL) is the Central Transmission Utility (“CTU”).
5. The Petitioner has made the following prayers:
 - a) *Direct that the Respondent No. 2 cannot collect Additional DSM Charges and Sign Violation Additional Charges imposed upon the Petitioner, in the facts and circumstances of the present case; and*
 - b) *Pass such other and further orders as this Hon’ble Commission may deem fit.*

Submissions of the Petitioner

6. The Petitioner has submitted as under:
 - a) It has developed a 1200 MW (4 x 300 MW) Power Plant at Raigarh, Chhattisgarh.
 - b) On 01.01.2019, only Unit No. 2 was operating and generating electricity and supplying power to the following:
 - i. 13.5 MW to CSPTCL under Long Term Arrangement;
 - ii. 108 MW to Noida Power Company Limited (“NPCL”) under medium-term arrangement;
 - iii. 60 MW to Bihar Utility under short-term arrangement; and
 - iv. 44 MW under collective transaction through Indian Energy Exchange (“IEX”) [sold during non-peak hours]
 - c) On 01.01.2019, due to a fire accident in the plant, Unit-2 of 300 MW of the said plant tripped.
 - d) Thereafter, it tried to synchronise its Unit-1 with the grid, so as to fulfil its power supply obligations. However, due to several reasons Unit-1 could not be synchronised with the grid and hence, it was forced to draw power from the grid to meet the requirement of auxiliary equipment etc. for restarting Unit-1.
 - e) On account of failure of the Petitioner to supply power to IEX, as per schedule, and further drawl of power from the grid for meeting auxiliary consumption, WRPC imposed charges upon the Petitioner as per the DSM Regulations.
 - f) As per the amended Regulation 7 (10) of the Central Electricity Regulatory Commission (Deviation Settlement Mechanism and related matters) (Fourth Amendment) Regulations, 2018, (Fourth Amendment) (“the DSM Regulations (4th Amendment)”), a Regional Entity is supposed to change its graph sign every 6th time

block, failing which the generator is liable for additional DSM/UI charges and violation charges.

- g) The deviation attributed to the Petitioner was with respect to the time blocks during the period from 13.20 hrs on 01.01.2019 to 17.39 Hrs on 06.01.2019. This was on account of the fire accident on 01.01.2019, which affected the operations of Unit-2 from 13.20 hrs. As such, the Petitioner was not in a position to change the graph sign after every 6th time block, in either injection of power or drawl of power, as both the Units were under shut down condition, due to tripping on account of fire accident for Unit-2 and technical snags in Unit-1.
- h) The schedule for supply of power to IEX was submitted to WRLDC before 12:00 Hrs. on 31.12.2018 as per Clause 5.5 of the Procedure on Short-Term Open Access in Inter-State Transmission (Bilateral Transaction) published by the Central Transmission Utility. Such supply was to be made from Unit-2.
- i) On the previous day, it could not have been possible for the Petitioner to reverse the graph sign on 01.01.2019 from 13.20 hrs onwards; as the schedule was submitted on 31.12.2018 and the fire accident occurred on 01.01.2019 on 13.20 hrs.
- j) Similarly, on 01.01.2019, before the fire accident, the Petitioner had already submitted its bid for IEX as also the schedule for 02.01.2019. Hence, the Petitioner had no opportunity to reverse the graph sign as the fire accident happened after 12.00 hrs on 01.01.2019.
- k) On 02.01.2019, since restoration of Unit-2 was likely to take more than 2 months, the Petitioner planned for synchronisation of Unit-1, w.e.f. 00.00 hrs of 3rd January 2019. Accordingly, IEX and other medium-term and long-term schedules were planned for execution.
- l) However, similar events unfolded on 02.01.2019 as well and thereafter, with respect to the IEX transaction of the Petitioner, due to technical snags in Unit-1, it could not be synchronised as planned despite repeated attempts till 06.01.2019. Though the medium-term and long-term schedules were revised to Zero in time by the Petitioner, the IEX schedule for 03.01.2019, which was submitted on 02.01.2019 and accepted by IEX, could not be revised, and hence there was default accordingly.
- m) Also, it had to continue with drawl of start-up power from the grid for operating the auxiliary equipment and to start operations of Unit-1, without prior submission of drawl schedule as per previous practice. As the other Unit was also under forced shut

down due to fire accident, the Petitioner's generation unit had no alternative but to draw start up power from the grid.

- n) Similar events unfolded on 03.01.2019 as well and thereafter, with respect to the IEX transaction of the Petitioner, owing to technical snags in Unit-1 due to which the Unit-1 could not be synchronised as planned despite repeated attempts till 06.01.2019. Though, the medium-term and long-term schedules were revised to Zero in time by the Petitioner, the IEX schedule for 05.01.2019, which was submitted on 04.01.2019 and accepted by IEX, could not be revised, and hence there was default accordingly.
- o) As per Regulation 8(7) of the CERC (Grant of connectivity, Long term and Medium term open access in inter State Transmission System) Regulation 2018 and subsequent amendments ("the CERC Connectivity Regulations") read with the Procedure for drawl of Start-up Power for new Generating Stations, 2014, a new generating station is allowed to draw start up power from the grid, which would be considered as deviation, in accordance with the DSM Regulations, after having submitted a request in that regard to the concerned RLDC one month prior to the expected date. Though the Petitioner's generating station is not a new generating station and is not covered under the said regulations, drawing analogy from the same in the present case, the event was unforeseen and a forced outage, which is also in the nature of Force Majeure. The Petitioner, could not submit a request to the RLDC as per the above timelines. This also resulted in imposition of additional penalty upon the Petitioner, as per Regulation 7(10) of the DSM Regulations (4th Amendment).
- p) Hence, the Petitioner is primarily aggrieved with the applicability of Regulation 7(10) of the DSM Regulations (4th Amendment).
- q) The fire accident suffered by Unit-2 is an uncontrollable and unforeseen incident and is covered under Regulation 2(1)(ff) and Regulation 2(1)(gg) of the Grid Code.
- r) The Petitioner's case is that that it was prevented from revising its schedule to IEX on account of Clause 5.5 of the Procedure on Short-Term Open Access in Inter-State Transmission (Bilateral Transaction). Therefore, with respect to the IEX transaction, the Petitioner ought not to be imposed with any additional charges as per Regulation 7(10) of the DSM Regulations (4th Amendment). Further, any additional charges also should not be imposed.
- s) As per Regulation 6.5.19 of the Grid Code, a generator undertaking collective transaction through an exchange is not allowed to revise schedules from the 4th time

block. The above exclusion is on account of the fact that in case of the transaction through an exchange, it is not possible for a generator to revise its schedules as the same has been accepted. However, the DSM Regulations are silent about any such exception, in line with the Grid Code.

- t) Further, DSM Regulations create a deemed contract between the parties and therefore it must be governed by the Indian Contract Act 1872. As per Section 56 of the Indian Contract Act 1872, any act which becomes impossible at a later stage, the party ought to be exempted from complying from that event.
- u) Therefore, the Commission ought to invoke its regulatory powers available under Section 79(1)(c) of the Act, in order to streamline the provisions of the Grid Code with the DSM regulations.
- v) Also, Regulation 12 of the DSM Regulations contains powers to relax, which can be invoked in the present case, along with regulatory powers, as it cannot be the intent that the Grid Code provides exclusion for exchange transactions, while DSM regulations are silent on the same.
- w) Both the Grid Code and DSM Regulations are meant for grid security, and therefore, both the said regulations are to be streamlined, which is required in the present case.
- x) On account of the above unforeseen and unprecedented event, the total loss caused to the Petitioner is about Rs 600 lakhs on account of repairing the damage, in addition to long outage of Unit-2 and default in feeding committed power to customer and levying of penalties. On account of the above forced outage situation, the Petitioner has been imposed sign violation additional charges amounting to Rs. 174.02 lakhs and additional DSM charges of Rs. 39.76 lakh, which will affect the functioning of the Petitioner as it is already suffering huge losses on account of the fire accident.

Hearing dated 04.04.2019

7. Learned senior counsel submitted that the Petitioner has filed IA No. 30/2019 for seeking stay of the operation of invoice dated 18.2.2019 issued by WPRC and for direction to WPRC to grant approval to the Petitioner for supply of power to IEX, pending disposal of the petition. Learned senior counsel submitted that the Petitioner has paid all other DSM charges and only the sign violation additional charges of Rs.174.02 lakh and additional DSM charges of Rs.39.76 lakh have not been paid for which the Petitioner has approached by way of the

present Petition. Learned senior counsel submitted that unless a stay is granted, WRLDC would not permit the Petitioner to supply power to IEX.

8. After hearing, the Commission directed the Petitioner to pay 25% of the sign violation additional charges and additional DSM charges by due date, i.e. 15.4.2019 subject to the outcome of the decision in the Petition. The Commission directed the WRPC and WRLDC not to take coercive measure against the Petitioner for non-payment of remaining amount till further orders. Accordingly, the IA was disposed of.

Hearing dated 23.11.2021

9. The learned senior counsel for the Petitioner and the representative of WRLDC made detailed submissions. The Commission permitted the contracting parties to file written submission and reserved the Order in the matter.

Written Submission of the Respondent No.2 (WRLDC)

10. WRLDC has filed the written submissions on 06.12.2021 vide which it has submitted as under:
 - a) As per the Grid Code and the DSM Regulations, WRPC is responsible for preparation and publication of weekly statement of Deviation Accounts for the Petitioner, based on the relevant data received from WRLDC.
 - b) The tripping due to fire accident is a case of forced outage and cannot be treated as force majeure as defined under Regulation 2(1)(gg) and Regulation 2(1)(ff) of the Grid Code.
 - c) As per the Regulation 6.5.19 of the Grid Code, the revision in schedule due to forced outage of a generator of capacity 100 MW and above is applicable for generators selling power under short term open access (STOA) bilateral transaction but is not applicable for generators selling power under collective transaction scheduled through Power Market.
 - d) Unit tripping is a very common event in grid operations and thus cannot be considered to be a force majeure event.
 - e) Further, the Petitioner continued to submit sell bid in Power Exchange for subsequent days i.e. for 2nd, 3rd, 4th and 5th of January 2019 even though the Unit-2 of the Petitioner had not stabilised. The Petitioner chose to submit the sell bid in the power exchange being fully aware that the schedules would be cleared as collective

transactions leading to liability of deviation charges, additional deviation charges and sign violation charges applicable under the DSM Regulation if the event thus demands. This could be a case of miscalculation of business risk on the part of the Petitioner.

- f) If such relief is granted to one Petitioner it would set a wrong precedent and may lead to innumerable requests by all such affected generators who have knowingly taken a business risk.
- g) Against the schedule under collective transactions, the generators would have received around Rs.1.3 crore at the prevailing MCP as indicated in the table below:

Sr. No.	Date	SKS Power scheduled energy in IEX	Maximum schedule (in MW) for the day cleared in IEX	Average MCP (in Rs./kWh) in IEX
1	01.01.2019	0.83	44	3.20
2	02.01.2019	0.84	44	3.53
3	03.01.2019	0.74	44	3.25
4	04.01.2019	1.31	150	3.67

- h) Regulation 7(10) of DSM Regulations (4th Amendment) which introduced penal charges for sustained deviation in one direction for more than 6 time blocks, as provided below, came into effect on 01.01.2019 and does not provide any special dispensation to any entity:

“In the event of sustained deviation from schedule in one direction (positive or negative) by any regional entity (buyer or seller), such regional entity shall have to change sign of their deviation from schedule, at least once, after every 6 time blocks. To illustrate, if a regional entity has positive deviation from schedule from 07.30 hrs to 09.00hrs, sign of its deviation from schedule shall be changed in the 7th time block i.e. 09.00hrs to 09.15hrs from positive to negative or vice versa as the case may be.

Provided that violation of the requirement under this clause shall attract an additional charge of 20% on the daily base DSM payable / receivable as the case may be.”

- i) Subsequently, the Commission introduced 5th Amendment to the said Regulations which came into effect on 03.06.2019 and allowed relief to some entities, on sign change provision i.e. sign violation charges as below:
- Renewable energy generators which are regional entities
 - Run of river projects without pondage

- c. Any infirm injection of power by a generating station prior to CoD of a unit during testing and commissioning activities, in accordance of the connectivity Regulations.
 - d. Any drawal of power buy a generating station for a start up activities of a unit.
 - e. Any inter regional deviations.
 - f. Forced outage of generating station in case of collective transaction on Power Exchange.
- j) However, such exemption was not available when the incidence under consideration occurred. If the relief sought by the petitioner is granted it would derail the existing regional pool account settlement system. It is worth noting that any surplus fund in the DSM Pool is transferred to the Power System Development Fund (PSDF) on monthly basis and this transfer is irreversible.
- k) The Commission vide RoP dated 04.04.2019 had directed the Petitioner to pay 25% of the sign violation additional charges and additional DSM charges by the due date, 15.04.2019 subject to the outcome in the instance petition. However, the Petitioner has extended the above temporary relief granted vide the said RoP without any express order or direction of the Commission, to the next two weeks i.e. 14.01.2019 to 27.01.2019 and paid only 25% (i.e. Rs.16,58,850) of the sign violation additional charges and additional DSM charges of Rs.66,35,402.
- l) The Petitioner is persistently delaying/ defaulting in the payment of the deviation charges and thus the payment due from the Petitioner stood at Rs. 22,80,571 (principal amount being Rs. 17,86,867 and interest due amount being Rs. 4,93,704) as on 06.12.2021.
- m) As per the Connectivity Regulation 2018, prior approval for drawal of infirm power from the grid for start-up and commissioning activities is taken by the generator prior to its CoD. After CoD there is no regulatory provision to draw infirm power by the generators after taking prior permission from the RLDC. Any power requirement for meeting auxiliary load by generating stations during the period of complete plant shutdown can be met through purchase of power from STOA bilateral or collective market.
- n) In the instant case, during the outage of Unit-2, the Petitioner could have purchased power from STOA bilateral or collective market to meet its start-up power requirement. However, the Petitioner chose to draw the energy for its auxiliary

without any schedule and is liable to pay the applicable charges under DSM Regulations.

- o) No relief may be allowed to the Petitioner in respect of additional deviation and sign violation charges under the DSM Regulations.

Written Submission of the Petitioner

11. The Petitioner vide written submission filed on 13.12.2021 has reiterated its submission made in the pleadings and as such the same are not repeated herewith for the sake of brevity. Additionally, the Petitioner has submitted as under:

- a) While it is liable to pay the deviation charges for the quantum scheduled through power exchange, the issue for consideration is whether the Petitioner is to be subjected to penalty by way of additional charges as per Regulation 7 (10) of the DSM Regulations.
- b) Admittedly, both the Unit-1 and Unit-2 were not operating during the relevant days. There was, therefore, no occasion for change of signage within the scope of Regulation 7(10) of the DSM Regulations (4th Amendment). Accordingly, the imposition of the penalty for violation of requirement under the said regulations does not arise.
- c) That it is bonafide in following the requirement of the above Regulations is clear from the fact that it had duly revised the schedules given for supply to long term, medium term contracted capacities namely other than the collective transactions with the time prescribed and did not commit any violation of Regulation 7 (10) of the DSM Regulations (Fourth Amendment).
- d) Therefore, the Commission ought to invoke its regulatory powers available under section 79(1)(c) of the Act to streamline the provisions of the Grid Code with DSM Regulations. It is settled law that regulatory powers, wherever granted under a statute, are extremely wide. The Petitioner has placed its reliance on the following case laws: *Cellular Operators Assn. of India v. Union of India*, reported in (2003) 3 SCC 186; *U.P. Power Corpn. Ltd. v. NTPC Ltd.*, reported in (2009) 6 SCC 235; *U.P. Coop. Cane Unions Federations v. West U.P. Sugar Mills Assn.*, reported in (2004) 5 SCC 430.
- e) It is also a well settled principle that law does not compel a man to do which he cannot possibly perform [*lex non cogit ad impossibilia*]. The Petitioner has placed its

reliance on the following case laws: *Presidential Poll, In re.* (1974) 2 SCC 33; *Raj Kumar Dey v. Tarapada Dey*, reported in (1987) 4 SCC 398; *Krishnaswamy S. Pd. v. Union of India*, reported in (2006) 3 SCC 286.

Analysis and decision

12. We have heard the Petitioner and the Respondent and have carefully perused the records.
13. The brief fact of the case is that the Petitioner has developed a 1200 MW (4 x 300 MW) Thermal Power Plant at Raigarh, Rajasthan. On 01.01.2019, only Unit-2 (300 MW) of the generating station was operating and generating electricity to meet the obligation to supply 13.5 MW to CSPTCL under long-term arrangement; 108 MW to NPCL under medium-term arrangement; 60 MW to Bihar Utility under short-term arrangement; and 44 MW under collective transaction through Indian Energy Exchange (IEX). At 13:20 hrs on 01.01.2019, a fire accident occurred in Unit-2 of the power plant leading to shutdown of the unit. The same day the Petitioner sent email to WRLDC informing about the tripping of Unit-2 and requesting to revise the load schedule as zero in respect of the 60 MW power to be supplied to Bihar under short term arrangement. The schedule of the Petitioner under STOA was revised to Zero. However, the schedule under collective transaction was not revised. The efforts made by the Petitioner to restart its Unit-1 (300 MW) to meet the obligations of Unit-2 could not materialise due to technical reasons and was synchronised only on 17:39 hrs on 06.01.2019. At the same time, the Petitioner kept on submitting schedule for collective transactions on IEX for delivery of Power on 02.01.2019, 03.01.2019, 04.01.2019, 05.01.2019 and 06.01.2019. As the Petitioner was not able to meet its schedules under collective transactions, WRLDC levied DSM charges, sign violation additional charges and additional DSM charges on the Petitioner for the duration between shut down of Unit-1 and synchronisation of Unit-2. On 18.02.2019, the final revised bill was raised by WRPC, imposing sign violation additional charge of Rs.17,402,400 and additional DSM charge of Rs.3,975,783 upon the Petitioner for violation under collective transactions. On 18.02.2019, the Petitioner requested WRPC for the waiver of the sign violation additional charges and additional DSM charges levied for the period from 01.01.2019 to 06.01.2019 in view of the occurrence of force majeure event. However, WRLDC turned down the request of Petitioner.
14. The main contention of the Petitioner is that sign violation additional charges and additional DSM charges levied on it for the period from 01.01.2019 to 06.01.2019 should be waived in

view of its generating units going under forced shut down due to fire accident/technical snag during the said period. The broad arguments put forth by the Petitioner in support of its prayers are as under:

- i. The forced shut down of the generating units are in the nature of force majeure and as such additional DSM charges should not be levied for the said period of force majeure that is for the period from 01.01.2019 to 01.06.2019.
- ii. As the generating units were under forced shut down due to fire accident, they had no alternative but to draw start-up power from the grid. As per Regulations 8(7) of the CERC Connectivity Regulations, a new generating station is allowed to draw start-up on payment of deviation charge. Though the Petitioner's generating units are not new generating units, they should also be extended the treatment at par with a new generation station/unit in view of the fire accident/technical snag.
- iii. The Petitioner was prevented from revising schedule to IEX on account of clause 5.5 read with Clause 11 of the '*Procedure of Short Term Open Access in Inter-State Transmission (Bilateral Transaction)*'. Therefore, additional charges cannot be levied on it as per regulation 7(10) of the DSM regulations (4th Amendment). Further, any additional charges should also not be imposed.
- iv. As per Regulation 6.5.19 of the Grid Code, collective transactions through power exchange are excluded from revision of schedule, whereas DSM Regulations are silent about such exclusion. Therefore, both these regulations need to be streamlined in the present case. The Commission ought to invoke its regulatory powers available under section 79(1)(c) of the Act to streamline the provisions of the aforesaid two regulations viz., the Grid Code and the DSM Regulations.
- v. DSM Regulations create deemed contract between parties and, therefore, it may be governed by the Indian Contracts Act, 1872. As per Section 56 of the Indian Contract Act, any act which becomes impossible at later a stage, the party ought to be exempted from its execution.
- vi. The Commission ought to invoke Regulation 12 of the DSM Regulations and exercise powers to relax to mitigate the hardship of the Petitioner and waive sign violation charges and additional DSM charges imposed on the Petitioner.

15. We now proceed to deal with each of the aforesaid arguments made by the Petitioner in subsequent paragraphs.

16. The first argument of the Petitioner is that the fire accident/technical snag in the generating units of the Petitioner are in the nature of Force Majeure and are required to be treated as such. The Petitioner has referred to Regulation 2(1)(ff) and Regulation 2(1)(gg) of the Grid Code to claim that the forced shut down due to fire accident should be treated as Force Majeure event. The relevant Regulations of Grid Code are quoted as under:

“Regulation 2(1) (ff):

“Force Majeure” means any event which is beyond the control of the persons involved which they could not foresee or with a reasonable amount of diligence could not have foreseen or which could not be prevented and which substantially affects the performance by person such being the following including but not limited to :-

- a) Acts of God, natural phenomena, floods, droughts, earthquakes and epidemics;*
- b) Enemy acts of any Government domestic or foreign, war declared or undeclared, hostilities, priorities, quarantines, embargoes;*
- c) Riot or Civil Commotion;*
- d) Grid’s failure not attributable to the person.*

Regulation 2(1) (gg):

“Forced Outage” means an outage of a Generating Unit or a transmission facility due to a fault or other reasons which has not been planned;”

17. The Commission observes that “forced outage” is defined under the Grid Code as “an outage of a generating unit or a transmission facility due to a fault or other reasons which has not been planned”. The term “forced outage” has been used in contradistinction to the “planned outage” which is decided in advance for reasons of maintenance, etc. Therefore, any unplanned outage on account of unforeseen circumstances falls within the scope of forced outage and not under Force Majeure. WRLDC has also categorically stated in its written submission that unit tripping is a very common event in grid operation and it cannot be considered to be a Force Majeure event. The Commission further observes that even if such an event is treated as Force Majeure in terms of Regulation 2(1)(ff) of the Grid Code as contended by the Petitioner, no relief can be claimed in the absence of any specific provision in this regard in the Grid Code.

18. The second argument of the Petitioner is that with due regard to the special circumstances arising out of fire accident/technical snag, the start-up power drawn by its generating units should be extended the treatment akin to the start-up power drawn by a new generating

station in terms of Regulation 8(7) of the CERC Connectivity Regulations. The Commission notes that Clause (7) of Regulation 8 of the CERC Connectivity Regulations stipulates as under:

“(7) Notwithstanding anything contained in Clause (6) of this Regulation and any provision with regard to sale of infirm power in the Power Purchase Agreement, a unit of a generating station including a captive generating plant which has been granted connectivity to the inter-State Transmission System in accordance with these regulations shall be allowed to inter-change infirm power with the grid during the commissioning period, including testing and full load testing before the COD, after obtaining prior permission of the concerned Regional Load Despatch Centre for the periods mentioned as under:-

(a) Drawal of Start-up power shall not exceed 15 months prior to the expected date of first synchronization and 6 months after the date of first synchronization.

(b) Injection of infirm power shall not exceed six months from the date of first synchronization.

Provided that drawal of Start-up power shall be subject to payment of transmission charges and the generator shall have to open a Revolving and Irrevocable Letter of Credit issued by a Scheduled Bank equivalent to 2 months transmission charges prior to drawal of Start-up power.

Provided further that the Start-up power shall not be used by the generating station for the construction activities;

Provided further that RLDC shall stop the drawl of the Start-up Power in the following events:

(a) In case, it is established that the Start-up power has been used by the Generating Station for construction activity.

(b) In case of default by the Generating Station in payment of monthly transmission charges to the transmission licensee for the drawal of Start-up power, on the request of the transmission licensee.

Provided that the Commission may in exceptional circumstances, allow extension of the period for inter-change of power beyond the period as prescribed in this clause, on an application made by the generating station at least two months in advance of completion of the prescribed period:

Provided further that the concerned Regional Load Despatch Centre while granting such permission shall keep the grid security in view:

Provided also that the onus of proving that the interchange of infirm power from the unit(s) of the generating station is for the purpose of commissioning activities, testing and commissioning, shall lie with the generating company and the respective RLDC shall seek such information on each occasion of

interchange of power before COD. For this, the generating station shall provide RLDC sufficient details of the specific commissioning activity, testing and full load testing, its duration and intended period of interchange, etc:

Provided also that the infirm power so interchanged by the unit(s) of the generating plant shall be treated as deviation and the generator shall be paid/charged for such injection/drawal of infirm power in accordance with the provisions of the Central Electricity Regulatory Commission (Deviation Settlement Mechanism and related matters) Regulations, 2014, as amended from time to time or subsequent re-enactment thereof.”

19. The Commission observes that the aforesaid provision carves out a special dispensation for a generating station during its commissioning period and that too after obtaining prior permission of the concerned RLDC. Neither of these conditions is fulfilled in case of the Petitioner’s generating units in the instant case and hence, the Commission does not find any merit in the argument of the Petition that the start-up power drawn by its generating units be treated at par with that for a new generating station in terms of Regulation 8(7) of the CERC Connectivity Regulations.

20. The third argument of the Petitioner is that it was prevented from revising schedule to IEX on account of Clause 5.5. read with Clause 11. of the ‘*Procedure on Short Term Open Access in inter-State Transmission (Bilateral Transaction)*’ and therefore additional charges as per Regulation 7(10) of the DSM Regulations (4th Amendment) should not be imposed on it. The relevant provision of the aforesaid short term open access procedure is quoted as below:

5. PROCEDURE FOR ADVANCE SCHEDULING OF BILATERAL TRANSACTION

...
5.5. *While processing the Applications, the Nodal RLDC shall seek the concurrence of each of the other RLDCs involved in the transaction by 12:00 Hrs. on next day of the applicable last date for submission of Application.*

.....

11. REVISION OF SCHEDULE

11.1. *The Short-Term Open Access Schedules accepted by the Nodal RLDCs in case of “Advance Scheduling” or “First-Cum-First Served basis” may be cancelled or revised downwards by the Applicant by giving minimum two (2) days notice. The notice period shall be excluding the day on which notice is served and the day from which revised schedules are to be implemented.*

11.2. *The accepted schedules for Day-Ahead transactions and transactions in a Contingency shall not be revised or cancelled.*

11.3. The Applicant, who has requested for revision or cancellation of the accepted schedule as above, shall pay the Transmission Charges and Operating Charges as per the originally accepted schedule, if the period of revision or cancellation is upto two (2) days. If the period of revision or cancellation exceeds two(2) days, the Transmission Charges and Operating Charges for the period beyond two (2) days shall be payable as per the revised accepted schedule and for the first two (2) days as per the original schedule.

21. The Petitioner has argued that as per the aforesaid provisions of the procedure, there is no scope for the Petitioner to revise its schedule after 1200 Hours. This led to deviation from schedule and consequent imposition of additional DSM charges on the Petitioner in terms of Regulation 7(10) of the DSM Regulations (4th Amendment).

22. The Commission's unequivocal position has been that the procedures are made in terms of the substantive provisions of the Regulations. In the instant case, the procedure for short term open access has been made in compliance with the following provisions of the Short Term Open Access Regulations read with the Grid Code.

23. The relevant provision of the Open Access Regulations (Amendment 2009) is quoted as below:

“15(1) The Regional Load Despatch Centre may curtail power flow on any transmission corridor by cancelling or re-scheduling any transaction, if in its opinion cancellation or curtailment of any such transaction is likely to relieve the transmission constraint on the corridor or to improve grid security:

Provided that subject to provisions of the Grid Code, while cancellation or curtailment of any transaction, among short-term, medium-term and long-term transactions, short-term transactions shall be cancelled or curtailed first, followed by medium -term and thereafter long term–transactions:

Provided further that while cancelling or curtailing any short-term transaction, bilateral transactions shall be cancelled or curtailed first followed by collective transactions.”

24. The relevant provision of the Grid Code is quoted as below:

“6.5.19. Notwithstanding anything contained in Regulation 6.5.18, in case of forced outage of a unit of a generating station (having generating capacity of 100 MW or more) and selling power under Short Term bilateral transaction (excluding collective transactions through power exchange), the generator or electricity trader or any other agency selling power from the unit of the generating station shall immediately intimate the outage of the unit along with the requisition for revision of schedule and estimated time of restoration of the unit, to SLDC/RLDC, as the case may be. The schedule of beneficiaries, sellers and buyers of power from this generating unit shall

be revised accordingly. The revised schedules shall become effective from the 4th time block, counting the time block in which the forced outage is declared to be the first one. The SLDC/RLDC as the case may be shall inform the revised schedule to the seller and the buyer. The original schedule shall become effective from the estimated time of restoration of the unit. However, the transmission charges as per original schedule shall continue to be paid for two days.”

*“6.5.27. When for the reason of transmission constraints e.g. congestion **or in the interest of grid security**, it becomes necessary to curtail power flow on a transmission corridor, the transactions already scheduled may be curtailed by the Regional Load Despatch Centre.”*

“6.5.28. The short-term customer shall be curtailed first followed by the medium-term customers, which shall be followed by the long term customers and amongst the customers of a particular category, curtailment shall be carried out on pro rata basis.”

“6.5.30. Collective Transaction through Power Exchange(s) would normally be curtailed subsequent to the Short Term Transaction(s).”

25. It is evident that in various Regulations, the Commission has specified in clear terms that collective transactions through power exchange cannot be revised under normal circumstances. The rationale behind such a provision is that unlike long term, medium term and short term contracts which are in the nature of one to one contract between buyers and the sellers who could be identified, contracts under collective transactions are collective in nature and one to one relationship between buyer and seller cannot be established. Revision of schedule of the identified buyers and sellers under all types of contracts except collective transaction is possible without any procedural constraint or commercial consequences. However, given the nature of collective transactions, revision of schedule of such collective transactions could lead to procedural as well as commercial difficulties in term of energy accounting and settlement. For example, if such revision of schedule under collective transactions in case of forced outage of generation is accepted, this could lead to imposition of undue cost on the Discoms and other consumers by way of deviation charges for no fault of theirs. In other words, the commercial risks of the generators associated with forced outage instead of being borne by the generating station itself will get passed on to the Discoms and consumers.
26. The Commission further notes in the instant case that the Petitioner continued to submit sell bid in Power Exchange for subsequent days i.e. for 2nd, 3rd, 4th and 5th of January 2019 even though the Unit-2 of the Petitioner had not stabilised. The Petitioner chose to submit

the sell bid in the power exchange being fully aware that the schedules would be cleared as collective transactions and could lead to liability of deviation charges, additional deviation charges and sign violation additional charges applicable under the DSM Regulation. Clearly, the Petitioner took a calculated business risk which went wrong and it has to bear the consequences for the same.

27. In view of the above discussions, the argument of the Petitioner that it was prevented from revising schedule because of the Short Term Open Access procedures and therefore, should not be levied additional charges under DSM Regulations does not sustain.
28. The fourth argument of the Petitioner is that collective transactions are excluded from revision as per Regulations 6.5.19 of the Grid Code whereas DSM Regulations are silent about any such exclusion and therefore there is a need for streamlining the provisions of Grid Code and DSM Regulations. The Petitioner has requested the Commission to exercise its Regulatory Powers under section 79 (1) (c) of the Act for this purpose.
29. The Commission finds this argument of the Petitioner to be far-fetched. It is a common knowledge to all market participants that scheduling and despatch and consequent provisions relating to revision of schedule are codified in the Grid Code. DSM Regulations in no way deal with either scheduling or revision of the schedule. DSM Regulations kick-in only after schedules as finalised in terms of the provisions of the Grid Code are violated, that is, when the grid connected entity deviates from the schedule decided by the system operator in terms of the provisions of the Grid Code. By no stretch of imagination can there be any provision relating to revision of schedules in the DSM regulations. The argument of the Petitioner, therefore, seems to reflect lack of understanding of the well-established procedure of the scheduling, dispatch and deviation from schedule as are so clearly articulated in the Grid Code and the DSM regulations. In view of the above, the Commission does not find any merit in the contention of the Petitioner that the provisions of the Grid Code and DSM Regulations need be further streamlined.
30. Further, the Petitioner has requested the Commission to exercise its regulatory powers in this context. The Commission would like to refer to Hon'ble Supreme Court judgment dated 11.04.2017 in the case titled *Energy Watchdog Versus Central Electricity Regulatory Commission and Ors. etc. Civil Appeal Nos.5399-5400 of 2016* as stated in the context of

regulatory powers of the Commission under section 79 (1) (b) of the Act that *“it is only in a situation where there are no guidelines framed at all or where the guidelines do not deal with a given situation that the Commissions general regulatory powers under Section 79(1)(b) can then be used.”*

31. From the above it follows that the need for the Commission to invoke regulatory powers arises only in cases where there are no clear provisions in the guidelines or regulations to deal with any given situation. In the instant case there are clear provisions in various regulations of the Commission dealing with circumstances of forced outage, treatment of scheduling and deviation from schedule in case of collective transactions through power exchange. The concerned agencies (WRLDC and the Power Exchange) have acted strictly as per the provisions of the said regulations. As such, the Commission does not find any rationale for invoking regulatory powers in the instant case.

32. Fifth argument of the Petitioner is that the DSM regulations create a deemed contract between the parties and therefore it should be governed by the Indian Contract Act, 1872. As per Section 56 of the said Act, if any act becomes impossible at a later stage, the parties ought to be exempted from its execution.

33. The Commission once again finds a lack of understanding of the Petitioner about the framework of DSM. The word contract is interpreted/defined in the Indian Contract Act, 1872 as under:

“2. Interpretation-clause.—In this Act the following words and expressions are used in the following senses, unless a contrary intention appears from the context:—

(a) When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal;

(b) When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted, becomes a promise;

(c) The person making the proposal is called the “promisor”, and the person accepting the proposal is called the “promisee”;

(d) When, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise;

(e) Every promise and every set of promises, forming the consideration for each other, is an agreement;

(f) Promises which form the consideration or part of the consideration for each other are called reciprocal promises;

(g) An agreement not enforceable by law is said to be void;

(h) An agreement enforceable by law is a contract;
(i) An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others, is a voidable contract;
(j) A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable.”

34. One of the premises of any contract is that there is a proposal from one person and the same is accepted by the other and such agreement is enforceable by law. There is no such proposal or agreement in case of deviation from schedule. As per the Electricity Act, 2003, the system operators are required to schedule based on the contract. Thus, scheduling based on contracts forms part of the Grid Code. Deviation Settlement Mechanism by design is a commercial deterrent against deviation from schedule and has no element of Contract. These regulations merely provide that the grid connected entity shall be liable to pay deterrent charges for deviation, for instance in the instant case DSM charges, sign violation additional charges and additional DSM charges because of deviation from the schedule finalised by way of a contract settled through collective transactions of power exchanges.
35. In view of the above, the argument of the Petitioner that the DSM Regulations create a deemed contract does not sustain and accordingly there is no case for application of Section 56 of the Indian Contract Act in the instant case.
36. In view of the observations made in the preceding paragraphs, the Commission does not find any ground to invoke its powers to relax under Regulation 12 of the DSM Regulations in the present case. Accordingly, the prayer of the Petitioner for waiver of sign violation additional charges and additional DSM charges for the period from 01.01.2019 to 06.01.2019 is rejected.
37. Accordingly, the Petition No. 90/MP/2019 is disposed of in view of the above.

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