

**MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION
BHOPAL**

Sub: In the matter of petition under Section 86 of the Electricity Act, 2003 read with Regulation 6(5), 10 and 12 of 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 exercise of power to issue directions to remove difficulty in implementation of the DSM Regulations.

Petition No. 16 of 2020

ORDER

(Date of order: 14th May' 2021)

M/s. Ostro Madhya Wind Pvt. Ltd.,

138, Ansal Chambers-II, Bhikaji Cama Place,
New Delhi – 110 066

- **Petitioner**

Vs.

1. M. P. Power Transmission Company Ltd.,
Shakti Bhawan, Rampur, Jabalpur – 482008

- **Respondents**

2. State Load Despatch Centre
M.P. Power Transmission Co. Ltd.
Nayagaon, Rampur, Jabalpur – 482 008 (M.P.)

Ms. Swapna Sheshadri, Advocate appeared on behalf of the petitioner.

Shri Ashish Bernard, Advocate appeared on behalf of the Respondent No. 2 (SLDC).

The subject petition is filed under Section 86 of the Electricity Act, 2003 read with Regulation 6(5), 10 and 12 of 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 exercise of power to issue directions to remove difficulty in implementation of the aforesaid Regulations.

2. In the subject petition, the petitioner broadly submitted the following:

- (i) *The present petition is filed by the Petitioner – Ostro Madhya Wind Private Limited against the decision of the Respondent to unilaterally issue DSM statements and implementing the Madhya Pradesh Electricity Regulatory Commission (Forecasting, Scheduling, Deviation Settlement Mechanism and related matters of wind and solar generating stations) Regulations, 2018 (hereinafter referred as “DSM Regulations, 2018”) issued by the Commission, without their first being any approved Detailed Procedure under Regulation 6(5) of the said Regulations.*

- (ii) *The detailed procedure under Regulation 6(5) is a pre-requisite for implementation of the DSM Regulations, 2018. Without there being an approved detailed procedure as envisaged in the DSM Regulations, 2018 itself, there are a number of practical difficulties which arise in implementation of the DSM Regulations, 2018, for which the Petitioner is seeking directions of this Commission.*
- (iii) *The detailed procedure was only notified on 25/09/2019. However, for the period prior to 25/09/2019, the Respondent had unilaterally issued DSM statements thereby seeking to implement the Regulations, which cannot be permitted.*
- (iv) *The Petitioner, along with its associated companies, is engaged in the business of generation of renewable energy through its power projects housed under various Special Purpose Vehicles (SPVs) in the State of Madhya Pradesh. A list of the Petitioner's and its associated companies' power projects located in the State of Madhya Pradesh is attached hereto and marked as Annexure A.*
- (v) *The Commission on 20/04/2018, under Section 181 of the Electricity Act, 2003, has notified the MPERC (Forecasting, Scheduling, Deviation and Settlement Mechanism and related matters of Wind and Solar Generating Stations) Regulations, 2018 (DSM Regulations, 2018). A copy of the DSM Regulations, 2018 is attached hereto and marked as Annexure B.*
- (vi) *The objective of the DSM Regulations, 2018 as stated in Regulation 3 is to facilitate large scale integration of wind and solar power while maintaining the grid stability, reliability and security as envisaged under the Grid Code, through forecasting, scheduling, and commercial mechanism for deviation settlement of wind and solar generators.*
- (vii) *Regulation 6(a) provides for the "procedure" to be adopted for the purpose of forecasting, scheduling and elimination of gaming. Further, Regulation 6(5) therein, provides that the plan for data telemetry, formats of forecast submission and other details, are to be provided in the "Detailed Procedure" to be prepared by the SLDC (the Respondent in the present case) and approved by the State Commission.*
- (viii) *Regulation 10 thereafter, mandates the Respondent to formulate, within three months of the notification of the said Regulations, the Operating Procedures and Business Rules for construction of State Power Committee, and the same is thereafter to be approved by the Commission.*

- (ix) *Therefore, for implementation of the DSM Regulations 2018, an essential pre-requisite is of there being an approved detailed procedure formulated by the Respondent. The purpose of having the detailed procedure is to have clarity on many practical aspects which would otherwise cause difficulties in implementation of the Regulation.*
- (x) *While the Respondent had not put in place any detailed procedure approved by the Hon'ble Commission within the time frame as envisaged under the Regulations, in absence of an approved detailed procedure, there were a number of issues on which there was no clarity whatsoever and it was practically impossible to implement the DSM Regulations and ensure seamless forecasting and scheduling.*
- (xi) *For example, while Regulation 6(2) proviso, provides that revision in generation schedule within a day was permitted, there was no clarity on the number of revisions permitted. Wind and Solar generation being entirely dependent on weather conditions, local site-specific conditions and inherently variable, the Detailed Procedure was essential for the implementation of the DSM Regulations. While most states have adopted the Hon'ble CERC Regulations which allow for 16 revisions in 24 hours, there is no clarity in the present case.*
- (xii) *Further, without there being any clarity about the detailed procedure, operational framework and commercial applicability of the DSM Regulations, it was not possible to ascertain the validity of the method adopted for arriving at DSM Charges for each pooling station.*
- (xiii) *In fact, the standard practice adopted in other states is to have a mock trial period before implementation of the DSM Regulations. The mock trial period is required to check the accuracy of proposed framework and have a practical experience of the problems to formulate workable solutions. Also, once the detailed procedure is formulated, the QCA will be required to make changes in the software and the process as to comply with such approved procedures. This calls for allowing a reasonable time after the approved procedures are made available for implementation.*
- (xiv) *The grievance of the Petitioner in the present Petition is on account of the fact that the Respondent for the period from August 2018, till notification of the approved procedure on 25/09/2019, during which there was no detailed procedure in place, had started issuing the DSM Accounts for renewable energy-based generators. The DSM statements issued to the Petitioner by the Respondent for the months of August 2018 to November 2019 are attached hereto and marked as Annexure C.*

- (xv) *Interestingly, there were certain pooling sub-stations which did not submit data to the Respondent, and the said data was not being included in calculation of final DSM Accounts by the Respondent. Therefore, to that extent, the non-performers i.e. pooling stations who did not submit any data to the Respondent, were incentivized for their non-performance.*
- (xvi) *Further, on 21/02/2019, the Commission issued a public notice stating that it proposes to make amendments to the DSM Regulations, 2018, including provision for a DOP. Copies of the Public Notice, and the proposed amendment to the DSM Regulations, 2018 are attached hereto and marked as Annexure D and Annexure E, respectively.*
- (xvii) *While, the Petitioner had submitted its comments, through its parent company M/s ReNew Power Limited, including issues arising on account of there not being any clarity on the operation and implementation of the DSM Regulations, 2018, the amendment to the DSM Regulations, 2018, including the detailed procedure was only notified on 25/09/2019.*
- (xviii) *In the above background, the Petitioner, through its parent company M/s ReNew Power Limited, had written a letter on 03/04/2019, to the Respondent highlighting the difficulty being faced by it. The Petitioner stated in its letter that, in absence of a detailed procedure approved by the Commission, it was not practically possible to reconcile DSM Accounts, and the issuance of DSM Accounts prior to there being an approved detailed procedure be treated as a mock trial for a period of 6 months.*
- (xix) *The Respondent vide letter dated 09/04/2019 responded to the aforesaid letter stating that the Respondent had requested the Hon'ble Commission to allow (3) months' time for necessary preparations i.e. to implement the Regulations from 1st August, 2018, and accordingly, the Respondent has started issuing the DSM Accounts from the month of August 2018. However, the Respondent failed to appreciate that the necessary preparations for implementing the Regulations ought to have included notification of the detailed procedure as well, which was admittedly not done by the Respondent. A copy of the letter dated 09/04/2019 is attached hereto and marked as Annexure G.*
- (xx) *On 25/09/2019, this Hon'ble Commission has notified the First Amendment to the MPERC Forecasting Regulations. A copy of the same is attached as Annexure H. Along with the Amendment, the Operating Procedure has also been notified. Therefore, it is only from 25/09/2019 that, there is a clarity on how the forecasting and scheduling will be done under the Forecasting Regulations.*

- (xxi) *While the Respondent has made it clear from 25/09/2019 as to how the forecasting will operate, the past period implementation remains unclear and selective. However, it is still not clear as to how the period from August 2018 till 25/09/2019 would be dealt with. The Respondent seeking to implement the same retrospectively from the date of issuance of the DSM Accounts i.e., August 2018 onwards would be unfair.*
- (xxii) *It is submitted that such an approach cannot be permitted. The operation and implementation of the DSM Regulations, 2018, can only be prospective i.e. after the approval of the detailed procedure. The detailed operating procedure as mentioned under Regulation 6(5) of the DSM Regulations was essential to facilitate understanding between the stakeholders and to avoid any unnecessary disputes in relation to DSM mechanism. The said procedure has only been notified on 25/09/2019.*
- (xxiii) *The period from August 2018 to 25/09/2019 for which, there was no approved detailed operation procedure ought to be treated as a Mock Trial period, so that the generators get a practical experience of problems and further workable solutions may be formulated thereafter.*
- (xxiv) *Without prejudice to the above, the procedure adopted by the Respondent for the above period is evidently flawed, as QCAs who did submitted data to the Respondent were not being included in the calculation of DSM Accounts, and therefore, to that extent were being incentivized for their non-performance. It is evident that even the Respondent has not strictly implemented the DSM Regulations from August 2018 till 25/09/2019, and was only issuing the DSM Accounts as a test run. This, in fact, would be in line with the practice being followed in other states as well.*
- (xxv) *However, the renewable based energy generators including the Petitioner and its associated companies, would be prejudiced if the DSM Regulations after approval of the detailed procedure were to be applied retrospectively. As stated above, prior to 25/09/2019 when the detailed procedure was not available, there was no clarity on a several issues such as scheduling format, number of permissible revisions etc.*
- (xxvi) *In view of the above, the Commission is requested to pass directions clarifying that the DSM Regulations, 2018 would be implemented prospectively, after approval of the detailed operating procedure for implementation of these Regulations i.e., 25/09/2019. The Commission may also clarify that the DSM Accounts issued for the period prior to 25/09/2019, during which there was no detailed procedure in place, are not to be acted upon, and the same may be treated as a test run.*

(xxvii) The Petitioner has sought exercise of the Hon'ble Commission's power to issue directions as without there being available the detailed procedure as envisaged under Regulation 6(5), for implementation of the Regulations, there are difficulties that arise in giving effect to the Regulations.

3. With the above submissions, the petitioner prayed the following:

- (i) To hold and direct that the DSM Regulations, 2018 would be implemented only prospectively from 25.09.2019 i.e. the date of its notification and approval of the detailed procedure;
- (ii) To hold and direct that the DSM Accounts being issued by the Respondent prior to there being a detailed procedure as required under Regulation 6(5), be treated as a mock trial period.

Proceeding in the subject petition:

4. The subject petition was admitted on 06th March'2020 2020. The petitioner was directed to add State Load Despatch Centre, Jabalpur also as respondent in view of the issues in this matter and to serve the copy of subject petition on the Respondents. The Respondents were directed to file reply to the petition by 30.03.2020 and the case was fixed for hearing on 16.04.2020. The Respondents were also directed to serve copy of reply to the petitioner simultaneously. The hearings in this matter were postponed due to outbreak of COVID 19 and nation-wide lockdown.

5. At the hearing held on 13th October' 2020, the Commission observed the following:

- (i) The Respondent No. 1 (MPPTCL) had not filed reply to the subject petition.
- (ii) The Respondent No. 2 (SLDC) filed reply to the subject petition on 17th July' 2020.
- (iii) Ld. Counsel for the petitioner submitted that the rejoinder on the reply of the Respondent No. 2 has been filed.

6. Vide order date 19th October' 2020, the Respondent No.1 was directed to file reply to the subject petition within ten days. Looking to the prayer and issues involved in this petition, the Commission had decided to club the subject petition with the petition No. 10 of 2020 and petition No. 23 of 2020 which is of similar nature.

7. At the hearing held on 09.02.2021, Ld. Counsels for the parties concluded their arguments. The parties were directed to file their written submissions within 10 days. The case was reserved for order on filing of written submissions by the parties within the stipulated time.

Submissions by the Parties:

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

- i. *SLDC is an implementing agency for various regulations. SLDC has to perform all the functions in accordance with the regulations notified by the Regulatory Commissions and CEA from time to time. SLDC while performing its functions, cannot deviate from the regulatory provisions made in the respective regulation for that particular function.*
- ii. *SLDC is bound to perform all the functions and duties within the regulatory framework only and cannot deviate from the regulatory provisions on request of any of the State Grid entity / Renewable Energy Generator etc.*
- iii. *The regulations are formed by the Regulatory Commissions for safe, secure, reliable and economic operation of the grid. Further, regulations are also formed for commercial settlement amongst the Regional / State Grid entities.*
- iv. *The MPERC (Forecasting, Scheduling, Deviation Settlement Mechanism and related matters of Wind & Solar Generating Stations) 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.*
- v. *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.*
- vi. *That for safe, secure & reliable operation of the grid as well as continuous supply to the consumers, all the generators and distribution licensees 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 distribution licensees.*
- vii. *That adhering to scheduled generation by generator and scheduled drawal by distribution licensee is utmost necessary for the stability of the grid. If either generator*

or distribution licensee deviates from the schedule given by SLDC, may lead to insecure operation of the grid.

- viii. *The Central Electricity Authority notification dated 26.11.2014 and MPEGC provides guidelines for type of meters to be installed, metering scheme, metering capability, testing & calibration requirement and the 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.*
- ix. *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.*
- x. *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.*
- xi. *SLDC had proposed Hon'ble State Commission for 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 and accordingly SLDC issued DSM Accounts for wind / solar generators w.e.f. 1st August 2018.*
- xii. *Thus, the submission of the Petitioner that they were waiting for approved detailed procedure for compliance of FSDSM Regulations 2018, is not correct and only to escape from paying DSM Charges for deviation from the forecasted generation for some period.*
- xiii. *It is to submit that regulatory provisions regarding data telemetry and forecasting / scheduling are 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. SLDC was pursuing all the Wind / Solar Generators for submitting the day ahead forecast before notification of this regulation. Most of the RE Generators started forecasting their generation on day ahead basis. In the past, SLDC was giving permission for injection into*

the grid to RE Generators only when telemetry data was made available and assurance for submission of forecasted generation, after notification of regulation in this regard.

- xiv. *The approval of detailed operating procedure does not prohibits RE generators for compliance of the regulations, SLDC had complied regulatory provisions and submitted the procedure within stipulated time.*
- xv. *Relevant Regulations regarding Telemetry, Forecasting and Scheduling are summarized below:*
 - a. *Amendment of Regulation 6.2 of Part 6 of Principal Regulations of the CERC Indian Electricity Grid Code (Third Amendment) Regulations, 2015 provides that Telemetry / communication system & Data Acquisition System shall also be provided by RE Generators for transfer of information to the concerned SLDC and RLDC.*
 - b. *Amendment to clause 5.10 of the Madhya Pradesh Electricity Grid Code (Revision-I), 2005 (Fourth Amendment) provides –*
Reliable and efficient speech and data communication systems shall be provided by all the users to facilitate necessary communication and data exchange, and supervision/ control of the grid by the SLDC, under normal and abnormal conditions. All Users shall provide the required facilities at their respective ends and SLDC and this shall be indicated in the Connection Agreement.
 - c. *Third Amendment to Madhya Pradesh Electricity Regulatory Commission (Cogeneration and Generation of Electricity from Renewable Sources of Energy) Regulations, 2010 under Regulation-9 stipulates that- “The scheduling of Wind Electric Generators with collective capacity of 10 MW and above and Solar Generating Plants with collective capacity of 5 MW and above shall be made as per the decision of the Central Electricity Regulatory Commission”.*
 - d. *Seventh Amendment to Madhya Pradesh Electricity Regulatory Commission (Cogeneration and Generation of Electricity from Renewable Sources of Energy) Regulations, 2010 under Regulation-9 stipulates that- “Co-generation and generation from Renewable sources of Energy shall be subjected to “Scheduling” in terms of provisions of Indian Electricity Grid Code.”*
- xvi. *Regarding practical difficulties / issues raised by RE Generators, SLDC had convened a meeting with RE Generators, Developers and QCAs on 23rd Oct 2018 and addressed the queries / problems faced in implementation of MPERC (FSDSM) Regulations 2018.*

- xvii. *Regulation 6(2) proviso, has no lack of clarity and Petitioner could make revisions in forecasted generation during the real time of operation as per provisions of Grid Code and MPERC Intra State Open Access Regulations, 2005. SLDC has accepted all the revisions in forecasted generation submitted during the real time of operation by RE Generators in accordance with regulatory provisions.*
- xviii. *The provisions of Regulation-2018 and methodology for computation of DSM charges for RE Generator are clear in itself and did not pose any hurdle / difficulty in implementation. As such, MPERC (FSDSM) Regulation-2018 can be implemented in the State of MP without requiring any further clarification. Thus, the statement of the Petitioner that it was not possible to ascertain the validity of the method adopted for arriving at DSM Charges for each pooling station is not correct.*
- xix. *Madhya Pradesh Electricity Regulatory Commission (Forecasting, Scheduling, Deviation Settlement Mechanism and related matters of Wind and Solar generating stations) Regulations, 2018 already provides essential mechanism and methodology for computation of DSM Charges for Wind / Solar Generators and does not require any elaboration for carrying out computation of DSM Charges of RE Generators.*
- xx. *The regulation of Hon'ble State Commission had sufficient clarity in every respect for implementation. 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 such as forecasting, scheduling, metering, data collection etc. have already been complied by the RE Generators. SLDC has issued the DSM Accounts to RE Generators in compliance to MPERC(FSDSM) Regulations 2018.*
- xxi. *It is to submit that as per prevailing regulatory provisions, collection and submission of readings of Inter-face energy meters is assigned with the Licensee (Distribution / Transmission) in whose jurisdiction pooling station is located. Initially for few months, readings of around 2 to 4 no. out of 104 no. pooling stations could not be obtained either through AMR or Licensee. Thus RE Generators cannot be held responsible and penalize for non-receipt of their reading at SLDC. Since the Inter-face meter data was not provided by the Licensee, their actual generation is replaced with forecasted generation to avoid any financial burden on the RE Generators without being at fault.*
- xxii. *SLDC vigorously pursued with the Distribution Licensee for furnishing reading of these pooling stations and Distribution Licensee started furnishing readings of these pooling stations within few months.*

- xxiii. *The 1st amendment to MPERC (FSDSM) regulations 2018 was issued by the Commission after completion of due process required for notification of amendment. 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. As such, the amendment was issued after considering all such representations. MPERC (FSDSM) regulations 2018 already provides essential mechanism and methodology for computation of DSM Charges for Wind / Solar Generators and does not require any elaboration for carrying out computation of DSM Charges of RE Generators. The regulation of Hon'ble State Commission had sufficient clarity in every respect for implementation.*
- xxiv. *It is submitted that there is no change in the provision for declaration of available capacity, forecasting and scheduling mentioned at clause no. 6 "Forecasting, Scheduling and Elimination of Gaming" of MPERC (FSDSM) regulations 2018 and its 1st amendment notified on 25.09.2019.*
- xxv. *The provisions of Regulation-2018 are clear in itself and did not pose any hurdle / difficulty in implementation. Implementation of MPERC (FSDSM) Regulations 2018 did not require approval of Detailed Operating Procedure. However, SLDC had prepared a Detailed Operating Procedure covering all the existing regulatory provisions and amendment proposed to the Regulation-2018, on 29th June-2018 for approval of Hon'ble Commission. SLDC has started issuing DSM Accounts of wind and Solar Pooling Stations w.e.f. 1st August 2018. As such, the DSM Accounts were issued from the prospective dates and there is no question of retrospective implementation. The DSM Accounts issued for the period from August 2018 to 25th Sept 2019 are issued in accordance with regulatory provisions.*
- xxvi. *It is to submit that as per prevailing regulatory provisions, collection and submission of readings of Inter-face energy meters is assigned with the Licensee (Distribution / Transmission) in whose jurisdiction pooling station is located. Initially for few months, readings of around 2 to 4 no. out of 104 no. pooling stations could not be obtained either through AMR or Licensee. Thus, RE Generators cannot be held responsible and penalize for non-receipt of their reading at SLDC. Since the Inter-face meter data was not provided by the Licensee, their actual generation is replaced with forecasted generation to avoid any financial burden on the RE Generators without being at fault.*
- xxvii. *SLDC vigorously pursued with the Distribution Licensee for furnishing reading of these pooling stations and Distribution Licensee started furnishing readings of these pooling stations within few months.*

xxviii. *In accordance with regulatory provisions, SLDC has strictly implemented the MPERC (FSDSM) Regulations 2018 and issued the DSM Accounts of Wind and Solar Pooling Stations w.e.f. 1st August 2018. Thus, the question of issuing the DSM Accounts for the period August 2018 to 25th Sept 2019 as a test run does not arise.*

xxix. *The regulatory provision for forecast submission by QCA to SLDC already existed in MPERC (FSDSM) Regulation-2018. The procedure for submission of forecast to SLDC was already posted on the website of SLDC prior to implementation of Regulation-2018 and all the QCAs, Wind / Solar Generators and Developers were aware of the same. Some of the RE Generators had been submitting their forecast to SLDC in compliance to Third Amendment to Madhya Pradesh Electricity Regulatory Commission (Cogeneration and Generation of Electricity from Renewable Sources of Energy) Regulations, 2010.*

xxx. *The Petitioner could make revisions in forecasted generation during the real time of operation as per provisions of Grid Code. SLDC has accepted all the revisions in forecasted generation submitted during the real time of operation by RE Generators in accordance with regulatory provisions of Grid Code.*

9. The petitioner M/s. Ostro Madhya Wind Pvt. Ltd., filed its rejoinder to the reply filed by the Respondent No. 2 (SLDC). The petitioner in its rejoinder broadly submitted the following:

(i) *The present Petition has been moved by the Petitioner [Ostro Madhya Wind Private Limited] against the decision of the Respondents to unilaterally issue DSM statements and implementing the MPERC (Forecasting, Scheduling, Deviation Settlement Mechanism and related matters of wind and solar generating stations) Regulations, 2018 (hereinafter referred to as the "Regulations") issued by the Hon'ble Commission, in the absence of any approved 'Detailed Procedure' as envisaged under Regulation 6(5) of the said Regulations.*

(ii) *The Petitioner is seeking exercise of power of the Hon'ble Commission to issue directions to remove difficulty in implementation of the aforesaid Regulations, and to clarify that the said Regulations would be implemented only prospectively from 25.09.2019, i.e. the date of notification and approval of the 'Detailed Procedure'.*

(iii) *The Hon'ble Commission has admitted the Petition on 06.03.2020, and has directed the Respondents to file their replies by 30.03.2020. In pursuant to the liberty granted by the Hon'ble Commission, the Respondent No. 2 [M.P. State Load Despatch Centre]*

(hereinafter referred to as the "SLDC") has filed its reply on 17.07.2020, albeit with a delay of more than 3 months. However, the Respondent No. 1 has not filed its reply yet.

- (iv) At the outset, it is stated that the contents of the reply filed by the SLDC are wrong, devoid of merit and thus, denied. Save as expressly admitted herein, each contention and averment raised by the SLDC in its reply is denied as if set out in full and traversed herein seriatim.*
- (v) While there is no dispute on the submission made by the SLDC that the Regulations have been notified for safe, reliable and economic operation of the grid, the SLDC seems to be using the Regulations to earn money/impose high levels of penalty, rather than for grid discipline. It is further submitted that the absence of procedure for the period between 20.04.2018 and 25.09.2019 has even affected the SLDC and its decision-making inasmuch as, for the said period, intra-state generators who have submitted their schedule, but their generation data was not made available (either wholly or partly, and for reasons ranging from absence of a meter to errors in transmission of the generation data) to the SLDC, the SLDC has not levied any DSM Charges and has treated such cases as cases of 'zero deviation'. This particular lacuna has infact only been addressed now after publication of the 'Detailed Procedure'. This shows the arbitrariness and non-application of mind in the decision-making process as also the uncertainties not accounted for in the absence of the approved Detailed Procedure.*
- (vi) There is no doubt that once the schedules are given, the generators should adhere to the schedule and minimize deviation. However, when there is no clarity as to how the scheduling and deviation would be treated to any of the parties involved, no penalties should be imposed. The SLDC has not met this case but is making general submissions on the DSM mechanism.*
- (vii) It is stated that the SLDC's reply is completely silent on the issues raised by the Petitioner in the present Petition. The reply does not touch upon the practical issues being faced by the Petitioner on which there was no clarity and it was practically impossible for the Petitioner to implement the Regulations and ensure seamless forecasting and scheduling in absence of the 'Detailed Procedure'.*
- (viii) It is further stated that the Regulations, notified on 20.04.2018, provided for an essential pre-requisite of there being a 'Detailed Procedure' formulated by the SLDC and approved by the Hon'ble Commission for its implementation.*

- (ix) *However, inspite of the statutory obligation, the SLDC did not put any 'Detailed Procedure' as approved by the Hon'ble Commission in place within the time frame (i.e., 3 months) as envisaged under the Regulations, but started issuing DSM Accounts for renewable energy-based generators for the period from August 2018, when the Detailed Procedure was only approved and notified on 25.09.2019, i.e., after more than 17 months of the issuance of the Regulations. The power to levy and collect any penalties can only be exercised in the manner and as per procedure prescribed for such levy, which requires approval of the Hon'ble Commission.*
- (x) *The Reply also does not touch upon the aspect of issuance of DSM Accounts for the retrospective period, i.e., from August 2018 till 25.09.2019, i.e., the date on which the 'Detailed Procedure' was approved and notified by the Hon'ble Commission.*
- (xi) *As stated above, in absence of an approved Detailed Procedure, there were a number of issues faced by the Petitioner on which there was no clarity whatsoever and it was practically impossible to implement the Regulations and ensure seamless forecasting and scheduling:*
 - (a) *While the Proviso to Regulation 6(2) provides that revision in generation schedule within a day was permitted, there was no clarity on the number of revisions permitted. Wind and Solar generation being entirely dependent on weather conditions, local site-specific conditions and inherently variable, the Detailed Procedure was essential for the implementation of the Regulations. While most States have adopted the CERC Regulations which allow for 16 revisions in 24 hours, there is no clarity in the present case.*
 - (b) *Further, without there being any clarity about the Detailed Procedure, operational framework and commercial applicability of the Regulations, it was not possible to ascertain the validity of the method adopted for arriving at DSM Charges for each pooling station.*
 - (c) *In fact, the standard practice adopted in other States is to have a mock trial period before implementation of the DSM Regulations. The mock trial period is required to check the accuracy of proposed framework and have a practical experience of the problems to formulate workable solutions. Also, once the detailed procedure is formulated, the QCA will be required to make changes in the software and the process as to comply with such approved procedures. This calls for allowing a reasonable time after the approved procedures are made available for implementation.*

- (d) *Interestingly, there were certain pooling sub-stations which did not submit data to the SLDC, and the said data was not being included in calculation of final DSM Accounts. Therefore, to that extent, the non-performers i.e. pooling stations who did not submit any data to the SLDC, were incentivized for their non-performance.*
- (xii) *Further, the absence of procedure for the period between 20.04.2018 and 25.09.2019 has even affected the SLDC and its decision-making inasmuch as, for the said period, intra-state generators who have submitted their schedule, but their generation data was not made available (either wholly or partly, and for reasons ranging from absence of a meter to errors in transmission of the generation data) to the SLDC, the SLDC has not levied any DSM Charges, and has treated such cases as cases of 'zero deviation'. This particular lacuna has infact only been addressed now after publication of the Detailed Procedure.*
- (xiii) *Contrary to all of the above, in its reply, the SLDC contends that the Regulations had sufficient clarity in every respect for implementation and did not require any further elaboration/clarity. The SLDC has also stated that it implemented the Regulations w.e.f. August 2018 itself. However, the SLDC thereafter takes a U-turn and states that it had convened a meeting with the RE Generators, Developers and QCAs on 23.10.2018 and addressed the issues/problems faced in implementation of the Regulations. The stand of the SLDC is self-contradictory, and is ample evidence of the uncertainty in the absence of the Detailed Procedure. There is no room for uncertainty in such a regulatory framework, more so when the uncertainty leads to levy of penalties.*
- (xiv) *The SLDC has sought to project the meeting held on 23.10.2018 as having resolved all issues raised by the RE Generators, Developers and the QCAs. This is wrong and specifically denied.*
- (xv) *The Petitioner states that it had also attended the said meeting of 23.10.2018 and had pointed out certain issues in the implementation of the Regulations. However, they were not resolved by the SLDC. The same is clearly evident from the letter dated 03.04.2019 written by the Petitioner (through its parent company M/s ReNew Power Limited) to the SLDC. In addition to stating that in absence of the approved procedure it is not practically possible for the Petitioner to reconcile the DSM Accounts released, the letter further also points out the practical difficulties being faced by the Petitioner. The relevant extracts of the letter are as under:*

“

In addition to the aforesaid, we would like to bring to your attention several practical difficulties being faced by us in verification of the DSM Account, issued vide Letters, which are as follows:

- I. In the absence of the detailed procedure, we are unable to submit the schedules or ascertain the potential exposure on account of deviation charges. A detailed procedure as mentioned under clause 6(5) of DSM Regulations is essential to facilitate understanding between the stakeholders and to avoid any unnecessary disputes in relation to DSM mechanism.*
- II. No mock trial period is provided to generators as provided in all other states. This mock trial period is required to check the accuracy of proposed framework and have practical experience of problems to formulate workable solutions.*
- III. There are certain pooling substations which are not submitting the data and hence the said data is not included in calculation of final DSM Accounts. This practice is in a way incentivizing the non-performers which is against the principle of natural justice.*

The above-mentioned issues were also discussed with your good office seeking resolution during the meeting held on 23.10.2018. We request you to kindly take cognizance of the above-mentioned issues and withdraw the DSM statements issued vide the Letters. We further request that in line with the customary practice, we shall be accorded a 6 month of mock trial period to enable us to test the implementation of the detailed procedure."

(xvi) The allegation of the SLDC that the Petitioner is only trying to escape from paying the DSM Charges from 01.08.2018 till the approval of the Detailed Procedure is absurd and without any merit. The Petitioner could not have imagined how the Regulations would operate in practical terms without the Detailed Procedure. In fact, the Regulations themselves contemplated that the Detailed Procedure would be published by the SLDC within 3 months. As a matter of fact, even the SLDC was not clear as to how the Regulations would operate and till today is changing the methodology to prepare the DSM Accounts.

(xvii) The contention of the SLDC that even without the approved Detailed Procedure there was no prohibition on the renewable energy generators to comply with the Regulations,

is completely absurd and wrong. Infact, the Petitioner's case is that it has complied with the Regulations even in the absence of the Detailed Procedure by giving proper schedule as understood by the Petitioner. However, the only prayer of the Petitioner is that no penal charges should be levied by the SLDC on the period between 01.08.2018 to 25.09.2019 in view of lack of clarity on practical implementation of the Regulations.

- (xviii) The Regulations quoted by the SLDC are on the applicability of scheduling on the renewable energy generators. However, none of these Regulations provides for the details of implementation, which came only in the Detailed Procedure on 25.09.2019. The primary issue is of levy and recovery of penalties in the absence of proper procedure, i.e. not in accordance with law.*
- (xix) It is reiterated that the issues raised by the RE Generators were not resolved by the SLDC in its meeting on 23.10.2018. On the specific averment of SLDC that all revisions in forecasted generation was accepted by it on real-time basis, it is stated that this is not correct. In fact, there was no clarity on revision of schedule till Detailed Procedure was in place, as no clarity on implementation of real-time schedule was provided by SLDC to any QCA like Revision can be submitted at real-time or in a gap of 1.5 hrs, as allowed by other states.*
- (xx) In contrast, the Detailed Procedure has comprehensively dealt with this issue and now the SLDC is permitting the revisions as per the Detailed Procedure.*
- (xxi) The Regulations themselves envisaged Detailed Procedure to be notified within 3 months. If indeed the Regulations could be implemented without any clarification, there would have been no requirement to notify the Detailed Procedure or the first Amendment on 25.09.2019. The SLDC cannot advance an interpretation to render the provision for Detailed Procedure nugatory/otiose.*
- (xxii) The Petitioner reiterates that in the absence of Detailed Procedure, it was not possible to either ascertain or understand the method adopted by the SLDC in arriving at the DSM Charges for each pooling station.*
- (xxiii) The Petitioner is raising a genuine difficulty before the Hon'ble Commission and it is unfair on the part of SLDC to allege that the Petitioner is seeking to escape from the payment of DSM Charges.*
- (xxiv) It is wrong and denied that the Regulations had sufficient clarity on every aspect of implementation. If so, the meeting dated 23.10.2018 and the Detailed Procedure as well as the first Amendment on 25.09.2019 are meaningless and not necessary.*

- (xxv) *The very fact that the SLDC had to convene a meeting to discuss and iron out the issues being faced by all the Stakeholders, including the RE Generators, Developers and the QCAs show that clarifications were required.*
- (xxvi) *The contents of Para 18 show the uncertainty and confusion (if not the selective attitude adopted by the SLDC) qua implementation of the Regulations. The SLDC has admitted that the Distribution Licensees had not furnished the details of certain pooling stations and the details could also not be obtained through AMR, and therefore, no financial liability has been cast on such generators. However, other generators who ensured metering are being penalized by the SLDC.*
- (xxvii) *It is reiterated and denied that the Regulations had sufficient clarity on every aspect of implementation. If so, the meeting dated 23.10.2018 and the Detailed Procedure as well as the first Amendment on 25.09.2019 are meaningless and not necessary.*
- (xxviii) *Further, the very fact that the SLDC had to convene a meeting to discuss and iron out the issues being faced by all the Stakeholders, including the RE Generators, Developers and the QCAs show that clarifications were required.*
- (xxix) *It is reiterated that the Regulations themselves envisaged Detailed Procedure to be notified within 3 months. In absence of an approved Detailed Procedure, there were a number of issues being faced by the Petitioner on which there was no clarity and it was practically impossible to implement the Regulations and ensure seamless forecasting and scheduling. If indeed the Regulations could be implemented without any clarification, there would have been no requirement to notify the Detailed Procedure or the first Amendment on 25.09.2019.*
- (xxx) *The SLDC, inspite of the statutory obligation, did not put any 'Detailed Procedure' in place within the time frame (i.e., 3 months) as envisaged under the Regulations, but started issuing DSM Accounts for renewable energy-based generators for the period from August 2018, when the Detailed Procedure was only approved and notified on 25.09.2019, i.e., after more than 17 months of the issuance of the Regulations.*
- (xxxi) *The Petitioner is not disputing that the Regulations were notified on 20.04.2018 and effective from 01.08.2018. However, a limited relaxation is being sought till 25.09.2019, when the Detailed Procedure was notified. The retrospectivity being contended by the Petitioner is only limited to its submission that the Detailed Procedure which brought clarity to the entire process should be taken as the effective date of implementation, instead of 01.08.2018.*

(xxxii) The SLDC has admitted that the Distribution Licensees had not furnished the details of certain pooling stations and the details could also not be obtained through AMR, and therefore, no financial liability has been cast on such generators. However, other generators who ensured metering are being penalized by the SLDC.

(xxxiii) The Petitioner reiterates that there was no clarity on the number of revisions permitted. Wind and Solar generation being entirely dependent on weather conditions, local site-specific conditions and inherently variable, the Detailed Procedure was essential for the implementation of the Regulations. While most States have adopted the CERC Regulations which allow 16 revisions in 24 hours, there is no clarity in the present case.

10. The Respondent No. 2 (SLDC) filed its final common written submission (in similar other petitions) as follows:

- i. It is submitted most respectfully that in the instant petition the petitioners have essentially sought a relief by invoking the regulation 11, pertaining to Power to Relax of the MPERC (Forecasting, Scheduling, Deviation, Settlement Mechanism and Related Matters of Wind and Solar Developing Station) Regulations, 2018 (hereinafter referred to as “the MPERC Regulations”).*
- ii. It is the common case of all the petitioners that Regulation 6(b) should be relaxed and not made applicable only from 20.04.2018. It is submitted that therefore, the petitioners have invoked the powers to relax under Regulation 11 of the MPERC Regulations, 2018 and have interalia prayed that Regulation 6(b) which deals with imposition of deviation charges be made applicable from 04.10.2019 i.e. the date of publication of First amendment to the MPERC (Forecasting, Scheduling, Deviation Settlement Mechanism and related matters of Wind and Solar generating stations) Regulations 2018.*
- iii. The primary ground taken in all the petitions 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 common 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 common 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.

- iv. *It is submitted that the answering respondent has filed its detailed return in all the matters which shall be read as part and parcel of the instant written submissions, however, without prejudice to the same, it is submitted that all 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.*
- v. *In this regard, it is pertinent to note that the petitioner in Petition No.16/2020 (Ostro Wind) has started doing its real time revisions in generation from 01.08.2018 and by way of demonstration it is submitted that on 01.08.2018 it has undertaken as many as 15 real time revisions.*
- vi. *Therefore, it is completely incorrect on the part of the Petitioner 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.*
- vii. ***Further, it is pertinent to note that as stated hereinabove the first real time revision was started by the petitioners from 01.08.2018, 02.08.2018 and 11.10.2018 and it is submitted that till 20.06.2019 the petitioner in Petition No.16/2020 has undertaken about 4860 real time revisions till 20.06.2019, similarly in Petition No.10/2020, petitioners has undertaken 3244 real time revisions for its 25 MW solar plant as till 20.06.2019 and 2287 real time revisions for its 105 MW solar plant till 20.06.2019 and 4860 real time revisions for its 190 MW wind power project. Similarly, the petitioner in Petition No.63/2020 (AMPL) has undertaken 3276 real time revisions till 20.06.2019 and lastly the petitioner in Petition No.23/2020 has undertaken 4845 real time revisions till 20.06.2019. The detailed chart showing the same is attached as Annexure-II.***
- viii. *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.*

- ix. *Further, it is most respectfully submitted that the bills for deviation settlement were issued way back on 06.10.2018 with complete details and it is completely incorrect on the part of the petitioners to aver or allege that they have filed the petitions in the year 2020 as the bills were received by them on 20.01.2020. It is submitted that the bills issued on 20.01.2020 are nothing but a notice to the petitioners and other such charges to pay the amount immediately. A copy of the bills dated 06.10.2018 and 20.01.2020 are attached as Annexure-III.*
 - x. *It is, therefore, 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 in the year till 20.6.2019. 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.*
 - xi. *It is submitted that the instant written submissions are in addition to the reply submitted by the answering respondent and the answering respondent submits that the written submissions be treated as part and parcel of the reply. In light of the submissions made hereinabove it is most respectfully submitted that no case is made out by the Petitioners for invocation of regulation 11 (Power to Relax) of the MPERC Regulations, 2018.*
 - xii. *In view of the submissions made hereinabove, it is, therefore, prayed that the instant petitions may kindly be dismissed.*
- 11.** The petitioner in its final written submission reiterated its contention as submitted in the subject petition and in its rejoinder. The petitioner has broadly submitted the following:
- (i) *The present Written Submissions are being filed to summarize the arguments made by the Petitioner on 09.02.2021 before this Hon'ble Commission in the instant Petition.*
 - (ii) *It is stated that the petition has been filed against the decision of the MP-SLDC to unilaterally issue DSM statements and implementing the MPERC (Forecasting, Scheduling, Deviation Settlement Mechanism and related matters of wind and solar generating stations) Regulations, 2018 ("DSM Regulations") issued by the Hon'ble*

Commission, without there first being any approved Detailed Procedure under Regulation 6(5) of the DSM Regulations.

- (iii) The said DSM Regulations were notified by this Hon'ble Commission on 20.04.2018, the objective of which, as stated in Regulation 3, is to facilitate large scale integration of wind and solar power while maintaining the grid stability, reliability and security as envisaged under the Grid Code, through forecasting, scheduling, and commercial mechanism for deviation settlement of wind and solar generators.*
- (iv) Further, Regulation 6(a) provided for a "procedure" to be adopted for the purpose of forecasting, scheduling and elimination of gaming. Sub-clause (5) therein, provided that the plan for data telemetry, formats of forecast submission and other details, are to be provided in the 'Detailed Procedure' to be prepared by the MP-SLDC and approved by this Hon'ble Commission. (@pages 20-21 of the Petition)*
- (v) Therefore, for implementation of the DSM Regulations, an essential pre-requisite is of there being a 'Detailed Procedure' formulated by the MP-SLDC, and approved by the Hon'ble Commission. The purpose of having the 'Detailed Procedure' is to have clarity on many practical aspects which would otherwise cause difficulties in implementation of the DSM Regulations. Thus, till the time the 'Detailed Procedure' formulated by the MP-SLDC, and approved by the Hon'ble Commission was not published, the DSM Regulations could not have been implemented.*
- (vi) However, inspite of the statutory obligation, the MP-SLDC did not put any 'Detailed Procedure' as approved by the Hon'ble Commission in place within the time frame as envisaged under the DSM Regulations, but started issuing DSM Accounts for renewable energy-based generators for the period from August 2018, when the 'Detailed Procedure' was only approved and notified on 04.10.2019, i.e., after more than 17 months of the issuance of the DSM Regulations. (@page 276 of the Petition)*
- (vii) The Petitioner therefore, is only praying that the DSM Regulations be implemented prospectively from the date of notification of the approved 'Detailed Procedure' i.e., from 04.10.2019, as it is only after the said 'Detailed Procedure' was notified that the issues which were being faced by the Petitioner and the other RE generators in the State in implementing the DSM Regulators and ensure seamless forecasting and scheduling got resolved.*
- (viii) The absence of 'Detailed Procedure' for the period between 20.04.2018 and 04.10.2019 has even affected the MP-SLDC and its decision-making inasmuch as, for the said period, intra-state generators who have submitted their schedule, but their generation data was not made available (either wholly or partly, and for reasons ranging from absence of a meter to errors in transmission of the generation data)*

to the MP-SLDC, the MP-SLDC has not levied any DSM Charges, and has treated such cases as cases of 'zero deviation'. This particular lacuna has infact only been addressed after publication of the Detailed Procedure.

- (ix) Interestingly, there were certain pooling sub-stations which did not submit data to the MP-SLDC, and the said data was not being included in calculation of final DSM Accounts. Therefore, to that extent, the non-performers i.e., pooling stations who did not submit any data to the MP-SLDC, were incentivized for their non-performance. (@pages 31, 46, 60, 75, 90, 105, 120, 135, 150 and 165 of the Petition)*
- (x) Further, there were certain pooling sub-stations which did not appoint the QCA and thus, did not furnish their forecasting and availability data to MP-SLDC. The MP-SLDC computed the DSM Charges for such pooling stations considering the availability and schedules as "zero". (@pages 46, 60, 75, 90, 105, 120, 135, 150, 165, 180, 195 & 210 of the Petition)*
- (xi) On the contrary, the MP-SLDC contended that the DSM Regulations had sufficient clarity in every respect for implementation and did not require any further elaboration/clarity.*
- (xii) The MP-SLDC further contended that all the issues / problems faced by the RE generators in implementation of the DSM Regulations were addressed in the meeting dated 23.10.2018. The stand of the MP-SLDC is not only self-contradictory, but also is not based out of records.*
- (xiii) In the meeting dated 23.10.2018 held between the MP-SLDC, RE Generators, Developers and the QCAs, the Petitioner had pointed out certain issues in implementation of the DSM Regulations, which issues were flagged by MP-SLDC. However, they were not resolved. The same is clearly evident from the letter dated 03.04.2019 written by the Petitioner (through its parent company M/s ReNew Power Limited) to the MP-SLDC. In addition to stating that in absence of the approved procedure, it is not practically possible for the Petitioner to reconcile the DSM Accounts released, the letter further also points out the practical difficulties being faced by the Petitioner. The relevant extracts of the letter dated 03.04.2019 are as under: (@pages 265-267 of the Petition)*

"....."
- (xiv) The MP-SLDC's reply dated 09.04.2019 to the above letter is ample evidence of the fact that the issues pointed out in the meeting were not resolved, but were forwarded to this Hon'ble Commission. The MP-SLDC's reply to the above letter, inter-alia reads as under: (@pages 268-269 of the Petition)*

“... it is to mention that Hon’ble Commission has notified the MPERC (Forecasting, Scheduling, Deviation Settlement Mechanism and related matters of Wind and Solar Generating Stations) Regulations, 2018 on 20th April 2018. The said regulation, come into force from the date of notification of regulations. SLDC has requested the Hon’ble Commission to allow (3) months’ time for necessary preparations i.e., to implement the regulations from 1st August 2018. Accordingly, SLDC has started issuing the Deviation Accounts of Wind and Solar Pooling Stations from the month of August 2018. The said regulations are still in force and Wind & Solar Generators shall have to pay the Deviation Charges through QCA on the basis of Deviation Accounts issued by SDLC. Regarding suggestions / request made by QCA / developer during the meeting held at SLDC, Jabalpur on 23.10.2018, it may be mentioned that the issues were submitted before Hon’ble MPERC.

The Hon’ble Commission vide Public Notice No, MPERC/(L&R)/2019/283 dated 21.02.2019 has proposed to make amendments to the ‘Madhya Pradesh Electricity Regulatory Commission (Forecasting, Scheduling, Deviation Settlement Mechanism and related matter of Wind and Solar Generating Stations) 2019’ and invited comments from stake holders. The Hon’ble Commission has also arrange a public hearing on 28.03.2019 at MPERC, Bhopal. Most of the QCAs / Developers, provifng services in the state of M.P. have submitted their representation before Hon’ble Commission.”

- (xv) The MP-SLDC, in the hearing, further argued that some of the RE generators have revised their schedules from 4 times to 16 times in a day, and that the same signifies that the RE generators were aware of the revisions in the schedules. The said contention of the MP-SLDC is ex-facie erroneous and in fact, the varying numbers of revisions made by the RE generators themselves proves that there was no clarity on the number of revisions allowed to a RE generator during the day.*
- (xvi) Infact, it is the Petitioner’s case that it has complied with the DSM Regulations, as understood by the Petitioner, even in the absence of the Detailed Procedure by giving proper schedule. However, the only prayer is that the penal charges should not be levied by the MP-SLDC for the period from August 2018 to 04.10.2019, in view of lack of clarity on practical implementation of the DSM Regulations, and that the DSM Regulations ought to be made applicable from the date of notification of the Detailed Procedure. The issuance of DSM accounts prior to there being a detailed procedure should be ideally treated as a mock trial period, as also being implemented in various other states.*

- (xvii) *Further, if indeed the contention of the MP-SLDC is accepted that the DSM Regulations were complete in every aspect and could be implemented without any clarity/clarification, there would have been no requirement to notify the 'Detailed Procedure' or the first Amendment on 04.10.2019. The existence and notification of a 'Detailed Procedure' in itself illustrates the relevance and importance for practically reconciling the DSM Accounts and ensuring seamless forecasting and scheduling.*
- (xviii) *In view of the above, the Petitioner requests this Hon'ble Commission to invoke its 'power to relax' and 'power to issue directions' under Regulations 11 and 12 of the DSM Regulations to direct that the DSM Regulations would be implemented only prospectively from 04.10.2019, i.e., from the date of notification of the approved 'Detailed Procedure' by the MP-SLDC, and consequently, set aside the DSM statements issued by MP-SLDC on the Petitioner till such date. The said Regulations 11 and 12, inter-alia, read as under: (@page 26 of the Petition)*

"11. Power to Relax.

The Commission may by general or specific 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 any affected party, issue such directions as may be considered necessary in furtherance of the objective and purpose of these Regulations."

- (xix) *The Hon'ble Appellate Tribunal in various judgments has held that the 'Power to relax' can be invoked if the Regulations in any manner cause hardships to a party.*

- (xx) *Thus, the Hon'ble Commission has ample powers under the above Regulations to issue directions to the MP-SLDC in case of difficulties being faced by any concerned party in the implementations of the DSM Regulations. The practical difficulties explained above are ample evidence of difficulties and issues having faced by the Petitioner.*

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 petitioner M/s. Ostro Madhya Wind Pvt. Ltd., is engaged in the business of generation of renewable energy through its power projects housed under various Special Purpose Vehicles (SPVs) in the State of Madhya Pradesh. The subject petition is filed under Section 86 of the Electricity Act, 2003 read with Regulation 6(5), 10 and 12 of 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 of Commission to remove difficulty in implementation of the aforesaid Regulations.
- (ii) The petitioner is seeking directions to remove difficulty in implementation of MPERC FSDSM Regulation, 2018 on the following two grounds:
 - (a) That the principal FSDSM Regulations, 2018 itself contemplated revision of schedule by a generating company such as petitioner but the petitioner was not able to revise their schedules due to ambiguity/vacuum in applicable MP Electricity Grid Code.
 - (b) Due to non-existence of detailed operating procedure in aforesaid FSDSM Regulation, 2018, the petitioner was prevented from revising their schedules.
- (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 functions 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 petitioner 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 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. The petitioner has broadly submitted the following in the petition and its additional submissions:

- i. The detailed procedure under Regulation 6(5) is a pre-requisite for implementation of the DSM Regulations, 2018. Without there being an approved detailed procedure as envisaged in the DSM Regulations, 2018 itself, there are a number of practical difficulties which arise in implementation of the DSM Regulations, 2018, for which the Petitioner is seeking directions of this Commission.
- ii. The detailed procedure was only notified on 25/09/2019. However, for the period prior to 25/09/2019, the Respondent had unilaterally issued DSM statements thereby seeking to implement the Regulations, which cannot be permitted.
- iii. Regulation 6(a) of the DSM Regulations, 2018 provides for the "procedure" to be adopted for the purpose of forecasting, scheduling and elimination of gaming. Further, Regulation 6(5) therein, provides that the plan for data telemetry, formats of forecast submission and other details, are to be provided in the "Detailed Procedure" to be prepared by the SLDC (the Respondent in the present case) and approved by the State Commission.
- iv. Regulation 10 thereafter, mandates the Respondent to formulate, within three months of the notification of the said Regulations, the Operating Procedures and Business Rules for construction of State Power Committee, and the same is thereafter to be approved by the Hon'ble Commission.
- v. While the Respondent had not put in place any detailed procedure approved by the Hon'ble Commission within the time frame as envisaged under the Regulations, in absence of an approved detailed procedure, there were a number of issues on which there was no clarity whatsoever and it was practically impossible to implement the DSM Regulations and ensure seamless forecasting and scheduling.

- vi. The grievance of the Petitioner in the present Petition is on account of the fact that the Respondent for the period from August 2018, till notification of the approved procedure on 25/09/2019, during which there was no detailed procedure in place, had started issuing the DSM Accounts for renewable energy-based generators.
 - vii. Further, on 21/02/2019, the Commission issued a public notice stating that it proposes to make amendments to the DSM Regulations, 2018, including provision for a detailed operating procedure. Copies of the Public Notice, and the proposed amendment to the DSM Regulations, 2018 are attached hereto and marked as Annexure D and Annexure E, respectively.
 - viii. It is submitted that such an approach cannot be permitted. The operation and implementation of the DSM Regulations, 2018, can only be prospective i.e. after the approval of the detailed procedure. The detailed operating procedure as mentioned under Regulation 6(5) of the DSM Regulations was essential to facilitate understanding between the stakeholders and to avoid any unnecessary disputes in relation to DSM mechanism. The said procedure has only been notified on 25/09/2019.
 - ix. The period from August 2018 to 25/09/2019 for which, there was no approved detailed operation procedure ought to be treated as a Mock Trial period, so that the generators get a practical experience of problems and further workable solutions may be formulated thereafter.
 - x. In view of the above, the Commission is requested to pass directions clarifying that the DSM Regulations, 2018 would be implemented prospectively, after approval of the detailed operating procedure for implementation of these Regulations i.e., 25/09/2019. The Commission may also clarify that the DSM Accounts issued for the period prior to 25/09/2019, during which there was no detailed procedure in place, are not to be acted upon, and the same may be treated as a test run.
- 14.** In response, the Respondent (SLDC) has submitted the following in its reply and other submissions in this matter:
- i. The regulations are formed by the Regulatory Commissions for safe, secure, reliable and economic operation of the grid. Further, regulations are also formed for commercial settlement amongst the Regional / State Grid entities.
 - ii. 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.

- iii. The regulation of the State Commission had sufficient clarity in every respect for implementation. However, in the First Amendment to MPERC (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.
- iv. SLDC had proposed Hon'ble State Commission for 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 and accordingly SLDC issued DSM Accounts for wind / solar generators w.e.f. 1st August 2018.
- v. It is to submit that regulatory provisions regarding data telemetry and forecasting / scheduling are 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. SLDC was pursuing all the Wind / Solar Generators for submitting the day ahead forecast before notification of this regulation. Most of the RE Generators started forecasting their generation on day ahead basis. In the past, SLDC was giving permission for injection into the grid to RE Generators only when telemetry data was made available and assurance for submission of forecasted generation, after notification of regulation in this regard.
- vi. The approval of detailed operating procedure does not prohibits RE generators for compliance of the regulations, SLDC had complied regulatory provisions and submitted the procedure within stipulated time.
- vii. Regarding practical difficulties / issues raised by RE Generators, SLDC had convened a meeting with RE Generators, Developers and QCAs on 23rd Oct 2018 and addressed the queries / issues / problems faced in implementation of MPERC (FSDSM) Regulations 2018.
- viii. Regulation 6(2) proviso, has no lack of clarity and Petitioner could make revisions in forecasted generation during the real time of operation as per provisions of Grid Code and MPERC Intra State Open Access Regulations, 2005. SLDC has accepted all

the revisions in forecasted generation submitted during the real time of operation by RE Generators in accordance with regulatory provisions.

- ix. MPERC (Forecasting, Scheduling, Deviation Settlement Mechanism and related matters of Wind and Solar generating stations) Regulations, 2018 already provides essential mechanism and methodology for computation of DSM Charges for Wind / Solar Generators and does not require any elaboration for carrying out computation of DSM Charges of RE Generators.
 - x. It is submitted that there is no change in the provision for declaration of available capacity, forecasting and scheduling mentioned at clause no. 6 “Forecasting, Scheduling and Elimination of Gaming” of MPERC (FSDSM) regulations 2018 and its 1st amendment notified on 25.09.2019.
 - xi. The Petitioner could make revisions in forecasted generation during the real time of operation as per provisions of Grid Code. SLDC has accepted all the revisions in forecasted generation submitted during the real time of operation by RE Generators in accordance with regulatory provisions of Grid Code.
- 15.** With the above observations and submissions made by the petitioner and Respondent on record, 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. None of the parties in this matter 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 petitioner.

(b) With regard to contention of the petitioner 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 Regulations:

- (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 unamended 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 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) As stated by the Respondent SLDC, the petitioner had submitted revisions in forecasted generation in real time of operations from 1st August 2018 to 20th June 2019 and the same has been accepted by SLDC and the schedules were issued to the petitioner by SLDC. The Respondent (SLDC) further 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 petitioner. SLDC has also submitted that the first real time revision was started by the petitioner from 01.08.2018 and has undertaken 4860 real time revisions till 20.06.2019.

- (i) The Respondent SLDC submitted along with the details of Available Capacity, day ahead forecast and real time revisions that the petitioner (M/s Ostro Madhya Wind Pvt. Ltd.,) started submission of revision from 01.08.2018 for their Power plant. The aforesaid revisions as submitted by the petitioner during real time of operations were accepted and the schedules were issued by SLDC accordingly.

16. In view of the aforesaid observations and examination of facts and circumstances in the matter, the Commission finds no merit in contention of the petitioner for 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 is dismissed.

(Shashi Bhushan Pathak)
Member

(Mukul Dhariwal)
Member

(S.P.S. Parihar)
Chairman