



नई दिल्ली

NEW DELHI

याचिका संख्या./ Petition No. 160/MP/2024

श्री जिष्णु बरुआ, अध्यक्ष/Shri Jishnu Barua, Chairperson
श्री अरुण गोयल, सदस्य/ Shri Arun Goyal, Member
श्री पी. के. सिंह, सदस्य / Shri P. K. Singh, Member

आदेश दिनांक/ Date of Order: 19th of May, 2024

IN THE MATTER OF:

Petition under Section 79 of the Electricity Act, 2003 challenging levy of penalty by Southern Regional Power Committee for alleged deviation by Renew Surya Ojas Private Limited from the schedule, being contrary to Central Electricity Regulatory Commission (Deviation settlement mechanism and related matters) Regulations, 2022.

AND IN THE MATTER OF:

ReNew Surya Ojas Private Limited
138, Ansal Chambers-II,
Bhikaji Cama Place, Delhi- 110 066

...Petitioner

Versus

- Southern Regional Power Committee,**
No. 29 Race Course Cross Road, Nehru Nagar,
Gandhi Nagar, Bengaluru- 560009
- Southern Regional Load Despatch Centre,**
No. 29 Race Course Cross Road,
Bengaluru- 560009

- 3. Solar Energy Corporation of India Limited,**
6th Floor, Plate-B, NBCC Office Block Tower-2,
East Kidwai Nagar, New Delhi – 110023

...Respondents

Parties Present: Shri Sanjay Sen, Senior Advocate, RSOPL
Ms. Neha M. Dabral, Advocate, RSOPL
Shri Girik Bhalla, Advocate, RSOPL
Ms. Anamika Rana, Advocate, RSOPL
Shri Agam Kumar, RSOPL
Shri Nadim Ahmad, SRLDC
Shri Alok Mishra, SRLDC

आदेश/ ORDER

The Petitioner, M/s ReNew Surya Ojas Private Limited (RSOPL), is a Special Purpose Vehicle incorporated by M/s ReNew Solar Power Private Ltd. (RSPPL) for developing and commissioning a 300 MW Hybrid RE power Project located at Koppal ISTS substation, Karnataka. In the petition, the Petitioner has challenged the levy of penalty by the Southern Regional Power Committee for deviation in infirm power being scheduled under Section 8(3) of the *Central Electricity Regulatory Commission (Deviation Settlement Mechanism and Related Matters) Regulations, 2022 (DSM Regulations, 2022)*. Consequently, the Petitioner is seeking a refund of excess amounts that have been erroneously levied by Southern Regional Load Despatch Centre by considering the Petitioner as a general seller instead of a WS Seller.

2. Respondent No. 1, Southern Regional Power Committee (SRPC), is constituted to facilitate the stability and smooth operation of the integrated grid and the economy and efficiency in the operation of the power system in the Southern region of India.
3. Respondent No. 2, Southern Regional Load Despatch Centre (SRLDC), is responsible for optimum scheduling and despatch of electricity in accordance with the contracts entered into with the licensees or the generating companies operating in the Southern Region of India.

4. Respondent No. 3, Solar Energy Corporation of India Limited (SECI), is a Government of India enterprise under the administrative control of the Ministry of New and Renewable Energy (MNRE) and functions as the implementing and facilitating arm of the National Solar Mission for the development, promotion, and commercialization of solar energy technologies in the country.
5. The Petitioner has made the following prayers:
- Direct the Respondent / Southern Regional Power Committee to revise the Deviation Settlement Account Statement dated 05.03.2024, 12.03.2024, 19.03.2024 (revised vide Deviation Settlement Account Statement dated 26.03.2024), 26.03.2024 and 02.04.2023 by levying deviation charges as applicable to WS Seller.*
 - Going forward, direct SRPC and SRLDC to levy deviation charges as applicable to a WS Seller for any deviation by the Petitioner.*
 - Set aside the email dated 30.03.2024 and 03.04.2024 issued by SRLDC / Respondent No. 2 to the Petitioner threatening coercive actions against the Petitioner after 07.04.2024.*
 - Direct SRLDC to refund the excess amount of Rs. 1,97,66,864/- from the amounts paid by the Petitioner.*
 - Direct SRLDC to pay interest / late payment surcharge if there is any delay in refunding the amounts.*
 - In the interim, no coercive steps be taken against the Petition towards recovery of the deviation charges going forward, till final adjudication of the present petition; and*
 - Pass such other order or orders which are deemed fit and proper in the facts and circumstances of the case.*

Factual Matrix

6. The brief facts of the case are as under:

Events	Date
Request for Selection No. SECI/ C&P/HPD/ISTS-VII/RfS/1200MW/082019 issued on	01.08.2019
Location	State of Karnataka
Nodal Agency	SECI

Applicable Tariff (Two parts)	<i>Rs.2.88/kWh Off-Peak Rs. 6.85/kWh Peak</i>
Capacity (MW)	300 MW
Power (322.45 MW Wind, 81 MW Solar and 75 MW BESS component)	Hybrid
PPA executed on	31.08.2022
Effective date of PPA	31.08.2022
The Commission passed order in Petition No. 16/SM/2022 exercising its power to remove difficulty under Regulation 12 of the <i>DSM Regulations, 2022</i>	26.12.2022
Hon'ble High Court of Delhi passed order in W.P. (C) No. 270 of 2023 titled <i>National Solar Energy Federation of India & Ors. vs. Union of India & Ors.</i> thereby directing that no coercive steps shall be taken pursuant to <i>DSM Regulations, 2022</i> till the next date of hearing	12.01.2023
The Commission passed order in Petition No. 1/SM/2023 in supersession of order dated 26.12.2022 passed in Petition No. 16/SM/2022 in exercise of its powers under Regulation 11 and Regulation 12 of the <i>DSM Regulations, 2022</i>	06.02.2023
RSOPL commenced trial operations for 225 MW wind capacity out of the total 322.45 MW wind component and since then power generated during trial run is being scheduled and sold in the power market	20.02.2024 onwards
SCoD as per PPA	29.02.2024
Extended SCoD by SECI vide letter dated 23.02.2024	11.12.2024
SRPC issued Deviation Settlement Account Statements (DSAS) for the corresponding week levying penalty on RSOPL for the infirm power being injected in the grid under <i>DSM Regulations 2022</i> .	05.03.2024 12.03.2024 19.03.2024 26.03.2024 and 02.04.2024

7. The instant petition, along with I.A. No. 223 of 2024, was filed on 20.04.2024. During the hearing held on 01.05.2024, I.A. No. 223 of 2024 was disposed of by the Commission. The Commission further directed the Respondents to file their replies within 3 days, with a copy to the Petitioner and directed the Petitioner to submit its Rejoinder on Replies, if any, within 2 days. The Petition was again listed for hearing on 08.05.2024. During the course of the hearing on 08.05.2024, the Commission, after hearing the submissions of the parties, reserved the matter for orders.

Submission of the Petitioner

8. Briefly, RSOPL has submitted as under:

- a. On 31.08.2022, RSOPL executed a PPA with SECI for the development, generation and supply of 300 MW power from the project comprising 322.45 MW Wind, 81 MW Solar, and 75 MW BESS component (300 MW Hybrid Power Project) to be established in the State of Karnataka wherein the SCoD of the project was 29.02.2024.
- b. From 20.02.2024 onwards, RSOPL commenced trial operations for 225 MW wind capacity out of the total 322.45 MW wind component.
- c. On 23.02.2024, through its letter SECI extended the SCoD of the project to 11.12.2024, i.e. by 286 days.
- d. Since the start of the trial run, SRPC is levying penalties on the infirm power being injected into the grid.
- e. However, the DSM Day-wise Statement for WS Sellers provided along with the Deviation Settlement Account Statements (DSAS) dated 05.03.2024, 12.03.2024, and 19.03.2024 (letter revised by DSAS 26.03.2024) does not specify the quantum of deviation in electricity injection in RSOPL's case.
- f. SRPC had categorised RSOPL under the WS Seller category in the DSAS.
- g. On 22.03.2024, RSOPL requested the Superintending Engineer (Commercial), SRPC, to withdraw the DSAS dated 05.03.2024, 12.03.2024, and 19.03.2024 wherein the deviation penalty on the project was computed based on Regulation 8(3) of *DSM Regulations, 2022* amended through the Commission Order in Petition 1/SM/2023 dated 06.02.2023 (*Order dated 06.02.2023*) and to issue revised DSAS in terms of Regulation 8(1) of the *DSM Regulations, 2022* as amended by the Commission through the *Order dated 06.02.2023*.

It also *inter alia* submitted as under:

- i. The penalty levied on RSOPL in terms of Regulation 8 (3) of the DSM Regulations 2022 is untenable since Regulation 8(1) provides the charges applicable to WS Seller on account of deviation from schedule.
- ii. Project undertaken by RSOPL is currently under trial operations preceding commercial activity, and the power generated during this phase is being scheduled through the Power Exchange.

- iii. Since the power generated during the trial phase is of a scheduled nature, the same cannot be termed as infirm power. Therefore, the penalty levied by SRPC in terms of Section 8(3) of the DSM Regulations is erroneous as it is not applicable in RSOPL's case.
- iv. The Hon'ble High Court of Delhi, vide its order dated 12.01.2023 passed in W.P. (C) No. 270 of 2023, has directed that no coercive steps shall be taken pursuant to the *DSM Regulations, 2022*.
- h. On 22.03.2024, SRLDC wrote to RSOPL regarding pending dues in terms of charges levied under *DSM Regulations 2022* for various SPVs of ReNew, as under:
 - i. Total pending DSM payments for all SPVs of ReNew have reached Rs. 8.78 Crores, and the payment of the penalty levied on RSPPL in terms of DSM Regulations 2022 has been pending for more than 30 days.
 - ii. If payments of dues levied in terms of the *DSM Regulations 2022* are not settled by 29.03.2024, SRLDC will be constrained to take coercive measures of restricting the schedules with effect from 01.04.2024.
 - iii. Given that the weekly penalty levied on RSOPL in terms of DSM Regulations 2022 exceeds Rs. 1 Crore, accordingly, RSOPL is advised to improve the forecast, necessary portfolio management for infirm power, and reduce the under-injection to reduce its liability in terms of DSM Regulations 2022.
- i. On 26.03.2024, SRPC wrote to RSOPL that:
 - i. In terms of Regulation 3 (69) of the *Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2023 (IEGC Regulations, 2023)*, infirm power is the electricity injected into the grid prior to commercial operation of the generating station.
 - ii. Charges for deviation for drawal of start-up power or injection of infirm power shall be levied as per DSM Regulations 2022.
 - iii. In terms of Para 27(3) of the Order dated 06.02.2023, the proviso to Regulation 8(3) of the DSM Regulations inter alia provides that if infirm power is being scheduled, for deviation in injection of infirm power, charges shall be as applicable for a general seller.
- j. On 28.03.2024, SRLDC informed RSOPL as under: -

- i. Payment of charges levied in terms of the DSM Regulations 2022 amounting to over Rs. 8 Crores for ReNew's projects is still pending.
 - ii. Payment of charges levied on RSOPL in terms of DSM Regulations 2022 amounting to over Rs. 3 Crores is pending.
 - iii. If payment of dues in terms of charges levied under DSM Regulations 2022 is not received by 02.04.2024, SRLDC will initiate the process for encashment of a letter of credit.
- k. On 30.03.2024, SRLDC again informed RSOPL regarding pending dues in terms of charges levied under DSM Regulations 2022, *inter alia*, stating:
- i. Since ReNew has taken steps towards clearing pending statutory payments in terms of the *DSM Regulations 2022*, no action is currently being envisaged by SRLDC against RSOPL.
 - ii. Deviation Settlement Account Statement issued by SRPC levying charges on RSOPL under *DSM Regulation 2022* does not need to be revised.
 - iii. Payment of charges levied under *DSM Regulations 2022* is a statutory payment and cannot be delayed for want of clarification or wilful default. Further, interest on delay of such payment is supposed to cover only inadvertent delays.
 - iv. Accordingly, RSOPL is advised to make payment of charges levied on it under *DSM Regulations, 2022* before 07.04.2024 to avoid any coercive measures by SRLDC against RSOPL.
- l. On 03.04.2024, SRLDC wrote another email to RSOPL threatening initiation of coercive action w.e.f. 08.04.2024 if the outstanding dues are not cleared by RSOPL.
- m. On 05.04.2024, RSOPL informed SRLDC that necessary payments amounting to Rs. 7,18,01,420 have been made under protest and without prejudice to its rights in law.
- n. The amount levied under DSM Regulation 8(3) from 19.02.2024 to 24.03.2024 has been summarised below:

S No.	Summary of penalty as per Deviation Settlement Account Statement	Penalty (Amt in Rs.)
1	Dated 05.03.2024 for the week 19.02.2024 to 25.02.2024	1,15,77,656
2	Dated 12.03.2024 for the week 26.02.2024 to 03.03.2024	1,24,59,068
3	Initially dated 19.03.2024 and revised dated 26.03.2024 for the week 04.03.2024 to 10.03.2024	1,87,04,353
4	Dated 26.03.2024 for the week 11.03.2024 to 17.03.2024	1,46,79,437

5	Dated 02.04.2024 for the week 18.03.2024 to 24.03.2024	1,43,80,906
Total		7,18,01,420

- o. Under the *DSM Regulations, 2022*, different deviation charges were fixed for different sellers based on the source of power generation. Generally, WS Sellers, i.e., generating companies based on wind or solar, or hybrid sources of energy, have been prescribed a higher threshold for deviation charges given the intermittent and uncertain nature of power supply from such sources of energy. Further, among the WS Sellers, wind power generators have been given a higher threshold. Further, given the uncertain and variable nature of wind energy generation, the Wind Power Projects cannot predict the exact generation.
- p. Further, due to the uncertain and variable nature of wind and solar power generation, the Wind and Solar Power Projects have been provided ‘Must-Run’ status to maximize harnessing of clean and natural sources of energy.
- q. This Commission, in the Explanatory Memorandum issued for draft *CERC (Deviation Settlement Mechanism and Related Matters) Regulations, 2021 (Draft DSM Regulations, 2021)*, has recognised the uncertain and variable nature of generation from wind and solar generators, basis which special dispensation has been allowed to such generators. The relevant portion of the Explanatory Memorandum issued for draft DSM Regulations is as under:

“3.10 Wind and Solar Generators

3.10.1 The generation from the wind and solar generators is uncertain and variable. Over the period, efforts are being made by such generators to address variability by deploying robust forecasting tools and techniques. However, recognising the inherent uncertainty of these resources and in order to promote generation from these green sources, the existing framework of DSM as under the 2014 DSM Regulations carves out a special dispensation for wind and solar generators. In the proposed DSM Regulations also, special dispensation has been continued but with certain changes. For over injection, they will neither be paid nor will they have to pay any deviation charge. For under injection, they have been exempted from the payment of deviation charge up to 10% deviation unlike the current tolerance band of (+/-) 15%. This is based on the experience gained over the period in terms of improved forecasting and aggregation of scheduling at the pooling station thereby reducing error for individual generators. Under injection beyond the limit of 10% during a time block shall attract charges for deviation at the rate of 10% of the normal charges for deviation applicable during that time block.”

- r. Regulation 8(1) of the *DSM Regulations, 2022* provides for deviation charges on Sellers for deviating in the schedule for firm power, i.e., power supplied by the Seller after commissioning of the wind Project. However, Regulation 8(3) of the *DSM Regulations, 2022* provides that no charges shall be leviable for deviation for injection of infirm power. Infirm power is defined under Regulation 3(69) of the *IEGC Regulations, 2023*, to mean electricity injected into the grid prior to the date of commercial operation of a unit of the generating station.
- s. This Hon'ble Commission vide *Order dated 06.02.2023* relaxed provisions of Regulation 8 of the *DSM Regulations, 2022*, and added the following *proviso* to Regulation 8(3) as under:

*“8 (3) (a) The charges for deviation for injection of infirm power shall be zero: **Provided that upon such infirm power being scheduled, the charges for deviation for such power shall be as applicable for a general seller.**”*

- t. RSOPL is being levied DSM Charges applicable for general sellers for the infirm power being supplied as per Regulation 8(3) of the *DSM Regulations, 2022*, modified as per *Order dated 06.02.2023*. In doing so, SRPC has erred in appreciating the intent and provisions of the *DSM Regulations, 2022*, inasmuch as there is no basis for levying deviation charges for a general seller on the Petitioner, who is a WS Seller based on wind sources of energy.
- u. Regulation 8(3) of *DSM Regulations 2022* provides for the levy of deviation charges for injection and scheduling infirm power. As specified in the Statement of Reasons to the *DSM Regulations, 2022*, issued by this Commission, RSOPL is ensuring that the power generated during the trial phase is meticulously scheduled on the SRLDC portal for sale on the power exchange. The Statement of Reasons to the *DSM Regulations, 2022*, provides as under:

“The Commission would like to emphasise that going forward, every grid connected entity is mandated to adhere to schedule. In such a scenario, injection of infirm power without corresponding buyer will lead to imbalance in the system. The basic message is that the generators should make necessary arrangements for scheduled transaction of their infirm power. The Commission is of the view that sufficient avenues are available for the generators to sell their infirm power in the market. Hence, the generators should explore those options rather than using grid as a market for injection and obtaining compensation. The revenue generated from the scheduled transaction of infirm power can be used to mitigate the burden of the beneficiaries of the generating station.”

However, given the uncertain nature of power generation from wind sources, some deviation in the scheduling is inevitable.

- v. Being a WS Seller, deviation charges ought to be levied upon the Petitioner in accordance with Regulation 8(1) of the *DSM Regulations, 2022*. However, the SRPC has levied deviation charges that are applicable to a ‘general seller.’ This approach is inequitable and erroneous as it has led to a scenario wherein WS Sellers based on wind sources, such as the Petitioner herein, are being subject to two different rates of deviation charges, viz. one, under Regulation 8(1) of the *DSM Regulations, 2022* as a WS Seller and, two, under Regulation 8(3) of the *DSM Regulations, 2022* as a general seller.
- w. The word ‘general seller’ used in Regulation 8(3) of the *DSM Regulations, 2022* has to be read contextually. The intent of Regulation 8(3) of the *DSM Regulations, 2022* is that if infirm power is being scheduled, the same category charges that are applicable as under Regulation 8(1) of the *DSM Regulations, 2022* should be applicable. In other words, WS Seller based on wind resources can only be levied with charges as provided under Regulation 8(1) of the *DSM Regulations, 2022*.
- x. The SRPC, by levying deviation charges for all sellers under the category of ‘general seller’ under Regulation 8(3) of the *DSM Regulations, 2022*, has failed to appreciate the intent of this Commission in fixing different deviation charges for different sellers. If the intent was to levy deviation charges for all sellers at the rate of a ‘general seller’ only, then there was no basis to have different categories of sellers prescribing different deviation charges under Regulation 8(1) of the *DSM Regulations, 2022*.
- y. It is trite law that a well-recognised tenet of the right to equality in terms of Article 14 of the Constitution of India is that ‘un-equals cannot be treated equally.’. In the present case, two un-equals, i.e., general seller and WS Seller, are being treated equally for the purpose of levy of deviation charges for deviation in the scheduling of infirm power. Reliance is placed on decision of the Hon’ble Supreme Court in Hon’ble Supreme Court in *U.P. Power Corpn. Ltd. v. Ayodhya Prasad Mishra, (2008) 10 SCC 139*:

“40. It is well settled that equals cannot be treated unequally. But it is equally well settled that unequals cannot be treated equally. Treating of unequals as equals would as well offend the doctrine of equality enshrined in Articles 14 and 16 of the Constitution. The High Court was, therefore, right in holding that Executive

Engineers placed in Category I must get priority and preference for promotion to the post of Superintendent Engineer over Executive Engineers found in Category II.”

- z. The only difference between Regulation 8(1) and Regulation 8(3) of the *DSM Regulations, 2022* is that the former deals with the penalty for deviating from the schedule while injecting (over or under) firm power, i.e., after the Project having declared COD, whereas, the latter, deals with infirm power. However, the underlying intent cannot be lost sight of that different deviation charges have been provided for different sellers.
- aa. Regulation 8(3) of the *DSM Regulations, 2022* is not applicable to the Petitioner since it is a WS Seller based on wind resources. The proviso added to Regulation 8(3) of the *DSM Regulations, 2022*, by way of the Suo Moto Order dated 06.02.2023, was intended to apply to general sellers only.
- bb. Even otherwise, this Commission, in the Explanatory Memorandum to the *draft DSM Regulations, 2021*, has stated that for the purposes of computation of deviation, infirm power is akin to over-injection. The relevant portion is extracted as under:
- “3.13 Infirm power is akin to over injection. Accordingly, the proposed regulations provide that the charges for deviation for injection of infirm power shall be zero. Startup power is akin to over-drawal and can be avoided by entering into contracts which can be scheduled. As such, the proposed DSM Regulations provide that the charges for deviation for drawal of start-up power before COD of a generating unit for drawal of power to run the auxiliaries during shut-down of a generating station shall be payable at the normal rate of charges for deviation. The charges for inter-regional deviation and for deviation in respect of cross-border transactions, caused by way of over-drawal or under-injection, shall be payable at the normal rate of charges for deviation.”***
- cc. As the infirm power is akin to over-injection, the consequential deviation charges should be the same as that levied for over-injection based on the seller that is over-injecting. Since Regulation 8(1) of the *DSM Regulations, 2022*, provides that charges for over-injection are different for a general seller and a WS Seller, there is no basis to levy deviation charges uniformly as that of a general seller under Regulation 8(3) of the *DSM Regulations, 2022*.
- dd. The actions of SRLDC in issuing the email dated 30.03.2024 threatening, coercive action is in direct contravention of the Order dated 12.01.2023 passed by the Hon’ble High

Court of Delhi in WP(C) No. 270 of 2023 directing that no coercive action would be taken pursuant to the *DSM Regulations, 2022*. Since the interim order continues to operate, it is submitted that the conduct of SRLDC and SRPC in issuing emails dated 22.03.2024, 28.03.2024, and 30.03.2024 and threatening initiation of coercive steps after 07.04.2024 is a flagrant violation of the Hon'ble Delhi High Court's Order.

Hearing dated 01.05.2024

9. During the hearing held on 01.05.2024, it was held as under:
 - a) Admit and issue notice in Petition (Diary) No. 201/2024.
 - b) Respondents to file their respective replies, if any, within three days with a copy to the Petitioner, who may file its rejoinder within two days thereafter
 - c) The Petition will be listed for hearing on 8.5.2024. Consequently, IA (Diary) No. 233/2024, having served its purpose, stands disposed of.

Submission of SRPC

10. Briefly, SRPC has denied all the allegations of RSOPL and has submitted that all infirm power which is scheduled is treated equally by the Commission through *IEGC Regulations, 2023*, after having due consideration. All the charges for deviations computed for RSOPL have been meticulously scrutinized and found to be in strict adherence with extant DSM Regulations. It was also submitted that for 48.88% of time blocks, the actual generation from the RSOPL project is less than 50% of the schedule. The treatment of infirm power being injected by RSOPL is being treated as per para 27(3) of the *Order dated 06.02.2023*.

Submission by SRLDC

11. Briefly, SRLDC, in its reply, has submitted as under:
 - a) M/s RSOPL is scheduling Infirm Power from its wind portion only. As per the *DSM Regulations 2022*, the Commission has given high priority to the timely payment of applicable charges by the regional entities. The schedule of payment of charges for deviation is governed by Regulation 10 of the *DSM Regulations, 2022*, and amendment thereof. Even after the issuance of the weekly deviation statements by SRPC, RSOPL was not paying the deviation charges in the regional DSM Pool Account for the

statement issued, and in fact, the due date of payment had crossed for considerable days, as shown in Table below:

Period	Amount (Rs)	Statement date as per SRPC	Due date of Payment	Actual date of payment	Delay beyond due date
19.02.24 to 25.02.24	1,15,77,656	05.03.24	12.03.24	04.04.24	23
26.02.24 to 03.03.24	1,24,59,068	12.03.24	19.03.24	04.04.24	16
04.03.24 to 10.03.24	1,87,04,353	26.03.24 (revised)	02.04.24	04.04.24	2 (with revised statement date delay is 2 days else delay is 9 days)
11.03.24 to 17.03.24	1,46,79,437	26.03.24	02.04.24	04.04.24	2
18.03.24 to 24.03.24	1,43,80,906	02.04.24	09.04.24	04.04.24	-

- b) In view of the deviation from schedule observed in the injection of infirm power, SRLDC advised Petitioner RSOPL to improve the forecast, necessary portfolio management for infirm power, and reduce the under-injection to reduce its liability in terms of *DSM Regulations, 2022*, given that the weekly penalty levied on RSOPL is exceeding Rs. 1 Crore every week. Further, regional pool members/entities have to pay the deviation charges within the specified due date as per RPC issued original statement until the account statement is revised.
- c) RSOPL, was persistently defaulting in payment of ‘Deviation Charges,’ thereby violating Regulation 10(1) of the *DSM Regulations, 2022*. Payment of charges levied under *DSM Regulations, 2022* is a statutory payment and cannot be delayed for want of clarification or wilful default. Such persistent defaults in payment of weekly deviation charges of huge amounts were affecting the pool-based settlement system.
- d) Due to the non-payment of huge DSM charges outstanding beyond the due date, SRLDC, after several follow ups, had taken up with RSOPL to pay the outstanding dues immediately in line with the *DSM Regulations, 2022*, else LC will be encashed as per the provision of *DSM Regulations, 2022* and coercive action may be taken if the dues were not paid. Subsequently the payment of the outstanding dues was made by RSOPL communicating to SRLDC on 05.04.2024.
- e) Since the start of the injection of infirm power by RSOPL, the violation of *DSM Regulations 2022* by ReNew for other projects was continuing. Under the above circumstance, the payment of RSOPL dues also joined the queue and has not been paid since the first statement of DSM.
- f) Due to the persistent follow up by SRLDC, ReNew cleared part of the payment of dues for other projects except RSOPL. Accordingly, no action was initiated for all other

projects except RSOPL. However, as RSOPL's project was commissioned only in February 2024 and no provision for LC was available as per *DSM Regulation, 2022*, SRLDC did not have any other option except to serve a further one (1) week notice to RSOPL vide email dated 30.03.2024 for needful action at their end. Finally, RSOPL confirmed the payments vide email dated 05.04.2024.

- g) To avoid huge defaults by new regional entities/pool members, the Commission may give appropriate direction to open LC on a prerequisite amount and not wait for a financial year to be over.
- h) The directions in the Hon'ble High Court of Delhi order dated 12.01.2023 mention that there shall be no coercive steps till the next date of hearing pursuant to the impugned Regulations dated 14.03.2022 bearing No. L-1/260/2021/CERC. However, the Order does not give any authority for the petitioner to violate *DSM Regulations, 2022* & related Suo Moto orders and not to make the statutory payments. Thus, SRLDC was constrained to issue notices for taking action as the non-payment was not only related to the instant plant but also to the other plants as an intentional default quoting various reasons.
- i) Non-payment of dues may lead to a shortfall in DSM payments to recipient entities from the DSM Pool as well as delay in payment to Ancillary Service Providers viz gas-based generating plants and other generating plants.

Analysis and Decision

12. We have heard the learned counsels for the Petitioner and the Respondents and have carefully perused the records and considered the submissions of the parties.

13. On the basis of the submissions of the parties, the issues that arise for adjudication are as under:

Issue No. 1: *Whether SRPC and SRLDC should be directed to levy deviation charges as applicable to a WS Seller for any deviation by the Petitioner in the future?*

Issue No. 2: *Whether SRPC should be directed to revise the Deviation Settlement Account Statements dated 05.03.2024, 12.03.2024, 19.03.2024 (revised vide Deviation Settlement Account Statement dated 26.03.2024), 26.03.2024 and 02.04.2023 by levying deviation charges as applicable to WS Seller?*

Issue No. 3: *Whether the email dated 30.03.2024 and 03.04.2024 issued by SRLDC threatening coercive actions should be set aside?*

Issue No. 4: *Whether SRLDC should be directed to refund the excess amount of Rs. 1,97,66,864/- from the amounts paid by the Petitioner along with interest/late payment surcharge, if any?*

14. Now, we proceed to discuss the above issues.

Issue No. 1:

Whether SRPC and SRLDC should be directed to levy deviation charges as applicable to a WS Seller for any deviation by the Petitioner in the future?

Issue No. 2:

Whether SRPC should be directed to revise the Deviation Settlement Account Statement dated 05.03.2024, 12.03.2024, 19.03.2024 (revised vide Deviation Settlement Account Statement dated 26.03.2024), 26.03.2024 and 02.04.2023 by levying deviation charges as applicable to WS Seller? AND

15. Since Issue No. 1 & Issue No. 2 are interconnected, the same are taken together for discussion. RSOPL has submitted that it is a generating company that has executed a PPA with SECI for the development, generation, and supply of 300 MW power from the hybrid project comprising 322.45 MW Wind, 81 MW Solar, and 75 MW BESS component. From 20.02.2024 onwards, the RSOPL project has commenced trial operations for 225 MW wind capacity out of the total 322.45 MW wind component, and since then, power generated during the trial run has been scheduled and sold in the power market. On 23.02.2024, SECI issued a letter to RSOPL extending the SCoD of the Petitioner's project by 286 days and revised the SCoD from 29.02.2024 to 11.12.2024. Subsequent to the start of the trial operations, SRPC has been levying charges for deviation from schedule based on Regulation 8(3) of the *DSM Regulations, 2022*, modified as per this Commission's Order dated 06.02.2024. The charges/penalty levied by SRPC for deviation in the injection of infirm power by RSOPL is erroneous; as such, SRPC should be directed to revise the Deviation Settlement Account Statements by levying deviation charges as applicable to a WS Seller and not a general seller. ***Per contra***, the SRPC has submitted that the infirm power, which is scheduled and being injected by RSOPL, is being

treated as per para 27(3) of the Order dated 06.02.2024. Further, all infirm power that is scheduled is treated equally by the Commission through *IEGC Regulations, 2023*, after having due consideration. For 48.88% of the time blocks, the actual generation from the Petitioner’s Project is less than 50% of the schedule. The infirm power being injected by RSOPL is being treated as per para 27(3) of the *Order dated 06.02.2023*. Further, SRLDC has submitted that RSOPL is scheduling infirm power from its wind portion only. The schedule of payment of charges for deviation is governed by Regulation 10 of the *DSM Regulations, 2022*, and amendment thereof. Even after the issuance of the weekly deviation statements by SRPC, RSOPL was not paying the deviation charges in the regional DSM Pool Account for the statement issued. Non-payment of dues may lead to a shortfall in DSM payment to recipient entities from DSM Pool as well as in delay payment to Ancillary Service Providers viz gas-based generating plants and other generating plants.

16. We observe that the relevant provisions of the Power Purchase Agreement dated 31.08.2022 stipulate as under:

“Wind Solar Hybrid Project”: shall mean the wind solar hybrid power project where the rated capacity of one resource is at least 25% of the rated capacity of the other resource” while “wind Project” has been defined as “the wind power project that uses wind energy for conversion into electricity through wind turbine generator”.

17. We observe that the relevant Regulations of *Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2023 (IEGC Regulations, 2023)* stipulate as under:

3. Definitions

69.	‘Infirm Power’	<i>means the electricity injected into the grid prior to the date of commercial operation of a unit of the generating station;</i>
-----	----------------	------------------------------------------------------------------------------------------------------------------------------------

....

106.	‘Renewable Hybrid Generating Station’ or “RHGS”	<i>means a generating station based on hybrid of two or more renewable source(s) of energy with or without Energy Storage System, connected at the same inter-connection point;</i>
------	-------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

18. We observe that the relevant Regulations of *Central Electricity Regulatory Commission (Deviation Settlement Mechanism and Related Matters) Regulations, 2022 (DSM Regulations, 2022)* stipulate as under:

3. Definitions and Interpretation

(1) *In these regulations, unless the context otherwise requires-*

...
 (k) ‘Deviation’ in a time block for a seller of electricity means its total actual injection minus its total scheduled generation; and for a buyer of electricity means its total actual drawal minus its total scheduled drawal, and shall be computed as per Regulation 6 of these regulations;

...
 (m) ‘General seller’ means a seller in case of a generating station based on other than wind or solar or hybrid of wind-solar resources;

...
 (x) ‘Scheduled generation’ or ‘Scheduled injection’ for a time block or any period means the schedule of generation or injection in MW or MWh ex-bus including the schedule for Ancillary Services given by the concerned Load Despatch Centre;

(y) ‘Scheduled drawal’ for a time block or any period means the schedule of drawal in MW or MWh ex-bus including the schedule for Ancillary Services given by the concerned Load Despatch Centre;

(z) ‘Seller’ means a person, including a generating station, supplying electricity through a transaction scheduled in accordance with the Grid Code;

...
 (aa) ‘Time Block’ means the time block as defined in the Grid Code;

(bb) ‘WS seller’ means a seller in case of a generating station based on wind or solar or hybrid of wind-solar resources.

8. Charges for Deviation

(1) Charges for deviation in a time block by a seller shall be payable by such seller as under:

...

Entity	Charges for deviation payable to Deviation and Ancillary Service Pool Account		
	Seller	Deviation by way of over injection	Deviation by way of under injection
...			
For a general seller other than an RoR generating station or a generating station based on municipal solid waste.	(i) Zero up to [2% Deviation - general seller (in %)]; Provided that such seller shall be paid back for over injection @ the reference charge rate for deviation up to [2% Deviation-general seller (in %)]; and (ii) @ 10% of the normal rate of charges for deviation beyond [2% Deviation-general seller (in %); and (ii) @ 10% pf the normal rate of charges fpr deviation beyond [2% Deviation- general seller (in%].	(i) @ the reference charge rate up to [2% Deviation-general seller (in %)]; (ii) @ 120% of the normal rate of charges for deviation beyond [2% Deviation-general seller (in %)] and up to [10% Deviation-general seller (in %)]; and (iii) @ 150% of the normal rate of charges for deviation beyond [10% Deviation-general seller (in %)].	
For WS seller	Zero:	(i) Zero up to [10% Deviation-WS seller (in %)];	

	<p><i>Provided that such seller shall be paid back for over injection as under:</i></p> <p><i>(i) @ contract rate, or in the absence of a contract rate, @ the weighted average ACP of the Day Ahead Market segments of all Power Exchanges for the respective time block, up to [5% Deviation -WS seller (in %)];</i></p> <p><i>and</i></p> <p><i>(ii) @ 90% of the contract rate, or in the absence of a contract rate, @ 90% of the weighted average ACP of the Day Ahead Market segments of all Power Exchanges for the respective time block for deviation beyond [5% Deviation-WS seller (in %)] and up to [10% Deviation-WS seller (in %)].</i></p>	<p><i>And</i></p> <p><i>(ii) @ 10% of the normal rate of charges for deviation beyond [10% Deviation-WS seller (in %)];</i></p> <p><i>Provided that such seller shall pay back for the total shortfall in energy against its schedule in any time block due to under injection, @ the contract rate, or in the absence of a contract rate, @ the weighted average ACP of the Day Ahead Market segments of all Power Exchanges, for the respective time block.</i></p>
--	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

(3) (a) The charges for deviation for injection of infirm power shall be zero.

(b) The charges for deviation for drawal of start-up power before COD of a generating unit or for drawal of power to run the auxiliaries during shut-down of a generating station shall be payable at the normal rate of charges for deviation.

(4) The charges for inter-regional deviation and for deviation in respect of cross-border transactions, caused by way of over-drawal or under-injection shall be payable at the normal rate of charges for deviation.

11. Power to Relax

The Commission may by general or special order, for reasons to be recorded in writing, and after giving an opportunity of hearing to the parties likely to be affected, may relax any of the provisions of these regulations on its own motion or on an application made before it by the affected party.

12. Power to Remove Difficulty

If any difficulty arises in giving effect to these regulations, the Commission may on its own motion or on an application filed by any affected party, issue such practice directions as may be considered necessary in furtherance of the objective of these regulations.

19. We observe that the Commission vide Order dated 06.02.2023 in 1/SM/2023 (the Order dated 06.02.2023) has held as under:

...

27. Relaxation of Regulation 8 of the DSM Regulations, 2022:

The Commission hereby relaxes provisions of Regulation 8 of the DSM Regulations, 2022 and the said Regulation 8 shall be read as follows, until further orders:

8. Charges for Deviation:

(1) The charges for deviation in a time block by a seller shall be payable by such seller as under:

<i>Entity</i>	<i>Charges for deviation payable to Deviation and Ancillary Service Pool Account</i>	
<i>Seller</i>	<i>Deviation by way of over injection</i>	<i>Deviation by way of under injection</i>
...		
<i>For a general seller other than an RoR generating station or a generating station based on municipal solid waste</i>	<i>Zero: Provided that such seller shall be paid back for over injection @ the reference charge rate for deviation upto [10% DGS or 100 MW, whichever is less].</i>	<i>(i) @ the reference charge rate up to [10% DGS or 100 MW, whichever is less]; (ii) @ 120% of the normal rate of charges for deviation by way of under injection beyond [10% DGS or 100 MW, whichever is less] and up to [15% DGS or 150 MW, whichever is less]; and (iii) @ 150% of the normal rate of charges for deviation beyond [15% DGS or 150MW, whichever is less].</i>
<i>For WS seller being a generating station based on solar or hybrid of wind-solar resources</i>	<i>Zero: Provided that such seller shall be paid back for over injection as under: (i) @ contract rate, or in the absence of a contract rate, @ the weighted average ACP of the Day Ahead Market segments of all Power Exchanges for the respective time block, up to [10% DWS]; and (ii) @ 90% of the contract rate, or in the absence of a contract rate, @ 90% of the weighted average ACP of the Day Ahead Market segments of all Power Exchanges for the respective time block for deviation beyond [10% DWS] and up to [15% DWS].</i>	<i>(i) Zero up to [10% DWS] and (ii) @ 10% of contract rate or in the absence of a contract rate, @ the weighted average ACP of the Day Ahead Market segments of all Power Exchanges for the respective time block for deviation beyond [10% DWS] and up to [15% DWS], and (iii) @ 50% of contract rate or in the absence of a contract rate, @ the weighted average ACP of the Day Ahead Market segments of all Power Exchanges for the respective time block for deviation beyond [15% DWS]: Provided that such seller shall pay back for the total shortfall in energy against its schedule in any time block due to under injection, @ the contract rate, or in the absence of a contract rate, @ the weighted average ACP of the Day Ahead Market segments of all Power Exchanges, for the respective time block.</i>
<i>For WS seller being a generating station based on wind resource</i>	<i>Zero: Provided that such seller shall be paid back for over injection as under: (i) @ contract rate, or in the absence of a contract rate, @ the weighted average ACP of the Day Ahead Market segments of all Power Exchanges for the respective time block, up to [15% DWS]; and (ii) @ 90% of the contract rate, or in the absence of a contract rate, @ 90% of the weighted average ACP of the Day Ahead Market segments of all Power Exchanges for the respective time block for deviation beyond [15% DWS] and up to [20% DWS].</i>	<i>(i) Zero up to [15% DWS] and (ii) @ 10% of contract rate or in the absence of a contract rate, @ the weighted average ACP of the Day Ahead Market segments of all Power Exchanges for the respective time block for deviation beyond [15% DWS] and up to [20% DWS] and (iii) @ 50% of contract rate or in the absence of a contract rate, @ the weighted average ACP of the Day Ahead Market segments of all Power Exchanges for the respective time block for deviation beyond [20% DWS]: Provided that such seller shall pay back for the total shortfall in energy against its schedule in any time block due to under injection, @ the contract rate, or in the absence of a contract rate, @ the weighted average ACP of the Day Ahead Market segments of all Power Exchanges, for the respective time block.</i>

Note: DGS means Deviation-general seller (in %); DWS means Deviation-WS seller (in %).

...

**(3) (a) The charges for deviation for injection of infirm power shall be zero:
Provided that upon such infirm power being scheduled, the charges for deviation for such power shall be as applicable for a general seller.**

(b) The charges for deviation for drawal of start-up power before COD of a generating unit or for drawal of power to run the auxiliaries during shut-down of a generating station shall be payable at the reference charge rate or contract rate or in the absence of reference charge rate or contract rate, the weighted average ACP of the Day Ahead Market segments of all Power Exchanges for the respective time block, as the case may be.

20. We note that Regulation 3(1) of the *IEGC Regulations, 2023* defines “Renewable Hybrid Generating Station” or “RHGS” as “a generating station based on hybrid of two or more renewable source(s) of energy with or without Energy Storage System, connected at the same inter-connection point;”. Also, ‘Infirm Power’ is defined as “the electricity injected into the grid prior to the date of commercial operation of a unit of the generating station;”.
21. We note that RSOPL is setting up the hybrid project comprising 322.45 MW Wind, 81 MW Solar, and 75 MW BESS components. We also note that as per PPA dated 31.08.2022, the SCoD of the project was 29.02.2024. RSOPL commenced trial operations for 225 MW wind capacity out of the total 322.45 MW wind component from 20.02.2024 onwards. Further, SECI (vide letter dated 23.02.2024) extended the SCoD of the RSOPL projects to 11.12.2024. As the CoD of the project has not been achieved, the power generated from the project is infirm in nature.
22. We note that this Commission, vide Order dated 06.02.2023 in Petition No 1/SM/2023, relaxed the provisions of Regulation 8 of the *DSM Regulations, 2022*. The Order dated 06.02.2023 came into effect from 00.00 hours of 08.02.2023 and remains in force until further orders by the Commission. Thus, at the time of occurrence of the event (deviation), the SRPC was obliged to levy charges for deviation as applicable under Regulation 8 of *DSM Regulations, 2022* modified/relaxed vide Order dated 06.02.2023.
23. We note that RSOPL is also scheduling the power being generated and is selling the power in the Power Exchange.
24. As per Regulation 8(3) of the *DSM Regulations, 2022*, as modified/relaxed vide Order dated 06.02.2023, “the charges of deviation for injection of infirm power is zero:, provided that upon such infirm power being scheduled, the charges for deviation for such power shall be as

applicable for a general seller.” As such, we find that the SRPC has levied the charges for Deviation strictly in terms of the *DSM Regulations, 2022*, as modified/relaxed vide Order dated 06.02.2023.

25. However, the Commission, has already taken cognizance of the similar issue as raised in the present petition and proposed a framework to deal with the same in Regulation 8(8) of the draft *Central Electricity Regulatory Commission (Deviation Settlement Mechanism and Related Matters) Regulations, 2024 (Draft DSM Regulations, 2024)*. The Commission has requested the stakeholders to submit their comments on the draft, by 24.05.2024. The Commission is of the view that the issue raised in the present petition, that is, the issue of treatment of deviation of infirm power from RE sources scheduled for generation, is a generic issue and should be decided after public consultation of the draft DSM Regulations, 2024, and as such it would not be proper to exercise the powers to relax in a specific case like the present petition.
26. In view of the above, the Commission holds that once the *Draft DSM Regulations, 2024* are finalised, the treatment of infirm power scheduled from the RE project (including the Petitioner’ project) shall be governed as per the provisions of the DSM Regulations so amended/re-enacted. As a result, there shall not be any retrospective revision of the deviation charge levied on RSOPL’s project.
27. The Issue No. 1 and Issue No.2 are answered accordingly.

Issue No. 3:

Whether the email dated 30.03.2024 and 03.04.2024 issued by SRLDC threatening, coercive actions should be set aside? AND

Issue No. 4:

Whether SRLDC should be directed to refund the excess amount of Rs. 1,97,66,864/- from the amounts paid by the Petitioner along with interest/late payment surcharge, if any?

28. In view of our findings on Issue No.1 and Issue No. 2, we decide Issues No. 3 and Issue No. 4 against the Petitioner and in favour of the Respondents. We find that the emails dated 30.03.2024 and 03.04.2024 issued by SRLDC are not to be set aside. We further find that the SRLDC is neither liable to refund the amount of Rs. 1,97,66,864/- nor the interest/late payment surcharge.

29. Petition No. 160/MP/2024 is disposed of in terms of the above.

Sd/-
पी. के. सिंह
सदस्य

Sd/-
अरुण गोयल
सदस्य

Sd/-
जिष्णु बरुआ
अध्यक्ष