



U.P. SUGAR MILLS
COGEN ASSOCIATION



Ref. No.: 027/Cogen/2024

May 16th, 2024

To,

The Secretary,
Central Electricity Regulatory Commission,
3rd & 4th Floor, Chanderlok Building,
36, Janpath Road,
New Delhi -110001

Kind Attn.: Shri Harpreet Singh Pruthi

Sub.: Representation against the Draft Central Electricity Regulatory Commission (Deviation Settlement Mechanism and Related Matters) Regulations, 2024 ('Draft DSM Regulations')

Ref.: Public Notice dated 30.04.2024 issued by the Ld. Commission inviting comments/ suggestions/ objections on the Draft DSM Regulations

Sir,

In response to the above-referred public notice, the U.P. Sugar Mills Cogen Association (**'UPSMCA'**) seeks to submit the following:

1. UPSMCA is a representative body of sugar mills in the State of Uttar Pradesh. It has forty-two (42) members who are engaged in generation of power through bagasse-based cogeneration plants. The association is registered under the Uttar Pradesh Societies Registration Act, and has its office at 4th floor, Room No. 403, Chintels House, Trade Centre, 16 Station Road Lucknow - 226001. Shri Deepak Guptara, the undersigned herein, is the Secretary General of UPSMCA and is authorized to represent the association before this Hon'ble Commission in the present proceedings.
2. UPSMCA is making the present representation espousing the cause of its members sugar mills who own and operate bagasse-fired cogeneration plants. The concerns which we are espousing here resonate with all the bagasse-based cogeneration plants and reflect the collective plight of the industry.
3. At the outset, we must clarify that we have an in-principle disagreement on application of Deviation Settlement Mechanism (**'DSM'**) to cogeneration plants, and the meting out of same treatment to cogeneration plants as to any other



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thermal power plant ('**TPP**') w.r.t. DSM. We shall, therefore, confine our submissions to this issue. At this stage we are not addressing ourselves to other provisions of the Draft DSM Regulations. We, however, reserve our right to make further submissions on the Draft DSM Regulations at an appropriate stage and at the time of oral hearing in the matter.

4. The Draft DSM Regulations categories generating companies into four (4) categories, namely, (i) General seller, (ii) WS seller i.e. wind / solar / hybrid generators, (iii) Run-of-River (RoR) generators, and (iv) Municipal Solid Waste (MSW) generators. The cogeneration plants have been bunched under the General seller category along with all other generating stations including TPPs.
5. The DSM treatment proposed for all of these four categories of generators is different. The Draft DSM Regulations has recognised and created separate standards and penalties for different types of power generating plants. The separate categories have been brought about in consideration of the fact that different types of generators have different operational challenges and a uniform applicability of DSM on such generators will be unreasonable and discriminatory.
6. The Draft DSM Regulations recognises that power plants generating power from different sources face different constraints and operational parameters. It is for this reason that separate penalties and schedule compliance levels are imposed in case of deviation by different types of power plants.
7. However, as stated above, cogeneration plants have been arrayed along with any other generating station. In our respectful submission this non-acknowledgement of the unique characteristics of a bagasse-based cogeneration plant and to treat them like any other generating station, especially like TPPs, is the root cause of our trepidation. There has been absolutely no regulatory recognition of the underlying features of a bagasse-based cogeneration plant which distinguishes it from any other RE-based plant or TPP.
8. In this regard we wish to highlight that bagasse-based cogeneration plants do not have the means to ensure 100% accurate scheduling of power and, therefore, TPPs and cogeneration plants do not stand on the same footing. A bagasse-based cogeneration plant is subject to a lot of uncertainty and externalities which makes it impossible for it to strictly adhere to the schedule provided by it. The availability of fuel (i.e. bagasse), for example, is subject to the seasonality, competition for alternate use, grade of the bagasse available, festivals, etc. Furthermore, unlike a coal based thermal power plant, the generation of electricity in bagasse-based co-generation plant is an ancillary





activity. The primary business is that of the operation of sugar mills and the requirement of steam in the operation of such sugar mills. The generation of electricity cannot be confined to the narrow brackets of the schedule provided for the simple reason that operation of the sugar mills depends inter alia, on factors like variation of plant load factor, the quantity of cane becoming available for crushing, changes in steam requirement (being a critical product of co-generation) in the back pressure turbines depending on the load that has to be handled. All such points are independent of the electricity generated and due to their critical nature cannot be made subject to electricity generation being scaled up or down for adherence to the schedule.

9. It must be appreciated that a TPP is engaged in the primary business of generation of electricity with a certain level of security with respect to availability of fuel i.e. coal from the supplier. Due to such fuel security and generation of electricity being the priority, it is possible for the coal based thermal power plants to adhere to the schedule provided. However, in contrast, for a bagasse-based co-generation plant, there are innumerable factors, some of which have been highlighted hereinabove, that make it impossible to strictly adhere to the schedule provided for generation of electricity as adjustments to generation have to be made on the go depending on inter alia, the plant requirements, sugar mill requirements, fuel availability¹.
10. Similarly, a co-generation plant cannot be compared to a wind / solar / wind-solar hybrid power project for the applicability of DSM. The above technologies have been aggressively supported by the government and have consequently grown and progressed to an extent that forecasting their generation have become a relatively reliable phenomenon. The ability to schedule along with the purpose of generation between a co-generation power plant and other RE power plants are incomparable. Other RE projects like a TPP are set up with the primary purpose of generating electricity and they do not generate any other form of useful energy. Therefore, unlike a cogeneration plant, they are not restricted in their generation of power. A cogeneration plant on the other hand also generates steam as a source of energy for the sugar mills which has to be maintained at a certain level which restricts its ability to generate power as well.

¹ There is no certainty for cane supply to sugar factories. Further, harvested cane cannot be stored. It has to be harvested and brought to the cane yard for crushing within six hours to ensure 'Non-Inversion' of sucrose. Therefore, there are recurring instances of 'No-Cane' leading to sudden unpredictable stoppages. The variable bagasse quantities are directly fed to the cogeneration boilers immediately after cane crushing and no storage of large quantities of bagasse is available during the crushing operations. Hence, the power generation from the available varying quantities of bagasse also varies frequently every hour and within the hour also.





11. It is a settled principle of law that for state action / legislation (which creates classifications), to pass muster under Article 14 of the Constitution of India, the classification needs to be founded on intelligible differentia and the differentia should have a rational relation to the object sought to be achieved. Article 14 further embeds in itself the principle that equals should not be treated unequally and unequal(s) should not be treated equally.
12. In *Association for Democratic Reforms and Anr. v. Union of India and Ors.*² (**'ADR case'**) the Hon'ble Supreme Court vide its judgement dated 15.02.2024 has reiterated that State action whether executive or legislative, can be struck down for being contrary to Article 14 if it is not reasonable and is manifestly arbitrary. Manifest arbitrariness has been explained by the Hon'ble Supreme Court in *Sharma Transport v. Government of Andhra Pradesh*³ as something which is done in an unreasonable manner, capriciously or at pleasure, without adequate determining principle, non-rational and basis will alone without adhering to reason. In addition to the above grounds for applicability of manifest arbitrariness, the Hon'ble Supreme Court in the ADR case (supra) has laid down the following parameters:

"194. ...[T]his Court has applied the standard of "manifest arbitrariness" in the following manner:

- a. A provision lacks an "adequate determining principle" if the purpose is not in consonance with constitutional values. In applying this standard, Courts must make a distinction between the "ostensible purpose", that is, the purpose which is claimed by the State and the "real purpose", the purpose identified by Courts based on the available material such as a reading of the provision; and
- b. A provision is manifestly arbitrary even if the provision does **not** make a classification.

195. ... [T]he legislature and the executive makes classifications to achieve factual equality. The underlying premise of substantive equality is the recognition that not everybody is equally placed and that the degree of harm suffered by a group of persons (or an individual) varies because of unequal situations. This Court has in numerous judgments recognized that the legislature is free to recognize the degrees of harm and confine its benefits or restrictions to

² 2024 INSC 113

³ (2002) 2 SCC 188





those cases where the need is the clearest. The corollary of the proposition that it is reasonable to identify the degrees of harm, is that it is unreasonable, unjust, and arbitrary if the Legislature does not identify the degrees of harm for the purpose of law.

(Emphasis Supplied)

13. This Hon'ble Commission has a bounden duty to identify the degree of harm being caused while extending the DSM dispensation to different types of power plants. It is basis such identification that this Hon'ble Commission can create differing categorisation / classification and deviation charges for plants running on different sources of power. The degree of harm which can be anticipated from a TPP is incomparable to that of a cogeneration plant. Generally, the TPPs have capacities in the range of hundreds and thousands of MW, whereas co-generation plants are small scale projects rarely exceeding 25 MW. As an illustration, it can be considered that if a TPP of 1000 MW deviates from its schedule by 10%, the grid will be burdened to the tune of 100 MW. Similarly, if a large size cogeneration plant of 25 MW deviates by 10%, the load on the grid would be to the tune of 2.5 MW. This Hon'ble Commission should reconsider the degree of harm being visited by a TPP vis-à-vis a cogeneration plant in case of deviation before clubbing them together.
14. Furthermore, the operational parameters and challenges along with fuel availability and generation certainty between a TPP and a cogeneration plant are so unequal that clubbing them together for the purposes of applying DSM and, computing and imposing deviation charges is manifestly arbitrary.
15. It is reiterated that a cogeneration plant is fundamentally different in its intent of generation, manner of operation and requirement of power than a TPP or projects based on other RE sources. This Hon'ble Commission while exercising the power of issuing delegated legislation under the Electricity Act, 2003 (**'Act'**) needs to make a separate classification for cogeneration plants as not doing so will fall afoul of Article 14 of the Constitution of India.
16. The Act saddles this Hon'ble Commission with a duty to promote generation of power from renewable sources and cogeneration sources. However, the impact of clubbing cogeneration with thermal power is that the exorbitant deviation charges levied on small scale cogeneration projects are disincentivizing further investment in setting up such projects. The ostensible purpose behind the issuance of the Draft DSM Regulations is to ensure security of the grid and recover from deviating entities, the charges that are actually incurred for





maintaining grid stability keeping in mind the level of control such entities might have in injection or drawal of power. However, such a purpose is not being served if cogeneration plants are made comparable to either TPPs or other sources of RE power.

Hence, in view of the aforesaid submissions, it is our humble request that a separate mechanism be carved out for bagasse-based cogeneration plants in consideration of their unique position and in consideration of their restraints and the degree of harm to be expected by way of their deviation. Hon'ble Commission, for instance, in order to avoid operational complexities, may consider specifying a threshold capacity thereby excluding the cogeneration plants below such threshold from applicability of DSM, as is being followed in Maharashtra.

We would urge for an opportunity to participate and make submissions at the time of the public hearing on Draft DSM Regulations.

Thanking you.

With Regards,

Yours faithfully,

for U.P. Sugar Mills Cogen Association

Deepak Gupta

(Deepak Gupta)
Secretary General

