

BEFORE THE HARYANA ELECTRICITY REGULATORY COMMISSION AT PANCHKULA

Case No. HERC/P. No. 04 of 2023

Date of Hearing : 26.07.2023

Date of Order : 12.09.2023

IN THE MATTER OF:

Petition under Section 32, 33 & 181 of the Electricity Act, 2003 read with Regulation 18 to 21 of the HERC (Deviation Settlement Mechanism and related matters) Regulations, 2019 and Regulations 65 to 67 of the HERC (Conduct of Business) Regulations, 2019, seeking necessary directions for clarification/ modification/ amendment and removal of difficulties which have arisen in the implementation of certain Regulations of the HERC (Deviation Settlement Mechanism and related matters) Regulations, 2019 in furtherance of the objective and purpose of the Regulations..

Petitioner

The Chief Engineer/SO & Comml., Haryana Vidyut Prasaran Nigam Limited, Shakti Bhawan, Sector-6, Panchkula-134109

Present

On behalf of the Petitioner

1. Sh. Shiv Kumar, SE Commercial, HVPNL.
2. Sh. Neeraj Hooda, XEN/Commercial, HVPNL.
3. Ms. Aerika Singh, Advocate.

On behalf of the Respondents

1. Ms Sonia Madan, Advocate for HPGCL and Discoms.
2. Ms. Puja Priyadarshini, Advocate for Northern Railway

QUORUM

Shri R.K. Pachnanda, Chairman

Shri Naresh Sardana, Member

ORDER

1. Background of the Petition:

- 1.1 That the present petition has been filed by Haryana Vidyut Prasaran Nigam Ltd. ('**HVPNL**' or **STU**), operating as the 'State Load Despatch Centre' ('**SLDC**') under Section 31 of the Electricity Act, 2003 read with Regulation 2(n) and 5 of the HERC (Deviation Settlement Mechanism & Related Matters) Regulations, 2019 (for brevity '**DSM Regulations, 2019**'). The SLDC is responsible for

coordinating, scheduling of the Buyer and the Sellers in accordance with the provisions of the Grid Code.

2. The petitioner has submitted as under:

2.1 That the facts leading up to the filing of the present petition are as under:

- a. On 29.04.2019 the Hon'ble Commission notified the DSM Regulations, 2019.
- b. As per Regulation 6(B), 12(1) and 13(4) of the DSM Regulations, 2019 a duty is cast upon the petitioner-SLDC, to formulate detailed Procedure for scheduling, despatch, energy accounting etc. In view the same, in the month of July, 2020 a draft 'Procedure for Deviation Settlement for State Entities and Energy Accounting of the State' (**'Draft Procedure'**) was formulated and published on the website by the petitioner-SLDC.
- c. The objections/ comments/ suggestions from the stakeholders with respect to the draft procedure were called for and thereafter, vide memo dated 12.01.2021, the detailed procedure alongwith the comments of the stakeholders were submitted by the petitioner-SLDC to the Hon'ble Commission for approval.
- d. Pursuant to the letter dated 12.01.2021, the Hon'ble Commission vide memo No. 120/HERC/Tech. dated 12.04.2021 sought certain clarifications with respect to the procedure and directed the petitioner-SLDC to resubmit the draft procedure after making suitable amendments.
- e. The petitioner-SLDC vide memo No. Ch-12/PC-23/Vol-II/SLDC/OP dated 10.06.2021 submitted a detailed reply to the clarifications sought by the Hon'ble Commission. It may kindly be noted vide the said letter, the petitioner-SLDC had requested to relax the application of the DSM Regulations, 2019 till the implementation of -Scheduling, Accounting, Metering and Settlement of Transaction in Electricity Framework (**'SAMAST'**).
- f. At this stage, the petitioner-SLDC is in the process of developing software for implementation of SAMAST, however, certain ambiguities and difficulties have arisen in the implementation of the DSM Regulations, 2019 in its letter and spirit.
- g. Thus, the petitioner-SLDC is constrained to approach the Hon'ble Commission under regulation (18 to 21) of the DSM, Regulations, 2019 seeking directions for removal of difficulties and requisite clarifications/ modifications/ amendments to the said Regulations.

Details of the difficulties being faced:

2.2 Additional Charge of Deviation under regulation 10(I) has not been specified:

It is submitted that the regulation 10 (G) of the DSM Regulations, 2019 provides for 'Additional Charge for Deviation' to be applicable in case of over-drawl or under-injection of electricity as under: -

"10. Limits on Deviation volume and consequences of crossing limits (G) *In addition to Charges for Deviation as stipulated under Regulation 9 of these Regulations, **Additional Charge for Deviation shall be applicable** for over-drawl or under-injection of electricity when grid*

frequency is “below 49.70 Hz” **in accordance with the methodology specified in clause (I) of these Regulations.**

Provided that Additional Charge for Deviation for under-injection of electricity by a Seller, during the time-block when grid frequency is “below 49.70 Hz”, by the generating stations regulated by the Commission using coal or lignite or gas supplied under Administered Price Mechanism (APM) as the fuel in accordance with the methodology specified in clause (J) of this Regulation shall be equivalent to 100% of the Cap Rate of Main Fuel (Imported Coal) as determined by the Central Electricity Regulatory Commission for Deviations. [303.04] Paise/kWh.”

Further, regulation 10 (I) of the DSM Regulations, 2019 provides as under: -

*“(I) The **additional Charge for Deviation** for over-drawls and under-injection of electricity for each time block when grid frequency is “below 49.70 Hz” **shall be as specified by the Commission** as a percentage of the charges for the Deviation corresponding to average grid frequency of the time block with due consideration to the behaviour of the Buyers and Sellers towards grid discipline:*

Provided that the Commission may specify different rates for Additional Charges for Deviation for over drawls and under injections and for different ranges of frequencies “below 49.70 Hz”.”

It is brought to the notice of the Hon’ble Commission that the said rate of Additional Charges for deviation (in terms of percentage of charges for deviation) to be levied on buyers/sellers for over-drawls/ under-injection of electricity for the time blocks when grid frequency is “below 49.70 Hz”, has not been specified in the DSM Regulations, 2019. As such, it is prayed that the said Additional Charges for deviation under regulation 10(I) may kindly be specified.

2.3 Ambiguity with respect to the levy of Additional Deviation Charges under regulation 10(C) and Table-II(A) of Annexure-II:

It is submitted that regulation 10 (C) of the DSM Regulations, 2019 provides as under:

“(C) The under injection or over injection of electricity by seller shall not exceed following when grid frequency is “49.70 Hz or above and below 50.05 Hz”;

- i. 12% of the scheduled injection or **[10] MW**, whichever is lower for a seller.

*Provided that in case schedule of a seller, in a time block, is less than or equal to **[40] MW**, under injection/over injection in a time block shall not exceed (5) MW, when grid frequency is “49.70 Hz or above and below 50.05 Hz”. ”*

Further, the Additional Charge for deviation for under-injection of electricity, when the grid frequency is “49.70 Hz and above” with respect to the generating stations regulated by the Hon’ble Commission (using coal or lignite or gas supplied under Administered Price Mechanism as fuel), is mentioned in the regulation 10(E) of the DSM Regulations, 2019 which is reproduced below:

*“(E) Additional Charge for Deviation for under-injection of electricity, during a time-block in excess of the volume limit specified in clause (C) of this regulation when grid frequency is “49.70 Hz and above”, by the generating stations regulated by the Commission using coal or lignite or gas supplied under Administered Price Mechanism (APM) as the fuel shall be at the rates specified in **Table II of Annexure-II** in accordance with the methodology specified in clause (J) of this regulation;”*

Furthermore, Table-II of Annexure-II provides for the calculation of Additional Deviation Charges in two scenarios: - (A) When 12% of the schedule is less than or equal to [10] MW; and (B) When 12% of the schedule is more than [10] MW.

At this stage, for ease of understanding, the following illustration is presented before the Hon’ble Commission:

Illustration: Let the schedule of generator be 40 MW.

And injected power of 35 MW in a particular time slot i.e. under injection with deviation of 5 MW.

As such, 12 % of schedule injection is 4.8 MW;

15 % of schedule injection is 6.0 MW; and

20 % of schedule injection is 8.0 MW.

Thus, for cases such as the one illustrated above, as per clause 10 (C), it is submitted that the Additional Deviation Charges are exempted for under injection up to 5 MW. However, as per Table-II (A) of Annexure-II rates of Additional Charges have been given separately –

1. *“For under-injection of electricity by any Seller **in excess of 12% and up to 15%** of the schedule in a time block”,*
2. *“For under-injection of electricity by any Seller **in excess of 15% and up to 20%** of the schedule in a time block” and*
3. *“For under-injection of electricity by any Seller **in excess of 20%** of the schedule in a time block”*

Meaning thereby, in the cases such as the one illustrated above, Additional Deviation Charges are to be levied as the under injection (5MW) by generator is in excess of 12% of scheduled generation which is 4.8 MW. It is humbly submitted that such an ambiguity existing in regulation 10(C) read with Table-II(A) of Annexure-II may kindly be clarified.

2.4 Volume Limit of [X] MW under Table-II (B) of Annexure II has not been specified for Sellers:

Further, Table-II(B) of Annexure II relates to the cases **“(B) When 12% of the Schedule is more than [10] MW”**. The said Table-II(B) is reproduced below for ready reference:

(B) When 12% of the Schedule is more than [10] MW	
1.	<i>For under-injection of electricity by any Seller is Equivalent to 20% of Cap Rate for Deviations of [303.04] Paise/kWh or charge for</i>

	<i>above X MW and up to X+[10] MW in a time block</i>	<i>Deviation corresponding to average grid Frequency of the time-block, whichever is less.</i>
2.	<i>For under-injection of electricity by any Seller is above X+[10] MW and up to X + [20] MW in a time block</i>	<i>Equivalent to 40% of Cap Rate for Deviations of [303.04] Paise/kWh or charge for Deviation corresponding to average grid Frequency of the time-block, whichever is less.</i>
3.	<i>For under-injection of electricity by any Seller is above X + [20] MW in a time block</i>	<i>Equivalent to 100% of Cap Rate for Deviations of [303.04] Paise/kWh or charge for Deviation corresponding to average grid Frequency of the time-block, whichever is less.</i>

A perusal of the table shows that the Hon'ble Commission has specified various slabs of Additional Charges for deviation for under-injection by Generating stations regulated by the Commission using coal or lignite or gas supplied under Administered Price Mechanism (APM). The Additional Charges of deviation have been linked to Volume Limit of "X" MW.

It is the case of the petitioner-SLDC that though the methodology for determination of Volume Limit of [X] MW has been provided for distribution licensee(s) and buyer(s) under regulation 10(B) of the DSM Regulations, 2019, however the same has not been provided in the case of seller. It is humbly prayed that the Volume Limit [X] MW may kindly be specified in case of sellers.

2.5 Ambiguity in Clause 10(B)(iii) of the DSM Regulations, 2019:

It is submitted that the methodology for calculation of Volume Limit of [X] MW for distribution licensees and buyers has been detailed under regulation 10 as follows:

*"(B) The Volume Limit of **[X] MW** for **distribution licensee(s)** and **Buyers** shall be determined as under: -*

- i. Minimum of (12% of schedule, (Peak Demand of Distribution Licensee or Buyer / Σ NCPD) x State Volume Limit)
NCPD (Non-Coincident Peak Demand) represents the sum of Peak Demand of Distribution Licensee(s) and Buyer(s) subject to condition stipulated under following sub-clause (iii).*
- ii. State Volume Limit shall be linked to Volume Limit applicable to the State as per CERC (Deviation Settlement Mechanism and related matters) Regulations, 2014 and its amendments thereof;*
- iii. **Peak Demand of the Distribution Licensee shall be recorded Peak Demand in the previous Financial Year or Projected Peak Demand of Buyer in ensuing Financial Year, whichever is higher;***

Provided that no over drawl of electricity by any Buyer shall be permissible when grid frequency is "below 49.70 Hz" and no under drawl of electricity by any Buyer shall be permissible when grid frequency is "50.05 Hz and above".

It is submitted that the above clause 10(B)(iii) relates to the recorded peak demand of only the distribution licensee in the previous financial year and does not relate to the recorded peak demand of buyers in the previous financial year. Similarly, it considered the projected peak demand of the buyer in ensuing financial year and not of the distribution licensee. Higher value of recorded peak demand in previous financial year or projected peak demand in ensuing financial year can be selected only between same entities. However, it appears that intention of the above clause is to consider recorded peak demand or projected peak demand of both distribution licensee(s) and/or buyer(s), whichever is higher to calculate the Volume Limit of [X] MW. As such, it is humbly submitted that regulation 10 (B) (iii) of DSM Regulations, 2019 may kindly be modified as under:

*“Peak Demand of the **Distribution Licensee/ Buyer** shall be recorded Peak Demand in the previous Financial Year or Projected Peak Demand of **Distribution Licensee/ Buyer** in ensuing Financial Year, whichever is higher;”*

2.6 Clarification with respect to the imposition of Additional Charges for change of sign under regulation 9(A)(1) of the DSM Regulations, 2019:

It is submitted that the Clause 9(A)(1) of the DSM Regulations, 2019 provides as under: -

“9. (Charges for deviations)

(A) Deviation Charges for Sellers and Buyers:

(1) The charges for the Deviations for all the time-blocks shall be payable for over-drawl by the Buyer and under-injection by the Seller and receivable for under-drawl by the Buyer and over-injection by the Seller, which are State Entities, and shall be worked out on the average frequency of a time-block by considering the Price Vector for Deviation Charges as specified in the Central Electricity Regulatory Commission (Deviation Settlement Mechanism and related matters)Regulations, 2014 and its amendments thereof considering the methodology specified in the Annexure-1 of these Regulations and subject to conditions stipulated under clause (2) to (8) of this regulation:

Provided that, a change in sign of the deviation shall be made once every 12-time blocks, failing which additional charges @10% of the deviation charges applicable shall be levied for the duration of continuance of violation.”

The above clause imposes additional charges @10% of the deviation charges, applicable for the failure of seller or buyer to effect a change in sign of the deviation once every 12-time blocks. However, the regulation is not clear whether additional charges in the event of violation of above clause are to be levied @10% of base charges for deviation or @10% of sum of base charges for deviation and additional charges for deviation. As such, it is humbly prayed

that the difficulty in the calculation of the such additional charges may kindly be removed by the Hon'ble Commission.

2.7 Ambiguity in the applicability of regulation 11(1) w. r. t. under/ over Injection of electricity by Seller when the grid frequency is below 49.70Hz/50.05 Hz:

It is submitted that as per the proviso to regulation 10(B) no over-drawl or under-drawl of electricity by the buyer is permissible when the grid frequency is below 49.70 Hz and 50.05 Hz and above, respectively. The said proviso is reproduced below for ready reference:

“Provided that no over drawl of electricity by any Buyer shall be permissible when grid frequency is “below 49.70 Hz” and no under drawl of electricity by any Buyer shall be permissible when grid frequency is “50.05 Hz and above”

It is further submitted that a corresponding provision has been incorporated in case of under/over-injection by the seller, however, the same has been incorporated in the Regulation relating to “Treatment of Infirm power and Start Up power prior to COD.” The same is reproduced below for ready reference:

“11. Treatment of Infirm power and Start Up power prior to COD

(1) No under injection of electricity by a seller shall be permissible when grid frequency is “below 49.70 Hz” and no over injection of electricity by a seller shall be permissible when grid frequency is “50.05 Hz and above”.

It is respectfully submitted that scheduling is not done for infirm power and as such, it is not appropriate to include the above clause (1) under regulation (11) relating to the treatment of infirm power. It is suggested that clause (1) may kindly be subsumed in Regulation 10(C) of the DSM Regulations, 2019 and the said provision may kindly be made generally applicable to all the cases and not just in case of infirm power.

2.8 Clarification regarding telescopic or non-telescopic nature of Slabs given under Table-I of Annexure-II appended to the DSM Regulations, 2019:

As per regulation 10(D), in addition to charges for deviation as stipulated under regulation(9), ‘Additional Charge for Deviation’ shall be applicable for over-drawl as well as under-injection of electricity for each time block in excess of the volume limit specified in regulation 10(B) and (C) when average grid frequency of the time block is 49.70 Hz and above at the rates specified in the Table I of Annexure-II. Further, the Hon'ble Commission has given various slabs under Table-I captioned ‘Additional Deviation Charge (for Seller/Buyer)’ of Annexure-II appended to the DSM Regulations, 2019. The Table I of Annexure-II is reproduced below for ready reference:

Annexure-II: Additional Deviation Charges

TABLE – I: Additional Deviation Charge (for Seller/Buyer)

(A) When 12% of the Schedule is less than or equal to [10] MW		
1.	For over-drawl of electricity by any Buyer in excess of 12% and up to 15% of the schedule in a time block	Equivalent to 20% of Charge for Deviation corresponding to average grid Frequency of the time-block

2.	For over-drawl of electricity by any Buyer in excess of 15% and up to 20% of the schedule in a time block	Equivalent to 40% of Charge for Deviation corresponding to average grid Frequency of the time-block
3.	For over-drawl of electricity by any Buyer in excess of 20% of the schedule in a time block	Equivalent to 100% of Charge for Deviation corresponding to average grid Frequency of the time-block
4.	For under-injection of electricity by any Seller in excess of 12% and up to 15% of the schedule in a time block	Equivalent to 20% of Charge for Deviation corresponding to average grid Frequency of the time-block
5.	For under-injection of electricity by any Seller in excess of 15% and up to 20% of the schedule in a time block	Equivalent to 40% of Charge for Deviation corresponding to average grid Frequency of the time-block
6.	For under-injection of electricity by any Seller in excess of 20% of the schedule in a time block	Equivalent to 100% of Charge for Deviation corresponding to average grid Frequency of the time-block
(B) When 12% of the Schedule is more than [10] MW		
1.	For over-drawl of electricity by any Buyer is above X MW and up to X+[10] MW in a time block	Equivalent to 20% of Charge for Deviation corresponding to average grid Frequency of the time-block
2.	For over-drawl of electricity by any Buyer is above X+[10] MW and up to X + [20] MW in a time block	Equivalent to 40% of Charge for Deviation corresponding to average grid Frequency of the time-block
3.	For over-drawl of electricity by any Buyer is above X + 20 MW in a time block	Equivalent to 100% of Charge for Deviation corresponding to average grid Frequency of the time-block
(B) When 12% of the Schedule is more than [10] MW		
4.	For under-injection of electricity by any Seller is above [10] MW and up to [20] MW in a time block	Equivalent to 20% of Charge for Deviation corresponding to average grid Frequency of the time-block
5.	For under-injection of electricity by any Seller is above [20] MW and up to [25] MW in a time block	Equivalent to 40% of Charge for Deviation corresponding to average grid Frequency of the time-block
6.	For under-injection of electricity by any Seller is above [25] MW in a time block	Equivalent to 100% of Charge for Deviation corresponding to average grid Frequency of the time-block

However, on a perusal of the aforementioned table it is not clear, whether these slabs are telescopic or non- telescopic in nature.

It may be pertinent to mention here that the Central Electricity Regulatory Commission (Deviation Settlement Mechanism and Related Matters) Regulations, 2014 has clarified the telescopic nature of the slabs by way of an illustration under 'Annexure-I' which relates to the 'Methodologies for the computation of charges of deviation and additional charges for deviation for

each regional entity for crossing the volume limits specified for the over-draw/under injection by buyer/seller'. The said illustration is reproduced below (please note that '150MW' as per the CERC Regulations corresponds to 10MW in case of DSM Regulations, 2019):

“Illustration “A” When 12% of Schedule is less than or equal to 150 MW

Category	Additional Charges for Deviation
<i>D_{tb} is above 12% and up to 15% of schedule in MW</i>	<i>50 x (D_{tb}- 12% of schedule) x Charge for Deviation corresponding to average grid frequency of the time block</i>
<i>D_{tb} is above 15% and up to 20% of schedule in MW</i>	<i>(100 x (D_{tb}- 15% of schedule) + 1.50 x schedule) x Charge for Deviation corresponding to average grid frequency of the time block</i>
<i>D_{tb} is above 20%</i>	<i>(250 x (D_{tb}- 20% of schedule) + 6.50 x schedule) x Charge for Deviation corresponding to average grid frequency of the time block”</i>

It is humbly submitted that such similar illustration/ clarificatory note etc. may be added to the DSM Regulations, 2019 so as to clarify whether the slabs defined under Annexure-II, Table-I are telescopic or non-telescopic in nature.

- 2.9 That the Hon’ble Commission has ample powers to pass appropriate directions in the present petition in view of the following Regulations:

“18. Power to amend

The Commission may, at any time, vary, alter, modify or amend any provisions of these Regulations.

19. Power to remove difficulties

If any difficulty arises in giving effect to the provisions of these Regulations, the Commission may, by general or specific order, make such provisions not inconsistent with the provisions of the Act, as may appear to be necessary for removing the difficulty.

...

21. Power to issue directions

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 directions as may be considered necessary in furtherance of the objective and purpose of these Regulations.”

It is humbly submitted, that the aforementioned provisions relating to the power to amend/ remove difficulties etc. have been consciously added by the Hon’ble Commission in the DSM Regulations, 2019 with the intention that that, in case of difficulty, smooth functioning is ensured. In the present case, directions are

necessary so as to enable the petitioner to implement the DSM Regulations, 2019 in its true letter and spirit. Even otherwise, this Hon'ble Commission has been conferred with inherent power to pass necessary orders as may be necessary for ends of justice, which may kindly be invoked in the present case.

- 2.10 That it is pertinent to mention here that as per point 18 of the 'Schedule of Fees' appended with the HERC (Fee) Regulations, 2005, the fee for filing the present petition is 'NIL'.
- 2.11 That the present petition is *bonafide* and has been filed for facilitating the petitioner in implementation of 'SAMAST'.

PRAYER

In light of the submissions made hereinabove and in the interest of justice this Hon'ble Commission may be pleased to:

- I. Pass necessary directions/ orders for clarification/ modification/ removal of difficulties which have arisen in the implementation of DSM Regulations, 2019, especially relating to the following issues:
 - a. Specification of Additional Charge of Deviation under Regulation 10(I);
 - b. Clarification with respect to the levy of Additional Deviation Charges under Regulation 10(C) and Table-II(A) of Annexure-II;
 - c. Specification of Volume Limit of [X] MW under Table-II (B) of Annexure II for sellers;
 - d. Clarification with respect to Clause 10(B)(iii);
 - e. Clarification with respect to the imposition of Additional Charges for change of sign under Regulation 9(A)(1);
 - f. Clarification w.r.t. the applicability of Regulation 11(1) w.r.t. under/ over injection of electricity by seller when the grid frequency is below 49.70Hz/50.05 Hz;
 - g. Clarification regarding telescopic or non-telescopic nature of slabs given under Table-I of Annexure-II.
- II. Pass any other order(s) and or direction(s), which the Hon'ble Commission may deem fit and proper in the facts and circumstances of the case.

3. Proceedings:

- 3.1 The case initially came-up for hearing before the Commission on 09.02.2023, as scheduled, in the court room. The counsel for the petitioner submitted that they are in the process of development of software for implementation of Deviation Settlement Mechanism and need some clarifications/modification, in which the cause for removal of difficulties has arisen while implementing certain regulations of Deviation Settlement Mechanism, 2019. The Commission observed that, to consider the contention of petitioner, DISCOMs, HPPC, HPGCL, Railways and other stake holders are required to be impleaded. Accordingly, petitioner was directed to serve the dasti copy of the petition to them within two days.
- 3.2 The matter again came up for hearing on 09.03.2023. Ms. Aerika Singh, Counsel for the petitioner submitted that dasti copy of the petition has been served to DISCOMs, HPPC, HPGCL, Railways. The Commission decided that

the copy of the petition should be hosted on the web site of the Commission for 21 days to invite comments/objections from the all stake holders/Public before taking view in the matter.

Accordingly, the petition was hosted on the Commission's website for comments of the stake holders. The HPGCL and HPPC had filed their comments on which the petitioner-HVPL also filed its response.

4. Comments of HPGCL dated 31.03.2023: The HPGCL filed its comments as under:

4.1 That the HVPL has approached the Hon'ble Commission by way of instant petition with following prayers -

“Pass necessary directions/ orders for clarification/ modification/ removal of difficulties which have arisen in the implementation of DSM Regulations, 2019, especially relating to the following issues:

- a. Specification of Additional Charge of Deviation under Regulation 10(I);*
- b. Clarification with respect to the levy of Additional Deviation Charges under Regulation 10(C) and Table-II(A) of Annexure-II;*
- c. Specification of Volume Limit of [X] MW under Table-II (B) of Annexure II for Sellers;*
- d. Clarification with respect to Clause 10(B)(iii);*
- e. Clarification with respect to the imposition of Additional Charges for change of sign under Regulation 9(A)(1);*
- f. Clarification w.r.t. the applicability of Regulation 11(1) w.r.t. under/ over Injection of electricity by Seller when the grid frequency is below 49.70 Hz/ 50.05 Hz;*
- g. Clarification regarding telescopic or non-telescopic nature of Slabs given under Table-I of Annexure-II.”*

4.2 That considering the objective of the HERC (Deviation Settlement Mechanism and related matters) Regulations, 2019 ('**DSM Regulations, 2019**') with respect to maintenance of grid discipline and grid security through the commercial mechanism for deviation settlement for controlling drawl and injection of electricity by the users of the grid as per their schedules and dispatches within the State of Haryana, HPGCL submitted the following comments for the kind consideration of the Hon'ble Commission. The Comments of the HPGCL considers the nature of generation of electricity through State owned plants, operational challenges and financial implications.

A. THE DSM REGULATIONS, 2019 REFERS TO TWO KINDS OF SELLERS – A) SELLER AS GENERATING STATION REGULATED BY THE COMMISSION USING COAL OR LIGNITE OR GAS SUPPLIED UNDER ADMINISTERED PRICE MECHANISM (APM) AS FUEL; AND B) OTHER SELLERS, INCLUDING GENERATING STATION NOT REGULATED BY THE COMMISSION USING COAL OR LIGNITE OR GAS SUPPLIED UNDER ADMINISTERED PRICE MECHANISM (APM) AS FUEL

4.3 That a conjoint reading of the DSM Regulations, 2019 shows that conditions have been specified considering two categories of sellers/ generators.

Regulation 9 of the said DSM Regulations, 2019 refers to 'State Entities'. Regulation 9(A)(1) reads as under -

*“The charges for the Deviations for all the time-blocks shall be payable for overdrawl by the Buyer and under-injection by the Seller and receivable for underdrawl by the Buyer and over-injection by the Seller, **which are State Entities**, and shall be worked out on the average frequency of a time-block by considering the Price Vector for Deviation Charges as specified in the Central Electricity Regulatory Commission (Deviation Settlement Mechanism and related matters) Regulations, 2014 and its amendments thereof , considering the **methodology specified in the Annexure-1 of these Regulations** and subject to conditions stipulated under clause (2) to (8) of this regulation.”*

(Emphasis Supplied)

As per the Annexure-1 of the DSM Regulations, 2019, base rate for deviation charges is zero at frequency of 50.05 and above. The same is increasing gradually up to 824.04 Paise/kWh for frequency of 49.70 Hz and below. The charges for deviation for each 0.01 Hz step is equivalent to 35.60 Paise/kWh in the frequency range of 50.05 to 50.00 Hz, and 20.84 Paise/kWh in frequency range 'below 50 Hz to 'below 49.70 Hz'. However, as per the provision under said regulation 9(A)(1), the charges for the deviation for the generating stations regulated by the Commission using coal, when actual injection is higher or lower than the scheduled generation, shall not exceed the **Cap Rate**. This Cap rate has been specified as 303.04 Paise/kWh. Accordingly, the charges for deviation for HPGCL thermal plants shall not exceed 303.04 Paise/kWh.

- 4.4 As per regulation (10) of the DSM Regulations, 2019, additional charges are payable by the buyers and sellers for crossing limits of deviation volume. Here also, the additional charge for deviation by the generating stations regulated by the commission using coal is as per the rates specified in table ii of annexure-ii. however, for other sellers, the deviation charges are as per the rates specified in table i of annexure-ii.
- 4.5 From the foregoing, it has been observed that the seller has been classified into two categories:

Category 1- Seller, *including generating station not regulated by the Commission using coal or lignite or gas supplied under Administered Price Mechanism (APM) as fuel.*

Category 2- *Seller as generating station regulated by the Commission using coal or lignite or gas supplied under Administered Price Mechanism (APM) as fuel.*

The thermal plants of HPGCL fall under category-2 mentioned above. In that view, it is submitted that the limits on deviation volume under regulation 10 of DSM Regulations have already been included for buyer (although HVPNL has sought amendment in the same through the present petition) and Category-1 Sellers. However, the limits on deviation volume has not been incorporated for Category-2 Sellers as 'X' has not been specified/defined in Table II of Annexure-II. The submissions with respect to the same along with comments on

clarifications/ modifications/ amendments sought by the petitioner- HVPNL in the present petition relevant to the HPGCL are mentioned hereunder –

B. LEVY OF ADDITIONAL DEVIATION CHARGES UNDER REGULATION 10 (C) AND TABLE II (A) OF ANNEX-II (POINT NO. 5 OF THE PETITION)

- 4.6 It is submitted that the regulation 10(C) of DSM Regulations, 2019 is not applicable on category-2 Sellers, i.e. generating stations regulated by the Commission, as the deviation volume of this category has not been defined. The value of 'X' in Table-II of Annexure-II is yet to be decided by the Hon'ble Commission. Therefore, this regulation is applicable for the category-1 Sellers where additional deviation charges are to be leviable as per the Table-I of Annexure-II. It is submitted that only after finalizing the value of [X] under Table-II of Annexure-II, the deviation volume limit for HPGCL owned thermal plants/ Category-2 Plants can be worked out. The Hon'ble Commission may therefore, omit reference to regulation 10(C) under regulation 10(E) and 10 (J). The deviation volume shall instead be specified as per the value of [X].
- 4.7 Further, as per regulation 10(C), if the injection schedule in a time-block is equal to or less than less than 40 MW, deviation volume limit is 5 MW even if the 12% of scheduled injection is less than 5 MW. In this case, additional charges for 0.2 MW is not leviable. Similar, provision shall also be incorporated for HPGCL owned thermal plants/ Category-2 plants after determination of value of [X] under Table-II of Annexure II.

C. SPECIFICATION OF VOLUME LIMIT OF [X] MW UNDER TABLE-II (B) OF ANNEXURE-II:

- 4.8 That the deviation volume limit for Central Generating Stations has been fixed as 150 MW as per CERC (DSM) Regulation, 2014. Accordingly, the deviation volume for other power stations in the State of Haryana i.e. CLP and APCPL, being interstate generators, is 150 MW. In view thereof, it is the humble submission of HPGCL that the value of 'X' under Table II (B) of Annexure-II should be specified as 150 MW in parity with other plants located in the State of Haryana.
- 4.9 That another factor for considering specification of value of [X] as 150 MW is that as per the draft procedure prepared by petitioner-HVPNL, for the forced outage of the generating unit/plant during the day of operation, the generator shall immediately intimate the outage of the unit along with the requisition for revision of the schedule and estimated time of restoration of the unit to SLDC. The schedule of DISCOM, sellers, buyers of power from this generating plant/unit has to be revised accordingly from 4th time block counting the time block in which intimation is given by the generator. In that case, huge amount of additional charges is leviable on the tripping of Unit. Other unforeseen factors like outages of major auxiliaries and deterioration in quality of coal, can also lead to sudden and abrupt drop in generation vis-a-vis schedule generation. Thus, the deviation volume as 150 MW in a time block in parity with other plants located in the State will provide economic viability to operation of HPGCL plants.
- 4.10 It is further brought to the kind attention of the Hon'ble Commission that while going through the '*DSM account for the week from 28th November to 04th*

December, 2022' notified by the SLDC, it has been observed that in the Madhya Pradesh Power Transmission Company Limited (MPPTCL) vide memo dated 15.02.2023, the deviation volume has been specified as 150 MW in line with CERC DSM Regulations, 2014. Similarly, in case of Gujarat also, the deviation volume has been specified as 150 MW in line with CERC(DSM) Regulations, 2014 as is evident from the Gujarat SLDC memo dated 11.02.2023 notifying the *State Deviation Settlement Account (Deviation charges) for the week from 17/10/2022 to 23/10/2022*.

D. IMPOSITION OF ADDITIONAL CHARGES FOR CHANGE OF SIGN UNDER REGULATION 9(A)(1) OF THE DSM REGULATIONS 2019: -

4.11 The petitioner has contended that the regulation 9(A)(1) does not clarify whether the additional charges are to be levied @ 10% of base charge or 10% of sum of base charge and additional charge. In this regard, it is submitted that the proviso to regulation 9(A)(1) specifies 'additional charge' to be levied for change of sign as '10% of the deviation charges applicable'. The 10% of deviation charges in the proviso to the regulation can only be inferred as 10% of base charge which is the deviation charge. Hence, charges for change of sign as per said proviso shall be clarified as 10% of the base rate charges for deviation as per Annexure-1 for the duration of continuance of violation.

E. APPLICABILITY OF REGULATION 11 (1) W.R.T UNDER /OVER INJECTION OF ELECTRICITY BY A SELLER WHEN GRID FREQUENCY IS BELOW 49.70 HZ/50.05 HZ.:

4.12 The petitioner has mentioned in the petition that no scheduling is done for the infirm power. Therefore, it has been requested to subsume regulation 11(1) in regulation 10(C) thereby making the said condition inapplicable in case of infirm power. With respect to incorporating condition prohibiting over/under injection in a specific frequency band for all kinds of sellers under regulation 10(C), it is submitted that Generators (Sellers) have limitations and situations are sometimes beyond their control such as tripping of the unit and in that case, there will be under-injection irrespective of the frequency profile. As such, introducing a general prohibitory provision for all plants will not be feasible. It is further clarified that for under/over injection when the Grid frequency is below 49.7 Hz and above 50.05 Hz, necessary provisions for penalizing the sellers have already incorporated in the Regulations.

4.13 Further, regulation 11(2) regarding injection of power during testing and commissioning activities shall also be deleted as there may be appropriate conditions for the same under connectivity Regulations. Accordingly, the nomenclature of the regulation (11) shall be modified by deleting the word 'Infirm power' and retaining the same as 'Treatment of Start Up power prior to COD'.

F. CLARIFICATION REGARDING TELESCOPIC OR NON-TELESCOPIC NATURE OF SLABS GIVEN UNDER TABLE I OF ANNEXURE II APPENDED TO THE DSM REGULATIONS 2019.:

4.14 The petitioner has contended that Table-I of Annexure-II of DSM Regulations does not clarify whether the slabs and telescopic or non-telescopic in nature. Reference has been further made to illustration provided in CERC (DSM)

Regulations. From the perusal of Annexure-II of DSM Regulations, 2019, it is apparent that additional deviation charges are payable for crossing the volume limit @ 20%, 40%, 100% of charge of deviation for the incremental deviation in each slab. Thus, the slabs are telescopic in nature irrespective of the deviation volume. However, the Hon'ble Commission may consider specifying an illustration for Table-1 of Annexure-II and also for Table-II of Annexure II.

G. Amendment in Regulations as per CERC (Deviation Settlement Mechanism and Related Matters) Regulations, 2022 (hereafter, CERC DSM Regulations, 2022) -

- 4.15 CERC DSM Regulations, 2022 were notified on 14.03.2022. However, the CERC DSM Regulations, 2022 came into force w.e.f. 05.12.2022. Further, vide order dated 06.02.2023, the CERC in exercise of its powers under regulation (11) and regulation (12) of the DSM Regulations, 2022 and under section 79(1)(c) of the Electricity Act, 2003 ("the Act") issues practice directions and notified various relaxations in the Regulations.
- 4.16 During the course of last hearing, it was proposed by the Discom's that the Hon'ble Commission may consider amending the DSM Regulations, 2019 in line with latest CERC (DSM) Regulations, 2022. At the outset, it is submitted that vide CERC (DSM) Regulations, 2022, the existing frequency band of 49.70Hz - 50.05Hz has been done away with. However, various players apprised subsequently that wide frequency fluctuations occurred post the implementation of the DSM Regulations, 2022. Thereafter, the CERC issued certain directions on 26.12.2022 vide Suo Motu petition no. 16/SM/2022 stipulating inter-alia certain regulatory measures to contain frequency within the operating band and reduce wide frequency fluctuations. The new system being set up in line with CERC (DSM) Regulations, 2022 is yet to stabilize and therefore, the Hon'ble Commission may consider deferring adoption of CERC (DSM) Regulations, 2022 for few more months.
- 4.17 The present comments are being submitted on the existing DSM Regulations, 2019 as the scope of present petition is restricted to bringing limited clarifications/modifications in DSM Regulations, 2019. However, in the event the Hon'ble Commission decides to bring amendments in DSM Regulations, 2019 in line with CERC (DSM) Regulations, 2022, the draft Regulations shall be put up for comments of all stakeholders and an opportunity shall be afforded to comment on the same afresh.
- 4.18 Without prejudice to foregoing, it is worthwhile to bring to the kind notice of the Hon'ble Commission that in the CERC (DSM) Regulations, 2022 notified on 14.03.2022, a volume limit for over/under injection had been specified as 2% for the purpose of calculation of charges for deviation payable to Deviation and Ancillary Service Pool Account. The regional entity generators however, highlighted the difficulty in operating within the tight band of +/- 2% of schedule and requested for higher incentive for providing support during high and low frequency conditions. Consequently, in the CERC order dated 06.02.2023, considering the interest of grid security and based on the feedback of the stakeholders during consultations, the said volume limit for deviation has been increased in the range of 10% DGS/ 100 MW - 15% DGS/150 MW. The Hon'ble Commission may therefore, consider the peculiar operating

conditions of State Generating Stations and specify higher deviation percentage.

- 4.19 Further, the CERC (DSM) Regulations, 2022 provides incentives for providing support during high and low frequency conditions. Such incentives encourage generators to maintain grid discipline. The Hon'ble Commission may therefore, also consider incorporating adequate incentives in the Regulations for over injection when the grid frequency is on the lower side and for under injection the grid frequency is on the higher side.

H. ADDITIONAL COMMENTS: -

In addition to the issues raised by the HVPNL in the instant petition, the HPGCL requests the indulgence of the Hon'ble Commission to consider following additional submissions and appropriately issue clarifications/amendments in that respect, in the interest of justice -

I. Applicability of Regulations on WYC Hydro Project of HPGC -

- i. Regulation (4) defines 'applicability' as under -

"4. Applicability

These regulations shall apply to the transactions of conveyance of electricity through short-term open access or medium-term open access or long-term open access using intra-State transmission system or distribution system of electricity (including inter-state wheeling of power), subject to following conditions: -

- (A) Deviation Settlement Mechanism under these regulations shall be applicable for all Seller(s), including Open Access Generators, Captive Generators re-generators with capacity 10 MW and above (excluding In-Situ Captive Generators) connected to Intra-State Transmission system but excluding Wind and Solar Generating Station(s).*

Provided that, Forecasting, Scheduling and Deviation Settlement related matters in respect of Wind and Solar generation shall be governed as per the provisions of "Haryana Electricity Regulatory Commission (Forecasting, Scheduling and Deviation Settlement for Solar and Wind Generation) Regulations, 2018" as and when notified and its further amendments thereof.

- (B) Deviation Settlement Mechanism under these Regulations shall be applicable for all Buyer(s) including Distribution Licensee(s), Deemed Distribution Licensee(s) located in the State and Full Open Access Consumers connected to Intra-State Transmission system.*

Provided that, Deviation Settlement of Partial Open Access Consumers connected to Intra-State Transmission system and all Open Access Consumers connected to Distribution Network shall be in accordance with the provisions of Haryana Electricity Regulatory Commission (Terms and conditions for grant of connectivity and open access for intra-State transmission and distribution system) Regulations, 2012 and its amendment thereof."

- ii. It is submitted that the DSM Regulations, 2019 cannot be made applicable to WYC hydro projects of HPGCL as the rated capacity of machine is less than 10 MW and the collective capacity of the same is 62.4 MW.

- iii. The generation of WYC hydro project, being Run of River project, depends upon flow of water in the canal which is regulated by the irrigation department as per their requirement. As such, the implementation of scheduling may not be possible for WYC hydro projects. The guiding principles for scheduling and dispatch are also required to be put in place.
- iv. The cost of power of WYC hydro project is very low and it will not be in the interest of State to back down this power so as to avoid the possibility of paying of charges of deviation.

Therefore, it is requested that it may be specified that DSM Regulations, 2019 are not applicable for WYC hydro projects.

I. Unit wise or Station wise implementation of DSM Regulations -

- i. In the joint report prepared by the HPGCL with HVPNL, it was observed that it is not possible to implement Unit-wise DSM. This issue was also brought to the notice of the Hon'ble Commission during the filing of previous ARR tariff petitions. It is however brought to the notice of the Hon'ble Commission that HPGCL has taken up the matter before Hon'ble Appellate Tribunal for Electricity (APTEL) regarding metering at Plant-wise instead of Unit-wise and the same is pending adjudication.
- ii. In this regard, it is emphasized that the Station wise DSM is advantageous in terms of providing grid stability as the same has more flexibility in implementation of schedules in case of outage/problems in Unit(s). The following illustration may help clarify the foregoing submission:

- Station like RGTPP has 2 Units of 600 MW each and at any time each Unit has got schedule to run at 400 MW each (Net Power) up to 4th time block. Thus, the total schedule for RGTPP for current and next three blocks will be 800 MW.
- However, in case of tripping of any Unit say Unit-1, Station will have capability to deliver about 570 MW net Power (i.e. from Unit-2), however, HPGCL will not be able to do so as in case of Unit-wise DSM as DSM charges will be leviable on Unit-2 for excess generation.
- This will ultimately result into unnecessary backing down of the Unit-2. Further, in spite of having additional availability of 170 MW power from Unit-2 with the State, Discoms may either the power from the grid or impose cuts to balance the situation for 4 blocks. This situation is avoidable on implementation of DSM on station-wise basis.

In light of the foregoing, it is therefore, prayed that the Hon'ble Commission may kindly consider specifying that the DSM shall be implemented Station-wise and volume limits for deviation may be specified a par with the other Generation plants located in the State of Haryana.

II. Deletion of regulation 9 (A)(6) regarding injection of infirm power and relevant content in 9 (A)(3):

- i. As per regulation 9 (A)(6), the infirm power injected into the grid by a generating unit of a generating station during the testing, prior to COD of the unit shall be paid at Charges for Deviation for infirm power injected into the grid. However, the same has been capped at Rs 1.78/KWh sent out which is way lower as compared to the energy charges. The appropriate

regulation in this regard has already been notified under HERC MYT Regulation, which reads as under -

“44 SALE OF INFIRM POWER

- (a) *Supply of infirm power shall be accounted as Unscheduled Interchange (UI) and paid for from the regional or State UI pool account at the applicable frequency-linked UI rate.*
- (b) *Any revenue earned by the generating company from sale of infirm power after accounting for the fuel expenses shall be applied for reduction in capital cost. Any loss on this account shall not be taken into consideration...”*

In view of the regulation (44) of HERC MYT regulations, the regulation 9 (A)(6) fails to serve any purpose and may kindly be considered to be deleted. Accordingly, regulation 9(A)(3) also needs to be suitably modified to the extent that the exception mentions therein as ‘*except in case of infirm power, which shall be governed by clause 8 of the regulation*’ should also be deleted. It is also brought to the kind notice of the Hon’ble commission that clause 9(A)(3) inadvertently refers to clause 8 under exception whereas the actual clause here is clause 6.

III. Deviation Volume for seller whose generating station is not regulated by the Commission using coal or lignite or gas supplied under Administered Price Mechanism (APM) (i.e. Category-1 Seller)

- i. The DSM Regulations, 2019 specifies volume limit for the Category-1 sellers including the generators whose tariff is not decided by the Commission as 10 MW. Although at present, there is no coal-based plant in Haryana which falls under this category. However, any large size generator, whether the same is regulated by the Commission or not, the volume limit should be kept/fixed in parity to the volume limit specified for the ISGS of the State such as APCPL and CLP. Thus, Hon’ble Commission may therefore, specify separate volume limit for the Generating Stations whose tariff is not decided by the Commission in parity with other similar generators of the State.

IV. Accounting of power being fed to the colony from the HPGCL power stations:

- i. In order to ensure uninterrupted power supply in the colony, power is also fed to the residential colony from the respective thermal power stations of HPGCL at Panipat and Yamuna Nagar. At present, this metered power is added in the net sent out power from the respective power station for billing to HPPC. The consumers of colony/HPGCL (in case of single point metering) are paying bills to the Discoms. After implementation of DSM, the power fed to the colony in a time block of 15 minute each will also be captured for working out net power injected/drawl at the power station. Accordingly, HVPNL may kindly be directed to consider the same under SAMAST program.

- V. Non-levying of DSM Charges in case of forced outage of Unit(s):** It is submitted that the Hon’ble Commission may consider not levying any

deviation charge in the case of forced outage of the generating unit/plant for the time block in which the Unit (s) are tripped and in the subsequent time blocks.

VI. Running the system on trial basis before implementation on commercial basis: It is requested that the system/software may be allowed to run on trial basis for at least 12 months and based on the outcome of the trial basis, the DSM regulations/procedure may be amended (if required) before its implementation on commercial basis.

In view of the foregoing, it is most humbly prayed that the present petition may kindly be considered in light of submissions made by HPGCL.

5. The case again came up for hearing before the Commission on 12.04.2023, as schedule. The Commission directed the Discoms to file their comments within two weeks with an advance copy of the same to the petitioner. The petitioner was further directed to file the response on the comments of intervenors including HPGCL within two weeks thereafter.

6. HPPC Comments dated 03.05.2023:

HPPC submitted that “*the Intra State DSM, Levy of charges should be in line with those being applied by CERC on CGS units, since any deviation of schedule by Intrastate generation directly impacts the State UI (by the same degree/quantum) on which the CERC applies the UI charges*”. The other pointwise comments of HPPC on the issue raised by HVPNL are as under:

6.1 Specification of Additional Charge of Deviation under Regulation 10 (G)

10(I): HVPNL raised that rate of Additional Charges for deviation (in terms of percentage of Charges for Deviation) to be levied on buyers/sellers for over-drawls/ under-injection of electricity for the time blocks when grid frequency is “below 49.70 Hz”, has not been specified in the DSM Regulations, 2019 and prayed that the said Additional Charges for Deviation under Regulation 10(I) may kindly be specified:

HPPC submitted that Charges for Deviation to be levied on buyers/sellers for over-drawls/ under-injection of electricity for the time blocks when grid frequency is “below 49.70 Hz should be aligned with deviations charges as specified by the CERC in its order dated 06.02.2023. However, it is specified that no additional deviation charges would be levied as per the ibid order. Additionally, the operating frequency range should be amended to 49.85 Hz to 50.05 Hz in accordance with CERC DSM regulation.

6.2 Specification of Volume Limit of [X] MW under Table-II (B) of Annexure II for Sellers whereby HVPNL prayed that the Volume Limit [X] MW may kindly be specified in case of Sellers:

HPPC submitted that Volume limit specified in the CERC DSM Regulation 2014 is specified as 150 MW. The petitioner i.e. HVPNL has itself claimed that 150 MW as per CERC regulations corresponds to 10 MW in HERC DSM Regulation, 2019. Accordingly, it is requested to set volume as 10 MW for both category of seller.

6.3 Clarification with respect to the imposition of Additional Charges for change of sign under Regulation 9(A)(1): wherein HVPNL raised that the regulation is not clear whether Additional Charges in the event of violation of

above clause are to be levied @10% of base Charges for Deviation or @10% of sum of base Charges for Deviation & Additional Charges for Deviation and prayed that the difficulty in the calculation of the such additional charges may kindly be removed by the Hon'ble Commission

HPPC submitted that as per CERC DSM Regulation, 2022 in-force from 05.12.2022, the charges for sign change violation has been removed. HPPC has requested to align the HERC DSM regulation with existing CERC DSM regulation.

7. Composite rejoinder dated: 15.05.2023 by the petitioner-HVPL:

The petitioner by way of the present rejoinder has given the detailed para-wise rejoinder to the reply submitted by the HPGCL and comments of HPPC.

The para-wise reply to the comments submitted by the Haryana Power Generation Corporation Limited (HPGCL) with inclusion of the reply to the comments of HPPC at the appropriate place are as under:

A. Reply to “DSM Regulations, 2019 refers to two kinds of sellers- a) seller as generating station regulated by the Commission using coal or lignite or gas supplied under administered price mechanism (APM) as fuel; and b) other sellers, including generating station not regulated by the commission using coal or lignite or gas supplied under administered price mechanism (APM) as fuel.:

7.1 That the contents of para relating to the charges specified in Annexure-1 and the proviso of regulation 9(A)(1) whereby it has been stated that the charges for deviation for regulated generating stations shall not exceed the Cap Rate are a matter of record.

7.2 That the contents relate to the value of “X” has not been specified/defined in Table II of Annexure II is a matter of record. Further, the submission of the petitioner-HVPL with respect to the specification of Volume Limit of [X] MW under Table-II(B) of Annexure II may kindly be read in conjunction to the submissions made by HPGCL in present para.

B. Reply to “levy of additional deviation charges under regulation 10(c) and TABLE II (a) of Annex-ii:

7.3 That the HPGCL under the heading has sought that *“The Hon’ble Commission, may therefore, omit reference to Regulation 10(C) under regulation 10(E) and 10(J). The deviation volume shall instead be specified as per the value of [X].”* However, it is unclear as to what *“omit reference”* to the said Regulations signify. It is humbly submitted that the Hon’ble Commission may kindly specify the Volume Limit of [X] under Table-II(B) of Annexure II for Sellers and also kindly clarify the ambiguity w.r.t to the levy of additional deviation charges under regulation 10(C) and Table-II(A) of Annexure-II as per the petition.

7.4 That the petitioner-HVPL had sought removal of ambiguity in the applicability of the proviso to regulation 10(C) of the DSM Regulations, 2019. Now, HPGCL has sought incorporation of a similar proviso for HPGCL owned thermal plants/ category-2 plants after determination of value of [X] under Table-II of

Annexure-II. In this regard, it is submitted that the Hon'ble Commission may adjudicate upon the plea with respect to the incorporation of similar proviso for category-2 plants, as deemed fit, just and proper by the Hon'ble Commission.

C. REPLY TO “SPECIFICATION OF VOLUME LIMIT OF [X] MW UNDER TABLE II(B) OF ANNEXURE II (POINT 6 OF THE PETITION)”:

7.5 That as have already been specified in the petition w.r.t limit [X], that 150 MW as per the CERC, Regulations corresponds to 10MW is in case of DSM Regulations, 2019, however, HPGCL is seeking that the value of X be specified as 150MW in parity with the other plants located in the State of Haryana. The plea of HPGCL may kindly be decided as deemed fit by the Hon'ble Commission.

7.6 That it is submitted that the plea of HPGCL w.r.t specification of deviation volume as 150MW in a time block may kindly be decided as deemed fit by the Hon'ble Commission.

7.7 That it is reiterated that the plea of HPGCL w.r.t specification of deviation volume as 150MW in a time block may kindly be decided as deemed fit by the Hon'ble Commission.

It is further submitted that HPPC in comments had raised a similar contention that –“... volume limit specified in the CERC DSM Regulations, 2014, is specified as 150 MW. The petitioner has itself claimed in the petition that 150 MW as per CERC Regulations corresponds to 10 MW in the HERC DSM Regulations, 2019. In view of above, it is requested to set volume limit as 10MW for both categories of sellers.” In this regard, HVPNL reiterated that the said aspect may kindly be clarified as deemed fit by the Hon'ble Commission.

D. REPLY TO “IMPOSITION OF ADDITIONAL CHARGES FOR CHANGE OF SIGN UNDER REGULATION 9(A)(1) OF THE DSM REGULATIONS 2019 (POINT NO 8 OF THE PETITION)”:

7.8 That the petitioner-HVPNL reiterates the contents of the petition and submitted that it is unclear whether the additional charges for sign change are required to be levied @10% of the base charge for deviation or @10% of the sum of base charges for deviation and additional charges. As such the petitioner-HVPNL submitted that the said aspect may kindly be clarified as deemed fit by the Hon'ble Commission.

7.9 It is further submitted that HPPC in its comments had submitted that the CERC DSM Regulations, 2022 has removed the charges for sign-change violations and requested the Hon'ble Commission to align the HERC DSM Regulations, 2019 with the existing CERC (DSM) Regulations. In this regard, HVPNL reiterated that the said aspect may kindly be clarified as deemed fit by the Hon'ble Commission

E. Reply to “applicability of regulation 11 (1) w.r.t under /over injection of electricity by a seller when grid frequency is below 49.70 Hz/50.05 Hz.:

7.10 That a provision generally applicable to all the buyers have already been incorporated in the DSM Regulations, 2019 i.e. the proviso to regulation 10(B) vide which no over-drawl or under-drawl of electricity by the Buyer is permissible when the grid frequency is below 49.70 Hz and 50.05 Hz and above

respectively. However, the general provision for sellers have been incorporated under regulation (11) which relates to the *‘Treatment of Infirm power and Start Up power prior to COD’*, whereas no scheduling is done in case of infirm power. As such, the petitioner-HVPL had sought incorporation of a general provision for Sellers similar to that in case of Buyers and deletion of regulation 11(1) of the DSM Regulations, 2019. However, HPGCL has sought deletion of the general prohibitory provision for all Sellers. In this regard, the petitioner-HVPL reiterates its prayer regarding inclusion of general provision w.r.t under/over injection of electricity by seller.

7.11 Further regarding deletion of word ‘Infirm Power’ from regulation(11) may kindly be decided as deem fit by the Hon’ble Commission.

F. Reply to “Clarification regarding Telescopic or Non-Telescopic Nature of Slabs given under Table-I of Annexure-II appended to the DSM Regulations 2019:

7.12 That the Hon’ble Commission may kindly clarify whether the slabs are telescopic or non-telescopic in nature.

G. Reply to “Amendment in Regulation as per CERC (Deviation Settlement Mechanism and related Matters) Regulations, 2022 (CERC DSM Regulations, 2022):

At the outset, it is submitted that the aspect w.r.t. “CERC DSM Regulations, 2022” as well as the points raised by way of “Additional Comments” herein below have been raised afresh by HPGCL and the same do not form the part of the petition submitted by HVPL.

7.13 Further the petitioner-HVPL is presently in the process of development of the software for implementation of SAMAST. In case the regulations are overhauled i.e. the DSM rates are delinked with frequency, then the petitioner-HVPL may require additional time for incorporation of changes and modification of the software. As such, it is submitted that amendment in line with CERC(DSM) Regulations, 2022 or the decision with respect to the deferring the adoption of the CERC (DSM) Regulations, 2022 may kindly be decided as deemed fit by the Hon’ble Commission keeping in view the additional time that may be required for development and modification of the software. Be that as it may, it is brought to the notice of the Hon’ble Commission that after the notification of the CERC (DSM) Regulations, 2022, a number of amendments have been notified thereafter. Further, directions have been passed by Hon’ble CERC by way of orders issued in exigency as an interim measure, in the interest of Grid Security. The Hon’ble CERC may also come up with further suitable amendments to the CERC (DSM) Regulations, 2022 separately based on further analysis

7.14 That the other issue raised by HPGCL may kindly be decided as deemed fit by the Hon’ble Commission considering the comments of DISCOM, if any.

H.REPLY TO “ADDITIONAL COMMENTS”:

I. Applicability of Regulations on WYC Hydro Project of HPGC”:

7.15 That the issue with respect to the applicability of the Regulations on WYC Hydro Project of HPGCL may kindly be decided as deemed fit by the Hon'ble Commission.

II. Unit wise or Station wise implementation of DSM Regulations:

7.16 That the DSM Regulations, 2019 define 'Seller' as under:

*“(s) ‘Seller’ means a person, **including a generating station**, supplying electricity through a transaction scheduled in accordance with the regulations applicable for short-term open access, medium-term open access and long-term open access;”*

Further, as per the Central Electricity Authority (Installation and Operation of Meters) (Amendment) Regulations, 2019 the provision for installing main meters and check meter on generation stations is as under:

“On all outgoing feeders including bus sectionalizer or tie line between two stages of generating stations having different tariffs or different ownership or both”

Thus, the issue raised by HPGCL may kindly be decided in view of the aforementioned definition of 'Seller' as well as the applicable CEA Regulations.

III. Deletion of regulation 9(A)(6) regarding injection of infirm power and relevant content in 9(A)(3):

7.17 That in reply to the contents of this para it is submitted that the matter of capping of charges @ 1.78/KWh prior to COD for generating stations is not linked to present petition preferred by HVPNL. However, it is correct that the Regulation 9(A)(3) inadvertently refers to clause 8 under exception whereas the actual clause here is clause 6 of the ibid Regulation. As such, the error w.r.t. Clause 8 may kindly be amended by the Hon'ble Commission.

IV. Deviation volume for seller whose generating station is not regulated by the Commission using coal or lignite or gas supplied under Administered Price Mechanism (APM) (i.e. Category-1 Seller)

7.18 That the deviation volume limits are specified by the Hon'ble Commission in the DSM Regulations, 2019. Further, the issue w.r.t. specification of separate volume limit for the Generating Stations whose tariff is not decided by the Commission in parity with other similar generators of the State may kindly be decided as deemed fit by the Hon'ble Commission.

V. Accounting of power being fed to the colony from HPGCL power stations:

7.19 That in reply to the contents of this para it is submitted that the consumption of residential colony of power plants is almost negligible as compared to the 'total generation' of the generating station. By installing the SEMs on the colony feeders, as proposed by HPGCL, there may be complications in dealing the DSM relating issues. As such, the submission of HPGCL is not feasible. Be that as it may, the issue has been raised by HPGCL for the very first time before the Hon'ble Commission, as such, the Hon'ble Commission may direct the resolution of the issue by mutual consultation. The aggrieved party may be directed to approach the Hon'ble Commission only in case of failure in reaching an amicable solution.

VI. Non-levy of DSM Charges in case of forced outage of Unit(s):

7.20 In reply to the contents of this para, it is submitted that the issue with respect to the Non-levying of DSM Charges in case of forced outage of Unit(s) may kindly be decided as deemed fit by the Hon'ble Commission.

VII. Running the system on trial basis before implementation on commercial basis:

7.21 The petitioner-HVPL submits that the DSM Regulations, 2019 may be implemented on trial basis before its commercial operation, for the period as deemed fit by the Hon'ble Commission.

VIII. Additional Submissions wrt Comments of HPPC:

Additional Charge of Deviation under Regulation 10(I) has not been specified:

It is further submitted that HPPC in its comments received had submitted that- *‘that the additional deviation charges, applicable for over-drawls/under-injection when grid frequency falls below 49.70 Hz should align with deviation charges paid by buyer/seller as specified by CERC in its order dated 06.02.2023. in petition 01/SM/2023 (copy attached). However, it is specified that no Additional deviation charges would be levied as per said order. Additionally, the operating frequency range should be amended to 49.85 Hz to 50.05 Hz in accordance with CERC DSM Regulation.’*

7.22 In this regard, HVPL reiterates that the said rate of Additional Charges for deviation (in terms of percentage of Charges for Deviation) to be levied on buyers/sellers for over-drawls/ under-injection of electricity for the time blocks when grid frequency is “below 49.70 Hz”, has not been specified in the DSM Regulations, 2019. As such, it is prayed that the said Additional Charges for Deviation under Regulation 10(I) may kindly be specified. Further, the amendment in the frequency range may also kindly be decided as deemed fit by the Hon'ble Commission

PRAYER:

7.23 In light of the submissions made hereinabove, as well as the detailed submissions made in the petition the Hon'ble Commission may be pleased to:

- i. Pass necessary directions/ orders for clarification/ modification/ removal of difficulties which have arisen in the implementation of DSM Regulations, 2019, especially relating to the following issues:
 - a. Specification of Additional Charge of Deviation under Regulation 10(I);
 - b. Clarification with respect to the levy of Additional Deviation Charges under Regulation 10(C) and Table-II(A) of Annexure-II;
 - c. Specification of Volume Limit of [X] MW under Table-II (B) of Annexure II for Sellers;
 - d. Clarification with respect to Clause 10(B)(iii);
 - e. Clarification with respect to the imposition of Additional Charges for change of sign under Regulation 9(A)(1);
 - f. Clarification w.r.t. the applicability of Regulation 11(1) w.r.t. under/ over Injection of electricity by Seller when the grid frequency is below 49.70Hz/50.05 Hz;
 - g. Clarification regarding telescopic or non-telescopic nature of Slabs given under Table-I of Annexure-II.

- ii. Pass any other order(s) and or direction(s), which the Hon'ble Commission may deem fit and proper in the facts and circumstances of the case.
8. The case again came up for hearing on 17.05.2023, as scheduled, in the court room of the Commission. Ms. Aerika Singh, the counsel appearing for the petitioner submitted that HVPNL has filed the rejoinder on the reply of HPGCL and HPPC. Ms. Kanupriya Sharma appearing for Indian Railways submitted her reply during the hearing and reiterated the brief submissions covered in the said reply. Ms. Aerika Singh submitted that HVPNL has not yet received the copy of the reply submitted by the Indian Railways and requested for three weeks' time to file its response on the same. The Commission directed the counsel for the Indian Railways to provide the copy of the reply to the petitioner and the petitioner further directed to file the response on the same within three weeks, as requested for.

9. Comments dated 15.05.2023 by Northern Railways:

The intervenor has submitted as under:

- 9.1 That the present petition has been filed by the petitioner i.e., HVPNL (operating as the SLDC) seeking necessary directions for clarifications / modification / amendment and removal of difficulties which have allegedly arisen in the implementation of certain provisions incorporated under regulations 9, 10 and 11 of the HERC (Deviation Settlement Mechanism and related matters) Regulation 2019 ("HERC (DSM) Regulations) which specifically deal with Additional DSM Charges on account of volume deviation and sign change violation.
- 9.2 That the present reply is being filed by the respondent i.e. Northern Railways in response to the above petition. The contents of the petition, except whatever may be a matter of record, are denied in seriatim. Nothing under this reply may be construed as an admission on the part of the respondent, unless specifically admitted. All arguments are in the alternative and without prejudice to each other.

Re: Issues raised under the present petition-

- 9.3 That the present petition is in relation to 'Additional Charges for Volume Limit Deviation' and 'Additional Charges for Sign Change Violation' which used to exist under the CERC (DSM) Regulations, 2014. The CERC (DSM) Regulations, 2014 stands repealed by virtue of the CERC (DSM) Regulations, 2022. As such, these Additional Charges have been discontinued by the Hon'ble CERC. In this light of the matter, this Hon'ble Commission may also consider deleting these clauses in relation to Additional Charges from the HERC (DSM) Regulations, 2019.
- 9.4 In this regard, Section 79(1)(h) and 86 (1)(h) of the Electricity Act, 2003 are instructive-
"Section 79. (Functions of Central Commission): -
(1) The Central Commission shall discharge the following functions, namely: -
...
(h) to specify Grid Code having regard to Grid Standards."

“Section 86. (Functions of State Commission): -

(1) The State Commission shall discharge the following functions, namely: -

...

(h) specify State Grid Code consistent with the Grid Code specified under clause (h) of sub-section (1) of section 79;”

9.5 That under Section 79(1)(h) of the Electricity Act, the Central Commission has the power to specify the Grid Code. The Electricity Act, 2003 also provides that the function of the State Commission to specify State Grid Code under Section 86(1)(f) of the Electricity Act, should be consistent with the Grid Code specified by the Central Commission and, therefore, there is a connect between the two.

9.6 That the above-mentioned connection between Section 79(1)(h) and Section 86(1)(h) has been recognized by the Hon’ble Supreme Court in **Central Power Distribution Co. v. Central Electricity Regulatory Commission, (2007) 8 SCC 197**, where in the context of UI mechanism, it has held as follows-

“...

18) Under Section 79(1)(h) the Central Commission has the power to specify Grid Code. It also provides that the function of the State Commission to specify State Grid Code under Section 86(1)(f) should be consistent with the Grid Code specified by the Central Commission and therefore the power of the State Commission is subservient to the power of the Central Commission. Section 2 (32) defines Grid as inter connected transmission lines. The expression used inter connected has a significant meaning. Sub-section (1) of Section 28 deals with the function of RLDC (Regional Load Despatch Centre) to ensure integrated operation of the power system in the concerned region. The term power system is of wide import. It is not confined to inter State Transmission Lines but extends to even supply lines, distribution, main service lines etc. However, sub-section (3) of Section 28 deals with duties of RLDC using the expression within the region or in the region. Obviously, it includes both Inter State and Intra State lines and is not restricted to inter State lines. Section 29 of the Act empowers the RLDC to give directions and exercise such supervision and control to any person for ensuring stability of grid operation. It also provides that the State Load Despatch Centre shall duly enforce such directions. Sub-section (3) of Section 33 of the Act provides that the State Load Despatch Centre shall comply with the directions of the Regional Load Despatch Centre.

(19) A fascicule reading of the above provisions would clearly show that the scheme of the Electricity Act is that RLDC is required to follow the principles, guidelines and methodologies specified by the Central Commission and all persons including the distribution licensees like the appellants herein are required to follow the directions of RLDC. RLDC can enforce such directions through SLDC. In turn SLDC is required to follow the directions of RLDC.

(20) Having regard the aforesaid mentioned provisions of law the contention that the Central Commission has no jurisdiction to deal with grid discipline in regard to single State beneficiary station, in our view, has no merit. As already noticed ABT is to ensure discipline in the integrated system. Further ABT is being introduced station wise and it is the Central Commission alone who has the jurisdiction particularly, in regard to generating stations of NTPC, which is a Central Government, owned and controlled generating company...”

9.7 The comments of Northern Railways on the specific issues raised by the petitioner are tabulated herein below-

S. No.	Issue raised by the Petitioner under the Petition	Comments of Indian Railways
I.	Additional Charge of Deviation under Regulation 10(I) has not been specified.	It is understood that this has already been specified under Table I of Annexure II.
II.	Ambiguity with respect to the levy of Additional Deviation Charges under Regulation 10(C) and Table II(A) of Annexure II.	Regulation 10(C) deals with deviations by a seller and Table (II)A of Annexure II deals with 'Additional Deviation Charge for Under Injection by Generating Stations regulated by the Commission using coal or lignite or gas supplied under APM". As such, these regulations do not apply Northern Railways which is a deemed distribution licensee.
III.	Volume Limit of [X] MW under Table-II(B) of Annexure II has not been specified for Sellers.	The prayer is in respect of "Sellers" and, hence, inapplicable to Northern Railways.
IV.	<p>Ambiguity in Clause 10(B)(iii) which reads as under-</p> <p><i>"(B) The Volume Limit of [X] MW for distribution licensee(s) and Buyers shall be determined as under:-</i></p> <p>...</p> <p><i>(iii) Peak Demand of the Distribution Licensee shall be recorded Peak Demand in the previous Financial Year or Projected Peak Demand of Buyer in ensuing Financial Year, whichever is higher:</i></p> <p>..."</p> <p>The Petitioners' case is that-</p> <p><i>"It is submitted that the above clause 10(B)(iii) relates to the Recorded Peak Demand of only the Distribution Licensee in the previous Financial Year and not about Recorded Peak Demand of Buyers in the previous Financial Year. Similarly, it takes into account the Projected Peak Demand of the buyer in ensuing Financial Year and not of the Distribution Licensee. Higher value of Recorded Peak Demand in previous financial year or Projected Peak Demand in ensuing financial year can be</i></p>	<p>It is to be noted that the term "Buyer" has been defined under the HERC DSM Regulations and reads as follows-</p> <p><i>"Buyer means a person, including distribution licensee or open access consumer, purchasing electricity through a transaction scheduled in accordance with the regulations applicable for short-term open access, medium term open access and long-term open access."</i></p> <p>In terms of the above, the term 'Buyer' includes a 'Distribution Licensee.</p>

	<i>selected only between same entities. However, it appears that intention of the above clause is to consider Recorded Peak Demand or Projected Peak Demand of both Distribution Licensee(s) and/or Buyer(s), whichever is higher to calculate Volume Limit of [X] MW.</i>	
V.	<p>Clarification with respect of Imposition of Additional Charges for change of sign under Regulation 9(A)(1). It is the Petitioner's case that Regulation 9(A)(1) <i>"is not clear whether Additional Charges in the event of violation of the above clause are to be levied at 10% of base Charges for Deviation or @ 10% of sum of base Charges for Deviation & Additional Charges for Deviation. As such, it is humbly prayed that the difficulty in the calculation of the such additional charges may kindly be removed by the Hon'ble Commission."</i></p>	<p>The language of the 1st Proviso to Regulation 9(A)(1) makes it abundantly clear that the Additional Charges in the event of violation of the above clause are to be levied at 10% of base Charges for Deviation. Any attempt by the Petitioner to promote levy of Additional Charges for sign change violation @ 10% of sum of base Charges for Deviation & Additional Charges for Deviation, is against the express language of the extant Regulation. It is to be noted that the Petitioner is seeking removal of difficulty in this regard. However, the settled law is that the power to remove difficulty can only be employed to give effect to the provision of the regulation and not otherwise. The assertions of the Petitioner are, in fact, a challenge to the Regulations and it is trite that a regulation being in the nature of delegated legislation, cannot be a matter of judicial review by this Hon'ble Commission but can only be challenged before the High Court. Reliance is placed on the Constitution Bench judgment rendered by the Hon'ble Supreme Court in the case of <i>PTC v. CERC</i>, (2010)4 SCC 603.</p>
VI.	Ambiguity in the applicability of Regulation 11(1) w.r.t. under/over injection of electricity by Seller when the grid frequency is below 49.70Hz/50.05Hz	The prayer is in respect of "Sellers" and, hence, inapplicable to Northern Railways.
VII.	Clarification regarding telescopic or non-telescopic nature of Slabs given under Table-I of Annexure-II appended to the DSM Regulations, 2019	The extant regulations are abundantly clear and need to be strictly interpreted. No changes are required.

9.8 In terms of the above, it is evident that the provisions highlighted by the petitioner under the present petition are actually self-evident and abundantly clear. However, the real reason for filing of the above petition is to be

understood which gets manifested by the conduct of the petitioner as detailed in the subsequent paragraphs.

Re: Contravention of HERC DSM Regulations and specific directions issued by this Hon'ble Commission by HVPNL:

9.9 That the following seriatim of events are relevant-

DATE	PARTICULARS
29.04.2019	The HERC DSM Regulations were notified by this Hon'ble Commission and came into effect on the same day. Per Regulation 12(1), the SLDC/Petitioner was directed to develop and publish on its website Procedures and Methodologies for the computation of Charges for Deviation and Additional Charges.
July, 2020	As admitted by the Petitioner, after more than a year, the Petitioner internally formulated a 'Procedure for Deviation Settlement for State Entities & Energy Accounting of the State' ("Draft Procedure").
12.01.2020	The Draft Procedure along with stakeholder comments was submitted before this Hon'ble Commission by the Petitioner.
17.06.2020	This Hon'ble Commission issued order in Petition No. HERC/PRO-11 of 2017 wherein, on the issue of Imbalance Charges v. DSM Charges, this Hon'ble Commission was pleased to categorically hold that imbalances / deviations shall be settled in line with the terms of HERC DSM Regulations instead of HERC OA Regulations, 2012 as amended from time to time.
12.04.2021	After analyzing the Draft Procedure and noticing unilateral changes/deviations incorporated under it from the HERC DSM Regulations, this Hon'ble Commission called for certain clarifications from the Petitioner and specifically directed the Petitioner to re-submit the Draft Procedure after amending suitably the draft procedure in consonance with the HERC DSM Regulations, for consideration of this Hon'ble Commission.
10.06.2021	The Petitioner submitted its Reply on the clarifications sought by this Hon'ble Commission and <i>inter alia</i> made a specific request to this Hon'ble Commission to relax/extend the date for implementation of the HERC DSM Regulations till March 2023.
29.10.2021	A meeting took place under the Chairmanship of ACS (Power)-cum-Chairman, HPU with Northern Railways wherein, after considering the submissions of HVPNL that the Draft Procedure has been submitted to this Hon'ble Commission and decision is awaited, HVPNL was specifically directed to issue DSM Charge bills as per HERC DSM Regulations on provisional basis which would be reconciled after approval of the Procedure of DSM Charges by this Hon'ble Commission.
September 2021 to October 2022	HVPNL (in the capacity of the SLDC) raised invoices on Northern Railways for the months September 2021 to October 2022 in accordance with the HERC DSM Regulations.

November 2022 onwards	Despite the agreed position between the parties and specific directions by this Hon'ble Commission and in derogation of the extant regulations, HVPNL started raising invoices for Imbalance Charges (instead of DSM Charges) on Northern Railways.
10.01.2023	The present Petition was filed by HVPNL.
07.02.2023	Northern Railways sent a representation to HVPNL highlighting that HVPNL was continuing to act in contravention of the directions under this Hon'ble Commission's order dated 17.06.2020 and directions issued during the meeting dated 29.10.2021.
15.02.2023	Northern Railways sent a representation to ACS (Power)-cum-Chairman, HPU's requesting intervention in the matter since HVPNL was continuing to act in contravention of the directions under this Hon'ble Commission's order dated 17.06.2020 and directions issued during the meeting dated 29.10.2021.
10.03.2023	HVPNL wrote to Northern Railways informing that it had submitted the Draft Procedure before this Hon'ble Commission for approval. Further, HVPNL informed its ad-hoc decision that, in the absence of approval, the HERC DSM Regulations is yet to be implemented on State Utilities. Further, in specific contradiction of the directions under this Hon'ble Commission's order dated 17.06.2020 and directions issued during the meeting dated 29.10.2021, HVPNL informed that it has decided to raise the Imbalance Charges in line with HERC OA Regulations, 2012.
Nil	Northern Railways made several requests and representations to HVPNL to revise its invoices and to comply with the directions under this Hon'ble Commission's order dated 17.06.2020 and directions issued during the meeting dated 29.10.2021. However, HVPNL continued to act in blatant disregard thereof and asserted its monopolistic and dominant position to force Northern Railways to clear some of the Imbalance Charge invoices under protest.

9.10 That the SLDC is constituted under Section 31 of the Electricity Act, 2003 and performing specific functions defined under Section 32 of the Electricity Act, 2003. Further, Section 32(3) of the Electricity Act, 2003 reads as follows-

“Section 32 - Functions of State Load Despatch Centres

(3)The State Load Despatch Centre may levy and collect such fee and charges from the generating companies and licensees engaged in intra-State transmission of electricity as may be specified by the State Commission.”

(Emphasis supplied)

In the light of the above, it is evident that the SLDC is a statutory authority created under the aegis of the Electricity Act, 2003 which is authorized to levy and collect only such fee and charges as may be specified by the State Commission. The SLDC is a 'regulated entity' and not the 'regulator'.

9.11 That it is trite law that a statutory authority has to function within the four corners of the statute. In this regard, the Hon'ble Supreme Court in the case

of **Bhavnagar University v. Palitana Sugar Mill (P) Ltd.** reported as (2003)2 SCC 111 (Para 40, at pg. 52 of the Compendium) has observed as follows:

“40. The statutory interdict of use and enjoyment of the property must be strictly construed. It is well settled that when a statutory authority is required to do a thing in a particular manner, the same must be done in that manner or not at all. The State and other authorities while acting under the said Act are only creature of statute. They must act within the four corners thereof.”

9.12 That in the present case, it is pertinent to note that HVPNL (operating as the SLDC) has refused to comply with the HERC (DSM) Regulations and is levying the Imbalance Charges in direct contravention of the specific directions issued by this Hon’ble Commission in its order dated 17.06.2020. The willful non-compliance of regulations and directions of this Hon’ble Court attracts applicability of Section 142, which reads as follows-

“Section 142- Punishment for non-compliance of directions by Appropriate Commission:

In case any complaint is filed before the Appropriate Commission by any person or if that Commission is satisfied that any person has contravened any of the provisions of this Act or the rules or regulations made thereunder, or any direction issued by the Commission, the Appropriate Commission may after giving such person an opportunity of being heard in the matter, by order in writing, direct that, without prejudice to any other penalty to which he may be liable under this Act, such person shall pay, by way of penalty, which shall not exceed one lakh rupees for each contravention and in case of a continuing failure with an additional penalty which may extend to six thousand rupees for every day during which the failure continues after contravention of the first such direction.”

9.13 That the alleged case of the petitioner is that there are difficulties in the implementation of the HERC (DSM) Regulations. However, this stand of HVPNL is a sham as evident from its own conduct that from September, 2021 to October, 2022, when the petitioner has no difficulty in computing the DSM charges and was, as a matter of fact, raising the DSM invoices on Northern Railways. However, all of a sudden, it has acted completely *volte face* its own earlier practice and procedure. Further, HVPNL even had the option to raise provisional bills as per directions in the meeting dated 29.10.2021, which option it has unilaterally chosen to discontinue.

9.14 It is well settled that statutory authorities are expected to follow the law as it stood thence. No steps can be taken by a statutory authority on the presupposition that the law would be amended. In this regard, the Hon’ble Supreme Court in the case of **Ashok Lanka v. Rishi Dixit**, (2005) 5 SCC 598 has held that-

“55. The Commissioner of Excise issued a circular letter dated 14-2-2005 which power evidently, he did not possess in terms of Section 7 of the Act. Although the State may delegate its power to the Commissioner of Excise, such a delegation cannot be made in relation to the matters contained in the rule-making power of the State. The matters which are, therefore, outside the purview of the Rules only could be the subject-matter of delegation in favor of the Commissioner of Excise. The Commissioner of Excise is a statutory authority. He is bound to exercise his power only within the four corners of the Act or the Rules framed thereunder and not de hors the same.

56. *Mr Desai is also not correct in his submission that clause 22 of the said circular contemplates a future amendment in the Rules. Even if the same contemplates a future amendment, the same would not sub serve the statutory requirements inasmuch as the Commissioner of Excise was not supposed to know as to how the existing Rules would be amended and whether the same would be applied prospectively or retrospectively. The Court cannot draw a presumption that the Commissioner of Excise could proceed on a presupposition that his action in issuing a circular contrary to rules would stand ratified by retrospective operation of the Rules. A statutory authority, it is trite, must exercise his jurisdiction with the four corners of the statute and cannot deviate or depart therefrom.*

...

62. *A statute must be read reasonably. A statute should not read in such a manner which results in absurdity. A statute, on its plain language, although postulates a prospective operation, it cannot be held to be retrospective only because it would apply for the excise year for which applications were invited despite the fact that the selection process made thereunder is over. The State is bound by the terms of the advertisement and the Rules existing at that time. The statutory authorities and the applicants are expected to follow the law as it stood thence. No step could be taken on the presupposition that the rule would be amended. It is also not a case where draft rules were already in existence and such draft rules had been applied, which could otherwise be permissible in law. But a situation of this nature is not contemplated in law.”*

(Emphasis supplied)

9.15 That on 10.06.2021, when the petitioner submitted its reply on the clarifications sought by the Hon’ble Commission, despite knowing fully well that this Hon’ble Commission has already issued specific directions to it to issue invoices in accordance with HERC DSM Regulations, it made a request to the Hon’ble Commission to relax/extend the date for implementation of the HERC DSM Regulations till March 2023. Even then, without even waiting for an authorization from this Hon’ble Commission, the petitioner decided to become a judge of its own cause and unilaterally and arbitrarily decided to defer the implementation of the HERC (DSM) Regulations and instead levy Imbalance Charges on Northern Railways. It is a settled principle of law that pecuniary liability must be created by clear, unambiguous and express enactment. In this regard, the Hon’ble Supreme Court in the case of **M/s. Khemka & Co. (Agencies) Pvt. Ltd. v. State of Maharashtra**, (1975)2 SCC 22 was pleased to hold as follows-

*“39. On a consideration of the provisions mentioned above, it seems to me to be clear that whatever may be the objects of levying a penalty, its imposition gives rise to a substantive liability which can be viewed either as an additional tax or as a fine for the infringement of the law. The machinery or procedure for its realization comes into operation after its imposition. In any case, it is an imposition of a pecuniary liability which is comparable to a punishment for the commission of an offence. **It is a well settled canon of construction of statutes that neither a pecuniary liability can be imposed nor an offence created by mere implication. It may be debatable whether a particular procedural provision creates a substantive right or liability.** But, I do not think that the imposition of a*

*pecuniary liability, which takes the form of a penalty or fine for a breach of a legal obligation, can be relegated to the region of mere procedure and machinery for the realization of tax. It is more than that. **Such liabilities must be created by clear, unambiguous, and express enactment. The language used should leave no serious doubts about its effect so that the persons who are to be subjected to such a liability for the infringement of law are not left in a state of uncertainty as to what their duties or liabilities are. This is an essential requirement of a good Government of laws.** It is implied in the constitutional mandate found in Article 265 of our Constitution: “No tax shall be levied or collected except by authority of law.”*

(Emphasis supplied)

- 9.16 That a statutory entity like SLDC is a ‘regulated’ entity and cannot usurp the role of a regulator i.e., this Hon’ble Commission to unilaterally suspend the implementation of the HERC (DSM) Regulations and/or to levy Imbalance Charges in place of DSM Charges. It is further submitted that, as per Section 178 of the Electricity Act, 2003 the regulation making power is a sole prerogative of the Commission and, as a corollary, the power to suspend implementation of the Regulations also vests solely with this Hon’ble Commission. Such powers cannot even be delegated in terms of the express language of Section 97 of the Electricity Act, 2003, which reads as under-

“Section 97- Delegation:

The Appropriate Commission may, by general or special order in writing, delegate to any Member, Secretary, officer of the Appropriate Commission or any other person subject to such conditions, if any, as may be specified in the order, such of its powers and functions under this Act (except the powers to adjudicate disputes under Section 79 and Section 86 and the powers to make regulations under section 178 or section 181) as it may deem necessary.”

Thus, in the present facts and circumstances, the conduct of HVPNL has been completely arbitrary and illegal.

- 9.17 That actions of State instrumentalities are required to be non-arbitrary and such actions would stand vitiated if it lacks bona fides, as it would only be a case of colorable exercise of power. In this regard, the Hon’ble Supreme Court in the case of **Noida Entrepreneurs Assn. v. Noida**, (2011) 6 SCC 508 has held as under-

“39. State actions are required to be non-arbitrary and justified on the touchstone of Article 14 of the Constitution. Action of the State or its instrumentality must be in conformity with some principle which meets the test of reason and relevance. Functioning of a “democratic form of Government demands equality and absence of arbitrariness and discrimination”. The rule of law prohibits arbitrary action and commands the authority concerned to act in accordance with law. Every action of the State or its instrumentalities should neither be suggestive of discrimination, nor even apparently give an impression of bias, favouritism and nepotism. If a decision is taken without any principle or without any rule, it is unpredictable and such a decision is antithesis to the decision taken in accordance with the rule of law.

40. *The public trust doctrine is a part of the law of the land. The doctrine has grown from Article 21 of the Constitution. In essence, the action/order of the State or State instrumentality would stand vitiated if it lacks bona fides, as it would only be a case of colourable exercise of power. The rule of law is the foundation of a democratic society. [Vide Erusian Equipment & Chemicals Ltd. v. State of W.B. [(1975) 1 SCC 70 : AIR 1975 SC 266] , Ramana Dayaram Shetty v. International Airport Authority of India [(1979) 3 SCC 489 : AIR 1979 SC 1628] , Haji T.M. Hassan Rawther v. Kerala Financial Corpn. [(1988) 1 SCC 166 : AIR 1988 SC 157] , Shrilekha Vidyarthi v. State of U.P. [(1991) 1 SCC 212 : 1991 SCC (L&S) 742 : AIR 1991 SC 537] and M.I. Builders (P) Ltd. v. Radhey Shyam Sahu [(1999) 6 SCC 464 : AIR 1999 SC 2468] .*

41. *Power vested by the State in a public authority should be viewed as a trust coupled with duty to be exercised in larger public and social interest. Power is to be exercised strictly adhering to the statutory provisions and fact situation of a case. "Public authorities cannot play fast and loose with the powers vested in them." A decision taken in an arbitrary manner contradicts the principle of legitimate expectation. An authority is under a legal obligation to exercise the power reasonably and in good faith to effectuate the purpose for which power stood conferred. In this context, "in good faith" means "for legitimate reasons". It must be exercised bona fide for the purpose and for none other. [Vide Commr. of Police v. Gordhandas Bhanji [AIR 1952 SC 16], Sirsi Municipality v. Cecelia Kom Francis Tellis [(1973) 1 SCC 409: 1973 SCC (L&S) 207: AIR 1973 SC 855], State of Punjab v. Gurdial Singh [(1980) 2 SCC 471: AIR 1980 SC 319], Collector (District Magistrate) v. Raja Ram Jaiswal [(1985) 3 SCC 1: AIR 1985 SC 1622], Delhi Admn. v. Manohar Lal [(2002) 7 SCC 222: 2002 SCC (Cri) 1670] and N.D. Jayal v. Union of India [(2004) 9 SCC 362: AIR 2004 SC 867]"*

It is submitted that the conduct of HVPNL is completely arbitrary and ad-hoc and jeopardizes public interest. HVPNL, by surrendering to its whims of illegally extracting Imbalance Charges is ultimately burdening the consumers of Haryana with the implications of carrying costs.

9.18 In light of the above, it is most humbly prayed that the Hon'ble Commission may graciously be pleased to dismiss the present petition and give specific directions to HVPNL to comply with the HERC (DSM) Regulations and direct refund of the Imbalance Charges amounts illegally obtained from Northern Railways along with carrying costs.

10. Rejoinder dated 08.06.2023 by the Petitioner-HVPNL to the

reply/comments of Northern Railway: The petitioner submitted as under:

PRELIMINARY OBJECTIONS/ SUBMISSIONS:

EXISTENCE OF AN EFFICACIOUS ALTERNATIVE REMEDY:

10.1 That the Northern Railways ('NR') by way of its reply has sought to raise certain grievances with respect to the imposition of DSM Charges/ Imbalance Charges which are beyond the scope of the present petition. It is submitted that an efficacious and alternative remedy is available with NR seeking resolution of the dispute by preferring a separate petition. The instant petition relates to the larger issue of clarification/ modification/ amendment and removal of

difficulties which have arisen in the implementation of the DSM Regulations, 2019, and does not entail within its scope the consideration of disputes inter-se the parties. The NR by way of these objections is indirectly trying to raise and get its personal disputes adjudicated, for which forum and remedy are separate. It is humbly submitted that NR may be directed to file a separate petition, rather than impeding the present proceedings.

- 10.2 That it is the case of the petitioner that adjudication of alleged personal grievance of NR cannot be adjudicated under the present petition wherein the Hon'ble Commission is exercising its legislative function. Attention in this regard is brought towards the judgment passed by the Hon'ble APTEL in the case of ***Madhya Pradesh Power Generation Company Ltd v. Madhya Pradesh Electricity Regulatory Commission [Appeal No. 170 of 2010, Decided on 06.05.2011]*** wherein it has been observed as under:

“It is not deniable that the Commission has manifold powers, namely, administrative, supervisory, legislative and adjudicatory but each power, according to us, must be exercised at appropriate field; simply because a Commission has many powers, it cannot be said that while exercising one power it oversteps its limit in that power and assumes another jurisdiction. This was what has been exactly said in *WB Electricity Regulatory Commission Vs. CERC* reported in (2002) 8 SCC 715 which has also been relied on by Mr. Ramachandran. In this case, the High Court while hearing appeal in its appellate jurisdiction vested in the statute, since repealed, exercised the writ jurisdictional power under Article 226 which was deprecated by the Hon'ble Supreme Court. 56. If it is a legislative function to remove difficulty like amending regulation, no direction can be passed by the Tribunal to the delegated Authority to exercise legislative power. Mr Sanjay Sen, learned counsel for the Commission takes us to the words of regulation 57.1 to submit that the power to remove difficulties which lies with the Commission is exercisable only to give effect to the provision of the Regulations. Now to direct the generating company to do or undertake things or itself to do or undertake by general or special order implies that this power to remove difficulties is intended to be exercised from the administrative domain of the Commission instead of exercising the legislative jurisdiction. Mr. Sen relies on *M.U. Sinai V/s Union of India*, (1975) 2 SCR 640 which we have already discussed. It is submitted by Mr. Sen that before the Commission the appellant did not rely on this power to remove difficulty clause, what was prayed for before the Commission was amendment of the Regulations. It is submitted that no direction can be passed by a Tribunal to the delegated authority to exercise legislative power.”

(Emphasis Supplied)

Thus, NR cannot be permitted to raise fresh issues before the Hon'ble Commission exercising its legislative jurisdiction and NR may kindly be directed to file a separate petition invoking the adjudicatory jurisdiction of the

Hon'ble Commission. Filing of a separate petition is also in line with the ratio of the judgment of the Hon'ble Madras High Court in **Tamil Nadu Electricity Regulatory Commission v. TAQA Neyveli Power Company Private Limited [W.A.No. 80 of 2021, Decided on 11.03.2021]** wherein the Hon'ble High Court directed as under:

*“Ordinarily, in the light of the existence of an efficacious alternative remedy, we would have declined to exercise discretionary jurisdiction and would have left it open to the parties to avail of such alternative remedy. However, it follows from the submissions made on behalf of the first respondent that prayer (a) in the petition before the TNERC would not be pursued by the first respondent herein and the first respondent would be content with seeking in-principle approval and permission from the TNERC to institute separate proceedings to claim the capital cost from TANGEDCO. **Once prayer (a) is given up, prayer (b) is clearly non- adversarial in nature and relates to the performance of regulatory functions by the TNERC while prayer (c) pertains to permission to institute separate adversarial proceedings against TANGEDCO separately to claim the capital cost.***

Therefore, except to the extent of requiring the first respondent herein to give up prayer (a) in the petition before the TNERC, the order impugned of the Writ Court does not call for interference. Accordingly, subject to the first respondent re- presenting the petition before the TNERC after deleting prayer (a), the TNERC is directed to accept such petition as a miscellaneous petition and pass appropriate orders thereon within a period of two weeks from the date of receipt of a copy of this order.”

PRESENT PROCEEDINGS ARE “NON- ADVERSARIAL” IN NATURE:

10.3 That it is submitted that the Hon'ble Commission by way of Public Notice had sought “*comments/objections*” of the interested parties/stakeholders on the instant petition which had been preferred by the Petitioner seeking “*clarification/ modification/ amendment and removal of difficulties*” which have arisen in the implementation of the DSM Regulations, 2019. The contents of the Public Notice are reproduced below for ready reference:

“Interested parties / stakeholders may submit ten copies of **their comments/ objections** along with supporting documents, if any, to the Secretary, HERC, Bays No. 33-36, Sector-4, Panchkula-134112 along with an affidavit and soft copy of the same at email id: secretary.herc@nic.in **on or before 03.04.2023**. The objections should carry full name, complete postal address and phone number / email address, if any, of the person sending the objection along with an Affidavit. A copy of the comments/objections may also be mailed to the petitioner. ...”

A perusal of the aforesaid public notice shows that the intention was to consider the comments of the interest parties with respect to the clarifications/modifications/removal of difficulty which is being sought by the Petitioner. However, **NR while assuming it to be adversarial litigation** has

raised personal grievances and raked allegations as against the Petitioner. Whereas the jurisdiction of the Hon'ble Commission under Regulation 18, 19 and 21 of the DSM Regulations, 2019 is not adversarial but inquisitorial. As a matter of fact, NR can in no manner be adversely impacted in case the present Petition is allowed. Attention at this stage is brought towards the meaning and scope of an "adversarial" and "non-adversarial litigation" can be culled from the following judicial pronouncements:

- i. In the case of **Anu Bhalla v. District Magistrate [Civil Writ Petition No. 5518 of 2020 (O&M). D/d. 22.9.2020]** the Division Bench of Hon'ble Punjab and Haryana High Court, in the context of proceedings of resolution of a company being corporate debtor, observed that since the proceedings are protective of the interest of the corporate debtor, such a proceeding cannot be termed as 'adversarial' in nature. The relevant part of the judgment is reproduced below:

"We have not been able to comprehend as to how this kind of litigation can be treated to be an adversarial litigation or would in any way adversely effect the interests or assets of the Corporate Debtor. Rather, this would enhance the assets and liquidity of the respondent, precisely which is required while insolvency proceedings are in process. It is thus evident, that the present proceedings would not fall within the ambit of Section 14(1)(a) of the Code, 2016."

It is submitted that, similarly, the present petition would result in smooth application of the DSM Regulations and can in no manner adversely affect the rights of NR.

- ii. In the case of **Municipal Corporation of Greater Mumbai v. Ankita Sinha [2021 AIR (SC) 5147]** while observing the non-adversarial procedures that can adopted by the National Green Tribunal, the Hon'ble Apex Court observed as follows:

*"18. We have earlier discussed that the NGT is empowered to carry out restitutive exercise for compensating persons adversely affected by environmental events. The larger discourse which informs such functions is related to distributive and corrective justice, as will be elaborated in later paragraphs. Even in the absence of harm inflicted by human agency, in a situation of a natural calamity, the Tribunal will be required to devise a plan for alleviating damage. **An inquisitorial function is also available for the Tribunal, within and without adversarial significance. Importantly, many of these functions do not require an active "dispute", but the formulation of decisions.***

...

*26.5 It is not only a matter of rhetoric that the Tribunal is to remain ever vigilant, but an important legal onus is cast upon it to act with promptitude to deal with environmental exigencies. **The responsibility is not just to resolve legal ambiguities but to arrive at a reasoned and fair result for environmental problems which are adversarial as well as non-adversarial.** It would be apposite here to*

refer to Justice Benjamin Cardozo, of the United States Supreme Court, who in his seminal treatise, 'The Nature of the Judicial Process', stated thus,

"It is true that codes and statutes do not render the judge superfluous, nor his work perfunctory and mechanical. **There are gaps to be filled. There are doubts and ambiguities to be cleared. There are hardships and wrongs to be mitigated if not avoided.**"

The above could be a pointer towards the preemptive functions of the NGT as a sui generis body."

It is submitted that similar to the powers conferred upon NGT, this Hon'ble Commission is conferred with powers to remove difficulty in a non-adversarial fashion, without existence of 'dispute' i.e. affirmation by one and denial by other.

- iii. Further, the Hon'ble Apex Court in the case of **Nirmal Singh Kahlon v. State of Punjab [2011 AIR (SC) (Cri) 1803]** while discussing the difference between a private and public interest litigation observed as under:

"32. ... The nature of jurisdiction exercised by the High Court, as is well known, in a private interest litigation and in a public interest litigation is different. Whereas in the latter it is inquisitorial in nature, in the former it is adversarial. In a public interest litigation, the court need not strictly follow the ordinary procedure."

- iv. The Hon'ble Madras High Court in State of **Tamil Nadu v. Arulmurugan and Company [1982 (51) STC 381]** held as under:

"26. ... There can be no analogy or parallel between a tax appeal and an appeal, say, in civil cases. **A civil appeal, like a law suit in the court of first instance out of which it arises, is really and truly an adversary proceeding, that is to say, a controversy or tussle over mutual rights and obligations between contesting litigants ranged against each other as opponents.** A tax appeal is quite different. Even as the assessing authority is not the tax - payer's "opponent", in the strictly procedural sense of the term, so too the appellate authority sitting in appeal over the assessing authority's order of assessment is not strictly an arbitral tribunal deciding a contested issue between two litigants ranged on opposite sides. **In a tax appeal, the appellate authority is very much committed to the assessment process. The appellate authority can itself enter the arena of assessment, either by pursuing further investigation or causing further investigation to be done.** It can do so on its own initiative, without being prodded by any of the parties. It can enhance the assessment, taking advantage of the opportunity afforded by the tax - payer's appeal, even though the appeal itself has been mooted only with a view to a reduction in the assessment. These are special and exceptional attributes of the jurisdiction of a tax appellate authority. These attributes underline the truth that the appellate authority is no different, functionally and substantially, from the assessing authority itself. This position has been well brought out in more than one decision

*of the Supreme Court. The **McMillan's case [1958] 33 ITR 182 (SC)**, which we earlier referred to, may be regarded as highlighting only one aspect of the wide range and peculiar slant of the appellate power in fiscal matters.”*

10.4 That it is humbly submitted that these proceedings were initiated by the Petitioner in a non-adversarial manner by placing all the facts before this Hon'ble Commission and leaving it to this Hon'ble Commission pass necessary orders as deem fit. Thus, it is the case of the Petitioner that the grievance of NR with respect to the imposition of DSM Charges/ Imbalance Charges are beyond the scope of the present petition. A bare perusal of the reply of NR shows that the scope of the present petition is now being expanded. As such, it is humbly prayed that any grievance raised by NR which is outside the purview of the pleadings of Petitioner cannot be given any credence at this stage, especially in a non-adversarial proceeding.

OTHER OBJECTIONS WITH RESPECT TO ADMISSIBILITY OF REPLY:

10.5 That NR is not a 'party' to the present proceedings. A non-party cannot be permitted to file a counter-claim or seek dismissal of the proceedings on any ground, especially when only comments/suggestions/objections have been sought.

10.6 That NR cannot be permitted to bypass the HERC (Fee) Regulations, 2005. NR is, firstly, seeking to get the disputes adjudicated without filing fresh petition and submitting the requisite fee and secondly, by non-submission of the reply within the time prescribed by the public notice while failing to pay the late filing fee.

10.7 That the delayed reply has been filed only to divert the main issue and delay the present proceedings, which is not liable to be considered on this ground alone.

10.8 That the allegations raked by way of the present reply are also not liable to be considered in view of the doctrine of delay and latches. As is admitted by the NR at para no. 9 of the reply, that NR was well-aware of the coming in force of the DSM Regulation, 2019 as also the submission of Draft Procedure, as such, cause of action, if any, accrued in the favour of the NR at the time of notification of the Regulations. However, NR is seeking redressal of grievance and has approached the Hon'ble Commission at such a belated stage. Any claim made by NR is liable to be dismissed outrightly being time-barred.

PARA-WISE REPLY:

10.9 That it is wrong and denied that the petition 'specifically' deals with the Additional DSM Charges on account of volume deviation and sign-change violation. As a matter of fact, a number of clarifications have been sought by the petitioner by way of the said petition.

10.10 That the present petition is not an adversarial litigation i.e. a litigation consisting of assertion/ denial. As such, denial of contents of petition is of no effect. It may kindly be noted that suggestions/objections were invited from all

the stakeholders, however, NR has misconstrued the present petition to be a *lis inter partes*.

Re: Issues raised under the present petition:

- 10.11 That in line with the submissions made by the petitioner in the composite rejoinder filed to the comments of HPGCL and HPPC, it is reiterated that the adoption of the CERC (DSM) Regulations, 2022 may be decided as deemed fit by the Hon'ble Commission.
- 10.12 That it is clarified that the petitioner had sought to invoke the legislative functions of the Hon'ble Commission. However, reference to the Grid Code has been made by NR instead of the DSM Regulations, 2019.
- 10.13 That the petitioner reiterates the contents of the petition and once again prays that the Hon'ble Commission may kindly be pleased to pass necessary directions/ orders for clarification/ modification/ removal of difficulties which have arisen in the implementation of DSM Regulations, 2019, especially relating to the following issues:
- I. Specification of Additional Charge of Deviation under Regulation 10(I);
 - II. Clarification with respect to the levy of Additional Deviation Charges under Regulation 10(C) and Table-II(A) of Annexure-II;
 - III. Specification of Volume Limit of [X] MW under Table-II (B) of Annexure II for Sellers;
 - IV. Clarification with respect to Clause 10(B)(iii);
 - V. Clarification with respect to the imposition of Additional Charges for change of sign under Regulation 9(A)(1);
 - VI. Clarification w.r.t. the applicability of Regulation 11(1) w.r.t. under/ over Injection of electricity by Seller when the grid frequency is below 49.70Hz/50.05 Hz;
 - VII. Clarification regarding telescopic or non-telescopic nature of Slabs given under Table-I of Annexure-II;

And/ Or the Hon'ble Commission may kindly pass any other order(s) and or direction(s), which the Hon'ble Commission may deem fit and proper in the facts and circumstances of the case.

- 10.14 That the allegations raised by the NR are misconstrued, beyond the scope of the present petition and devoid of any merits. The contents of the preliminary submissions/ objections may kindly be read as part and parcel of the reply to the present para which is not being repeated here for the sake of brevity.

Re: Contravention of HERC DSM Regulations and specific directions issued by this Hon'ble Commission by HVPNL:

- 10.15 That alternative and efficacious remedy is available with NR seeking compliance of orders, the non-compliance of which has been alleged by NR, by way of a separate petition. However, for the convenience of the Hon'ble Commission the reply on merits is as under:

29.04.2019	It is a matter of record that the DSM Regulations, 2019 were notified by the Hon'ble Commission on 29.04.2019. However, it is wrong and denied that all the provisions of the DSM Regulations, 2019 came into effect on the date of notification.
July, 2020	A draft 'Procedure for Deviation Settlement for State Entities & Energy Accounting of the State' ('Draft Procedure') was formulated by the Petitioner-SLDC. However, it would be incorrect to state that the Petitioner had "internally" formulated the Procedure because the Objections/ comments/ suggestions from all the stakeholders with respect to the Draft Procedure were duly called for, to be submitted on or before 07.08.2020 .
12.01.2021	The Detailed Procedure along with the comments of the stakeholders were submitted by SLDC to the Hon'ble Commission.
17.06.2020	<p>It is noteworthy to mention here that the said Petition bearing PRO-11 of 2017 had been filed by DHBVNL seeking "<i>clarification on various applicable charges under Clause 19, 20, 21, 22, 23, 24, 57, 58 and 59 of Haryana Electricity Regulatory Commission (Terms and conditions for grant of connectivity and open access for intra State transmission and distribution system) Regulations, 2012 (No. 25/HERC/2012 dated 11.01.2012) to be levied on Northern Railways (Deemed Distribution Licensee) for availing medium term open access</i>". Further, the conclusion of the Hon'ble Commission w.r.t. imbalance charges vide the said order dated <u>17.06.2020</u> is reproduced below for ready reference:</p> <p>"VIII. Imbalance Charges – <i>The Commission observes that the imbalance is currently being settled in line with the HERC OA Regulations, 2012. The relevant clause has been reproduced earlier in the present Order. It is observed that specific Regulations have been notified by the Commission namely Haryana Electricity Regulatory Commission (Deviation Settlement Mechanism and related matters) Regulations, 2019 dated 29th April, 2019. In this set of regulations fully open access consumer has also been defined as an Open Access Consumer connected to transmission system or distribution system but not having any contract demand with the distribution licensee within the state; which is the NR case. Hence, imbalances / deviations shall be settled in line with the terms of the said Regulations instead of HERC OA Regulations, 2012 as amended from time to time.</i></p> <p><i>In conclusion, the Commission Orders that all the relevant regulations and charges including losses and RPO Obligations as applicable to Long Term / Medium Term Open Access consumers shall be applicable to NR also except any deviation specifically allowed in the present Order till such time the NR fulfils all the terms and conditions including payment of Fees specified for a distribution licensee / deemed to be distribution licensee."</i></p> <p>It is humbly submitted that the deviations of all the consumers shall be settled as per HERC DSM Regulations, 2019 as and when procedure for implementation shall be approved by the Hon'ble Commission, only till such time the deviation of NR are being settled as per the provision of HERC Open Access Regulations. In fact, the Petitioner vide letter dated 10.06.2021 had specifically requested the</p>

	Hon'ble Commission that the implementation of the HERC DSM Regulations, 2019 may kindly be deferred till the implementation of SAMAST Project. Be that as it may, the order was passed in June, 2020, however, till date the NR has not approached the Hon'ble Commission seeking specific compliance of the same.
12.04.2021	The Hon'ble Commission vide its letter bearing Memo No. 120/HERC/Tech. dated 12.04.2021 sought certain clarifications with respect to the Procedure and directed the Petitioner-SLDC to resubmit the Draft Procedure after making suitable amendments.
10.06.2021	Reply was given by Petitioner-SLDC with respect to each of the clarifications sought by the Hon'ble Commission vide letter bearing Memo No. Ch-12/PC-23/Vol-II/SLDC/OP dated 10.06.2021. It may kindly be noted vide the said letter, the Petitioner-SLDC had requested to relax the application of the DSM Regulations, 2019 till the implementation of -Scheduling, Accounting, Metering and Settlement of Transaction in Electricity Framework (for brevity ' SAMAST ').
29.10.2021	The minutes of meeting convened between the parties are a matter of record. However, it may kindly be noted that as on the date of convening of this meeting charges on account of Open Access to the extent of Approx Rs. 34.23 Crores were pending on Northern Railways despite the order of Hon'ble HERC to pay Open Access charges as per transformation capacity blockage. Further, the bills were raised on 'provisional basis' only, in view of the pendency of the case before the Hon'ble APTEL.
Sep. 2021 to Oct 2022	The contents are a matter of record; however, these were provisional bills which was clearly mentioned on the bills along with the fact that these shall be reconciled after approval of the Procedure of DSM Regulations, 2019 by the Hon'ble HERC. It was also conveyed in the bills that in case the procedure of DSM charges is made applicable by Hon'ble HERC prospective effect, NR would be liable to pay the applicable imbalance charges along with the interest on differential amount for the relevant months.
Nov, 2022 onwards	In reply to the contents of this para it is brought to the notice of the Hon'ble Commission that the Answering Respondent is duty bound and obligated to comply with the orders of the Hon'ble Commission in letter and spirit. It is humbly submitted, that since the DSM Regulations, 2019 were not applied to any of the stakeholders, as such the raising of bills as per DSM Regulations, 2019 was kept in abeyance till the approval and implementation of the Procedure. Further, the order dated 17.06.2020 passed by the Hon'ble Commission has been challenged by NR and is pending adjudication before the Hon'ble APTEL.
10.01.2023	The filing of the present petition is a matter of record.
07.02.2023	The contents of the para w.r.t. letter dated 07.02.2023 is a matter of record.
15.02.2023	The contents of the para w.r.t. letter dated 15.02.2023 is a matter of record.
Nil	That the contents of this para are beyond the scope of instant petition. The NR may kindly be directed to file a separate petition for redressal

	of its grievance, in view of the submissions made in the preliminary submissions/ objections.
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- 10.16 That it is humbly submitted that the petitioner-SLDC is regulated by the Regulations laid down by the Hon'ble Commission and all charges/fee are being imposed as per the provisions of the relevant Regulations.
- 10.17 That the petitioner herein is bound by the regulations/orders/directions of the Hon'ble Commission and has always endeavored to act accordingly.
- 10.18 That the NR may be directed to exercise its alternative remedy by way of filing of a separate petition.
- 10.19 That, insofar as the invoices are concerned, the same were only 'provisional' in nature.
- 10.20 That the reliance on the judgement referred by NR is completely mis-placed. It is submitted that it would be completely incorrect to state that no steps have been taken by the petitioner on any presupposition that the law would be amended. It is submitted that the petitioner herein had specifically sought relaxation of the application of the DSM Regulations, 2019 till the implementation of -Scheduling, Accounting, Metering and Settlement of Transaction in Electricity Framework('SAMAST') vide memo No. Ch-12/PC-23/Vol-II/SLDC/OP dated 10.06.2021. It is further submitted that steps had already been initiated by the petitioner for SAMAST project. The work has been awarded to M/s R E Connect and is under progress with scheduled completion date as 06.04.2024. As such, it cannot be said that no steps have been taken by the petitioner or the petitioner had any presupposition regarding the amendment in law. The judgment being inapplicable to the facts and circumstances of the present case, is worthy of no credence.
- 10.21 That it is not the case where the Hon'ble Commission was unaware or uninformed about the deferment of the application of the DSM Regulations, 2019. NR has only tried to mislead the Hon'ble Commission while misconstruing the present petition a lis inter-parties. Once again, the reliance of NR on the decision in the case of M/s Khemkha & Co. is completely mis-placed and out of context.
- 10.22 That it is submitted NR has made superfluous, non-contextual and misconceived submissions, which are denied in totality. The Petitioner had not, on its own, suspended the implementation of the DSM Regulations, 2019 but had duly requested the Hon'ble Commission to grant some time relaxation. As such, the question of any delegation does not arise. It is vehemently denied that the conduct of the Petitioner has been in any manner arbitrary or illegal.
- 10.23 That there is no colorable exercise of power by the Petitioner. Be that as it may, the remedy of NR for seeking redressal against any alleged colorable exercise of power lies before the Hon'ble High Court in exercise of its writ jurisdiction. In fact, even the judgement relied upon by NR in the corresponding para has been passed by the Hon'ble Apex Court while exercising its writ jurisdiction.
- 10.24 That the DSM Regulations, 2019 can only be effectively implemented after the implementation of SAMAST. Further, NR is not a 'party' to the present proceedings. A non-party cannot be permitted to file a counter-claim or seek

dismissal of the proceedings on any ground, especially when only comments/suggestions/objections have been sought.

In view of the aforementioned facts and circumstances, it is humbly prayed that the contentions of NR being misconstrued and beyond the scope of the instant petition which has been filed seeking clarification/ modification/ removal of difficulties which have arisen in the implementation of DSM Regulations, 2019, may kindly not be considered, keeping in view of the preliminary objections raised hereinabove, in the interest of justice.

11. Commission's order:

- 11.1 The case finally came up for hearing before the Commission on 26.07.2023, as scheduled, in the court room of the Commission.
- 11.2 At the outset Ms. Aerika Singh counsel for the petitioner submitted that certain clarification/ modification/ amendment to the few provisions of the HERC (DSM) Regulation, 2019 have been sought by invoking the removal of difficulties clause which have arisen in the implementation of the said Regulations. She submitted that HPPC and HPGCL have filed their comments w.r.t point of clarification wherein the petitioner has filed its response on the same. She further submitted that the NR by way of their comments has indirectly tried to raise and get its personal disputes adjudicated, for which forum and remedy are separate and that NR may be directed to file a separate petition, rather than impeding the present proceedings.
- 11.3 Upon hearing the parties, and after considering the circumstances/facts/ documents placed on record, and contentions made by the intervenors/parties, the Commission observes that the present petition is filed by HVPNL operating as State Load Dispatch Centre (SLDC) seeking clarifications/ modifications in certain provision of the HERC (Deviation Settlement Mechanism and related matter) Regulations, 2019, dated 29.04.2019, on following issues:
1. Specification of Additional Charge of Deviation under Regulation 10(I);
 2. Clarification with respect to the levy of Additional Deviation Charges under Regulation 10(C) and Table-II(A) of Annexure-II;
 3. Specification of Volume Limit of [X] MW under Table-II (B) of Annexure II for Sellers;
 4. Clarification with respect to Clause 10(B)(iii);
 5. Clarification with respect to the imposition of Additional Charges for change of sign under Regulation 9(A)(1);
 6. Clarification w.r.t. the applicability of Regulation 11(1) w.r.t. under/ over Injection of electricity by Seller when the grid frequency is below 49.70Hz/50.05 Hz;
 7. Clarification regarding telescopic or non-telescopic nature of Slabs given under Table-I of Annexure-II.
- 11.4 Before dealing with the points raised by the petitioner, the Commission considers it appropriate to deal with the comments submitted by the Northern Railways.
Northern Railway has raised certain grievances w.r.t. the imposition of DSM charges/Imbalance charges. The Commission by way of public notice invited

the comments/objections from the stakeholders w.r.t. the clarification/modification/amendments and removal of difficulties which have arisen in the implementation of DSM Regulations, 2019. However, Northern Railways in its comments submitted that the provisions highlighted by the petitioner are abundantly clear and raised personal grievances over which Commission cannot assume its jurisdiction.

The Hon'ble APTEL in the case of **Madhay Pradesh Power Generation Company V/s Madhay Pradesh Electricity Regulatory Commission**, Appeal No 170 of 2010, dated 06.05.2011 has observed as under:

“It is not deniable that the Commission has manifold powers, namely, Administrative, Supervisory, legislative and adjudicatory but each power, according to us, must be exercised at appropriate field; simply because a Commission has many powers, it cannot be said that while exercising one power it oversteps its limit in that power and assumes another jurisdiction.”

- 11.5 Further, the scope of the present petition is limited to clarification/modification/ removal of difficulties which have arisen in the implementation of DSM Regulations, 2019 and the comments filed by Northern Railways are not related to the petition; instead they are raising the dispute of charges/billing levied by the petitioner with reference to minutes of meeting etc. The issue of billing as raised by Northern Railways by way of counter claim does not hold good for adjudication under the present petition.

In the case of **BSES Rajdhani Power ltd. Vs. Delhi Electricity Regulatory Commission**, Appeal No. 181 of 2008, dated 30.03.2009, the Hon'ble APTEL held that:

when a specific remedy is available for the consumer regarding wrong billing under section 42 (5) and 42 (6) of the Electricity Act,2003, the consumer cannot approach the State Commission for redressal. Simple billing disputes have to go before CGRF.

In another case of **Power Transmission Corporation of Uttarakhand limited vs. Uttarakhand Electricity Regulatory Commission**, Appeal No. 226 of 2014, dated 30.01.2017, the Hon'ble APTEL observed that

“A pure consumer-licensee dispute like a billing dispute will lie before CGRF”

In view of the judgments and reasons cited above the Commission observes that the issues raised by the Northern Railways does not dwell into the merit of the case and cannot be considered as they are outside the ambit of the present petition.

- 11.6 The comments of HPGCL, HPPC and NR which are pertaining to the points of clarification have been considered under the instant petition for clarification in the DSM Regulations, 2019. Accordingly, in exercising the powers conferred under the Regulation 9 (i.e. removal of practical difficulty),

the Commission hereby clarifies the issues raised under the instant petition. Accordingly, the pointwise clarification on the issues are as under:

a. Specification of Additional Charge of Deviation under Regulation

10(I): That rate of Additional Charges for deviation (in terms of percentage of Charges for Deviation) to be levied on buyers/sellers for over-drawls/under-injection of electricity for the time blocks when grid frequency is “below 49.70 Hz”, **has not been specified in the DSM Regulations, 2019 and** it has been prayed that the said Additional Charges for Deviation under Regulation 10(I) may kindly be specified.

Commission’s Observation/Clarification: The Commission observes that the DSM charges for up to 49.70 frequency is defined in regulation. In CERC DSM regulation, 2014, Additional charges for deviation below frequency of 49.70 have been specified as 100% of DSM charges. Accordingly, Commission finds it appropriate to specify that Additional Charges for Deviation for over drawls and under injection of electricity for each time block when grid frequency is below 49.70 Hz shall be payable as 100% of basic rate of charges for deviation.

b. Clarification with respect to the levy of Additional Deviation Charges under Regulation 10(C) and Table-II(A) of Annexure-II:

As per clause 10 (C), the Additional Deviation Charges are exempted for under injection upto 5 MW.

For illustration: Let the Schedule of Generator be 40 MW and Injected power of 35 MW in a particular time slot i.e. under injection with deviation of 5 MW. However, as per Table-II (A) of Annexure-II rates of Additional Charges have been given separately –

1. *“For under-injection of electricity by any Seller **in excess of 12% and up to 15%** of the schedule in a time block”,*
2. *“For under-injection of electricity by any Seller **in excess of 15% and up to 20%** of the schedule in a time block” and*
3. *“For under-injection of electricity by any Seller **in excess of 20%** of the schedule in a time block”*

As per the above illustration, Additional Deviation Charges are to be levied because the under injection (5MW) by generator is in excess of 12% of scheduled generation which is 4.8 MW and requested to clarify the same.

Commission’s Observation/Clarification: There is no ambiguity in the provision and relaxation up to 5 MW has been granted in the regulation and if the violation is above 5 MW then for the calculation of DSM, the relevant table is to be referred.

c. Specification of Volume Limit of [X] MW under Table-II (B) of Annexure

II for Sellers: A perusal of the table-II(B) shows that the Hon’ble Commission has specified various slabs of Additional Charges for Deviation for under-injection by Generating Stations regulated by the Commission using coal or lignite or gas supplied under Administered Price Mechanism (APM). The Additional Charges of Deviation have been linked to Volume Limit of “X” MW.

It is the case of the Petitioner-SLDC that though the methodology for

determination of Volume Limit of [X] MW has been provided for distribution licensee(s) and Buyer(s) under Regulation 10(B) of the DSM Regulations, 2019, however the same has not been provided in case of Seller and prayed that the Volume Limit [X] MW may kindly be specified in case of Sellers.

Commission's Observation/Clarification: On perusal of the DSM regulation of various states, it is seen that volume limit for generating stations regulated by the Commission and other sellers who are not regulated by the Commission is the same. However, there is a cap rate for deviation on the generating stations regulated by the Commission. As far as volume limit of 150 MW referred by HPGCL in its comments is concerned, the same is for the whole of Haryana State and not for an individual generating station.

Volume Limit 'X' has been defined for buyer in regulation 10(B) and it has been specified for seller as 10 MW in annexure-II Table-IB. The 10 MW limit has been specified in Annexure-II Table-II B (meant for Generating Stations regulated by the Commission using coal or lignite or gas supplied under Administered Price Mechanism). Hence X for table II B of Annexure -II may be considered as 10 MW.

- d. Clarification with respect to Clause 10(B)(iii):** That the above clause 10(B)(iii) relates to the Recorded Peak Demand of the Distribution Licensee only in the previous Financial Year and does not relates to Recorded Peak Demand **of Buyers** in the previous Financial Year. **Similarly, it considers the Projected Peak Demand of the buyer in ensuing Financial Year and not of the Distribution Licensee.** Higher value of Recorded Peak Demand in previous financial year or Projected Peak Demand in ensuing financial year can be selected only between the same entities. However, it appears that intention of the above clause is to consider Recorded Peak Demand or Projected Peak Demand of both Distribution Licensee(s) and/or Buyer(s), whichever is higher to calculate the Volume Limit of [X] MW and prayed that Regulation 10 (B) (iii) of DSM Regulations, 2019 may kindly be modified as under:

*“Peak Demand of the **Distribution Licensee/ Buyer** shall be recorded Peak Demand in the previous Financial Year or Projected Peak Demand of **Distribution Licensee/ Buyer** in ensuing Financial Year, whichever is higher;”*

Commission's Observation/Clarification: The Commission agrees with suggestion made by the petitioner and decides to substitute Regulation 10 (B) (iii) as under:

*“Peak Demand of the **Distribution Licensee/ Buyer** shall be recorded Peak Demand in the previous Financial Year or Projected Peak Demand of **Distribution Licensee/ Buyer** in ensuing Financial Year, whichever is higher;”*

- e. Clarification with respect to the imposition of Additional Charges for change of sign under Regulation 9(A)(1):** As per Regulation 9(A)(1) an additional charge @10% of the **deviation charges** are applicable for the failure of seller or buyer to effect a change in sign of the deviation once every 12-time blocks. However, the regulation is not clear whether Additional Charges in the event of violation of above clause are to be levied

@10% of base Charges for Deviation or @10% of sum of base Charges for Deviation and additional charges for deviation and prayed that the difficulty in the calculation of such additional charges may kindly be removed by the Hon'ble Commission

Commission's Observation/Clarification: The Commission observes that Additional Charge of 10% applicable for the failure of seller or buyer to effect a change in sign of the deviation once every 12-time blocks is to be levied @10% of Base Charges for Deviation.

- f. Clarification w.r.t the applicability of Regulation 11(1) w.r.t under/over Injection of electricity by Seller when the grid frequency is below 49.70Hz/50.05 Hz:** Clause (1) under Regulation 11 relating to the treatment of infirm power, as scheduling is not done for infirm power as such, it is not appropriate to include the above. It is suggested that Clause (1) may kindly be subsumed in Regulation 10(C) of the DSM Regulations, 2019 and the said provision may kindly be made generally applicable to all the cases and not in case of infirm power.

Commission's Observation/Clarification: As there is no scheduled power for plants before COD, clause 11(1) is not relevant for plants before COD. May be considered as deleted.

- g. Clarification regarding telescopic or non-telescopic nature of Slabs given under Table-I of Annexure-II:** As per Regulation 10(D), in addition to Charges for Deviation as stipulated under Regulation 9, 'Additional Charge for Deviation' shall be applicable for over-drawl as well as under-injection of electricity for each time block in excess of the volume limit specified in Regulation 10(B) and (C) when average grid frequency of the time block is 49.70 Hz and above, at the rates specified in Table I of Annexure-II. Further, the Hon'ble Commission has given various slabs under Table- I captioned 'Additional Deviation Charge (for Seller/Buyer)' of Annexure-II appended to the DSM Regulations, 2019. However, it is not clear whether these slabs are telescopic or non-telescopic in nature. The Central Electricity Regulatory Commission (Deviation Settlement Mechanism and related matters) Regulations, 2014 has clarified the telescopic nature of the slabs by way of an illustration. As such similar illustration/ clarificatory note etc. may be added to the DSM Regulations, 2019 so as to clarify whether the slabs defined under Annexure-II.

Commission's Observation/Clarification: In the regulation, the rates at which ADSM charges have to be levied are defined in the table-I of Annexure-II. In this table various slabs have been defined. It is clear from the table that ADSM charges for deviation above 12% and upto 15% are 20% of charge for deviation corresponding to average grid frequency of the time block and for deviation above 15% and up to 20% the ADSM is equivalent to 40% of charge of deviation corresponding to average frequency of the time block and so on. Hence, slabs provided under Table I of Annexure-II are telescopic in nature.

- 11.7 The Commission has considered the prayer of the petitioner and accordingly clarified the difficulties. The above observation/clarifications shall constitute the part of the relevant regulations of the HERC (DSM) Regulation, 2019, accordingly. The petitioner is hereby directed to comply with the existing DSM

Regulations, in vogue with the said clarification in true letter and spirit. This order shall come into force immediately upon its passing and shall remain in effect till further orders/amendment in the existing regulations are passed by the Commission.

Accordingly, the instant petition is hereby disposed of.

This order is signed, dated and issued by the Haryana Electricity Regulatory Commission on 12.09.2023.

Date: 12/09/2023

Place: Panchkula

(Naresh Sardana)

Member

(R.K. Pachnanda)

Chairman