

**MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION
BHOPAL**

Subject: In the matter of petition under Section 86 of the Electricity Act, 2003 read with Regulation 11 and 12 of MPERC (Forecasting, Scheduling, Deviation Settlement Mechanism and related matters of Wind and Solar Generating Station) Regulations, 2018 and Regulation 46 of MPERC (Conduct of Business) Regulations, 2004 seeking exercise of power to issue direction to remove difficulty in implementation of the Deviation Settlement Mechanism and for setting aside Deviation Charges levied on the petitioners from August' 2018 to 03.10.2019 in terms of the Demand Notice dated 28.10.2020 sent by the respondent to the petitioners' QCA.

**Petition No. 04 of 2021 &
IA No. 01 of 2021 in Petition No. 04 of 2021**

ORDER

**(Hearing through Video Conferencing)
(Date of Order: 14th September' 2021)**

(1) Ratedi Wind Power Pvt. Ltd.

ILF&S Financial Centre, Plot C-22, G-Block
Bandra Kurla Complex, Mumbai – 400 051

- **Petitioners**

(2) Etesian Urja Ltd.

ILF&S Financial Centre, Plot C-22, G-Block
Bandra Kurla Complex, Mumbai – 400 051

Vs.

(1) The Managing Director

M.P. Power Transmission Company Ltd.,
Block No. 2, Shakti Bhawan, Rampur, Jabalpur – 482008

- **Respondents**

(2) M.P. State Load Despatch Centre,

Through Chief Engineer,
M.P. Power Transmission Company Ltd.,
Nayagaon, Rampur, Jabalpur – 482008

Shri Parinay Deep Shah, Advocate and Ms. Surabhi Pandey, Advocate appeared on behalf of the Petitioners.

Shri Ayush Dev Bajpai, Advocate and Shri Anurag Mishra, EE appeared on behalf of the Respondent No. 2.

The petitioners have filed the subject petition under Section 86 of the Electricity Act, 2003 read with Regulations 11 and 12 of MPERC (Forecasting, Scheduling, Deviation Settlement Mechanism and related matters of Wind and Solar Generating Station) Regulations, 2018 and Regulation 46 of MPERC (Conduct of Business) Regulations, 2004 seeking directions to remove difficulty in implementation of the Deviation Settlement Mechanism and for setting aside Deviation Charges levied on the petitioners from August' 2018 to 03.10.2019 in terms of the Demand Notice dated 28.10.2020 sent by the Respondent No. 2 to the petitioners' QCA.

2. The petitioner while mentioning various provisions under MPERC (Forecasting, Scheduling, Deviation Settlement Mechanism and related matters of Wind and Solar generating station) Regulations 2018 and its first amendment broadly submitted the following in subject petition:

1. *The present petition has been filed by the Petitioners, Ratedi Wind Power Private Limited and Etesian Urja Ltd. (hereinafter "**the Petitioners**") under Section 86 of the Electricity Act, 2003 (hereinafter referred to as "**EA 2003**") r/w Regulation 11 (Power to Relax) and Regulation 12 (Power to issue directions) of the MPERC (Forecasting, Scheduling, Deviation Settlement Mechanism and related matters of Wind and Solar generating station) Regulations 2018, and Regulation 46 of the MPERC (Conduct of Business) Regulations, 2004 to pray before the Hon'ble Commission to set aside the Demand Notice dated 28.10.2020 sent by the Respondent No. 2 to the Petitioners' QCA to the extent the Demand Notice has directed payment of the Deviation Charges from August 2018 to 03.10.2019. The Petitioner further seeks the exercise of power by this Hon'ble Commission to issue directions and to remove difficulty in the implementation of the Deviation Settlement Mechanism of the RE Generators in terms of the MPERC (Forecasting, Scheduling, Deviation Settlement Mechanism and related matters of Wind and Solar generating station) Regulations 2018 (hereinafter referred to as the "**DSM Regulations**") read with the First Amendment and Detailed Procedure dated 25.09.2019.*
2. *The DSM Regulations were published on 12.04.2018 and notified on 20.04.2018. Vide Public Notice dated 21.02.2019, the Hon'ble Commission stated that it is proposing to make amendments to the DSM Regulations and invited the comments/objections of stakeholders. Subsequently the Hon'ble Commission published the First Amendment (hereinafter referred to as the "**First Amendment**") along with the approved Standard Operating Procedure/Detailed Procedure (hereinafter referred to as the "**SOP/Detailed Procedure**") on 25.09.2019 which were notified on 04.10.2019. The Detailed Procedure is necessary for an effective implementation of the DSM Regulation and application of Deviation Charges on RE Generators such as the Petitioners (the Regulations 2018 and the First Amendment along with the SOP shall together be referred to as the "**Consolidated DSM Regulations**"). The Respondent No. 2, vide letter dated*

28.10.2020, sent a demand notice to the Petitioners' QCA (Qualified Coordinating Agency) demanding Deviation Charges from the RE Generators retrospectively from August 2018, i.e., the month from which the DSM Regulations became effective even though the SOP/Detailed Procedure had not been approved by this Hon'ble Commission and notified until 04.10.2019. It is submitted that in the absence of the SOP/Detailed Procedure, no Deviation Charges can be levied on the Petitioners in the interim period, regardless of the fact that the DSM Regulations have been made effective from April 2018 in terms of the DSM Regulations. Furthermore, it is submitted that the Hon'ble Commission has not provided any trial/grace period in the DSM Regulations. The DSM Regulations have introduced a new mechanism of commercial settlement of Deviation Charges to be collected from the Wind and Solar Generators (hereinafter referred to as the "**RE Generators**") in the State and provides for new infrastructure along with compulsory appointment by the RE Generators of the QCA which QCA will act as an important and mandatory link between the RE Generators and the Respondent No. 2 for the implementation of the DSM Regulations read with the Detailed Procedure. Such arrangements did not exist in the State prior to the enactment of the DSM Regulations and the First Amendment and necessarily requires trials and tests before any commercial settlement may begin or liabilities imposed upon the Petitioners. In view of the illegal levy of Deviation Charges from Respondent No. 2 on the Petitioners from August 2018 to 03.10.2019 and due to the fact that the regulatory framework pertaining to Deviation Charges on RE Generators in the State is new and still at the stage of infancy, requiring adequate infrastructure and know how amongst the stakeholders for an effective implementation of the DSM framework, the Petitioners have approached this Hon'ble Commission to pray before this Hon'ble Commission to exercise its power to relax and power to issue directions and declare the Demand Notice dated 28.10.2020 issued by Respondent No. 2 for levying Deviation Charges as non-est in law and set aside the same; and further provide a trial/grace period of not less than 6 months to implement the provisions of the Detailed Procedure from 04.10.2019.

3. The Petitioners are independent power producers having three Wind Energy Projects located in Dewas, Agar and Ratlam Districts of Madhya Pradesh, having total capacity of 130 MW. Petitioner No. 1 has two wind energy projects of 24 MW (connected with Chapda PSS) and 56 MW (41.6 MW connected to Agar state GSS and 14.4MW connected to Susner state GSS) and Petitioner No. 2 has one wind energy project of 50 MW (connected with Amba PSS).
4. It is submitted that the DSM Regulations have been enacted to provide a framework inter alia for the forecasting, scheduling and commercial settlement of the deviation charges (**FS&D**) of the RE Generators. It is pertinent to note that such a regulatory framework is in existence in several other States which have enacted and brought into force specific regulations for the FS&D of the RE Generators. This is to ensure that with the rapid increase of generation of electricity from RE Generators and injection of the same into the Grid, there is a system put in place to maintain Grid stability and security.

5. Thus, having created a framework for the commercial settlement of Deviation Charges, the Hon'ble Commission obligated the SLDC with two tasks:
 - a. In terms of Regulation 6 (a) (5) the SLDC is to provide a Detailed Procedure which shall include the plan for data telemetry, formats of forecast submission and other details in this regard. This Detailed Procedure is to be approved by the Hon'ble Commission.
 - b. In terms of Regulation 10 (a) SLDC is to provide the Detailed Procedure and the Business Rules for the construction of State Power Committee within three months from the date of the notification of the DSM Regulations i.e., within 3 months from 20.04.2018.
6. It is submitted that in view of the provisions of the DSM Regulations, SLDC was required to come up with the Detailed Procedure on or before 20.7.2018 and was also to formulate the Business Rules for constituting a State Power Committee ("**SPC**") within the same time period. Thus, in terms of the DSM Regulations, the formulation of the SOP/Detailed Procedure and the SPC, both with the approval of the Hon'ble Commission were sine qua non for the implementation of the Deviation Charges upon the RE Generators in the State. However, SLDC had not come up with the Detailed Procedure or the Business Rules for the construction of the SPC within this time. Meanwhile, SLDC had started publishing the Deviation Accounts from August 2018, without having published the Detailed Procedure.
7. Vide letter dated 06.10.2018 sent by the SLDC to the Petitioner's QCA and other RE Generators, SLDC sent the details of the DSM Accounts and stated that "all the QCAs/generators are requested to check and verify the State DSM Account and intimate the discrepancies observed if any within a period of 15 days." A copy of the relevant extract from the letter dated 06.10.2018 sent by SLDC is annexed hereto and marked as **Annexure P-5**.
8. Vide letter dated 12.10.2018 the QCA wrote to the Chief Engineer, SLDC, requesting for waiver of the DSM Charges levied upon the RE Generators for the month of August 2018. The QCA informed SLDC that any implementation framework/procedure for the DSM Regulations has not been approved by the Hon'ble Commission and not published as on date. The QCA referred to Regulation 6 (5) of the DSM Regulations which provided for the formulation of the Detailed Procedure by SLDC and the approval by the Hon'ble Commission. The QCA also mentioned that in terms of Regulation 10 (1) of the DSM Regulations, no Detailed Procedure has been prepared and approved by the Hon'ble Commission and therefore till the time the same is done DSM should not be levied on RE Generators. It was also stated that without clarity about the Detailed Procedure, operational framework, and other relevant details, it was not possible to ascertain the validity of the method adopted for arriving at the DSM Charges for each Pooling Station. The QCA also mentioned that the DSM Regulations have not provided the number of revisions which were to be allowed for the RE Generators. The QCA informed SLDC of the need for a three-month mock trial of submissions of schedules to the ELTRIX software, feedback from the QCAs on the same and

suggested that that implementation be done only after the same. The QCA stated that without the Detailed Procedure, the operational framework, and the Payment Security Mechanism, it was not possible to collect and pay the DSM Charges under the DSM Mechanism. In view of the same, the QCA requested for 3 months' time for the implementation of the DSM Charges after approval of the Detailed Procedure by the Hon'ble Commission. A copy of the letter dated 12.10.2018 sent by the QCA to the SLDC is annexed hereto and marked as **Annexure P-6**.

9. There was no response from SLDC to the letter dated 12.10.2018. Thereafter, a meeting was held on 23.10.2018 between SLDC and the QCAs at Jabalpur. In the Minutes of Meeting (MOM) recorded in the said meeting the following was decided:
 - a. DSM Charges is already published for the month of August 2018 and the same will be continued till any confirmation is received from the Hon'ble Commission.
 - b. **Final DSM Charges will probably be waived off and will be charged after 3 months of finalization of the commercial settlement procedure by the Hon'ble Commission.**
 - c. SLDC has submitted amendments and procedures in alignment with the DSM Regulations but the same has not been approved by the Hon'ble Commission.
 - d. **In view of the above, it is expected that SLDC will request the Hon'ble Commission to extend the applicability of the DSM Charges by 3 months, which will be effective after implementation of the finalized Detailed Procedure by the Hon'ble Commission. Thereafter, request shall be made for mock/trial of the Deviation Settlement Mechanism.**
 - e. At the time of curtailment, DSM Charges will not be applicable and in order for the same to happen, the event of curtailment has to be certified by the distribution licensee/transmission licensee and the certified copy is to be provided to the State Nodal Agency for exemption of DSM Charges.
 - f. Service Agreement copy between the QCA and the RE Generators should be signed, stamp on each and every page have to share with SLDC.
 - g. SLDC will release/publish DSM account after final validation of DSM account by the QCA.
 - h. **Responsibility of the QCA will be the same in the Detailed Procedure as in the DSM Regulations.**
 - i. After finalization of the DSM Charges by SLDC, the RE Generators will have to pay the amount within 10 days.
10. Thus, in the meeting dated 23.10.2018, there was a mutual understanding between the QCA and the SLDC that the Deviation Charges shall be applicable only after the Detailed Procedure as submitted is approved by the Hon'ble Commission. It was also understood and agreed that a request shall be made to the Hon'ble Commission for providing a trial/mock period before the Deviation Charges are levied upon the RE Generators. A copy of the Minutes of Meeting dated 23.10.2018 is annexed hereto and marked as **Annexure P-7**.

11. Thereafter the QCA wrote letters dated 12.02.2019, 23.04.2019, 25.04.2019, 28.08.2019, 02.09.2019 and 04.10.2019 to the SLDC and in each of these letters the QCA detailed the provisions of the DSM Regulations and reiterated that in the absence of a Detailed Procedure it was not possible to levy Deviation Charges. The QCA requested that the DSM Charges be levied after a 3 months' time from the date of approval of the Detailed Procedure. Copies of the letters dated 12.02.2019, 23.04.2019, 25.04.2019, 28.08.2019, 02.09.2019 and 04.10.2019 sent by the QCA to SLDC requesting for a waiver of the DSM Charges and for a trial period of 3 months from the date of approval of the Detailed Procedure by the Hon'ble Commission is annexed hereto and marked as **Annexure P- 8 (Colly)**.
12. Vide letter dated 17.09.2019, the SLDC wrote to the QCA in response to the letter dated 28.08.2019 and stated the following:
- "In reference to the above, it is to indicate that **SLDC is implementing agency for implementation of Regulations issued by the Regulatory Commissions, SLDC cannot violate the instructions contained in the Regulations by its own and SLDC has to act according to the guidelines contained in the Regulations.** Only Regulatory Commission can amend, modify and give relaxation to any clause of the Regulations. The State Commission has given opportunity to all the RE Generators to put their problem before the Commission while conducting public hearing on Draft Amendment to MPERC (Forecasting, Scheduling, Deviation Settlement Mechanism and related matters of Wind and Solar Generating Stations), Regulations, 2018. In view of the above, it is intimate that waiver of DSM Charges is beyond the purview of SLDC and requested that matter may please be taken up with MPERC. **Further, it is also requested that payment due against DSM Charges may be made immediately to avoid any action by SLDC for non-payment.**"*
- Thus, vide its response letter dated 17.09.2019, SLDC has stated that it cannot act against the terms of the DSM Regulations and is only an implementing agency, bound by the guidelines contained in the DSM Regulations. SLDC has further directed that the payments towards the DSM Charges be made immediately in order to avoid any coercive steps by SLDC.
13. It is submitted that this understanding of SLDC is incorrect to the extent that SLDC has relied upon the DSM Regulations to bill the RE Generators towards Deviation Charges. It is submitted that the DSM Regulations are abundantly clear that the SLDC has to formulate a Detailed Procedure (Regulation 6 (a) (5) and also constitute an SPC (Regulation 10 (1)) which SPC shall play a role in the settlement of the deviation amongst the State Entities in accordance with the DSM Regulations. Thus, contrary to SLDC's assertion in the letter dated 17.09.2019, the Deviation Charges levied by SLDC is not in accordance to the DSM Regulations and instead are outside the scheme of the DSM Regulations. In fact, as a State Entity bound by the provisions of the DSM Regulations which have been enacted by the Hon'ble Commission, SLDC is bound to

levy Deviation Charges only after a system of forecasting and commercial settlement is put in place via its Detailed Procedure as approved by the Hon'ble Commission. Further, SLDC ought not have levied any Deviation Charges until the authorized SPC was constituted to carry out the functions under the DSM Regulations and the Business Rules, which again was to be enacted by SLDC. Having failed to discharge its duties under the DSM Regulations, SLDC has in an arbitrary and illegal manner levied Deviation Charges upon the Petitioners and also threatened coercive steps if the payments are not made.

14. *Subsequently, the DSM Regulations were amended vide the MPERC (Forecasting, Scheduling, Deviation and Settlement Mechanism and related matters of Wind and Solar generating stations) (First amendment) Regulations, 2018 {AG-44 (i) of 2019} dated 25.09.2019 ("**First Amendment**").*
15. *The First Amendment substituted the Objective and Scope of the DSM Regulations and the same is extracted below for reference:*

"3. Objective and scope

- (1) *The objective of these Regulations is to maintain grid discipline and grid security as envisaged under the Grid Code through the commercial mechanism for Deviation Settlement through injection of electricity by the users of the grid.*
- (2) *These Regulations shall be applicable to Seller (s) involved in the transactions facilitated through short-term open access or medium-term open access or long-term open access in intra-state wheeling of power), as the case may be, in respect of all wind power generators having a combined installed capacity of 10 MW & above and solar power generators having installed capacity of 5 MW & above including those connected via pooling stations and selling power within the State:
Provided that these Regulations shall also be applicable to all wind & solar generators selling power outside the State under open access and having combined installed capacity of 1 MW and above."*

16. *Vide Regulation 6 of the First Amendment, the Hon'ble Commission has deleted the earlier procedure provided in the DSM Regulations and incorporated the detailed operating procedure/Detailed Procedure/SOP which has been annexed as Annexure-I to the First Amendment. The substituted Regulation 6 has been extracted below for reference:*

"6. Forecasting, scheduling and elimination of gaming:

Procedure:- *The provisions of the Madhya Pradesh Electricity Grid Code and the M.P. Electricity Regulatory Commission (Terms and Conditions for intra-state open access in Madhya Pradesh) Regulations, 2005 as amended from time to time, shall be made applicable for declaration of*

capacity, scheduling and elimination of gaming and the **detailed operating procedure in this regard is annexed as Annexure-I**"

17. The First Amendment has omitted Regulations 7, 8 and 9 of the DSM Regulations. It is submitted that in the DSM Regulations, prior to the First Amendment, Regulation provided for Compliance with instruction of Load Despatch Centre, Accounting of Charges for Deviation and Schedule of Payment of Charges for Deviation. These provisions have been incorporated in a comprehensive manner in the SOP/Detailed Procedure.
18. The sub-regulation (1) of the Regulation 10 of the DSM Regulations was substituted by the following sub-regulation:

"(1) Within two months from the date of notification of these Regulations, the State Load Despatch Centre shall formulate a 'State Power Committee' and after obtaining approval from the Commission, issue the necessary order."

Thus, the First Amendment retained the requirement of creation of a SPC, however, now instead of the obligation being that SLDC had to formulate Business Rules for constitution of a SPC, the First Amendment stated that the SLDC shall formulate a SPC. An additional time period of 2 months was given for the constitution of the SPC. As has been mentioned before, the SPC was constituted only on 30.12.2019, i.e., almost 3 months after the First Amendment was notified.

19. Annexure-I of the First Amendment, i.e., the SOP/Detailed Procedure provides that the said SOP has been prepared in accordance with the provisions of Regulation 6 (a) (5) of the DSM Regulations and that the SOP is to read in conjunction with the Indian Electricity Grid Code (IEGC), the MPERC Electricity Grid Code and the MPERC (Terms and Conditions for Intra-State Open Access in Madhya Pradesh) Regulations, 2005. The SOP details the requisite qualifications for any company to be eligible to become a QCA and details the necessity of appointment of QCA by the Generators and provides that the QCA shall be the single point of contact with the SLDC on behalf of its coordinated generator. The SOP also provides for the manner of registration of the QCA with SLDC, the roles and responsibilities of the QCA and reiterates the pre-conditions for participation in Deviation Settlement Mechanism. It is germane to mention here that it is only through the SOP/Detailed Procedure that these specifics pertaining to the QCA have been elaborated.

Thus, the Detailed Procedure has provided specific requirements pertaining to the qualifying requirements for QCAs, the registration of QCA and the appointment of QCA. These details are necessary for a clear understanding of the roles and responsibilities of the QCA and their appointment by the RE Generators. It is submitted that the roles and responsibilities of the QCA in terms of the Detailed Procedure are within the broader framework provided by the Hon'ble Commission in its DSM Regulations.

20. *Vide the First Amendment, Regulation 4 of the DSM Regulations, which provides for the pre-conditions for participation in DSM has been amended. Regulation 4 (7) of the DSM Regulations was substituted and new sub-regulation (8) and (9) were added. Vide these changes, the First Amendment made it necessary for the QCAs to make necessary arrangements for putting up suitable meters which shall be capable of recording energy flows at 15-minute intervals, at the point of injection and for providing AMR facility for data downloading remotely at SLDC. It is submitted that the AMR facility is a pre-condition for commercial settlement, and it is completely ignored that the pre-condition of AMR facility was introduced by way of the Detailed Procedure. The AMR facility is essential for weekly commercial settlement as has been provided in the DSM Regulations. Furthermore, the First Amendment made it mandatory for the RE Generators which are connected via a pooling station to appoint a QCA which may be an RE Generator or a mutually agreed agency. In the event of a failure to appoint a common QCA the SLDCs shall issue notice and within 2 months from date of issue of notice by SLDC, SLDC shall advise the concerned licensee to disconnect the defaulting RE Generator. The First Amendment has also made it obligatory upon all RE Generators to appoint the same QCA in the event the said QCA has been consented to for appointment by more than 50% of the installed capacity of Re Generators including those connected to a pooling station. In case of non-compliance SLDC shall advise the concerned licensee to disconnect the defaulting RE Generators. The aforesaid penalties for non-appointment of the QCA was not envisaged in the DSM Regulations.*
21. *It is submitted that the SOP/Detailed Procedure also details the provisions pertaining to Declaration of Available Capacity (AvC), Forecasting, scheduling and Despatch (Clause 4 (i) to (xvii)), Metering and data collection (Clause 5 (i) to (iii)), Computation of Deviation Charges (Clause 6 (a) to (e)), Settlement of Deviation Charges (Clause 7), Compliance of SLDC Instructions (Clause 9), Event of default and consequences thereof (Clause 10), which are all integral to the establishment of a Deviation Settlement Mechanism in the State.*
22. *Thus, vide the Detailed Procedure annexed to the First Amendment, the SLDC complied with the requirements of Regulation 6 (a) (5) of the DSM Regulations only by 25.09.2019 and the same was notified on 04.10.2019. It is submitted that in the absence of the Detailed Procedure, there was no scope of the implementation of the DSM Regulations because the DSM Regulations were silent on the essentials inter alia such as the qualifying requirements for a QCA, the appointment of the QCA, the registration of the QCA with SLDC, the roles and responsibilities of the QCA, the mode of declaration of the Available Capacity, the forecasting procedures, the scheduling and dispatch and other functions such as the computation of data charges, payment of deviation charges etc.*

23. *Vide letter dated 07.11.2019 the SLDC wrote to the Distribution List (the QCAs, the RE Generators etc.) and stated that the First Amendment along with the Detailed Procedure have been notified. Consequently, the QCAs/Generators were to comply with the regulatory requirements as per the First Amendment and the Detailed Procedure. SLDC further made an erroneous demand for the Deviation Charges from August 2018 onwards. A copy of the letter dated 07.11.2019 has been annexed hereto and marked as **Annexure P-9**.*
24. *Thereafter on 28.10.2020 SLDC sent a Demand Notice to the Petitioners' QCA retrospectively demanding that payments towards the Deviation Charges for the months of August 2018 to July 2020 be made and stated that otherwise SLDC shall take coercive steps against the Petitioners. A copy of the Demand Notice dated 28.10.2020 sent by SLDC to the QCA is annexed hereto and marked as **Annexure P-10**.*
25. *Vide letter dated 03.11.2020, the QCA wrote to SLDC in response to the Demand Notice dated 28.10.2020 and stated the following points of concern and issues that required to be resolved:*
- “1. We have been registered as the QCA's (Qualified Coordinating Agency) and it necessary to put forth the fact before you that we are mere facilitators to coordinate with SLDC and the Generators, however, we would like to inform you that we have been pursuing with the Generators as per your previous letter and the published procedure to support us with all compliance requirements such as necessary documents, payment security mechanism etc. with limited success. Since as QCA we can only ask for support but not enforce, we request SLDC to give directions to all IPPS and generators in the state to cooperate with their respective QCA for complying with the regulation requirements not limited to sending of timely schedule alone.*
- 2. Furthermore, DSM bill of one of the PSS (Marutshakti Chandwasa) where we are neither registered nor performing forecasting scheduling is reflecting against our name and DSM account.***
- 3. Also, we would like to bring to your kind attention that wherever the DSM bills were published, we have submitted our observations, however, revised DSM bills were published for only month of Aug 18 and week of 9th to 15th of March 2020. The revised DSM bills for the rest of the period was never published hence as QCA we could not demand the respective DSM amount from the generators.*** We along with the generators were of the understanding that the payment is to be made only after the revised (R1) DSM results are published.
- Accordingly, we would like to humbly request that once the revised DSM account for the entire period under consideration are provided, instead of seeking whole outstanding amount in one go, a phased demand over a fair period of time be given to minimize hardships for the generators to arrange such a humongous amount.*
- 5. Also, we are in the midst of Corona Pandemic, a reasonable time should be given to QCA to raise individual DSM invoice and collect the obligated DSM amount, the same will also serve well in letter and in spirit of Law.*

Considering above mentioned issues we request you to consider the content of this reply letter for resolving the issues as mentioned in our reply letter.”

*Thus, as is evident from the contents of the letter dated 03.11.2020, not only has SLDC failed to notify a Detailed Procedure and constitute the SPC in a timely manner, it has also not been sending the DSM Bills to the QCAs for payments to be made by the RE Generators. In the absence of the DSM Bills published subsequent to the observations of the QCAs, the Deviation Charges cannot be said to be valid and correct and the SLDC cannot demand payments from the QCAs/Petitioners. Thus, the Deviation Charges from the months of August 2018 to September 2019 are invalid and the Deviation Charges levied subsequently without the DSM Bills (after incorporating the observations of the QCA) also cannot be demanded. Thus, the Demand Notice dated 28.10.2020 is wholly illegal and invalid and ought to be set aside. A copy of the reply letter dated 03.11.2020 sent by the QCA to SLDC is annexed hereto and marked as **Annexure P-11**.*

26. *It is submitted that aggrieved by the Demand Notice dated 28.10.2020 sent by SLDC to the Petitioners' QCA demanding the payment for Deviation Charges from August 2018 and threatening coercive steps in the event of non-payment, the Petitioners have approached this Hon'ble Commission. It is submitted that SLDC has erroneously levied the Deviation Charges on the Petitioners for the period August 2018 to 03.10.2019 and that no Deviation Charges are leviable on the Petitioners prior to the notification of the approved Detailed Procedure. Alternatively, it is submitted that the no Deviation Charges ought to be levied up to 01.01.2020 as the SPC was only constituted on 30.12.2019.*
27. *Additionally, it is submitted that SLDC ought not to levy Deviation Charges on the Petitioners even after the notification of the Detailed Procedure and constitution of the SPC, and instead provide a trial/grace period to the Petitioners for a minimum of 6 months to implement the various requirements of infrastructure development and understanding the working of the Deviation Settlement Mechanism by enabling all the stakeholders to work together and remove the practical difficulties faced in implementation of the DSM Regulations.*
28. *The grounds for filing the instant Petition are as below. The Petitioners crave leave of this Hon'ble Commission to add/alter/modify the grounds if necessary:*

Grounds for Relief:

I. Deviation Charges cannot be levied in the absence of a Detailed Procedure

29. *It is submitted that SLDC has erroneously levied the Deviation Charges on the Petitioners from the months of August 2018 to September 2019, i.e., after the effective date of the DSM Regulations but prior to the notification of the approved Detailed Procedure. It is submitted that the approved Detailed Procedure which were notified on 04.10.2019, are integral to the effective implementation of the DSM Regulations and that no DSM Charges can be levied in the absence of*

the approved Detailed Procedure. Regulation 6 (a) (5) of the DSM Regulations clearly provides that the plan for data telemetry, formats of forecast submissions and other details in this regard shall be provided in the Detailed Procedure to be prepared by SLDC and approved by the Hon'ble Commission. Thus, as on the date of the DSM Regulations being notified, there was no plan put in place for data telemetry, there was no formats of forecast submissions by the RE Generators or the QCA and also other details which were ancillary and necessary for the FS&D of RE Generators to commence in the State. These details were to be provided by SLDC and approved by the Hon'ble Commission. Regulation 6 (a) (5) clearly implies that there was a requirement of a plan for data telemetry/forecasting/other details and that the plan that SLDC will come up with requires the Hon'ble Commission's approval. This approval is clearly needed to ensure that the plan is within the broader framework provided in the DSM Regulations and is not arbitrarily framed. Thus, the two-fold requirement of formulation of the Detailed Procedure and its approval were both contemplated and intentionally provided for in the DSM Regulations. Levying of DSM Charges in non-compliance of the requirements laid down in Regulation 6 (a) (5) renders the Deviation Charges so levied as invalid and illegal.

30. *In terms of Regulation 10 (a), the Detailed Procedure was to be formulated and approved by the Hon'ble Commission within 3 months from the date of notification of the DSM Regulations. Thus, not only did the DSM Regulations create the necessity of a Detailed Procedure, but the Detailed Procedure is also mandated to be formulated within 3 months from the notification of the DSM Regulations. The obligation on SLDC with respect to the Detailed Procedure has been specified twice in the DSM Regulations. This only strengthens the submission that the Hon'ble Commission clearly intended at the time of formulation of the regulations that the same be implemented only upon creation of a Detailed Procedure by SLDC. Thus, in the absence of the Detailed Procedure, no Deviation Charges can be levied upon the RE Generators.*

31. *It is submitted that Regulation 10 (a) provides that within 3 months from the date of notification of the DSM Regulations, the SLDC shall formulate the Business Rules for the constitution of the SPC, both of which shall be approved by the Hon'ble Commission. Further, vide the First Amendment there was a further extension of 2 months for the constitution of the SPC. The SPC which was to be so constituted was entrusted with important functions with respect to the settlement of the Deviation Charges and monitoring the compliance of the DSM Regulations. However, the SPC was never constituted until 30.12.2019. Due to the non-constitution of the SPC, there existed no body which could undertake the implementation of the Deviation Settlement in the State. It is pertinent to note that once the Hon'ble Commission, in exercise of its legislative powers and after comments/objections from the public/stakeholders mandated that the settlement of deviation shall be done by the SPC, this function cannot be performed by any other body without an amendment to the DSM Regulation. Thus, the formulation of the Business Rules for the constitution of the SPC and the approval of the same by the Hon'ble Commission were mandatory conditions or the sine qua non for the implementation of the DSM Regulations and the*

levy of Deviation Charges on the RE Generators such as SLDC. Because SLDC did not constitute the SPC, there was no agency with the powers under the DSM Regulations to carry out the functions as specified in Regulation 10 namely:

- i. Co-ordinate and facilitate intra-State energy exchange for ensuring optimal utilisation of resources;
- ii. Review energy accounting and billing for inter-utility exchange of power;
- iii. **Ensure settlement of deviations amongst state entities in accordance with Regulations 2018;** and
- iv. Monitor compliance of the DSM Regulations by State Entities.

Therefore, SLDC ought to raise Deviation Charges on the RE Generators only after the Detailed Procedure and the SPC have been duly formulated with the approval of the Hon'ble Commission.

32. It is submitted that all the provisions of the DSM Regulations have to be given effect to. SLDC cannot pick and choose Regulations as per its convenience. The DSM Regulations have been enacted with the objective of facilitating Grid security. It is pertinent to note that SLDC has been mandated under the Electricity Act (EA) 2003 to ensure Grid security. Thus, SLDC must at all times act as an active entity instrumental in maintaining Grid security and not cannot have a passive role as a collector of deviation penalty. With the objective of ensuring Grid security the DSM Regulations have cast responsibilities on all stakeholders, the SLDC, the QCA and the RE Generators. The SLDC cannot shirk away its responsibilities and demand penalties from the Petitioners without creating a concrete framework, namely, the Detailed Procedure to supplement the DSM Regulations. It is submitted that the objective of the DSM Regulations is not to penalize the RE Generators such as the Petitioners. The objective is in fact, to enable an environment via the DSM Regulations read with the Detailed Procedure, which environment will be ensuring that the Grid is stable and secure. The Detailed Procedure formulated after the comments/suggestions/objections and with the approval of the Hon'ble Commission is important and mandatory for an effective implementation of the DSM Regulations. If Deviation Charges will be levied prior to the approval to the Detailed Procedure and its notification, this will render Regulation 6(a) (5) and Regulation 10 (a) as meaningless and redundant.
33. It is submitted that all the provisions of any statute/regulations must be given effect to. Each provision is inserted after meticulous research and with responsibility. The requirement of Detailed Procedure and its publication/approval within 3 months from the date of notification of the DSM Regulations are mandatory requirement and serve an objective. The objective being, that there must be a system put in place for the implementation of the DSM Regulations effectively and as intended. If there was any contradiction or difficulty while interpreting any two or more regulations, then even in such a case, instead of striking down or rendering invalid any provision, the courts attempt to reconcile the conflicting provisions through a harmonious interpretation. The consistent approach is to validate and retain provisions instead of rendering

them meaningless through judicial interpretation or otherwise. In the instant case, there is no conflict, and the provision is abundantly clear as to the requirement of a Detailed Procedure. Thus, the provision has to be given effect to. In such an event, SLDC levying Deviation Charges in the absence of an approved Detailed Procedure ought to be considered illegal and the said levy quashed as being invalid.

34. *It is submitted that there cannot be any levy of Deviation Charges without a proper Detailed Procedure with comments/objections of all stakeholders. It is pertinent to point out the DSM Regulations only provide a broad framework for the initiation of the commercial settlement of deviation in the State. The DSM Regulations does not provide for detailed plans and procedures which will be necessary for the implementation of the settlement of deviation in the State. SLDC is a specialized entity which is entrusted with the task of ensuring Grid discipline. There are multiple technicalities required in the implementation of the deviation settlement mechanism. It is for this purpose that the DSM Regulations envisage the creation of a QCA as the interlink between the RE Generators and the SLDC. It is in fact the duty of the SLDC as a statutory body constituted under the provisions of the EA 2003, to apply its mind to the modalities of deviation settlement mechanism and to come up with a procedure which is consistent with the objectives of the EA 2003 and the DSM Regulations and also the various other regulations such as the State Grid Code. It is due to the specialized nature of the functioning of SLDC and its roles and responsibilities, that the FOR-Model Regulations and the DSM Regulations of all the States including the present DSM Regulations provide for the formulation of the Detailed Procedure by SLDC. Today SLDC cannot shirk away from its responsibilities under the DSM Regulations and levy Deviation Charges without having formulated the Detailed Procedure. It is submitted that in the absence of the Detailed Procedure, the Petitioners' QCA had no occasion to know its specific obligations vis a vis SLDC. It is pertinent to note that the deviation settlement mechanism requires forecasting and scheduling before the deviation can be calculated. Forecasting is not an accurate science; therefore, multiple revisions are made by the QCAs which are submitted to the SLDC. It is for the SLDC to provide for 'n' number of permitted revisions and in the absence of a Detailed Procedure, there was no certainty as to the number of revisions that the QCAs may make before deviation penalty will become liable upon them. It is only the Detailed Procedure which provides the format/plan for forecasting and scheduling such as the requirement of a Telemetry/communication system & Data Acquisition System. These requirements were not envisaged in the DSM Regulations and for just reasons that the DSM Regulations is only meant to provide a broad framework while the Detailed Procedure delves with the specific requirements to ensure an effective implementation of the DSM Regulations. Thus, the Detailed Procedure is a mandatory requirement and SLDC cannot rely on the broad principles/framework as laid down in the DSM Regulations to levy Deviation Charges on the Petitioners.*
35. *It is submitted that the levy of Deviation Charges by SLDC from August 2018 is in itself an admission from SLDC that the Deviation Charges shall be levied after the formulation of the*

Detailed Procedure and its approval by the Hon'ble Commission. The DSM Regulations provide that they shall come into force from the date of notification. The DSM Regulations were notified on 20.04.2018. However, SLDC has levied Deviation Charges from August 2018 which is 3 months from the date of notification of the DSM Regulations. The only place where 3 months was mentioned in the DSM Regulations is in the formulation and approval of the Detailed Procedure and the Business Rules for the SPC. Thus, it is evident that SLDC is cognizant of the fact that the Deviation Charges are not to be made leviable from the date of notification of the DSM Regulations. The only time that the Deviation Charges become applicable is when the Detailed Procedure is approved and notified.

- 36. In continuation to the submissions made in the previous para, it is submitted that the Detailed Procedure serves the important purpose of creating a predictable and transparent method for the settlement of deviation. It is submitted that a regulatory framework requires uniformity and should not be arbitrary. While the DSM Regulations provide for a broad framework, it is only with the notification of an approved Detailed Procedure that a system is put in place for the stakeholders to enable them to comply with the requirements of the DSM Regulations and the Detailed Procedure. If statutory bodies like the SLDC will not take into consideration the requirement of putting a predictable system in place for the smooth implementation of the Hon'ble Commission's regulations/orders, then it will create an arbitrary situation wherein stakeholders will be at the whims of SLDC. As is evident in the instant case, SLDC has taken contrary stands in the MOM dated 23.10.2018 and the Letter dated 17.10.2019. Such unpredictable and contradictory stands taken by a statutory body ought to be discouraged.*
- 37. It is submitted that SLDC has not provided any time to the State Entities to implement and arrange suitable meters and provisions of the AMR facility (As introduced vide the First Amendment) for data downloading remotely at SLDC. Such an approach is not in the interest of the stakeholders and creates unnecessary difficulties and disputes between the parties.*
- 38. It is submitted that an analysis of the DSM Regulations and the Detailed Procedure will show that there are several new procedures which have been introduced way of the Detailed Procedure for an effective implementation of the DSM Regulations. The procedures which have been inserted in the Detailed Procedure but did not exist in the DSM Regulations are as below:*

 - a. Procedure 4, detailing the procedure for Declaration of Available Capacity (AvC), Forecasting, Scheduling and Despatch. It is pertinent to note that this runs into 'xvii' sub points detailing the procedure to be followed by a QCA;*
 - b. Procedure 5 detailing the metering and data collection;*
 - c. Procedure 6 detailing the computation of deviation charges;*
 - d. Procedure 7 detailing the Settlement of Deviation Charges;*
 - e. Procedure 8 detailing the payment of security towards deviation charges;*

- f. *Annexure VI detailing the guidelines for planning of telemetry and voice communication; and*
- g. *Annexure VII detailing the format for forecast submission*

- 39. *Thus, it is evident that the Detailed Procedure provides more clarity and requisite information for the effective implementation of the DSM Regulations which procedures were never incorporated in the DSM Regulations. Till the time these procedures were put in place, the Deviation Charges are only at the whims and fancies of SLDC, arbitrary and thereby invalid. The Detailed Procedure is therefore necessarily to be formulated and notified before any Deviation Charge is made applicable upon the RE Generators which includes inter alia the clarity on the scheduling process and clarity on the Payment Security Process.*
- 40. *It is submitted that SLDC cannot act outside the scope of the delegated legislation under the DSM Regulation. Therefore, any Deviation Charge levied upon the Petitioners without the Detailed Procedure is invalid and ought to be set aside.*
- 41. *It is submitted that the Hon'ble Commission may also take into consideration the fact that much like Regulation 6 (a) (5) and Regulation 10 (a) of the DSM Regulations, other States also provide for a Detailed Procedure without which no effective implementation of the DSM Regulations can take place.*

II. Trial Period of a minimum 6 months is essential for an effective implementation of the DSM Regulations read with the Detailed Procedure

- 42. *It is submitted that the DSM Regulations do not provide for any trial period. This is despite the fact that vide the DSM Regulations read with the First Amendment, the scheme of commercial deviation settlement requires pre-conditions to be fulfilled which require time and resources. The First Amendment has made it mandatory that all the State Entities shall make necessary arrangement for putting up suitable meters, capable of recording energy flows at 15-minute intervals, at the point of injection and providing AMR facility for data downloading remotely at SLDC. Furthermore, Clause 3 of the Detailed Procedure provides for multiple preconditions which have to be satisfied by the QCA for participation in the Deviation Settlement Mechanism. The QCAs have to inform the SLDC of all the contracts they have entered into (this itself involved the process of selection of QCA by the RE Generators and registration with the same). Moreover, Clause 3 (vii) reiterates the precondition of Regulation 4 (7) and states that all State Entities shall make necessary arrangements for putting up suitable SEM capable of recording energy flows at 15-minutes intervals along with AMR facility (Modem, Antena & SIM) for data downloading at SLDC, at the points of injection as per CEA Regulations and Grid Code. It is stated that setting up this infrastructure requires time and coordination between the RE Generators, the QCA and the SLDC. As has been the experience elsewhere in other States, setting up of the meters and creating a standard infrastructure takes time. It would be highly unjust if Deviation Charges*

are levied upon the Petitioners without reasonable time being given for the implementation of the pre-conditions and other necessary requirements. Thus, a reasonable period of time is needed for the QCAs and the RE Generators to comply with the mandatory preconditions envisaged in the Comprehensive DSM Regulations.

43. *It is submitted that the implementation of the commercial settlement of deviation is an altogether new system which is being put in place. The primary purpose of the DSM framework is not to penalize the RE Generators such as the Petitioner and instead the objective is to ensure Grid security. For this objective to be accomplished, it is important that there is a trial period wherein all the stakeholders can work in tandem and various issues are resolved before the Deviation Charges are levied on the Petitioners. It is submitted that the Detailed Procedure requires multiple new procedures to be implemented including roles and responsibilities of the QCA and the mandatory requirement of appointment of a QCA by the RE Generators. In order to comply with the various requirements as mandated in the Detailed Procedure and otherwise to assess and remove practical difficulties, a trial period becomes necessary.*
 44. *Other States have also brought in trial period. In all States where the deviation settlement mechanism has been put in place for the RE Generators, the Regulation enacted by the Ld. State Commission is followed by a Detailed Procedure and thereafter a trial period is given. In fact, a study of the implementation of the DSM Regulation in other States will show that the commercial implementation of the DSM Regulations is a time-consuming process and given the network and technological constraints in various parts of the States where the RE Generators are situated, it is essential that firstly SLDC and the QCAs work together to ensure that all the stakeholders are technologically equipped and prepared to initiate the commercial implementation of the deviation charges. It is submitted that the trial period is necessary to understand, identify and rectify practical difficulties faced by the RE Generators while implementing the DSM Regulations.*
 45. *In view of the submissions made above, it is submitted that the Demand Notice dated 28.10.2020 is invalid and ought to be set aside. It is submitted that no Deviation Charges ought to be levied on the Petitioners until the date the approve Detailed Procedure was notified. It is further requested that for the objective of the DSM Regulations to be fulfilled, it is important the there is a trial period/mock period given to the stakeholders.*
3. With the above submissions, the petitioners prayed the following:
- [a] Admit the Petition.
 - [b] Quash SLDC's Demand Notice dated 28.10.2020 to the extent the Deviation Charges have been levied upon the Petitioners from August 2018 up to 03.10.2019.
 - [c] Direct that no Deviation Charges shall be levied upon the Petitioners up to the date the approved Detailed Procedure were notified i.e., up to 03.10.2019 and up to the date of formation of the SPC i.e., 30.12.2019.

[d] Grant a period of a minimum 6 months as trial period/mock period from the date of the notification of the approved Detailed Procedure for the commercial implementation of the DSM Regulations and direct that no Deviation Charges shall be leviable on the Petitioners during the trial period.

4. The petitioners also filed an application for the following:
 - (i) Grant ad-interim ex-parte stay on the Demand Notice dated 28.10.2020 sent by SLDC to the petitioners' QCA to the extent SLDC has levied Deviation Charges upon the petitioners from August 2018 to 03.10.2019.
 - (ii) Direct SLDC to not take any coercive steps against the petitioners till further orders.

5. The petition was admitted on 09.02.2021 with directions to petitioners to clarify their prayer at S. No. (c) in the petition. The petitioners were directed to serve copy of the subject petition to Respondents within three days and report compliance of service to the Commission. The Respondents were directed to file their replies to the subject petition within 10 days, thereafter. They were also directed to serve a copy of their replies on the petitioners simultaneously. The petitioners were asked to file rejoinder on the aforesaid reply within seven days, thereafter.

6. At the next hearing held on 23.03.2021, the Respondent No. 2 had sought two weeks' time for filing reply to the subject petition. The petitioners had sought one week time for filing rejoinder, thereafter.

7. At the next hearing held on 28.05.2021, the Commission observed the following:
 - i. Vide letter dated 05.04.2021, the Respondent No. 2 (SLDC) filed reply to the subject petition and the application filed by the petitioners seeking ad-interim ex-parte stay on the demand notices issued by the SLDC.
 - ii. The petitioners had sought time to file rejoinder in this matter.

Considering their request, the petitioners were given last opportunity to file rejoinder within two weeks.

8. At the next hearing held on 06.07.2021, the petitioners had sought additional two weeks' time to file rejoinder and requested to adjourn the hearing. It was noted that the petitioners were still seeking time for filing their rejoinder despite given last opportunity to file their rejoinder at the last hearing held on 28th May' 2021. However, considering the reasons mentioned by the petitioners, another opportunity was given to the petitioners to file their rejoinder within two weeks.

9. At the hearing held on 10.08.2021, Ld. Counsel who appeared for the petitioners concluded his arguments. However, Ld. Counsel who appeared for the Respondents stated that he will file his written arguments within a week. Having heard the parties, the Respondents were directed to file their written arguments within a week and the case was reserved for order.

10. The Respondent No.2 (SLDC) broadly submitted the following in its reply to the subject petition:

1. *That the MPERC (Forecasting, Scheduling, Deviation Settlement Mechanism and related matters of Wind & Solar Generating Stations) Regulations-2018 say as MPERC(FSDSM) Regulations 2018 notified on 20.04.2018. Prior to issue of 1st amendment, the draft amendment was published and Public Hearing was held before the Commission wherein the stakeholders have represented their point of view and made written submissions. The amendment was issued after considering all such representations.*
2. *That electrical grid is a volatile system and strict discipline is utmost needed from all the entities connected with the Regional / State Grid. If any of the entity violates the grid discipline as mandated in Indian Electricity Grid Code and M.P. Electricity Grid Code, may cause threat to the secure grid operation. It is pertinent to submit here that smooth operation of the grid is utmost necessary for ensuring reliable and quality power supply to the consumers.*
3. *That for safe, secure & reliable operation of the grid as well as continuous supply to the consumers, all the generators and drawee entity shall have to adhere to forecasted generation and demand submitted to SLDC on day ahead basis. However, in case of any contingency, regulatory provisions exist for making revisions in real time of operation in forecasted generation and demand, respectively for generators and drawee entity.*
4. *That adhering to scheduled generation by generator and scheduled drawal by drawee entity is utmost necessary for the stability of the grid. If either generator or drawee entity deviates from the schedule given by SLDC, may cause threat to Grid security.*
5. *That Respondent No.1 has informed that the matter is related to DSM Charges and SLDC is Implementing Agency for the regulation hence authorized SLDC, the Respondent No.2 to file reply on their behalf, therefore this reply be considered on behalf of Respondent No.1 & Respondent No.2.*
6. *The primary ground taken in the petition is that as there was no mechanism or procedure prescribed in the M.P. Grid Code for revision in generation schedule as per Regulation 6(2) of the MPERC Regulations, 2018, therefore, it was not possible for the petitioners to revise their schedule on a real time basis and as they could not do so because of the unavailability of the*

specified procedure, therefore, no charges can be imposed on the petitioners under Regulation 6(b) of the MPERC Regulations, 2018. It is also the case of the Petitioners that since the specified procedure has been notified on 25.09.2019 and made applicable from 04.10.2019 from the date of publication therefore any such deviation charges can be made applicable prospectively and not retrospectively. It is also the case of the Petitioners that due to the non-availability of the specified procedure the Petitioners could not undertake revision of their generation schedule on the day of operation.

- 7. It is submitted by the answering respondent that the Petitioners have started their real time revisions as per the MPERC Regulations, 2018 from the month of August, 2018. It is, therefore, completely incorrect on the part of the petitioners to aver or allege that they could not undertake real time revisions in the Schedule due to the absence of the specified procedure in the Grid Code.*
- 8. In this regard, it is pertinent to note that the petitioner no.1 (Ratedi Wind) has started real time revisions for its wind power project from 1.8.2018. It is pertinent to note that the Petitioner no.1 has several wind project in MP and for all of them it started its first real time revision from 1.8.2018. In as much as it has undertaken 11 real time revisions for its 59.20 MW power project on 1.8.2018 and at least 9 real time revisions for its other project on 1.8.2018. Similarly, Petitioner no.2 (Etesian Urja) has undertaken real time revisions on 1.8.2018 for its power project and it has started with the same on 1.8.2018 and has undertaken as many as 14 real time revisions on 1.8.2018. A copy of the chart showing the real time revisions is attached as **Annexure-1**.*
- 9. Therefore, it is completely incorrect on the part of the Petitioners to aver or allege that the real time revisions were not possible from 2018 till 04.10.2019 and therefore no deviation charges can be imposed on them for this period.*
- 10. It will thus be seen that the entire basis of the petitions filed by the petitioners that there was no specified procedure for undertaking real time revisions and, therefore, no deviation charges can be imposed under Regulation 6(b) of the MPERC Regulations, 2018, as the Petitioner were unable to take real time revisions, is completely erroneous and incorrect on the facts of the case as with all the petitioners have been undertaking real time revisions from August, 2018 and have never ever objected to the fact while taking real time revisions that specified provision is unavailable. Therefore, to now aver or allege that the charges cannot be imposed is incorrect on the part of the petitioners.*
- 11. It is, further, submitted that the bills have been issued way back on 06.10.2018 and none of the petitioners have objected to the same therein and have instead continued with their actions of revision of schedules. Further, the meetings were also held with the answering respondents on*

23.10.2018 wherein it was decided that the real time revisions can be issued and, therefore, it is completely incorrect on the part of the petitioners in the instant petition to aver or allege that this Hon'ble Commission should direct that Regulation 6(b) which seeks to impose the deviation charges be made applicable from 04.10.2019 and not from the year 2018.

12. **PARAWISE REPLY-**

Para: 1 -

The content of this para is regarding matter of filing of petition. However, it is to submit that SLDC has been preparing and issuing DSM Charges bills and had issued notices to QCA for payment of DSM Charges as per provisions contained in Madhya Pradesh Electricity Regulatory Commission (Forecasting, Scheduling, Deviation Settlement Mechanism and related matters of Wind and Solar generating stations) Regulations, 2018 and first amendment.

Para: 2 -

*It is to submit that MPERC (Forecasting, Scheduling, Deviation Settlement Mechanism and related matters of Wind and Solar generating stations) (FSDSM) Regulations, 2018 had come into force from the date of publication in Madhya Pradesh Gazette i.e. on 20.04.2018. In order to complete requisite formalities for implementation of MPERC (FSDSM) Regulations, 2018, SLDC vide letter dated 01.05.2018 had requested to Hon'ble State Commission to allow commercial settlement under this Regulation w.e.f. 1st August 2018 so that sufficient time could be given to the RE Generators to make necessary preparation for metering, data collection, forecasting close to actual so as to minimize financial burden in terms of Deviation Charges and also adhering to grid discipline. Accordingly, SLDC had started issuing DSM Accounts for wind / solar generators w.e.f. 1st August 2018. Copy of the letter dated 01.05.2018 is annexed herewith as **Annexure-1**.*

Further, it is to submit that MPERC (FSDSM) Regulations 2018 could be implemented in the State of MP without approval of 'Detailed Procedure' as regulatory provisions for computation of Deviation Charges were clear and does not require any further clarification. It is pertinent to mention here that there is no additional condition incorporated in Annexure-I of First Amendment i.e. Detailed Operating Procedure of First amendment to MPERC (FSDSM) Regulations 2018 which may cause any financial burden on the RE Generators.

It appears that RE Generators instead of building capability for the functions to be performed under the MPERC (FSDSM) Regulation-2018, were engaged in extending the date of commercial settlement by raising the issues which were clearly defined in the Regulation-2018 and needs no further clarification / elaboration for implementation. The statement of the Petitioners that illegal levy of Deviation Charges from August 2018 to 03.10.2019 is incorrect and denied. SLDC has started computation of DSM charges of Wind and Solar Generators w.e.f. 1st August 2018 and the petitioners

are making continuous default in settlement of DSM charges, hence the notice dated 28.10.2020 was served to petitioners for payment settlement for violation of clause 10(a) of Annexure-I of First amendment of MPERC (FSDSM) Regulations -2018. The Petitioners are searching an escape route for non-payment of DSM Charges for a period of 01.08.2018 to 03.10.2019. Thus, it is to submit that the Respondent No. 2 has prepared and issued the Deviation Charges of the qualified Wind and Solar pooling stations in accordance with the regulatory provisions hence as per law.

Para: 3 to 5 –

The content of these paras are about the details of Petitioners and Respondents, hence no comments are offered.

Para: 6& 7–The content of these para is a matter of records, hence no comments are offered.

Para: 8 to 14 –

The Petitioner has mentioned that “Any State which begins with the implementation of RE Deviation takes almost 6 – 7 months in readying the infrastructure for the same”. In reply to this, it is submitted that all the infrastructure required for implementation of MPERC (FSDSM) Regulation-2018 were already available in the State prior to notification of the Regulation-2018.

SLDC has sought commercial implementation w.e.f. 1st August 2018 so that in the meantime qualified Solar / Wind Generators could develop expertise in scheduling / forecasting and appointment of QCA. It is expected that if Wind / Solar Generators had taken the Regulation-2018 in true spirit, 3 months’ time is more than sufficient to develop expertise in scheduling / forecasting and appointment of QCA.

It is to submit that SLDC is having SAMAST complied ABT System since 2009 and only minor modification in the software was required which had been done within few weeks.

Telemetry / real time data facility was existing for all the pooling stations.

Metering system as per regulatory provisions was already there as per MPEGC and CEA Regulations in this regard.

Forecasting on day ahead basis had already been done by the qualified Wind / Solar Generators prior to notification of MPERC (FSDSM) Regulations-2018 as per Madhya Pradesh Electricity Regulatory Commission (Cogeneration and Generation of Electricity from Renewable Sources of Energy) Regulations, 2010 and subsequent amendments.

Thus, it is difficult to understand that why QCA / Wind / Solar Generators require such a long time for commercial implementation of MPERC (FSDSM) Regulations-2018.

Para: 15 –

The content of this para is a matter of record and no comments are offered.

Para: 16 –

It is to submit that MPERC (FSDSM) Regulations 2018 could be implemented in the State of MP without approval of 'Detailed Procedure' as regulatory provisions for computation of Deviation Charges were clear and does not require any further clarification. It is pertinent to mention here that there is no additional condition incorporated in Annexure-I of First Amendment i.e. Detailed Operating Procedure of First amendment to MPERC (FSDSM) Regulations 2018 which may cause any financial burden on the RE Generators. Thus, in compliance of regulatory provisions SLDC had started publishing the DSM Accounts of qualified wind and solar generators w.e.f. August 2018.

It is to submit that there was no delay in formation of State Power Committee, as after publication of First amendment to MPERC (Forecasting, Scheduling, Deviation Settlement Mechanism and related matters of Wind and Solar generating stations) Regulations, 2018 on 4th October 2019, SLDC has constituted the State Power Committee on 30th December 2019, after approval from the Hon'ble State Commission. SLDC had convened the 1st meeting of the State Power Committee on 28th September, 2020. Due to COVID-19 epidemic and subsequent measures to contain spread of COVID-19 in the country, the meeting was conducted through VC.

It is to submit that State Power Committee has not been assigned any power to take decision against the provisions of MPERC (Forecasting, Scheduling, Deviation Settlement Mechanism and related matters of Wind and Solar generating stations) Regulations, 2018 and First amendment. This Committee is constituted only for smooth implementation of the regulation in the State. The Committee cannot waive off DSM Charges or provide any relaxation in payment of DSM Charges.

Thus, the submissions made by the Petitioners are misplaced.

Para: 17 –

The content of para is matter of record and no comments are required to be offered.

Para: 18 –

It is to submit that reply to this para has already been submitted in the reply to preceding para's. Regarding Intra Day Revisions in Schedule, it is to submit that it is clearly mentioned in MPERC (FSDSM) Regulations 2018 at Clause-2 of Regulation-6 (a) that the Petitioners could make revisions in forecasted generation during the real time of operation as per provisions of Grid Code. As per Clause-8.6 of fourth amendment of MPEGC, State Sector Generating Stations can revise their forecasted generation during the real time of operation as & when required. There is no restriction on number of revisions during the day of operation.

Clause-6(a)(2) of MPERC (FSDSM) Regulations 2018 is reproduced below-

The generating station, as far as possible, shall generate electricity as per the day ahead generation schedule finalized by the State Load Despatch Centre in accordance with the Grid Code.

Provided that the revision in generation schedule on the day of operation shall be permitted, in accordance with the procedure specified under the Grid Code and M.P. Electricity Regulatory Commission (terms and conditions for intra-state open access in Madhya Pradesh) Regulation, 2005 as the case may be.

It is clearly understood from the above clause that procedure specified under Grid Code and MPERC (Terms & conditions for intra-state open access in Madhya Pradesh) Regulation-2005 for SSGS shall also be followed for real time revisions in forecasted generation by Wind and Solar Generators. SLDC had addressed doubts / queries on the regulatory provisions of MPERC (FSDSM) Regulations 2018, if any raised by the Wind / Solar Generators, telephonically before the commercial implementation of Regulation w.e.f. 01.08.2018. SLDC had also convened a meeting on 23.10.2018 with Wind / Solar Generators, Developers and QCA to explain in detail all the regulatory provisions and suitably addressed all the queries raised by them. During the meeting, it was made clear to all the Wind / Solar Generators that the Regulation is complete in every respect and could be implemented in the State of MP.

In the meeting on 23.10.2018, it was made clear to all the participants that SLDC is the Implementing Agency of MPERC (FSDSM) Regulations 2018 and would act as per the provisions contained in the Regulation. Any relaxation in any of the regulatory provisions and commercial implication is beyond the purview of SLDC and may be taken up directly with the Hon'ble State Commission.

*Most of the qualified Wind and Solar Generators / QCAs had started revising forecasted generation during the real time of operation w.e.f. 1st August 2018. The petitioners have started submission of revisions in forecast through their QCA (M/s Manikaran Analytics Ltd.) from 01.08.2018 for their Wind Power Projects. The revisions in forecasted generation submitted by the petitioners during real time of operations has been accepted and accordingly the schedules were issued by SLDC. For ready reference, the Available Capacity, day ahead forecast and real time revisions submitted by the petitioners for 01.08.2021 are annexed herewith as **Annexure-2**.*

It was found that qualified Wind / Solar Generators were reluctant to comply the MPERC (FSDSM) Regulation-2018. SLDC had to pursue them for appointment of QCA, communication of data through Automatic Meter Reading System installed at SLDC, rectification of time drift in the meter, replacement of Sliding Window Type Meters and even conveyed them the forecasted and actual data for verification at their end before issuance of DSM account by SLDC in the initial months but they have not responded SLDC in time.

Subsequently after months together, they requested SLDC for correction in schedule / actual generation on the plea that there was outage in transmission / distribution network, time drift in meter which they never try to rectify on priority etc. This could have been informed to SLDC earlier also.

It is to submit that such act of QCA / Wind / Solar Generators is not justified and it shows that intention of Wind / Solar Generators is to put the whole process of DSM settlement of RE Generators under dispute.

Any revision in DSM Account requested by the Wind / Solar Generator, if found in order, has been made by the SLDC as early as possible. This is a regular process followed at State, Regional and National level on receipt of corrected data of any of the Grid entity received at a later date.

Para: 19 & 20 –

It is to submit that in order to address the doubts / queries on the regulatory provisions of MPERC (FSDSM) Regulations 2018 raised by the Wind / Solar Generators / QCA, SLDC had convened a meeting on 23.10.2018 with Wind / Solar Generators, Developers and QCA to explain in detail all the regulatory provisions and suitably addressed all the queries raised by them. In the meeting, it was clarified to all the Wind / Solar Generators /QCAs that MPERC (FSDSM) Regulations 2018 is complete in every respect and could be implemented in the State of MP. The official minutes of meeting was not issued by SLDC, but, it was assured to Wind / Solar Generators / QCA that issues which were genuine in nature and beyond the purview of SLDC would be taken up with Hon'ble Commission. Thus, the statement of the petitioners that there was a mutual understanding between the QCA and the SLDC that the Deviation Charges shall be applicable only after the Detailed Procedure is approved by the Hon'ble Commission is incorrect and hence denied specifically. Further, the Minutes of Meeting annexed as Annexure P-7 of the petition issued by the petitioners QCA (M/s Manikaran Analytics Ltd.) does not have SLDC and other participants consent, therefore cannot be treated as a valid document and may not be considered.

Para: 21 –

It is to submit that MPERC (FSDSM) Regulations 2018 could be implemented in the State of MP without approval of 'Detailed Procedure' as regulatory provisions for computation of Deviation Charges were clear and does not require any further clarification. All the Wind / Solar Generators were well aware of all the regulatory compliance except appointment of QCA, prior to the notification of MPERC (FSDSM) Regulations-2018. According to interpretation of SLDC of MPERC (FSDSM) Regulations-2018, no clarification was required in any of the clause which could cause financial burden on Wind and Solar Generators.

Further, it was also clarified to the Wind / Solar Generators / Developers / QCA that SLDC is an implementing agency for MPERC (FSDSM) Regulations 2018 and waiver of DSM Charges for a certain period of time is beyond the purview of SLDC.

Para: 22 –

It is to submit that Petitioners had quoted the content of Respondent No.2, SLDC letter dated 17.09.2019, the stand of Respondent No. 2, SLDC is same as mentioned in the letter.

It is to submit that SLDC is the Nodal Agency for faithful implementation of regulatory provisions notified by the Hon'ble Commission. If SLDC does not take any action for recovery of RE DSM Charges from the qualified Wind / Solar Generators, it would be treated as violation of the Hon'ble Commission's MPERC (FSDSM) Regulation-2018.

Para: 23 –

The contents of this para are not correct and misinterpretation of the MPERC (FSDSM) Regulation-2018 for evading from the payment of DSM Charges due on the Petitioners and also to put the DSM mechanism under dispute.

It is not mandatory that Detailed Operating Procedure is to be issued prior to commercial implementation of each regulation of the Hon'ble Commission.

The Petitioners can pray before the Hon'ble Commission for commercial implementation of MPERC (FSDSM) Regulation-2018 after notification of Detailed Operating Procedure. The comments of the Petitioners under this para seems to be putting the RE DSM under dispute by alleging SLDC for misinterpretation of regulatory provisions of MPERC (FSDSM) Regulation-2018, for computing & levying RE DSM Charges.

Para: 24, 25 & 26-

It is to submit that content of these paras is a matter of record hence no comments are offered.

Para: 27 –

It is to submit that Hon'ble Commission in the First Amendment to Madhya Pradesh Electricity Regulatory Commission (Forecasting, Scheduling, Deviation Settlement Mechanism and related matters of Wind and Solar generating stations) Regulations, 2018 has omitted Regulations 7, 8 & 9 as the same has been included in the Annexure-I (Operating Procedure) of First Amendment of Regulations 2018. The basic criteria for metering, computation of DSM Charges, forecasting / scheduling has not changed and addition / omissions of sections in the First Amendment of Regulations 2018 does not have any additional financial implication on the RE Generators.

Para: 28 –

It is to submit that there was no delay in formation of State Power Committee, as after publication of First amendment to MPERC (Forecasting, Scheduling, Deviation Settlement Mechanism and related matters of Wind and Solar generating stations) Regulations, 2018 on 4th October 2019, SLDC has constituted the State Power Committee on 30th December 2019, after approval from the Hon'ble State

Commission. SLDC had convened the 1st meeting of the State Power Committee on 28th September, 2020. Due to COVID-19 epidemic and subsequent measures to contain spread of COVID-19 in the country, the meeting was conducted through VC.

It is to submit that State Power Committee has not been assigned any power to take decision against the provisions of MPERC (Forecasting, Scheduling, Deviation Settlement Mechanism and related matters of Wind and Solar generating stations) Regulations, 2018 and First amendment. This Committee is constituted only for smooth implementation of the regulation in the State.

Para: 29 –

It is to submit that roles and responsibilities of the QCA has already been specified in the MPERC(FSDSM) Regulations 2018, only the elaboration of roles and responsibilities of the QCA has been done in the First Amendment to MPERC(FSDSM) Regulations 2018. Thus, there is no change in the roles and responsibility of QCA in the principal Regulations 2018 and its First amendment. Further, it is to submit that mostly all the Wind and Solar Generators had already appointed the QCA prior to issuance of DSM Account for the month of August 2018.

Para: 30 –

It is to submit that regulatory provisions for metering and AMR facility were already in vogue prior to notification of Madhya Pradesh Electricity Regulatory Commission (Forecasting, Scheduling, Deviation Settlement Mechanism and related matters of Wind and Solar generating stations) Regulations, 2018. From the year 2016 onwards, SLDC was giving permission for injection of power into the grid to RE Generators only when AMR facility and telemetry is provided. Also, Wind / Solar Generators have been asked to submit forecasted generation on day ahead basis as well as real time revision in compliance to Madhya Pradesh Electricity Regulatory Commission (Cogeneration and Generation of Electricity from Renewable Sources of Energy) Regulations, 2010 and subsequent amendments.

On notification of MPERC(FSDSM) Regulation-2018, some of the Wind / Solar Generators did not appoint the QCAs for their pooling station despite repeated requests from SLDC and in some of the pooling stations, all Generators have not consented for a single QCA. This had made the implementation of Regulation-2018 difficult in the State of MP due to non-compliance of Regulation-2018 by some of the Wind / Solar Generators. There was no provision in the Regulation to penalize Wind / Solar Generators for non-compliance of regulatory provisions. Thus, the Hon'ble State Commission has inserted Sub-clause 8 and 9 to Clause-4 of Regulation-2018 so that Wind / Solar Generator endeavor faithful compliance of the Regulation-2018 of the Hon'ble State Commission. In the absence of this inserted sub-regulations 8 and 9 of Sub-clause-4, SLDC could not initiate any action against the Wind / Solar Generators for faithful compliance of the MPERC(FSDSM) Regulations-2018.

Para: 31 –

It is to submit that Annexure-I (Operating Procedure) of First Amendment to Regulations 2018 is the elaboration of regulatory provisions of MPERC(FSDSM) Regulations 2018. The same has been notified by the Hon'ble Commission for the ease of implementation of regulatory provisions contained in the MPERC(FSDSM) Regulation-2018. Further, it is to submit that addition / omissions of sections in the First Amendment of Regulations 2018 does not have any additional financial implication on the RE Generators.

It is to submit that whenever any query / doubt raised by the Wind / Solar Generator on the provisions of MPERC (FSDSM) Regulation-2018, before and after commercial implementation of the regulation, SLDC had addressed all the queries / doubts on regulatory provisions either through telephonic conversation or if requested in writing.

All the QCAs and Wind / Solar Generators had been continuously in touch with SLDC and all are well aware of all the provisions of MPERC (FSDSM) Regulation-2018.

The submission of the Petitioners that they are unaware of various provisions of the regulation does not appear to be correct.

Para: 32 –

It is to submit that reply to this para has already been submitted in reply to preceding para's.

Para: 33 –

Contents of this para are a matter of record and need no comments.

Para: 34 –

SLDC has started computation of DSM charges of Wind and Solar Generators w.e.f. 1st August 2018 and the petitioners are making continuous default in settlement of DSM charges, hence the demand notice dated 28.10.2020 was served to petitioners for payment settlement for violation of clause 10(a) of Annexure-I of First amendment of MPERC (FSDSM) Regulations -2018.

If SLDC did not issue notice for recovery of DSM Charges towards the Pool Account, it would be the violation of MPERC (FSDSM) Regulation-2018. Non-payment of DSM Charges by some of the QCA / Wind / Solar Generators adversely affects the settlement of charges through RE DSM Pool Account. In the absence of non-receipt of payment from some of the QCA / Wind / Solar Generators, SLDC cannot make payment to the QCA / Wind / Solar Generators which are receivable from the Pool Account. Default in payment by some of the RE Generators defeat the very purpose of Hon'ble Commission for maintaining Grid security, by penalizing RE Generators which do not adhere to the Grid Discipline.

Para: 35 –

It is out of place to mention the issue of M/s Manikaran Analytics Ltd. with M/s Marut Shakti Chandwasa and it is not related with the Petitioners in any way. The intention of the Petitioners mentioning this issue in the instant petition is only to complicate the matter by irrelevant submission. M/s Manikaran Analytics Ltd is already in contact with SLDC and the DSM Account for the month of August, 2018 is under process and shall be revised shortly. This issue is for a month i.e. August, 2018 only.

Petitioners did not comply the MPERC (FSDSM) Regulation-2018 and never made any payment to the RE Deviation Pool Account. The default in payment is made by the Petitioners well before the pandemic COVID-19. If Petitioners have been making payments due towards DSM Pool Account in compliance to MPERC (FSDSM) Regulation-2018, a huge amount would not be outstanding against them. This has happened only due to non-compliance of regulatory provisions of MPERC (FSDSM) Regulation-2018.

The Petitioners are mentioning constitution of State Power Committee (SPC) again & again in their petition submitted before the Hon'ble Commission for seeking relief in payment of RE DSM Charges. It is mention that State Power Committee does not have any role in preparation and issuance of RE DSM Accounts and payment received / disbursed through the RE DSM Pool Account. Functions of SPC have already been defined in the regulation and it has to work within the provisions of MPERC (FSDSM) Regulation-2018.

Thus, seeking relief on the ground of non-constitution of SPC timely is baseless argument to justify their default in payment towards the RE DSM Pool Account.

Para: 36 & 37 –

It is once again submitted that the Petitioners have been violating the provisions of MPERC (FSDSM) Regulation-2018 since last more than two years by making default in payment towards the RE DSM Pool Account and can be treated as non-compliance of MPERC (FSDSM) Regulation-2018.

Now, Petitioners are finding escape route by mentioning again & again constitution of State Power Committee (SPC) and notification of Detailed Operating Procedure for non-compliance of MPERC (FSDSM) Regulation-2018 and also relief from Hon'ble Commission for payment of RE DSM Charges by them.

The RE DSM Charges Account prepared by SLDC are in true sense in line with the provisions contained in the MPERC (FSDSM) Regulation-2018. The Petitioners and other QCAs / Wind / Solar Generators have never found out mistake in methodology adopted by SLDC for preparation and issuance of RE DSM Accounts.

Para: 38 & 56 –

The reply to these paras has already been submitted in the reply to preceding paras. Further, it is to submit that –

Methodology for computation of DSM Charges for Wind / Solar Generators has been given in detail in the Madhya Pradesh Electricity Regulatory Commission (Forecasting, Scheduling, Deviation Settlement Mechanism and related matters of Wind and Solar generating stations) Regulations, 2018 and does not require any elaboration for carrying out computation of DSM Charges of RE Generators and there is no change in the methodology for computation of DSM Charges in the principal regulations and first amendment to Regulations 2018.

The Central Electricity Authority notification dated 26.11.2014, MP Electricity Grid Code and Madhya Pradesh Electricity Balancing & Settlement Code provides guidelines for type of meters to be installed, metering scheme, metering capability, testing & calibration requirement, AMR facility and scheme for collection and dissemination of meter data. The Solar / Wind Generators are well aware of the regulatory provisions for metering and communication of meter data before connecting with the State Grid.

The regulation of Hon'ble State Commission had sufficient clarity in every respect for implementation. However, in the First Amendment to Madhya Pradesh Electricity Regulatory Commission (Forecasting, Scheduling, Deviation Settlement Mechanism and related matters of Wind and Solar generating stations) Regulations, 2018, basic criteria for metering, computation of DSM Charges, forecasting / scheduling remain the same. Sections deleted / added by the Hon'ble State Commission does not have any additional financial implication on the RE Generators.

The procedures for various activities to be performed under this regulation were already indicated in various regulations of CERC / MPERC notified prior to notification of this regulation. Thus, the submission of the Petitioners that they were waiting for approved detailed procedure is not correct and only to escape from paying DSM Charges for deviation from the forecasted generation for some period of time.

10. The petitioners had made Madhya Pradesh Power Transmission Co. (MPPTCL) as respondent No.1 and State Load Despatch Centre (SLDC) as respondent no. 2. It is to submit that issues raised by the petitioners and relief sought in the petition is related with the functions and duties of SLDC. M.P. Power Transmission Co. Ltd. (MPPTCL) is no way related to the issues raised and relief sought in the petition. Thus, the reply on the petition is not required to be submitted by the respondent no.1 M.P Power Transmission Co. Ltd. (MPPTCL).

11. In light of the submissions made hereinabove, it is most respectfully submitted that the instant petition may kindly be dismissed.

11. By affidavit dated 03.08.2021, the petitioners submitted the following in their rejoinder:

1. *It is submitted that this Hon'ble State Commission had passed order dated 14.05.2021 in Petition No. 23 of 2020 in the matter of M/s DJ Energy Private Ltd. & Anr. v. SLDC & Anr. Petition No. 23 of 2020 was filed before this Ld. Commission under Section 86 of Electricity Act, 2003 r/w Regulation 11 (Power to Relax) and Regulation 12 (Power to issue directions) of the MPERC (Forecasting, Scheduling, Deviation Settlement Mechanism and related matters of Wind and Solar generating stations) Regulations, 2018 ("RE DSM Regulations") and Regulation 46 of the MPERC (Conduct of Business) Regulations, 2004 seeking exercise of power to issue directions to remove difficulty in implementation of the Deviation Settlement Mechanism. Vide order dated 14.05.2021, this Hon'ble State Commission dismissed the said petition and allowed the levy of deviation charges from 01.08.2018. The Hon'ble State Commission has taken the view that the detailed procedure which has been incorporated in the RE DSM Regulations vide the First Amendment dated 25.09.2019 is only to provide institutional strength to the RE DSM Regulations. Aggrieved by the order of the Ld. State Commission, the petitioners therein have approached the Hon'ble Tribunal vide Appeal No. 223 of 2021. Vide Daily Order dated 09.07.2021, the Hon'ble Tribunal was pleased to provide interim relief to the Appellants and the appeal has been transferred to the Registrar Court for completion of pleadings.*
2. *In this regard, it is submitted that the case of the Petitioner is identical in nature with the M/s DJ Energy Private Ltd and therefore the Petitioner has prima facie case in his favour and further balance of convenience lies in favour of the Petitioner and during the pendency of the proceedings before this Hon'ble State Commission if the Respondent is allowed to recover its claim, the Petitioner would be put to irreparable loss and damage.*
3. *Vide daily order dated 16.02.2021 the Ld. State Commission directed the petitioners to clarify their prayer at S. No. (c) in the petition. It is submitted that the prayer at S. No. (c) is as below:*
Direct that no Deviation Charges shall be levied upon the petitioners up to the date of formation of the State Power Committee i.e., 30.12.2019 and in the event the Ld. State Commission is not inclined to allow the same then the Ld. State Commission may direct that no Deviation Charges shall be levied upon the Petitioners up to the date the Detailed Procedure was notified i.e., up to 04.10.2019.

Preliminary Submissions:

4. *A bare perusal of SLDC's reply shows that SLDC's entire rationale for levying Deviation Charges from 01.08.2018 onwards is based on an incorrect interpretation of the MPERC*

- (Forecasting, Scheduling, Deviation Settlement Mechanism and related matters of Wind and Solar generating station) Regulations, 2018 (“DSM Regulations”) and is in contravention of its mandatory obligations under the DSM Regulations. It is submitted that SLDC has no legal ground to begin the levy of Deviation Charges from 01.08.2018. Furthermore, SLDC’s submissions that the Deviation Charges could be levied in the absence of the approved Detailed Procedure/DP is incorrect and deeply prejudicial to the interests of renewables in the State. SLDC’s conduct has led to arbitrary imposition of Deviation Charges on the RE Generators and created regulatory uncertainty and unpredictability in the State. SLDC has completely abdicated its responsibilities of a responsible State entity and the Deviation Bills raised from 01.08.2018 ought to be declared invalid and without authority of law on these grounds.*
5. *The DSM Regulations clearly and distinctly demarcate the obligations of SLDC to formulate a Detailed Procedure/DP. It is pertinent to note that SLDC itself was aware of its obligation to formulate the DP as it has also admitted in its letter dated 01.05.2018. In terms of Regulation 6 (a) (5) of the DSM Regulations, SLDC was required to formulate the plan for data telemetry, formats of forecast submission and other details in this regard and incorporate the same in the Detailed Procedure to be prepared by it. This Detailed Procedure was to be approved by this Hon’ble Commission. The wordings of Regulation 6 (a) (5) make it abundantly clear that the “Detailed Procedure” is to be prepared by SLDC and this Detailed Procedure will include inter alia the plan for data telemetry, formats of forecast submission and other details in this regard. Thus, the Detailed Procedure was clearly envisaged as a integral part of the regulations necessary of its implementation in the State. Thus, the scope of the DP was not to be limited to the specifics mentioned in Regulation 6 (a) (5) but was rather to include all necessary details which were necessary before the implementation of the DSM charges could begin. The mandatory requirement of the DP prior to implementation of the Deviation Charges is evident from the fact that it required the approval of the Hon’ble Commission. The DP was put before the stakeholders for their comments/suggestions via public notice dated 21.02.2019 and was thereafter approved by this Hon’ble Commission and notified. To assert that the DP was not required to start the implementation of the DSM in the State is completely erroneous understanding of the DSM Regulations, 2018. In view of the established norm and prevailing practice in other wind rich States where the DSM was implemented only after the approved DP was notified and also after a mock trial for several months was done, it is only proper that the Deviation Charges in the State of Madhya Pradesh are not levied upon the RE Generators until 04.10.2019, i.e., the date when the DP was notified, and after a pre-determined trial period with the participation of all stakeholders. However, instead of benefitting from the experience in the other States, SLDC has started to levy Deviation Charges from an arbitrarily chosen date.*

6. *SLDC's decision to not formulate and publish the approved Detailed Procedure within the time provided for in the DSM Regulations has a direct bearing on the date of its commercial implementation and levy of Deviation Charges/penalty on the RE Generators. It is submitted that while the DSM Regulations, 2018 came into force on 20.04.2018, the Deviation Charges could be levied only from the date of publication of the approved Detailed Procedure. If this were not so, then the Regulation 6 (a) (5) pertaining to formulation of the DP and its approval from the Hon'ble Commission becomes redundant. Thus, when SLDC failed to perform its obligation under the DSM Regulations, 2018 and formulate the DP for the comments/suggestions from the stakeholders and further to submit the DP to the Hon'ble Commission for its approval, SLDC created regulatory uncertainty and delayed the implementation of the Deviation Charges under the DSM Regulations.*

7. *It is submitted that in its letter dated 01.05.2018 SLDC represented before the Hon'ble Commission that it seeks a minimum of 3 months' time to ensure that all the stakeholders have prepared for the implementation of the DSM in the State and that it will meanwhile also prepare the DP. SLDC sought the Hon'ble Commission's permission to start the implementation of the DSM Regulations from 01.08.2018 despite the fact that the DSM Regulations were already notified from 20.04.2018. As submitted above, the coming into force of the DSM Regulations did not mean the Deviation Charges became applicable as on this date. In fact, the Hon'ble Commission was cognizant of SLDC's apprehensions as stated in the letter dated 01.05.2018 and it was understood that the State is not prepared for immediate implementation of the DSM. In fact, the objective of the DSM Regulations was not the immediate levy of Deviation Charges, rather it was to set into motion the DSM framework. It is for this reason that SLDC was granted three months' time under Regulation 10 (a) to formulate the DP and also the Business Rules for constitution of the State Power Committee ("SPC"). Furthermore, SLDC's request that it be given at least 3 months' time for the commercial implementation/levy of Deviation Charges, demonstrates that none of the stakeholders were prepared for the commercial implementation of the DSM Regulations, including SLDC. This Hon'ble Commission must take into account that the implementing body which is SLDC is itself submitting that without the existence of an operating procedure it cannot or could not have implemented DSM Regulations. Having made this submission it does not lie in the mouth of SLDC to say that even though it could not have implemented the DSM Regulations without the Detailed Procedure, the DSM Regulations came into force and were to be implemented from the date of the notification. If SLDC could implement the DSM Regulations without the Detailed Procedure then there was no occasion for SLDC to write to the Hon'ble Commission asking for more time to implement the DSM Regulations. If SLDC's submission were to be accepted that it made*

the request for delaying the implementation of DSM Regulations even though the DSM Regulations came into effect on the date of their notification and could have been implemented without the Detailed Procedure then in that case an enquiry has to be ordered to investigate the motives of a nodal agency to have sought more time for implementation of regulations until preparation of a detailed procedure, especially when it submits later in time that in actuality it does not think that there was any need for Detailed Procedure for implementing the DSM Regulations. A nodal agency cannot be permitted to blow hot and cold depending on its own changing motives.

It submitted that the levy of the Deviation Charges on the Petitioners from 01.08.2018 has no legal basis. SLDC cannot start the implementation of the DSM Regulations on any date as convenient to it. Such a levy merits to be struck down as arbitrary and illegal.

8. *It is submitted that no penalty can be levied without a clear, unambiguous, and certain procedure/law/rules put in place. In the present case, there is complete lack of clarity and complete abdication of responsibilities by SLDC. SLDC failed to perform its obligations under the DSM Regulations and has on an arbitrary date started to levy Deviation Charges on the Petitioners. No penalty can be levied in this manner. The Petitioners ought not to be treated in a manner which is prejudicial to the interest of the renewables in the State. While time and again the Renewable policy emphasis is on a predictable and certain regulatory regime, the nodal agency seems to be moving in the exact opposite direction of creating chaos. SLDC is acting illegally, irresponsibly and causing grave injury to the trust reposed by the Petitioners in the State. Without the DP, the commercial implementation of the DSM Regulations could not begin and Deviation Charges could not become applicable on the Petitioners. The Petitioners had every right to comment/object to the final procedure that would be adopted by SLDC and further to prepare themselves for any financial repercussions. However, the DP was never published and only because scheduling and revisions were being done, Deviation Charges do not become applicable. Penalty cannot be levied without there being a proper system put in place after consultation with all stakeholders and mock trials being done to ensure that deviations occurring prior to the DSM Regulations can be contained. If SLDC's submissions are to be believed then the DSM Regulations, only need to be replaced by a penalty table and everything else is a redundant exercise, in which case SLDC ought to explain why it wrote to the Hon'ble Commission earlier stating that the regulations cannot be implemented until it formulated its DP.*

Para Wise response:

9. *The contents of para 1 to 10 are general submissions and do not contend the submissions made in the petition and thus, merit no response.*

10. In response to para 11 of the reply, it is submitted that the Petitioners' ability to submit real time revisions from any given date has no bearing on the applicability of the deviation penalty on them. It is submitted that deviation penalty can be levied on the Petitioners' only when there is clarity and certainty of procedure, with the notification of the Detailed Procedure. It is submitted that prior to the notification of the DSM Regulations, the QCA/Stand alone Generators could submit their forecast on day ahead basis based on the operational available capacity and further do scheduling per 15-minute time block. With the coming into force of the DSM Regulations but in absence of the approved Detailed Procedure, there was no clarity on the appointment of the QCA which is an important interlink between the RE Generators and SLDC and in the implementation of the DSM Regulation. The DP made it mandatory that if on a single PSS, more than 50% RE Generators consented to the appointment of a particular QCA, then the remaining Generators shall also have to appoint such a QCA for that PSS. It is submitted that before the DP was formulated, SLDC was insisting on all the Generators at any particular PSS to give their consent to the appointment of any QCA, in order to initiate the registration of the PSS. Thus, there was great uncertainty culminating into practical difficulties faced by all the stakeholders, which could be resolved only with the formulation of the DP detailing the procedure to be followed by all concerned parties. A DP was the only means to resolve confusions and to ensure there was no arbitrariness. Further, as per the guidelines of the Hon'ble CERC the maximum number of intra-day revisions permitted is 16. However, the same was nowhere mentioned in the DSM Regulations, which led to multiple and often unlimited revisions. In fact, SLDC itself contends that it allowed for 'n' number of revisions by the RE Generators and accommodated all the revisions. Such an arbitrary approach goes against the very objective of Grid security as envisaged in the DSM Regulations. It is only after the amendment to the MP Grid Code with the notification of the Madhya Pradesh Electricity Grid Code (Revision-II), 2019 dated 12.06.2019 and with the notification of the DP, that there was a clear specification with respect to intra-day revisions. It is pertinent to note that the only reason the SLDC of the Petitioners sent schedules limited to 16 revisions in a day is because they had been following the same method in other States and not because there was any clarity whatsoever by the Respondent SLDC. However, while the Petitioners' QCA sent a maximum of 16 revisions per day, in view of the uncertainty and lack of clarity, the other QCAs/generators sent more than 16 revisions. The Ld. CERC's Procedure for Implementation of the Framework on Forecasting, Scheduling and Imbalance Handling for Renewable Energy (RE) Generating Stations Including Power Based on Wind and Solar at Inter-State Level has put a limit of a maximum 16 revisions per day. The relevant extract is as below:

"8.6 The schedule by RE generators or lead generator or principal generator may be revised by giving advance notice to the concerned RLDC, as the case may be. Such revisions shall be effective from 4th time block, the first being the time-block in which

notice was given. **There may be one revision for each time slot of one and half hours starting from 00:00 hours of a particular day subject to maximum of 16 revisions during the day.**

It is submitted that in the SOR to the Framework on Forecasting, Scheduling and Imbalance Handling for Variable Renewable Energy Sources (Wind and Solar), the Ld. CERC after giving due consideration to all comments/suggestions, has taken the following view on limiting the number of revisions to 16 per day:

“5.3

Most stakeholders have supported the proposal of doubling the number of revisions allowed, to 16 per day. Some have suggested even further increase to enable hourly revisions. **The Commission is of the view that while increasing frequency of revision would enhance forecasting accuracy, it might be difficult for beneficiaries to manage contracts due to very frequent revisions. As such, the Commission has decided to retain the number of proposed revisions to 16.**

5.3.2 Some stakeholders have requested for greater clarity on the provision relating to frequency of revision of schedules. The Commissions feels that the provision proposed is adequate. **The revisions would be effective from 4th time block as proposed in the draft regulations, counting the time block in which the request for revision has been received by the RLDC to be the first one.** The Commissions clarifies that there may be one revision for each time slot of one and half hours starting from 00:00 hours of a particular day, subject to a maximum of 16 revisions during the day.”

It is submitted that in absence of the DP, there was no rationale given by SLDC as to the number of revisions which shall be permitted within the State. In fact, Ld. CERC has categorically put the limit to 16 revisions given the fact that it might be difficult for the beneficiaries to manage the contracts. However, in the State of MP, due to the much-delayed notification of the public notice seeking comments/objections to the draft DP/SOP, there was no occasion for the Hon’ble Commission to form its view on the number of revisions which shall be permitted within the State. Moreover, there was no clarity. While the QCAs were guided by the Ld. CERC’s guidelines, the RE Generators cannot be made to pay Deviation Charges, which is a penalty, if there was no certainty of procedure within the State itself. The Petitioners’ crave leave of this Hon’ble Commission to refer to specific provisions in the DP which were not clear/provided for in the DSM Regulations and the absence of which created procedural uncertainty.

11. In response to para 12 of the reply, it is submitted that the very fact that the Petitioners were giving different real time revisions, and each was accepted by SLDC, whether it was 11, 9 or 14 only goes on to show the uncertainty which was prevalent at that time. As mentioned above, such an approach of permitting unlimited number of revisions creates

- arbitrariness and only shows the lackadaisical approach with which SLDC approached the implementation of the DSM Regulations.*
12. *The contents of para 13 are denied to the extent that the SLDC avers that it is incorrect on the part of the Petitioners to contend that only because it was not possible to undertake real time revisions from 2018 till 04.10.2019 and therefore, no deviation charges can be imposed on the Petitioners during this period. It has already been established that without the DP, there was uncertainty, vagueness and arbitration. In fact, SLDC was merely relying on the experience of the QCAs and the RE Generators with respect to DSM in other States. Instead of having a State specific DP taking into consideration the State's stakeholders, SLDC allowed arbitrary scheduling and forecasting. It is submitted that the web portal for uploading of the schedules was introduced by SLDC only in August 2018. Prior to the introduction of the web portal, the schedules were sent via emails. However, despite such fundamental changes being made, SLDC failed to provide any mock period or reasonable time for adjustment to the stakeholders in shifting to the new methodology. This approach is unlike any other State where all stakeholders have been treated as an equal participant and given time to adopt the new changes before any deviation penalty was levied upon them. SLDC's has acted contrary to the interest of the stakeholders and is using the DSM Regulations to penalize the RE Generators while performing none of its obligations under the DSM Regulations to ensure equal and effective participation of the stakeholders.*
13. *The contents of para 14 are denied. It is submitted that the Petitioners have correctly stated that in the absence of the approved Detailed Procedure, no deviation penalty can be levied on the Petitioners. SLDC is incorrectly relying on the day-to-day scheduling and revisions done by the Petitioners to levy the penalty under Regulation 6 (b) of the DSM Regulations despite having failed to publish the approved Detailed Procedure as per the mandate of the DSM Regulations.*
14. *The contents of para 15 are denied. It is submitted that the issuance of bills by SLDC does not create any obligation on the Petitioners to pay the deviation charges. It is further submitted that the revision of schedules by the Petitioners also does not bind the Petitioners to pay deviation charges in the absence of the approved Detailed Procedure. The DSM Regulations mandates that SLDC shall publish the approved Detailed Procedure/Standard Operating Procedure within 3 months from the date of notification of the DSM Regulations along with the Business Rules for constitution of the State Power Committee and until the same was done, the DSM Regulations do not permit levy of any Deviation Charges. It is submitted that the Petitioner No.1 had issued the consent letter to the QCA and had also received the registration letter from SLDC, however, due to non-receipt of static details by the OEM at the PSS with the combined capacity of multiple*

generators, the QCA Manikaran Analytics Limited) was unable to send the schedules to SLDC. During this time, the OEM of the Petitioner's PSS was sending schedules instead of the registered QCA of the Petitioner. MAL started to send its schedule only from January 2019. Any DSM Bills issued prior to January 2019 is at is disputed and not in accordance to any law/rules/regulations. The Petitioners cannot be burdened with deviation penalty arising out of scheduling done by any entity not authorized by the Petitioner.

- 15. In response to para 16 (Para 1) it is submitted that it is incorrect to state that SLDC had been preparing and issuing DSM Bills and had issued notices to the QCA for payment of the DSM Charges as per the DSM Regulations and the First Amendment. It is submitted that until 04.10.2019 i.e., the date of notification of the approved Detailed Procedure, there was no legal basis on which DSM Bills could be issued or Deviation Charges levied on the Petitioners or other RE Generators. All Deviation Bills issued prior to the notification of the Detailed Procedure and the constitution of the SPC are wholly illegal and merit to be set aside.*
- 16. In response to para 16 (Para 2) it is submitted that the contents of the letter dated 01.05.2018 prove the case of the Petitioners that neither SLDC nor the generators such as the Petitioners were prepared to implement the DSM in the State. SLDC has made wholly erroneous and absurd submissions that while the DSM Regulations had come into force from the date of publication in the MP Gazette i.e., on 20.04.2018, however, in order to complete requisite formalities for implementation of the DSM Regulations, SLDC wrote to the Hon'ble Commission on 01.05.2021 to allow commercial settlement from 01.08.2018 so that sufficient time could be given to all stakeholders for necessary preparations and thus, the deviation settlement which was ordinarily to begin from 20.04.2018 rightly begun from 01.08.2018. SLDC does not explain what were these necessary preparations which were required to be made before the commercial settlement could begin. The reason that SLDC fails to or omits to explain this fact or detail what the necessary preparations were is because in actuality only the Detailed Procedure was required before the commercial settlement could begin. The stakeholders can make preparation for commercial settlement under the DSM Regulations only in accordance with the Detailed Procedure. Until such procedure was issued the generators did not even know the specifics of any preparation that may be required to be done for the commercial implementation of the DSM regulations for levy of Deviation Charges. The Hon'ble Commission must take strict note of the fact that the nodal agency is using vague terminologies such as necessary preparations without specifying what such preparations could be in absence of a Detailed Procedure. The very function of a nodal agency is to stipulate the technical requirements or the processes which are to facilitate the implementation of any regulation issued by the Hon'ble Commission. When a nodal agency such as the SLDC fails to explain the technical specifications or the specific*

requirements for implementation of regulations that failure itself demonstrates that the submission of such nodal agency are completely without merit and the nodal agency is attempting to hide behind a veil of vagueness in order to hide its omission which in this case is the nodal agencies failure to bring a detailed procedure in time. At this stage it is germane to state that the Hon'ble Commission ought not to punish the RE Generators for the complete and utter failure and delay of the nodal agency. The nodal agency should not be allowed to get away in its delay of issuing the Detailed Procedure and should not be allowed to pass the buck to the RE Generators and if this was permitted then the nodal agency will be emboldened in the future to continue with its lackadaisical and negligent attitude towards timely issuance of procedure as required in the regulations because it would know that regardless of whether it performs its functions or not the adverse consequences of its actions will actually be borne by the generators and it will go scot-free. It is submitted that the consequence of the DSM Regulations coming into force was not that immediate levy of Deviation Charges had to begin, rather, the consequence was that SLDC had to prepare the Detailed Procedure and the Business Rules for constitution of the SPC within 3 months from the date of notification of the DSM Regulations so that the Hon'ble Commission may examine the same and give its approval for an effective implementation of the DSM Regulations. It is submitted that while SLDC submits that it is bound by the provisions of the DSM Regulations and therefore, started with the publishing of deviation statements and levy of Deviation Charges, however, the date on which it began such levy is arbitrarily chosen. The reason that the date of levy is arbitrarily chosen is because as per the DSM Regulations the levy can begin only after the Detailed Procedure is in place however SLDC needed to hide its failure of delaying the issuance of detailed procedure. The reason that today SLDC pleads that Detailed Procedure was not a prerequisite for levy of Deviations Charges on the RE Generators is because SLDC is conscious of the fact that it has failed in issuing the detailed procedure within the timeline given in the regulation. If the Detailed Procedure was not a prerequisite for the levy of Deviation Charges on the RE Generators and if such charges could be levied without the Detailed Procedure then firstly there would be no need for a timeline of three months for its issuance to be specified in the DSM Regulations and secondly there would be no need at all for the Detailed Procedure itself. The natural corollary of SLDC's submissions is that issuance of Detailed Procedure was optional because it argues that the DP was not required for implementation of Deviation Charges which is infact one of the primary purposes of the DSM Regulations. To say that the Detailed Procedure was to be made by SLDC under the DSM Regulations but was not a prerequisite for levy of Deviation Charges is a self contradictory statement. In effect SLDC seems to be saying that the Detailed Procedure was an optional document in the nature of an internal document to be formulated only for the convenience of SLDC and had no role to play in implementation of the DSM Regulation and thus was not a prerequisite for levy of Deviation Charges i.e. SLDC argues that the Detailed Procedure is

an unnecessary document to be made or formulated without any purpose but because it has been so directed in the DSM Regulations. The Hon'ble Commission must take note of the meaning of the arguments adopted by SLDC in this matter which in effect mean that the DSM Regulations of the Hon'ble Commission which require formulation of a Detailed Procedure are purposeless and meaningless. The Detailed Procedure has to serve some purpose and the Hon'ble Commission required it to be formulated within a timeline with a certain objective which is clearly linked to levy of Deviation Charges. SLDC pleads that the implementation of the DSM regulation was postponed from 20th April 2018 to 1st August 2018 because it wrote to the Hon'ble Commission that the stakeholders need time to prepare. The natural corollary of this argument is that the DSM Regulations or the commercial implementation of the DSM Regulations cannot come into effect until SLDC and the stakeholders are prepared for its commercial implementation. This is actually in line with the DSM Regulations which require a Detailed Procedure to be in place so that all the stakeholders and SLDC can prepare itself for the commercial implementation during the formulation of the Detailed Procedure and the Detailed Procedure should be formulated in such a manner which takes into consideration all the submissions and objections of the stakeholders. Therefore, the DSM Regulations are well thought out in so far as they require a Detailed Procedure to be in place before the Deviation Charges are levied and does also require the Hon'ble Commission to give its approval to the detailed procedure. Now that SLDC has delayed the implementation/formulation of the Detailed Procedure it seeks to get away from the true intent of the DSM Regulations. The contents of the letter dated 01.05.2018 assume significance because in this letter SLDC admits that none of the stakeholders are prepared to begin with the implementation of the DSM in the State and the stakeholders require 'at least' 3 months' time for the same. SLDC further states that meanwhile, it shall prepare the Detailed Procedure as directed in the DSM Regulations. As per SLDC's letter, at least 3 months' time is required for implementation of the DSM Regulations because of the following reasons:

"In order to implement provisions of above regulations in State of M.P. Sufficient time is required for completing requisite formalities, devising procedure for Forecasting, Scheduling, Deviation Settlement Mechanism, software development at SLDC, educating Wind and Solar Generators for compliance of regulations, etc., need to be completed. Accordingly, the following's are to be completed before smooth switch over to DSM regime for Wind and Solar Generators:

- i. At present, none of the qualified Wind and Solar Generators has appointed a Qualified Coordinating Agency (QCA) which is mandatory requirement for dealing with SLDC on behalf of Wind and Solar Generators. SLDC has already requested all the qualified Wind and Solar Generators for immediate appointment of QCA.***

- ii. ***Most of the qualified Wind and Solar Generators are forecasting their generation on day ahead basis and real time revisions are not being done. They have to develop skill for revision of forecasted generation during the real time operation.***
- iii. ***The qualified Wind and Solar Generators are not furnishing Available Capacity to SLDC along with forecasting generation. It is to mention that Available Capacity in 15 minute time block is essentially required for computation of % Absolute Error of qualified Wind and Solar Generators. SLDC has to develop certain mechanism for verification of Available Capacity declare by the Generators to avoid gaming.***
- iv. ***ABT meters installed at some of the pooling stations of qualified Wind and Solar Generators are not integrated with AMR system of SLDC. All the ABT meters are required to be integrated with AMR system for timely preparation Deviation Account.***
- v. ***Development of necessary software at SLDC for scheduling and computation of Deviation Charges of Wind and Solar Generators is required.***
- vi. ***Training to Wind and Solar Generators along with QCA shall be required to be imparted by SLDC for seamless transition to DSM regime.***

*In view of the above, it is submitted that for getting Wind and Solar Generators and SLDC fully prepared for implementation of MPERC (Forecasting, Scheduling, Deviation Settlement Mechanism and related matters of Wind and Solar Generating Stations) Regulations 2019 in the State of M.P. **at least three (3) months' time is required.** Thus, the Hon'ble Commission is **requested to allow SLDC to implement the above regulation from 01st August 2018.** In the meanwhile, SLDC shall also prepare Operating Procedure as **directed in regulation.**"*

It is submitted that there is nothing on record to show that SLDC's unilateral representation made vide letter dated 01.05.2018 was acknowledged, received, and acted upon by this Hon'ble Commission. There was no follow up letter or involvement of concerned stakeholders as regards the contents of the letter dated 01.05.2018. SLDC had not taken into consideration the views and suggestions of the RE Generators and the QCAs to ascertain the actual time that will be required. However, by SLDC's own understanding a minimum of three months' time was required during which time SLDC would also be preparing the Detailed Procedure. It is submitted that SLDC has not shared the details pertaining to the various tasks detailed in the letter dated 01.05.2018 and the timeline of the completion of each, which was crucial to an effective implementation of the DSM regime. It is pertinent to note that while the DSM

Regulations had mentioned the scope of work of the QCA, it had not provided the details pertaining to the qualifications etc., of the QCA by the RE Generators. In such a scenario, it is not clear on what basis did SLDC direct the RE Generators to appoint the QCAs. It is obvious that the generators could not be expected to appoint QCAs without SLDC providing for the qualifications of such QCAs, which qualifications were provided subsequently in the Detailed Procedure, and it was only then i.e. after such qualifications for QCAs were laid down that the generators could appoint QCAs as per the DSM Regulations and only then could deviation charges be levied on the generators.

17. *In response to para 16 (Para 8 to 14), it is submitted that SLDC's submissions that all the infrastructure required for implementation of the DSM Regulations were already available in the State prior to notification of the DSM Regulations and further that, had the RE Generators taken the DSM Regulations in true spirit, 3 months' time is more than sufficient to develop expertise in scheduling/forecasting and appointment of QCA, are contradictory to its own assertions made in the letter dated 01.05.2018. It is submitted that SLDC's letter dated 01.05.2018 makes it abundantly clear that the State was not prepared to undertake DSM commercial settlements and a minimum of 3 months was required (as per SLDC, however, as per the experience in other States, at least 7-8 months are required from the date of notification of the approved Detailed Procedure) which time was also needed for providing training to the stakeholders. While SLDC asserts that the RE Generators did not take the DSM Regulations in true spirit, the fact is that SLDC failed to perform its most important function under the DSM Regulations which are formulating the Detailed Procedure and formulating the Business Rules for constitution of the SPC, both of which were prerequisite to the effective implementation of the DSM Regulations. SLDC's submissions that it has the SAMAST complied ABT System since 2009 and only minor modifications in the software was required which had been done within a few weeks or that telemetry/real time data facility was existing for all pooling stations and other such submissions are contrary to its submissions in the letter dated 01.05.2018 and are also an attempt to divert attention from SLDC's failure to comply with the express mandate of the DSM Regulations that SLDC shall formulate a Detailed Procedure and also the Business Rules for constitution of the SPC. It is improper on SLDC's part to seek to levy Deviation Charges on the Petitioners without performing its obligations under the DSM Regulations which obligations are a sine qua non to the levy of any penalty on the Petitioners. It is wholly malafide on SLDC's part to submit that it is difficult to 'understand why QCA/Wind/Solar Generators require such a long time for commercial implementation' of the DSM Regulations. It is submitted that the RE Generators such as the Petitioners did not delay the formulation of the Detailed Procedure and the Business Rules for the constitution of SPC, for approval by this Hon'ble Commission nor did the RE Generators delay the approval and final notification of the same. The Petitioners are only seeking that the Deviation Charges be levied upon*

them after the date of notification of the approved Detailed Procedure and constitution of the SPC. The fact that there is a delay in the same is wholly attributable to SLDC. The Petitioners are liable to pay the Deviation Charges only when the complete DSM framework is presented to them for their knowledge and after their comments/suggestions, if any. It is pertinent to note that before the notification of the DSM Regulations, there were separate instructions for the AMR and Telemetry. However, this activity also remained pending at some Project due to multiple reasons. It was only with the introduction of the DSM Regulations that they were made mandatory. However, SLDC has not given any mock period to assess whether or not all requisites are in place before DSM could begin in the State.

18. *In response to para 16 (Para 16) it is submitted that it is wholly erroneous and irresponsible on SLDC's part to say that the DSM Regulations could be implemented without the approval of the Detailed Procedure as the regulatory provisions for computation of Deviation Charges were clear and does not require any further clarifications. It is submitted that SLDC ought to restrain from looking at the workability of the DSM Regulations in the State based on the provisions pertaining to the levy of penalty on the RE Generators and ought rather to look at the same from the point of certainty and clarity of procedure before huge sums towards deviation penalty is levied on them. SLDC's submissions that there is no additional condition incorporated in Annexure-I of the DP which may cause any financial burden on the RE Generators shows a myopic understanding of the DSM Regulations, the DP and the functioning of all the stakeholders.*

It is further submitted that SLDC's contention that there was no delay in formation of the SPC, as after publication of the First Amendment on 04.10.2019, SLDC has constituted the SPC on 30.12.2019 after approval from the Hon'ble Commission and thereafter, conducted the first meeting on 28.09.2020 shows SLDC's a continuing lack of a sense of responsibility and deference to the provisions of the DSM Regulations as provided for by this Hon'ble Commission. On the one hand SLDC does not want to give any time and certainty to the Petitioners before it starts to levy the Deviation Charges on them, on the other hand, SLDC submits that a delay of almost 1 year and 8 months is no delay. In order to contend that the SPC was constituted within time, SLDC relies on the First Amendment/DP which provided that SLDC shall constitute the SPC within 2 months from the date of notification of the First Amendment. It is submitted that for levying penalty SLDC relies on the date of notification of the DSM Regulations but for performing its own obligations, SLDC refers to the First Amendment/DP which itself was donemuch belatedly and further SLDC has no cogent reason for an additional 26 days of delay in constitution of the SPC. Furthermore, the first meeting of the SPC took another 9 months and was undertaken only on 28.09.2020. SLDC's conduct goes on to show its

utter failure in allaying the apprehensions of the RE Generators and also its complete lack of discipline so far as the implementation of the DSM Regulations and its obligations under the same are concerned.

SLDC has further attempted to suggest that the SPC does not have any important role and submits that the SPC has not been assigned any power to take decisions against the provisions of the DSM Regulations read with the First Amendment. That the SPC is constituted only for smooth implementation of the DSM Regulations. It is submitted that all submissions of SLDC show that as per SLDC the DSM Regulations is an ill-conceived document providing for redundant provisions which do not merit compliance by SLDC or even if complied with, do not merit to be taken with seriousness except for levying Deviation Charges on the Petitioners and like entities. The broader ambit of the role and the functions to be performed by SPC is provided in the DSM Regulations itself. In terms of Regulation 10 (2) of the DSM Regulations the SPC has been given the following important functions for the implementation of the DSM in the State:

- i. Co-ordinate and facilitate the intra-state energy exchange for ensuring optimal utilization of resources.*
- ii. Review energy accounting and billings for inter-utility exchange of power*
- iii. Ensure settlement of deviations amongst State Entities in accordance with these Regulations.*
- iv. Monitor compliance of these Regulations by State Entities.*

Thus, the DSM Regulations clearly envisage specific functions to be performed by the SPC and its importance may be gauged by the fact that the Business Rules for the constitution of the SPC were to be formulated by SLDC within three months and required the mandatory approval of the Hon'ble Commission. SLDC's assertion that the SPC was constituted "only" for smooth implementation of the DSM Regulations in the State is absurd as it suggests that smooth implementation of the DSM Regulations is not essential and is merely an ancillary function to be performed. Further, it is not the case of the Petitioners that the SPC ought to waive off the DSM Charges. Any request for waiver made by the Petitioners/QCA to SLDC was only for postponement of levy of Deviation Charges until the DP was published, to be in compliance with the law. It is stated that there is no issue of waiver of DSM Charges until the publication of the DP and the Constitution of the SPC because no DSM Charges are applicable until then.

- 19. In response to para 16 (Para 18) it is submitted that Regulation 6 (a) (2) of the DSM Regulations is only a broader framework which was required to be supplemented with the DP under Regulation 6 (a) (5), as was done with the notification of the Annexure I to the First Amendment. SLDC relies on Clause 8.6 of the 4th Amendment of the MPEGC to state that the State Sector Generating Stations (SSGS) can revise their forecasted*

generation during real time operations as and when required and that there is no restriction on number of revisions during day of operation. It is submitted that in terms of the 4th Amendment to the MPERC, the Hon'ble Commission permitted only the SSGS to revise its schedule and MPEGC did not permit revision of schedule by a RE Generator such as the Petitioner. Therefore, there existed an anomalous situation wherein while the DSM Regulations permitted the Petitioners to revise their schedule, however, the same could not be done by the Petitioners as the corresponding amendment was not carried out in the MPEGC. This anomaly was resolved by this Hon'ble Commission when on 21.06.2019, this Hon'ble Commission notified the MPEGC, 2019 wherein the Hon'ble Commission in Regulation 8.6 (ix) permitted revision of schedule by a Generating Company. The said amendment was then carried forward to the First Amendment of the DSM Regulations which was notified by the Hon'ble Commission on 04.10.2019.

SLDC submissions with respect to the meeting dated 23.10.2018 with the RE Generators are incorrect and unsubstantiated. However, the Petitioners admit that a meeting took place on 23.10.2018 and the Petitioners have also put on record the MOM dated 23.10.2018 (Annexure P-7) on record. As per SLDC's submissions the meeting dated 23.10.2018 was convened to explain in detail all the regulatory provisions and thereafter, SLDC addressed all the queries raised by the stakeholders and that during the meeting it was made clear to all RE Generators that the DSM Regulations, 2018 is complete in every respect and could be implemented in the State. It is submitted that it is not for SLDC to orally submit that the DSM Regulations was complete in all respect. As on the date of the meeting, SLDC had failed to formulate and get approval to the DP and the Business Rules for constitutions of the SPC. Had SLDC complied with its obligations, then the RE Generators would have had clarity and also a document to assess the validity of the procedure undertaken by SLDC. However, the RE Generators were deprived of such an opportunity. The Petitioners have already placed on record the MOM dated 23.10.2018 and request the Hon'ble Commission to take the same into consideration while determining the agenda of the meeting and also in accepting the Petitioners' submission that as far as the stakeholders were concerned, there was a legitimate expectation that the deviation penalty shall be levied only after the approved DP was notified. Further while SLDC denies the minutes of meeting placed on record by the petitioner it does not counter this with the minutes of meeting that it should have in its record. It is clear that SLDC is not being transparent to this Hon'ble Commission.

It is submitted that the submissions of real time of operation from 01.08.2018 cannot have a bearing on the Deviation Charges levied upon the Petitioners in the absence of the notified approved DP.

SLDC conveniently submits that the qualified RE Generators were reluctant to comply with the DSM Regulations when SLDC itself had not complied with its obligations and

formulated the DP or constituted the SPC. SLDC is solely to blame for the uncertainty surrounding the DSM in the State when it could have published the DP and constituted the SPC for an effective and proper implementation of the DSM Regulations. Any issues which arose in the implementation of the DSM Regulations is only on account of SLDC's failure to comply with its obligations.

20. *In response to para 16 (Para 19 & 20), it is submitted that SLDC has no basis to its contentions on the submissions of the Petitioners with respect to the meeting dated 23.10.2018 and has made general submissions aimed at denying the contents of the MOM put on record by the Petitioners. SLDC's submissions are vague and without any merit. It is submitted that the MOM dated 23.10.2018 is a valid document and has been put on record by the Petitioners as responsible entities. In fact, SLDC ought to have had its own MOM given the importance of the meeting for the implementation of the DSM in the State. However, SLDC quite conveniently submits that the official MOM was not issued by SLDC. This only goes on to show the callousness with which SLDC has approached the implementation of the DSM Regulations. In a matter where SLDC specifically denies the minutes of meeting placed on record by the petitioners, this Hon'ble Commission should not believe that SLDC did not keep the minutes of meeting of such an important meeting which forms the very basis of their contention that they had informed the stakeholders in the state regarding the implementation of DSM regulations. In absence of SLDC producing these minutes an adverse inference must be drawn against SLDC that its submissions regarding the discussions in the meeting are false and the minutes of meeting placed on record by the petitioners ought to be accepted. This becomes all the more relevant in view of the fact that if the submission of SLDC is accepted that the deviation charges were to be levied from the date of notification of the regulations then there would be no occasion for it to call for a meeting on 23rd of October 2018 on which date SLDC allegedly informed the stakeholders that the levy of Deviation Charges will begin from August 1, 2018. The contradictions in SLDC's submissions should be seen in the context that a plain reading of DSM Regulations makes it clear that Detailed Procedure is a prerequisite for implementation of deviation charges and SLDC having failed to bring out the Detailed Procedure within the timeline given in the regulations is now making every possible excuse so as to not be held accountable for its default.*

21. *In response to para 16 (Para 21) it is submitted that SLDC's submission that the DSM Regulations could be implemented without the approved DP as the regulatory provisions for computation of Deviation Charges were clear and did not require any further clarification is wholly erroneous. The inconsistencies in SLDC's stand has been detailed in above paras. Moreover, as per SLDC Regulations 6 (a) (5) and 10 (a) are redundant and serve no useful purpose. Moreover, as per SLDC the entire Annexure-I is a redundant*

- document and its formulation, approval and notification is a waste of public resources and it does not have any utility. The Hon'ble Commission must not give its seal of approval to such a submission of the SLDC which renders parts of this Hon'ble Commissions' regulations meaningless*
22. *In response to para 16 (Para 22) it is submitted that SLDC has been in continuous violation of the DSM Regulations read with the First Amendment and it is entitled to collect the DSM Charges only after complying with its obligations under the DSM Regulations, 2018. Any penalty collected or sought to be collected from the RE Generators from the arbitrarily chosen date of 01.08.2018 is illegal.*
23. *In response to para 16 (Para 23) it is submitted that having failed to perform its obligations under the DSM Regulations, 2018 and having created the DSM regime filled with regulatory uncertainty, today SLDC is conveniently alleging that the Petitioners are attempting to evade from the payment of the DSM Charges. SLDC's submissions that it is not mandatory that the DP is to be issued prior to commercial implementation of each Regulation of the Hon'ble Commission is erroneous and lacking a sense of responsibility expected from a Nodal agency. It is abundantly clear that DSM Regulations mandate that the DP be created and the SPC be constituted prior to the levy of deviation charges. To assert otherwise, is to challenge the wisdom of the Hon'ble Commission which has notified the DSM Regulations after due process and application of its mind. Every provision of the DSM Regulations is to be given effect to before huge penalties are levied on the RE Generators.*
24. *In response to para 16 (Para 27), it is submitted that SLDC's continued attempt to assert that no substantial changes have been introduced vide the First Amendment is without any merit in so far as the application of Deviation Charges on the Petitioners is concerned. No penalty can be levied arbitrarily and in absence of the precise law and a certain methodology. Whether or not the DP would bring any substantial change was only be known once the draft is shared with the Petitioners and the approved DP notified.*
25. *In response to para 16 (Para 24) it is submitted that the issue of delay in the constitution of SPC has already been dealt in the paras above.*
26. *In response to para 16 (Para 29) it is submitted that SLDC's submissions are incorrect. The DP is a comprehensive document and details inter alia the qualifications and other relevant provisions as regards the QCA. Whether or not the RE Generators had already appointed QCAs is not relevant because performance of the obligations under the DSM Regulations was done by the renewal generators to demonstrate best efforts while*

- awaiting the DP and the constitution of SPC. Any act of the Petitioners towards complying with the DSM Regulations cannot be used against the Petitioners to Penalise them. This Hon'ble Commission may note the contradictions in the submissions of SLDC which while being in non-compliance of the regulations by not issuing the detailed procedure in time is ironically today arguing that the petitioners should be levied with the penalty because they had complied with the regulations by appointing QCA. A defaulting entity is trying to hide its default by requesting the Hon'ble Commission to pass on the penalty for its default onto entities which made best efforts to comply with the regulations. This Hon'ble Commission should not permit this injustice lest it sets a precedent for all state entities.*
- 27. In response to para 16 (Para 30) it is submitted that SLDC's submissions are baseless. SLDC ought to have formulated the DP and constituted the SPC. It is submitted that there was no provision in the DSM Regulations for penalizing the stakeholders for non payment of DSM Charges or for not performing other functions like appointment of the QCA because such a provision was to be a part of the DP and the DSM Regulations contain the directive of the Hon'able Commission to Formulate a framework in the form of the Detailed Procedure to levy the deviation penalty. There was no question of penalizing the stakeholders unless the DP was formulated, and rights and obligations of all parties were detailed in a comprehensive manner.*
- 28. In response to para 16 (Para 31) it is submitted that SLDC's assertions that whenever any query/doubt was raised by the RE generators, it addressed all queries telephonically or if requested then in writing, merits to be looked at with suspicion and also taken as proof of the multiple, continuing issues arising in the understanding of the stakeholders only because SLDC was Agreeable to doing everything except for formulating The Detailed Procedure which would have clarified and addressed all the queries that SLDC today says it was addressing separately for each generator.*
- 29. In response to para 16 (Para 34), it is submitted that issuance of the Demand Notice is itself in violation of the DSM Regulations and the DSM Bills issued prior to the notification of approved DP and constitution of SPC are non-est in law.*
- 30. In response to para 16 (Para 35) it is submitted that there is no default on the Petitioners part in payment of DSM Charges. No DSM Charges are leviable on the Petitioners prior to the notification of approved DP and constitution of SPC. The Petitioners have already answered SLDC's submissions as regards the SPC.*
- 31. In response to para 16 (Para 36 & 37) it is submitted that there is no default on the Petitioners part in payment of DSM Charges. No DSM Charges are leviable on the*

Petitioners prior to the notification of approved DP and constitution of SPC. while SLDC alleges that the petitioners are attempting to take an escape route by referring to the need of the Detailed Procedure it is actually SLDC which is hoping that there would be no consequence to its failure in coming in formulating a detailed procedure so that deviation charges could be levied. If SLDC were to succeed in levying deviation charges on the generators without having issued the detailed procedure then it would succeed in passing off the consequence of its default on to the generators. The DSM Regulations do not permit levy of Deviation Charges in the absence of the DP and the constitution of SPC.

32. In response to para 16 (Para 38 to 56), it is submitted that SLDC's case is that the DP was never required, and the prevailing regulations were enough. However, such an assertion is erroneous. The Petitioner has explained the inherent arbitrariness and illegality in the levy of Deviation Charges from 01.08.2018.

33. Under the circumstances as mentioned above and in the interest of justice and fair play, it is most humbly prayed that (a) the Hon'ble Commission may graciously be pleased to direct Respondent not to take any coercive steps against the Petitioner till the disposal of the present Petition and (b) the Petitioners' prayers be allowed as prayed for in the main petition read with the clarification in para (4) of the present rejoinder.

Commission's Observation and Findings:

12. On perusal of the contents in subject petition and submissions of the parties in this matter, the Commission has observed the following:

- (i) The subject petition is filed under Section 86 of the Electricity Act, 2003 read with Regulation 11 (Power to Relax) and Regulation 12 (Power to issue directions) of the MPERC (Forecasting, Scheduling, Deviation Settlement Mechanism and related matters of Wind and Solar generating stations) Regulations, 2018 and Regulation 46 of the MPERC (Conduct of Business) Regulations, 2004 seeking directions to remove difficulty in implementation of the Deviation Settlement Mechanism.
- (ii) The petitioners are seeking directions to remove difficulty in implementation of MPERC FSDSM Regulation, 2018 on the following two grounds:
 - (a) Difficulty in implementation of FSDSM Regulations, 2018 due to absence of detailed operating procedure in the Regulations, 2018.
 - (b) That the principal FSDSM Regulations, 2018 itself contemplated revision of schedule by a generating company but the petitioners were not able to revise schedules due to ambiguity/vacuum in applicable MP Electricity Grid Code.

(iii) Regulation 11, 12 and 13 of the FSDSM Regulations, 2018 are reproduced below: -

“11. Power to Relax

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

12. 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 an affected party, issue such directions as may be considered necessary in furtherance of the objective and purpose of these Regulations.”

13. Repeal and Saving

(1) Nothing in these Regulations shall be deemed to limit or otherwise effect the inherent power of the Commission to make such orders as may be necessary for ends of justice to meet or to prevent abuses of the Process of the Commission.

(2) Nothing in these Regulations shall bar the Commission from adopting in conformity with the provisions of the Act a procedure, which is at variance with any of the provisions of these Regulations, if the Commission, in view of the special circumstances of a matter or class of matters and for reasons to be recorded in writing, deems it necessary or expedient for dealing with such a matter or class of matters.

(3) Nothing in these Regulations shall, expressly or impliedly, bar the Commission dealing with any matter or exercising any power under the Act for which no Regulations have been framed, and the Commission may deal with such matters, powers and directions in manner it thinks fit.”

(iv) MPERC (Forecasting, Scheduling, Deviation Settlement Mechanism and related matters of Wind & Solar Generating Stations) Regulations, 2018 was notified on 20.04.2018, (FSDSM Regulations, 2018). This FSDSM Regulations, 2018 is applicable to the wind generators having combined installed capacity of 10 MW and above and solar generators with an installed capacity of 5 MW and above including those connected via pooling stations and selling power within or outside the State. Regulation 1 (3) of the FSDSM Regulations, 2018 stated that **“The above Regulations shall come into force from the date of publication of this notification in the Madhya Pradesh Gazette.”**

- (v) Regulation 6 (b) of the DSM, 2018 prescribed charges for non-compliance of the forecasting. Regarding the scheduling generating stations, Regulation 6(a)(2) of the FSDSM Regulations, 2018 stated as follows:
*“The generating station, as far as possible, shall generate electricity as per the day-ahead generation schedule finalized by the State Load Despatch Centre in accordance with the grid code.
Provided that the revision in generation schedule on the day of operation shall be permitted, in accordance with the procedure specified under the Grid Code and M.P. Electricity Regulatory Commission (Terms and Conditions for Intra-state Open Access in Madhya Pradesh) Regulations, 2005 as the case may be.”*
- (vi) On 5th December’ 2008, the Commission notified the 4th Amendment to Madhya Pradesh Electricity Grid Code (Revision-I), 2005. **As per Clause-8.6 (i) of fourth amendment of MPEGC, State Sector Generating Stations can revise their forecasted generation during the real time of operation as & when required.** Clause-8.6 (i) of fourth amendment of MPEGC, (Revision-I), 2005 stated as follows:
In case of forced outage of a unit, SLDC will revise the schedules on the basis of revised declared capability by the generator (SSGS). The revised schedule will become effective from 4th time block, counting the time block in which the revision is advised by the generator to be the first one.
- (vii) In the aforesaid Regulation, the State Sector Generating Stations were allowed to revise schedule which will become effective from 4th time block. There was no restriction on number of revisions during the day of operation. Section 2 (definition) of the aforesaid Grid Code define the State Sector Generating Station as follows:
Any power station within the State, except the Inter-State Generating Station (ISGS) located within the State.
- (viii) In the Clause-2 of Regulation, 6 (a) of the FSDSM Regulations, 2018, it is mentioned that the petitioners could make revisions in forecasted generation during the real time of operation as per provisions of Grid Code. As per Clause8.6 of fourth amendment of MPEGC, State Sector Generating Stations can revise their forecasted generation during the real time of operation as & when required. There was no restriction on number of revisions during the day of operation.
- (ix) Subsequently, on 21st June’ 2019, the Madhya Pradesh Electricity Grid Code (Revision-II), 2019 was notified. Regulation 8.6 of the MPEGC, 2019 provides rules for revision in schedule in real time operation. For revision of schedule by a Renewable Generating Company, Regulation 8.6 (ix) stated as follows:

“The schedule by wind and solar generators may be revised by giving advance notice to the SLDC. Such revisions shall be effective from 4th time block, the first being the time-block in which notice was given. There may be one revision for each time slot of one and half hours starting from 00.00 hours of a particular day subject to maximum of 16 revisions during the day.”

- (x) First amendment to FSDSM Regulations, 2018 was notified on 4th October’ 2019. In the amendment, the operating procedure for forecasting, scheduling and elimination of gaming which was provided in MPERC, FSDSM Regulations, 2018, was given institutional strength without any change in the principles and methodology for computation of Deviation Charges.

13. With the above observations the findings of Commission are as under:

- (a) MPERC (Forecasting, Scheduling, Deviation Settlement Mechanism and related matters of Wind & Solar Generating Stations) Regulations, 2018 was notified on 20.04.2018. Regulation 5 of the aforesaid Regulations provides the principles for operationalization of Deviation Settlement Mechanism. The operating procedure for implementation of Regulations was provided in detail under Regulation 6 of the aforesaid Regulations. Further, it was provided in Regulation 6 of said Regulations, 2018 that the declaration of capacity, scheduling and elimination of gaming shall be applicable as per provisions under Grid Code and MPERC (Terms and Conditions for intra-state open access in Madhya Pradesh) Regulations 2005. The schedule of deviation charges applicable for under injection/over injection by Wind/ Solar generators has been provided under Table I to IV in the said Regulations, 2018 and there has been no change in Deviation Charges under aforesaid Tables I to IV in amended FSDSM Regulations, 2019. Neither the petitioners nor the Respondent No.1 approached the Commission under Regulation 12 of MPERC (Forecasting, Scheduling, Deviation Settlement Mechanism and related matters of Wind & Solar Generating Stations) Regulations, 2018 for any difficulty in giving effect to the aforesaid Regulations as contended by the petitioners.
- (b) With regard to contention of the petitioners on the issue of non-existence of detailed operating procedure in MPERC FSDSM Regulations 2018, the Commission on perusal of provisions under amended Regulations 2019, has noted that the following details were provided in the amended Regulation:
- (i) Consequences, if a Qualified Co-ordinating Agency (QCA) is not appointed by the generator.
 - (ii) General guidelines for appointing QCA and registration by QCA
 - (iii) Roles and responsibilities of QCA

- (iv) Payment of security by QCA to SLDC towards deviation charges.
- (v) Settlement of deviation charges mechanism.
- (vi) Pre-conditions for participation in DSM
- (vii) Event of default and consequences
- (viii) Schedule for Deviation Charges

(c) The Commission has further noted the following on perusal of unamended FSDSM Regulations 2018:

- (i) The provisions for appointing QCA, registration and responsibilities of QCA were provided under Regulation 2(1)(s) of unamended Regulations 2018.
- (ii) Preconditions for participation in DSM was provided under Regulation 4(1) to (7) of unamended Regulations 2018.
- (iii) Principles and framework for operationalization of DSM was provided under Regulation 5 (a) to (f) of unamended Regulations 2018.
- (iv) Procedure for forecasting, scheduling and elimination of gaming was provided under Regulation 6 (a) to (h) of unamended Regulations 2018.
- (v) Settlement of Deviation charges was provided under the heading of “Accounting for charges of deviation” in Regulation 8 (1) to (3) of unamended Regulations 2018.
- (vi) Schedule of payment of charges for deviation was provided under Regulation 9(1) to (5) of unamended Regulations 2018. There has been no change in the deviation charges specified in Table (I) to (IV) provided under schedule of unamended Regulations 2018.

(d) From the above comparison of the provisions under amended Regulations 2019 vis-à-vis the provisions under unamended Regulations 2018, it is noted that the amendment in certain provisions in Regulations 2018 was made to give institutional strength to the existing Regulations and there has not been any change in the principles for computation of deviation charges after notification of amended Regulations 2019.

(e) As per provisions under Clause-8.6 (i) of the fourth amendment to MPEGC, 2005 (Revision-I), the State Sector Generating Stations are allowed to revise their forecasted generation during the real time of operation as & when required and the revised schedule shall become effective from 4th time block. There was no restriction on number of revisions during the day of operation. Further, in the MP Electricity Grid Code the State Sector Generating Station is defined as *“Any power station within the State, except the Inter-State Generating Station (ISGS) located within the State.”*

- (f) MPERC (Forecasting, Scheduling, Deviation Settlement Mechanism and related matters of Wind & Solar Generating Stations) Regulations, 2018 is applicable to the wind generators having combined installed capacity of 10 MW and above and solar generators with an installed capacity of 5 MW and above including those connected via pooling stations and selling power within or outside the State. Regulation 1 (3) of the aforesaid Regulations, 2018 provides that ***“the above Regulations shall come into force from the date of publication of this notification in the Madhya Pradesh Gazette.”***
- (g) The Respondent SLDC submitted that the FSDSM Regulations, 2018 notified on 24.04.2018 but the commercial implication of the aforesaid Regulations was applied by SLDC after three months i.e., from 01.08.2018. The Respondent SLDC also submitted that it had convened a meeting with Wind Solar Generators, Developers and QCA on 23.10.2018 to explain in detail all the regulatory provisions and addressed all the queries raised by the generators. It was made clear by SLDC to all the Wind / Solar Generators during the meeting that the Regulation is complete in every respect and can be implemented in the State of MP.
- (h) The Respondent SLDC stated that it is having SAMAST complied ABT System since 2009 and only minor modification in the software was required which were done within few weeks. Telemetry / real time data facility was existing for all the pooling stations. Metering system as per regulatory provisions was already there as per MPEGC and CEA Regulations in this regard. Forecasting on day ahead basis had already been done by the qualified Wind / Solar Generators prior to notification of MPERC (FSDSM) Regulations-2018 as per Madhya Pradesh Electricity Regulatory Commission (Cogeneration and Generation of Electricity from Renewable Sources of Energy) Regulations, 2010 and subsequent amendments.
- (i) As stated by the Respondent SLDC, the petitioners had started submission of revisions in forecasted generation during real time of operations through their QCA (M/s Manikaran Analytics Ltd) from 1st August 2018 for their Wind Power Projects and the same had been accepted by SLDC and accordingly, the schedules were issued to the petitioners by SLDC. The Respondent (SLDC) stated that there was no restriction on number of revisions done by SSGS / RE Generators. Further, SLDC had never denied any requisition seeking revision in forecasted generation during the real time of operation and all such requests were entertained and generation schedules were issued to generators including that of petitioners. SLDC has further submitted that Petitioner no.1 has several wind projects in MP and for all of them it started its first real time revision from 1.8.2018. In as much as, it has undertaken 11 real time revisions for its 59.20 MW power project on

1.8.2018 and at least 9 real time revisions for its other project on 1.8.2018. Similarly, Petitioner No.2 (Etesian Urja) has undertaken real time revisions on 1.8.2018 for its power project and it has started with the same on 01.8.2018 and has undertaken as many as 14 real time revisions on 1.8.2018. SLDC has annexed a copy of the chart as **Annexure-1** showing the real time revisions.

- (j) The Respondent SLDC submitted along with the details of Available Capacity, day ahead forecast and real time revisions that the petitioners started submission of revision in forecast through their QCA from 01.08.2018. The aforesaid revisions as submitted by the petitioners during real time of operations were accepted and the schedules were issued by SLDC accordingly.

14. In view of aforesaid observations and examination of facts and circumstances in the matter, the Commission finds no merit in contention of the petitioners seeking directions to remove difficulty in implementation of MPERC (Forecasting, Scheduling, Deviation Settlement Mechanism and related matters of Wind and Solar generating stations) Regulations, 2018.

With the aforesaid observations and findings, the prayer is disallowed and the subject petition along with IA No. 1 of 2021 filed with this petition is dismissed.

(Shashi Bhushan Pathak)
Member

(Mukul Dhariwal)
Member

(S.P.S. Parihar)
Chairman