

**RAJASTHAN ELECTRICITY REGULATORY COMMISSION JAIPUR**

**Petition No. 1330/18**

Representation as per direction of Hon'ble Supreme Court, in the matter of Deviation Settlement Mechanism and related matters by M/s Hindustan Zinc Limited.

**Coram:**

<b>Sh. Vishvanath Hiremath,</b>	<b>Chairman</b>
<b>Sh. R.P. Barwar,</b>	<b>Member</b>
<b>Sh., S.C. Dinkar,</b>	<b>Member</b>

Date of hearing : 22.03.2018, 12.04.2018

Present : Sh. Anand K. Ganeshan, Advocate for Hindustan Zinc Ltd.

**Date of Order : 16.05.2018**

**ORDER**

1. RERC has notified the Rajasthan Electricity Regulation Commission (Terms and Conditions for Open Access) Regulations, 2016 (RERC OA Regulations, 2016) on 25.02.2016.
2. M/s Hindustan Zinc Limited challenged the "RERC OA Regulations, 2016" before the Hon'ble High Court Jodhpur in CW petition No. 3160/2016. The Hon'ble High Court after considering all submissions had upheld the validity of Regulations vide order dated 29.08.2016.
3. M/s Hindustan Zinc Limited has filed an SLP (Diary) No. 42401/2017 before the Hon'ble Supreme Court against order dated 29.08.2016 issued by the Hon'ble High Court of Rajasthan.
4. The case was listed before Hon'ble Supreme Court on 29.01.2018 and 13.03.2018 and the Hon'ble Supreme Court directed the Commission to

consider and dispose of the representation made by M/s Hindustan Zinc Limited.

5. M/s Hindustan Zinc Limited has made a representation dated 02.02.2018 before Commission in pursuance to the liberty given by the Hon'ble Supreme Court in the SLP (Diary) No. 42401/2017 to make representation under Rajasthan Electricity Regulation Commission (Deviation Settlement Mechanism and Related Matters) Regulations, 2017 ("RERC DSM Regulations, 2017"). It has also requested for an opportunity of hearing
6. M/s Hindustan Zinc Limited in its representation has submitted as under:-
  - (i) M/s Hindustan Zinc Limited is a Captive Power Plant, based in the State of Rajasthan and uses Open Access to supply power to its other units.
  - (ii) "RERC DSM Regulations, 2017" was notified on 14.09.2017 which adopts the CERC (Deviation Settlement Mechanism and related matters) Regulations, 2014 ("CERC DSM Regulations, 2014") for UI settlements. However the proviso to Regulation 4 of said "RERC DSM Regulations, 2017" excludes generators using Open Access from its purview and such exclusion prima-facie discriminates generators supplying power to Discoms against other generators.
  - (iii) The pivotal object of the "RERC OA Regulations, 2016" and "RERC DSM Regulations, 2017" is to ensure that the power generators inject or withdraw electricity from the grid as per the pre-determined schedule without deviating from the same so as to prevent grid failure and power black-outs caused by excessive deviations. For this purpose, both the Central Electricity Regulatory Commission ("CERC") as well as the State Electricity Regulatory Commissions have introduced the concept of Unscheduled Interchange charges ("UI charges").

- (iv) The Commission in the Writ Petition before Hon'ble High court has taken the following position

The explanation extended reads as under:-

*"It is also submitted that the Respondent Commission is empowered u/s 86(1)(c) to "facilitate intra-state transmission and wheeling of electricity". Therefore, the Respondent Commission is empowered in law to specify what rate would be applicable to any under-injection with respect to the schedule approved by the State Load Despatch Centre. Such a rate could very well be the higher of the rates specified by CERC or the energy charge at the rate of temporary tariff applicable for HT (NDS) category as determined by the Respondent Commission. The rationale behind this provision is that the incumbent distribution licensee will have to procure power at very high rates at very short notice from the open access consumer account of under injection by the source of its alternate open access supply including a generating station. Any under-injection would mean that power from alternate sources is not available to the open access consumer. Such a deficit will have to be met by the incumbent distribution licensee which has a statutory obligation to supply power u/s 43 of the 2003 Act. The impugned Regulation has also been made with an intent to hinder consumer from gaming activities on the grid. It is submitted that such a provision is necessary to balance the interest of consumers as well as the distribution licensee.*

*(f)The Deviation Settlement Regulations of the CERC are not relatable to Section 61(a) of the EA 2003 since they do not deal with the tariff of either generating companies or transmission licensees. The charges payable under the Deviation Settlement Mechanism of CERC do not go to the Transmission licensee but to a special fund set up for that purpose under the same Regulations. In any case such charges are not "tariff payable to generating companies or transmission licensees". They are only a commercial mechanism installed to instil grid discipline."*

- (v) Main objective of DSM is to maintain grid discipline and grid security through commercial settlement which is linked with frequency.
- (vi) Whenever grid frequency is higher and at the same time any generator have 'under injection' which lead to support the grid and less penalty. But in case of CPP who is availing the Open Access as per "RERC OA Regulation 2016" have to pay temporary NDS charges i.e. currently around Rs. 12.5 & above per unit irrespective of grid frequency.
- (vii) RERC allow 12% deviation for State generator at normal UI for under/over injection & drawl and for CPP allow only 5% deviation in time block and average 1% for the day in case over injection which in not purely linked with frequency (UI at 50 Hz or real time frequency whichever is low).
- (viii) As per last few months trends of grid frequency remain average of 49.98 Hz which attracts penalty of Rs. 3.23 per unit if 20 % deviation in schedule is there.
- (ix) Amount is payable/receivable at drawl end as per "RERC DSM Regulation 2017" but for Open Access consumer no payment for under drawl.
- (x) There is no rationale to levy discriminatory levy for UI on CPPs which contributes mere 3% to the grid as compared to generators contributing 97% to grid especially in the light of the fact that UI is for grid discipline.
- (xi) M/s Hindustan Zinc Limited had challenged the Regulation 21(i) of the "RERC OA Regulations, 2016" inter alia on the ground that the "UI charges" as provided by the CERC should be adopted by the RERC for the reason of its being rational and scientific. The Hon'ble High Court dismissed the petition solely on the ground that RERC is

at liberty to adopt or discard the rates provided by the CERC for Open Access customers.

- (xii) After the impugned order of Hon'ble High Court dated 29.08.2016, the RERC framed "RERC DSM Regulations, 2017" on 08.11.2017 wherein it adopted the "UI charges" as provided by the "CERC DSM Regulations, 2014" with a stated objective to be "in line with the CERC Regulations in the State of Rajasthan...". Thus, after the impugned order dated 29.08.2016, RERC has adopted the CERC rates for generators supplying power to Discoms but to the exclusion of generators using Open Access. This development vindicates the stand taken by M/s Hindustan Zinc Limited regarding the need for UI rates to be in consonance with the UI rates of CERC.
- (xiii) CERC provides for rational and scientific UI rates through its 'frequency' linked Deviation Settlement Mechanism, which takes into account the real time situation of demand and supply of power prevailing at a given point of time in the intra state electrical system.
- (xiv) The consequence of the "RERC DSM Regulations, 2017" is that all generators supplying power to Discoms, other than generators using Open Access, are governed by the said Regulations (UI rates of CERC) while generators using Open Access continue to be governed by the "RERC OA Regulations, 2016" despite the fact that no intelligible difference exists between the two. This results in discrimination which is prohibited under Sections 2(47), 9, 39(2)(d), 40(1)(c) and 42(2) of the Electricity Act, 2003.
- (xv) The "RERC DSM Regulations, 2017" repeals RERC (Intra-State ABT) Regulations, 2006, which provided for a fair "UI charges" for Captive Power Plants too. It is to be noted that the said Regulations were in fact never implemented.

- (xvi) CERC makes no discrimination against the Open Access generators under its Deviation Settlement Mechanism, as provided under the "CERC DSM Regulations, 2014".
- (xvii) The "RERC OA Regulations 2016" and "RERC DSM Regulations 2017" lay down a Deviation Settlement Mechanism for the purpose of maintaining grid discipline and charging UI rates. In order to ensure integrated grid operation, it is essential that the frequency hovers around 50 Hz. This issue was successfully countered by the CERC through its 'frequency' linked mechanism, which gives due regard to the real-time deviations in the system.
- (xviii) The CERC adopted the Availability-based Tariff ("ABT") structure after elaborate discussions and consultations, concluding that ABT should be implemented to ensure grid discipline and safety and to enhance the electricity market of the country. Since frequency variations were caused by unscheduled injections/drawls by generators/buyers at their convenience, a grid control linked UI Tariff with a frequency sensitive component was adopted by the CERC.
- (xix) In *Central Power Distribution Co. and Ors. versus Central Electricity Regulatory Commission and Anr.*, (2007) 8 SCC 197, the Hon'ble Court has held that, "...UI charges are a commercial mechanism to maintain grid discipline." On the point of need and requirement for ABT, this Hon'ble Court observed that:-

*"Prior to the introduction of ABT, the fixed charges were payable by the purchasers based on the units of electricity actually drawn by them. The scheme of recovery of fixed charges based on drawal of electricity was not considered appropriate and rationale particularly from the point of view of Grid safety and security. The scheme of fixed charges liability based on drawls allowed the purchasers of electricity to draw electricity from the Grid at their pleasure with no control. This led to the Grid*

*Frequency to vacillate from 48.5 Hz to 51.5 Hz, whereas Grid Frequency was required to be maintained ideally at 50 Hz and at the most, it should be within optimum variations. The frequency exceeding the optimum variation was causing grid collapse and blackouts in the entire region besides affecting the equipments of all generations, other electricity utilities and also the consumers. This has been a serious prejudice to public interest."*

- (xx) The CERC emphasizes that inadvertent deviations could be accepted and tolerated as a necessary feature of pooled operation, however deliberate deviations should be discouraged. The frequency' linked deviation mechanism, devised by the CERC, successfully maintains the equilibrium between grid control and the naturally occurring deviations.
- (xxi) The "UI charges" are an integral part of the ABT structure, which is required in order to stabilize the frequency in the grids and to minimize extreme deviations in the frequency. However, the impugned Regulation 21 (i) makes the higher of the deviations rates applicable, as notified by the CERC or the Temporary Tariff applicable to HT (NDS) category applicable in case of under injection, thereby effectively levying Temporary Tariff, which is 1.5 times the normal tariff.
- (xxii) The rationale behind maintaining grid discipline is to check 'gaming' activities by the generators, which could be adequately contained by the 'frequency' linked Deviation Settlement Mechanism as is evident from the successes of the Deviation Settlement Mechanism envisaged by the CERC.
- (xxiii) The objective behind adhering to grid discipline is to prevent inconveniences caused to the public at large by grid collapses and black-outs. It is submitted that naturally occurring deviations never causes grid failure and blackouts, hence, punishing an Open Access generator for minor deviations is unjust and unfair.

(xxiv) Benefits of UI rates, as provided by the CERC, ought to be extended to all generators without discrimination, including the generators using Open Access to supply power as failure to do the same causes much prejudice and harm to the Open Access customers.

7. Sh. Anand K. Ganeshan, Advocate who appeared on behalf of M/s Hindustan Zinc Limited on 22.03.2018 in the representation sought time for filing additional submissions. Accordingly time was granted. On 11.04.2018, the Council has filed the additional documents and the matter was finally heard on 12.04.2018.
8. The submissions made in the additional document and during hearing on 12.04.2018 are as under:
  - (i) The applicability of the RERC DSM Regulations amounts to discrimination and also results in a source of profit and revenue to the distribution licensees, which is not and cannot be the intent of the UI/DSM Regulation provisions.
  - (ii) The Commission has framed and notified the "RERC DSM Regulations, 2017" providing for the charges payable for deviation in the schedule which are made applicable to all state generating stations having installed capacity of more than 5 MW except for generators (including CPPs) supplying through Open Access.
  - (iii) M/s Hindustan Zinc Limited is supplying electricity for its own captive purposes, availing Open Access in the State. The deviation charges are being applied as per Regulation 21 (i) of "RERC OA Regulations, 2016". Accordingly, the applicable UI charges on M/s Hindustan Zinc Limited are the rates as per the "CERC DSM Regulations, 2014" or the temporary tariff for the HT (NDS) category, whichever is higher.

- (iv) The generators supplying electricity by Open Access for captive consumption are unfairly discriminated against as compared to the generators who supply electricity to the distribution licensees in relation to the applicable UI Charges.
- (v) For an Open Access captive generator, in case of under-generation of electricity in deviation from the schedule, the charges payable under the "RERC OA Regulations, 2016" is the higher of UI charges or the temporary supply charges whereas for a generator supplying electricity to the distribution licensee, in case of under-generation of electricity in deviation from the schedule, the charges payable is the UI charges as per the "CERC DSM Regulations, 2014".
- (vi) The impact on the distribution licensees in both the above situations would be the same. The distribution licensee, irrespective of the under-generation by the generator, would have to procure power on short notice to supply to the consumer to meet its demand. The impact of such under-generation by the generator would have to be met by the distribution licensee by drawing power. Even in cases of over drawal of electricity by the distribution licensee, the drawal would be under the DSM Regulations at the applicable DSM charges. There is no separate impact on the distribution licensee in case of Open Access captive consumer, as against a regular consumer.
- (vii) The distribution licensees are revenue neutral. The UI charges mechanism is not a source of revenue or profit to the distribution licensees. The entire basis of the UI Regulations is only for ensuring grid discipline and to compensate the distribution licensees for the charges to be incurred as a consequence of the deviation. To demonstrate it, M/s Hindustan Zinc Limited has filed the details of schedule, injection and deviation charges for M/s Rajwest Power

Limited, M/s Hindustan Zinc Limited and also the schedule and drawal details at the State periphery for the period from 05.02.2018 to 11.02.2018.

- (viii) The data shows that while the deviation charges on the State generator supplying to the distribution licensee is much less, the charges on M/s Hindustan Zinc Limited is very high. For example, on 11.02.2018, the charges for under injection on Rajwest in terms of the DSM Regulations are only in the region of Rs. 2.20 per kWh whereas the charges on the Petitioner are Rs. 12.25 per kWh. For the same day, the impact at the State periphery is also in consonance with what was applied to Rajwest.
- (ix) In case M/s Hindustan Zinc Limited was supplying electricity to the distribution licensee, the charges would be only Rs. 2.00, but only for the reason that the Petitioner is using it for captive purposes through Open Access, the charges are Rs. 2.25 per unit.
- (x) M/s Hindustan Zinc Limited has filed the summary of the deviation charges on the distribution licensees for the months of July, 2017 to December, 2017 as well as the charges on M/s Hindustan Zinc Limited for the same period which shows that while the charges for deviation from schedule on the distribution licensees is in the region of about Rs. 2.30 to 3.95 per unit, the charges on M/s Hindustan Zinc Limited is much higher.
- (xi) For the purpose of the UI charges for deviation, the end use of the electricity is irrelevant, but it is only the impact on the distribution licensee.
- (xii) In the proceedings before the Hon'ble High Court when the Regulations were considered, it was the specific contention of the distribution licensees that the charges for deviation are to ensure that the distribution licensees are revenue neutral. This is also the position in law.

- (xiii) The distribution licensees are profiting out of the UI charges for deviation on account of the Open Access generators, whereas the generators who supply to the distribution licensees are not put to the same terms for grid discipline.
- (xiv) The distribution licensees and the generators who supply to the distribution licensees have one standard for grid discipline, whereas generators such as M/s Hindustan Zinc Limited have another standard, which is not permissible.
- (xv) In any event, the distribution licensees cannot profit out of the UI mechanism, but is only a compensatory and commercial mechanism for grid discipline. The grid discipline is applicable on all entities in the State and there can be no preference to any one entity to deviate while not for the others. The entity to whom the supply is being made is irrelevant for the purpose of grid discipline.

**Commission's view**

- 9. Commission has carefully considered the submissions made in writing and orally during the hearing.
- 10. M/s Hindustan Zinc Limited has made the following arguments in support of its contentions :-
  - (i) The object of "RERC OA Regulations, 2016" and "RERC DSM Regulations, 2017" is to ensure that power generators inject or withdraw electricity from the grid as per pre-determined schedule so as to prevent grid failure by excessive deviation and for this purpose the concept of frequency linked commercial settlement have been introduced.
  - (ii) By the order dated 29.08.2016, the RERC has adopted the CERC UI rates for generators supplying power to Discoms but to the exclusion of generators using Open Access. This development

vindicates the stand taken by M/s Hindustan Zinc Limited regarding the need for UI rates to be in consonance with that of CERC.

- (iii) CERC makes no discrimination with the Open Access generators under the "CERC DSM Regulations, 2014".
- (iv) The applicability of the "RERC OA Regulations 2016" results in a source of profit and revenue to the distribution licensees. The UI charges mechanism is not a source of revenue or profit to the distribution licensees.
- (v) Whenever grid frequency is higher than the generator having 'under injection' supports the grid and shall subject to less penalty whereas CPP availing Open Access in the same conditions have to pay temporary NDS charges of Rs. 12.50/unit.
- (vi) Amount is payable/receivable at drawl end as per "RERC DSM Regulation, 2017" but for Open Access consumers no payment is receivables for under drawl.
- (vii) There is no rationale to levy discriminatory levy of UI charges on CPPs which contributes mere 3% to the grid as compared to generators contributing 97% to grid especially in the light of the fact that UI is for grid discipline.
- (viii) The "UI charges" as provided by the CERC should be adopted by the RERC for the reason of its being rational and scientific.
- (ix) In case of under-generation by a captive generator (availing Open Access) or by generator supplying electricity to the distribution licensee, the impact on the distribution licensees would be the same. The distribution licensee in case of under generation, irrespective of the generator, would have to procure power on short notice to supply to the consumers to meet its demand. Even in cases of over-drawal of electricity by the distribution licensee, the

drawal would be under the DSM Regulations at the applicable DSM charges. However, the Commission has prescribed different rates.

(x) This discrimination is prohibited under Sections 2(47), 9, 39(2)(d), 40(1)(c) and 42(2) of the Electricity Act, 2003.

11. Commission observes that “RERC OA Regulations, 2016”, and “RERC DSM Regulations, 2017” are two separate set of Regulations meant to serve different purposes. “RERC OA Regulations, 2016” have been framed in order to deal with the aspect of Open Access, whereas “RERC DSM Regulations, 2017” have been framed for grid discipline among Discoms and State generators who supply electricity to Discoms.

12. “RERC DSM Regulations, 2017” have been framed to maintain grid discipline and grid security through commercial mechanism for deviation settlement and apply to all generating stations (including CPP) supplying power to distribution licensee in the State. In case of the Generating Companies/Captive Power Plants supplying electricity to their own end-users/customers/consumers and not to the distribution licensees, the provisions contained in the “RERC OA Regulations, 2016” will apply and the provisions of “RERC DSM Regulations, 2017” will have no application to them.

13. The above classification of the entities to which “RERC DSM Regulations, 2017” will apply and the entity to which “RERC OA Regulations, 2016” will continue to apply are valid and justified as stated hereunder:

(i) Sale by Generating Stations/CPPs to Distribution Licensees

(a) A generating company/CPP supplying electricity to the distribution licensees are contracting with the distribution licensees in the State for such sale. The Procurers of electricity is the Distribution Licensees. The distribution licensees in-turn supplies electricity to consumers/ public at large who are the end users of

electricity. The deviation from the schedules in such cases is borne by the distribution licensees.

- (b) The distribution licensees schedule electricity as per the Scheduling and Despatch Mechanism of the quantum agreed to be generated by the Generating Company/CPP and agreed to be taken by the distribution licensees. In case of deviation in the drawal of electricity by any of the consumers/end-users to whom the electricity is to be supplied by the distribution licensee, the said deviation is in account of the distribution licensee.
- (c) The distribution licensees are already subjected to “UI Charges” and the Deviation Settlement Mechanism at the Inter-State level for deviation to the Scheduling and Despatch in regard to the electricity procured by such distribution licensee from the generating companies outside the State.
- (d) In the circumstances, it is just, equitable and proper that same deviation and settlement mechanism and adjustment through UI charges is implemented with certain modification for the generating stations/CPPs situated within the State of Rajasthan in regard to the supply of electricity by them to the distribution licensees. Such a mechanism has been applied in accordance with Section 32 (2) (a) of the Electricity Act providing for the optimum scheduling and despatch of electricity within a State in accordance with the contract entered into between the distribution licensees and the generating companies operating within the State.
- (e) Accordingly, “RERC DSM Regulations, 2017” is applicable to such generating stations supplying power to Discoms.

(ii) Sale/ supply by Generating Station including Captive Power Plant directly to end user through Open Access

- a. In case of electricity supplied by the Generating Companies including the Captive Power Plants to the end-users directly in terms of the provisions of Section 49 read with Sections 9 and 10 of the Electricity Act, 2003, the contract for sale and purchase of electricity is not with the distribution licensee. The same will not be governed by the contractual arrangement between the distribution licensee and the Generating Company/Captive Power Plant. The distribution licensees cannot be required to bear the impact of the unscheduled deviations. The said contract needs to be addressed in a different manner in regard to the scheduling and despatch of electricity.
- b. The mis-match in the scheduling and despatch in such cases is not on account of any act on the part of the consumers of the distribution licensees or by the distribution licensees but as a result of the bilateral contract entered into directly between the Generating Companies/Captive Power Plants and the end-users of electricity.
- c. If the electricity injected into the grid by the Generating Company/Captive Power Plant is less than the electricity agreed under Scheduling and Despatch Mechanism or the electricity drawn by the end-user/consumer from the grid is at variance with the electricity agreed to be scheduled and despatched by the Generating Company, the effect of this mis-match shall impact the distribution licensee and therefore cannot be dealt as per "RERC DSM Regulations, 2017".
- d. If the "RERC DSM Regulations, 2017" are applied on such Generating Station/ CPP then the deviation charges shall come in the State deviation pool account whereas effect of the deviation is to be compensated to the distribution licensee as stated above.

- e. To avoid the effect of deviation of generator/CPP, supplying electricity through Open Access, on the distribution licensee separate provision for deviation has been made for such generator/CPP in "RERC OA Regulations, 2016".
14. As per Section 9, 10, 38, 39 and 42 (2) of the Act, it is open to a generating/captive generating plant to wheel its electricity through Open Access to the transmission system and distribution system from the place of generation to the place where the electricity is used by the same company.
15. It is incumbent on such generating company and end-users purchasing electricity directly from the generators to adhere to the quantum of electricity scheduled and the quantum of electricity drawn in such a manner that there is no deviation. In case of deviation, inadvertent or otherwise, appropriate compensation needs to be paid to the distribution licensee linked with tariff payable by the public at large. The consequences of such deviation should be to the account of the generating company and end-users purchasing electricity directly from such generating companies. The burden of the same cannot be borne by the distribution licensee in the State.
16. As per the Electricity Act, 2003 a distribution licensee has the universal supply obligation to maintain the system and provide electricity to every premises in the area of supply upon being called to do so by the owner/occupier of the premises. The distribution licensee has no choice to refuse such supply to any premises. For the purpose of effecting supply, the distribution licensees are required to enter into a Long Term Power Procurement Agreement from various generating sources and others in order to effectively maintain the distribution and retail supply of electricity within the area.
17. Provisions of the Deviation and Settlement Regulations of the Central Commission are applicable in regard to the Inter State transaction and

not in case of Intra State transaction. For the purpose of the said Deviation and Settlement Mechanism of the Central Commission, the Rajasthan Discoms are considered as the representatives of one unit and all the impact of deviation, unscheduled interchange etc. are adjusted qua the Rajasthan Discoms irrespective of the person responsible in the State. If a generating company within the State of Rajasthan and not coming within the control area jurisdiction of the Regional Load Despatch Centre or end-user of electricity or Procurer of electricity other than the distribution licensees in the State are deviating from the Deviation and Settlement Mechanism, the Regional Load Despatch Centre will be taking effect thereof on the Rajasthan Discoms for settlement.

18. The "RERC OA Regulations, 2016" provides such conditions to suitably compensate the distribution licensees from the impact of Open Access through transmission and distribution system in the State of Rajasthan for purchase of electricity from a Generating Company/Captive Power Plant within the State of Rajasthan.
19. Regulation 21 of "RERC OA Regulations, 2016" provides that in the case of drawal of the electricity by the end-user getting supply of electricity from a generating company or a captive generating plant when the injection of electricity by such generating company/captive power plants is less than the quantum of electricity drawn by the end-users (mismatch between injection and drawal), the excess drawal shall be considered as supply of electricity by the distribution licensees in the area. Such supply which is not against the contract demand taken by the end-users from the distribution licensees, therefore, not being in the status of a consumer of the distribution licensee, shall be charged at the rate of temporary supply of electricity determined by the State Commission from time to time. In case of over-injection of electricity by a generating company vis-a-vis drawal of electricity by the Open Access end-user, the excess supply of electricity by the generating company upto 5% in a time block of 15 minutes and averaging upto 1% over a day shall be paid at the deviation

charge rate at frequency of 50 Hz or applicable deviation charge rate (as notified in "CERC DSM Regulations, 2014") whichever is less. It is considered that the excess injection of electricity over and above the said extent affects the safety and security of the Grid System.

20. The classification of generators supplying electricity directly to the end-users by taking Open Access to the transmission and distribution system in the State of Rajasthan distinct from a generator supplying electricity to the distribution licensee is valid and rationale. There is a valid nexus in not applying the Deviation and Settlement Mechanism, "UI Charges" in so far as the generator supplying electricity to end-users directly and subjecting such supply to deviation consequences provided under the "RERC OA Regulations, 2016" in place of the provisions contained in the "RERC DSM Regulations, 2017".
21. Therefore, the generating companies supplying electricity directly to the end-users and end-users purchasing electricity directly from the generators including getting supply from the Captive Power Plants and using the transmission and distribution system in the State of Rajasthan for Open Access to wheel such power are required to compensate for the deviation in scheduling and despatch of electricity distinct from the Deviation and Settlement Mechanism applicable to the distribution licensees purchasing power from the generating companies for maintaining the retail supply of electricity to the consumers at large. It is incumbent on such generating company and end-users purchasing electricity directly from the generators to adhere to the quantum of electricity scheduled and the quantum of electricity drawn in such a manner that there is no deviation. In case of deviation, inadvertent or otherwise, an appropriate compensation needs to be paid to the distribution licensee. The consequences of such deviation should be to the account of the generating company and end-users purchasing the electricity directly from such generating companies. The burden of the same cannot be borne by the distribution licensee in the State.

22. The consumers/ public at large receiving electricity from the distribution licensees cannot be asked to bear the financial consequences of such deviation in the scheduling and despatch of electricity. In terms of Section 32 of the Electricity Act, 2003, the distribution licensee is required to bear the consequences of deviation in the scheduling and despatch in regard to its contract entered into with the generating companies supplying electricity to the distribution licensees and not to the contracts entered into between the generating companies and the end-users of electricity for purchase of electricity directly from the generating companies.
23. M/s Hindustan Zinc Limited has contended that the treatment of deviation even in case of availing Open Access should be in line with the "CERC DSM Regulations, 2014". It is stated that the provisions of the Deviation and Settlement Regulations of the Central Commission is applicable in regard to the Inter State transaction and the same is applicable on the State periphery. For the purpose of the said Deviation and Settlement Mechanism of the Central Commission, the Rajasthan Discoms are considered as the representatives of one unit and all the impact of deviation, unscheduled interchange etc are adjusted qua the Rajasthan Discoms irrespective of the person responsible in the State of Rajasthan causing deviation. In other words, if a generating company within the State of Rajasthan and not coming within the control area jurisdiction of the Regional Load Despatch Centre or end-user of electricity or Procurer of electricity other than the distribution licensees in the State are deviating from the Deviation and Settlement Mechanism, the Regional Load Despatch Centre will be taking effect thereof on the Rajasthan Discoms for settlement and not on such generating company or the end-user or the Procurer of electricity.
24. In order to deal with the aspects of deviation and settlement for intra-state entities in the State of Rajasthan the Commission has made provisions in the "RERC DSM Regulations, 2017". Under these Regulations

the entire consequences of deviation and settlement at interstate level, distribution licensee and generator/CPP supplying electricity to distribution licensee are taken by the distribution licensee and generator/CPP supplying electricity to the distribution licensee.

25. The classification of generator supplying electricity directly to the end-users by taking Open Access to the transmission and distribution system in the State of Rajasthan distinct from a generator supplying electricity to the distribution licensee is valid and rationale and has a nexus to the objective sought to be achieved under the scheme. The RERC DSM Regulations, 2017 impose conditions for grid discipline on distribution licensee and generators/CPP supplying electricity to distribution licensee which almost covers the State grid (generator supplying electricity to distribution licensee constitute 97% of the grid as stated by M/s Hindustan Zinc Limited) as envisaged in the decision of the Hon'ble Supreme Court in the Central Power Distribution Company of Andhra Pradesh Limited V/s Central Electricity Regulatory Commission (2007) 8 SCC 197.
26. For the reasons mentioned herein above, representation of M/s Hindustan Zinc Limited for applying the provisions of the "RERC DSM Regulations, 2017" on generators supplying under Open Access is not tenable.
27. Therefore the representation made by M/s Hindustan Zinc Limited has no merit and the request to apply "DSM' Regulations, 2017 cannot be accepted. Accordingly, the representation filed by M/s Hindustan Zinc Limited stands disposed off.

(S.C. Dinkar)  
Member

(R.P. Barwar)  
Member

(Vishvanath Hiremath)  
Chairman