



In the Matter of

**Petition under section 86 (1) (f) of the Electricity Act, 2003,
to resolve dispute in the matter of illegal deduction of amount from
power sale bills and monthly scheduling of power.**

PRESENT : Narayan Singh, Chairman
: Arun Kumar Sharma, Member

1. Petition No. 25 of 2017(D)

M/s Balaji Power
(A unit of M/s Hira Ferro Alloys Ltd.) ... Petitioner

V/S

Chhattisgarh State Power Distribution Co. Ltd.
(CSPDCL) Daganiya, Raipur ... Respondent

2. Petition No. 26 of 2017(D)

M/s IndraPowergenPvt. Ltd. ... Petitioner

V/S

Chhattisgarh State Power Distribution Co. Ltd.
(CSPDCL) Daganiya, Raipur ... Respondent

3. Petition No. 27 of 2017(D)

M/s Sudha Bio Power Pvt. Ltd. ... Petitioner

V/S

Chhattisgarh State Power Distribution Co. Ltd.
(CSPDCL) Daganiya, Raipur ... Respondent

4. Petition No. 28 of 2017(D)

M/s KVK Bio-Energy Pvt. Ltd. ... Petitioner

V/S

Chhattisgarh State Power Distribution Co. Ltd.
(CSPDCL) Daganiya, Raipur ... Respondent

5. Petition No. 29 of 2017(D)

M/s Real Power Pvt. Ltd. ... Petitioner

V/S

Chhattisgarh State Power Distribution Co. Ltd.
(CSPDCL) Daganiya, Raipur ... Respondent

6. Petition No. 30 of 2017(D)

M/s Agrawal Vidyut Ltd. ... Petitioner

V/S

Chhattisgarh State Power Distribution Co. Ltd.
(CSPDCL) Daganiya, Raipur ... Respondent

7. Petition No. 31 of 2017(D)

M/s Animesh IspatPvt. Ltd. ... Petitioner

V/S

Chhattisgarh State Power Distribution Co. Ltd.
(CSPDCL) Daganiya, Raipur ... Respondent

8. Petition No. 32 of 2017(D)

M/s Shanti G.D. Ispat Pvt. Ltd. ... Petitioner

V/S

Chhattisgarh State Power Distribution Co. Ltd.
(CSPDCL) Daganiya, Raipur ... Respondent

APPEARANCE : 1. Shri Raunak Jain, Advocate for Petitioner.
2. Shri ApoorvKurup Advocate for CSPDCL &
Shri Arvind Banerjee, EE for Respondent

ORDER

(Passed on 08th June, 2018)

The above petitioners have filed this petition under section 86 (1) (f) of the Electricity Act, 2003, to resolve dispute in the matter of deduction of amount from power sale bills of power supplied by petitioners to respondent company Chhattisgarh State Power Distribution Co. Ltd. (CSPDCL).

Details of the Petitioners:

Petition No. 25 of 2017(D)

2. This petition has been filed by M/s Balaji Power having a 8.5 MW biomass-based power plant and is a unit of M/s Hira Ferro Alloys Ltd., which is a company registered under the Companies Act, 1956, engaging in manufacture of ferro alloys,

besides generation of electricity. The said biomass-based power plant was formerly owned and operated by M/s Shivalik Power & Steels Pvt. Ltd. With effect from April 2011, the company has acquired full ownership and management of the said power plant. A long term PPA was executed between the Petitioner (erstwhile Shivalik Power & Steels Pvt. Ltd.) and the erstwhile Chhattisgarh State Electricity Board ["CSEB"] on 12.05.2006, for supply of 8.5 MW firm power round the clock, till financial year 2014-15. On 14.10.2011, a supplementary PPA was executed between the parties to change in name of the petitioner from M/s Shivalik Power & Steels Pvt. Ltd. On 16.06.2014, a supplementary PPA was executed for extension of validity period of the principal PPA from 10 years to 20 years, as per various orders passed by the Commission from time to time. On 18.03.2015, another supplementary PPA was signed between the parties for amending the Clause 12 of the Principal PPA relating to late Payment Surcharge in line with Regulation 20 of the Principal RE Regulations 2012, with effect from the date of coming into effect of Principal RE Regulations 2012, i.e. with retrospective effect from 27.07.12. This petition have been filed under section 86 (1)(f) of the Electricity Act, 2003, as CSPDCL has made deductions from the power sale bills of the Petitioner for the month of Dec'16 amounting to Rs. 7,64,370/-.

Petition No. 26 of 2017(D)

- 3.** This petition has been filed by M/s Indra Powergen Pvt. Ltd., which is a generating company registered under the Companies Act, 1956, owning and operating a 10 MW biomass-based power plant at Nayanpur, Girwarganj Industrial Area, Distt. Sarguja, Chhattisgarh. A long term PPA was executed between the Petitioner and the erstwhile Chhattisgarh State Electricity Board ["CSEB"] on 31.03.2012, for supply of 8.5 MW firm power round the clock, till financial year 2014-15. On 10.03.2017, a supplementary PPA was signed between the parties for amending the Clause 12 of the Principal PPA relating

to Late Payment Surcharge in line with Regulation 20 of the Principal RE Regulations 2012, with effect from the date of coming into effect of Principal RE Regulations 2012, i.e. with retrospective effect from 27.07.12. This petition have been filed under section 86 (1)(f) of the Electricity Act, 2003, as CSPDCL has made deductions from the power sale bills of the Petitioner for the month of Mar'17 on account of calculation of load factor based on the sum of daily schedule, thereby illegally deducting an amount of total Rs. 26,32,329/-.

Petition No. 27 of 2017(D)

4. This petition has been filed by M/s Sudha Bio Power Ltd., which is a generating company registered under the Companies Act, 1956, and has established a 9.9 MW biomass-based power plant in the state of Chhattisgarh. A long term PPA was executed between the Petitioner (erstwhile Sudha Agro & Oil Chemicals Industries Ltd. Bilaspur Unit) and the erstwhile Chhattisgarh State Electricity Board ["CSEB"] on 17.10.2006, for supply of 9.9 MW firm power round the clock, till financial year 2014-15. On 02.03.2013, a supplementary PPA was executed between the parties to change in name of the petitioner from Sudha Agro & Oil Chemicals Industries Ltd to M/s Sudha Bio Power Pvt. Ltd as well as for extension of validity period of the principal PPA from 10 years to 20 years, as per various orders passed by the Commission from time to time. On 04.03.2015, another supplementary PPA was signed between the parties for amending the Clause 12 of the Principal PPA relating to Late Payment Surcharge in line with Regulation 20 of the Principal RE Regulations 2012, with effect from the date of coming into effect of Principal RE Regulations 2012, i.e. with retrospective effect from 27.07.12. This petition have been filed under section 86 (1)(f) of the Electricity Act, 2003, as CSPDCL has made deductions from the power sale bills of the Petitioner for the month of Dec'16 (Rs. 1,02,762/- deducted), Jan'17 (Rs. 3,28,812/- deducted) and Mar'17 (Rs. 74,624/- deducted) on account of calculation of load factor based on the

sum of daily schedule, thereby illegally deducting an amount of total Rs. 5,06,198/-.

Petition No. 28 of 2017(D)

5. This petition has been filed by M/s KVK Bio-Energy Pvt. Ltd., which is a generating company registered under the Companies Act, 1956, and has established a 15 MW biomass-based power plant in the state of Chhattisgarh at village Amartal, Distt.Janjgir-Champa. A long term PPA was executed between the Petitioner and the erstwhile Chhattisgarh State Electricity Board ["CSEB"] on 16.10.2006, for supply of 13.5 MW firm power round the clock, till financial year 2014-15. On 26.04.2013, a supplementary PPA was executed between the parties for extension of validity period of the principal PPA from 10 years to 20 years, as per various orders passed by the Commission from time to time. On 31.08.2016, another supplementary PPA was signed between the parties for amending the Clause 12 of the Principal PPA relating to Late Payment Surcharge in line with Regulation 20 of the Principal RE Regulations 2012, with effect from the date of coming into effect of Principal RE Regulations 2012, i.e. with retrospective effect from 27.07.12. This petition have been filed under section 86 (1)(f) of the Electricity Act, 2003, as CSPDCL has made deductions from the power sale bills of the Petitioner for the month of Dec'16 (Rs. 2,84,051/- deducted), Jan'17 (Rs. 37,088/- deducted) and Feb'17 (Rs. 21,49,015/- deducted) on account of calculation of load factor based on the sum of daily schedule, thereby illegally deducting an amount of total Rs. 24,701,54/-.

Petition No. 29 of 2017(D)

6. This petition has been filed by M/s Real Power Pvt. Ltd., which is a generating company registered under the Companies Act, 1956, and has established a 7.5 MW biomass-based power plant in the state of Chhattisgarh at village Khamhardih,

Rambode, Distt. Bilaspur. A long term PPA was executed between the Petitioner and the erstwhile Chhattisgarh State Electricity Board ["CSEB"] on 03.02.2007, for supply of 6.5 MW firm power round the clock, till financial year 2014-15. On 03.08.2010, a supplementary PPA was executed between the parties to change in name of the power plant from M/s NRI Steel & Power Ltd. to the present. A 2nd supplementary PPA was further executed on 29.11.2012 for extension of validity period of the principal PPA for 20 years, as per various orders passed by the Commission from time to time. On 11.03.2015, a 3rd supplementary PPA was executed between the parties for amending the Clause 12 of the Principal PPA relating to Late Payment Surcharge in line with Regulation 20 of the Principal RE Regulations 2012, with effect from the date of coming into effect of Principal RE Regulations 2012, i.e. with retrospective effect from 27.07.12. This petition have been filed under section 86 (1)(f) of the Electricity Act, 2003, as CSPDCL has made deductions from the power sale bills of the Petitioner for the month of Dec'16 (Rs. 31,943/- deducted), Jan'17 (Rs. 1,00,377/- deducted) and Mar'17 (Rs. 3,10,845/- deducted) on account of calculation of load factor based on the sum of daily schedule, thereby illegally deducting an amount of total Rs. 4,43,165/-.

Petition No. 30 of 2017(D)

7. This petition has been filed by M/s Agrawal Vidyut (A division of M/s Agrawal Oil Extractions Ltd.), which is a generating company registered under the Companies Act, 1956, and has established a 8.5 MW biomass-based power plant. A long term PPA was executed between the Petitioner and the erstwhile Chhattisgarh State Electricity Board ["CSEB"] on 17.05.2006, for supply of 8 MW firm power round the clock, till financial year 2014-15. On 29.10.2013, a supplementary PPA was executed between the parties for extension of validity period of the principal PPA from 10 years to 20 years, as per various orders passed by the Commission from time to time. On

04.03.2015, another supplementary PPA was signed between the parties for amending the Clause 12 of the Principal PPA relating to Late Payment Surcharge in line with Regulation 20 of the Principal RE Regulations 2012, with effect from the date of coming into effect of Principal RE Regulations 2012, i.e. with retrospective effect from 27.07.12. This petition have been filed under section 86 (1)(f) of the Electricity Act, 2003, as CSPDCL has made deductions from the power sale bills of the Petitioner for the month of Jan'17 (Rs. 2,20,141/- deducted) and Feb'17 (Rs. 28,82,427/- deducted) on account of calculation of load factor based on the sum of daily schedule, thereby illegally deducting an amount of total Rs. 31,02,568/-.

Petition No. 31 of 2017(D)

- 8.** This petition has been filed by M/s Animesh Ispat Pvt. Ltd, which is a generating company registered under the Companies Act, 1956, owning and operating a 9.8 MW biomass-based power plant in the State of Chhattisgarh. The power plant of the petitioner was earlier in the name of M/s South Asian Agro Industries Ltd. with effect from 24.02.2016, the Petitioner has acquired full ownership and management of the said power plant. A long term PPA was executed between the Petitioner and the erstwhile Chhattisgarh State Electricity Board ["CSEB"] on 17.05.2006, for supply of 8.91 MW firm power round the clock, till financial year 2014-15. On 13.01.2017, a supplementary PPA was executed between the parties to change in name and ownership of the power plant from M/s South Asian Agro Ltd. to the present. The supplementary PPA was further executed for extension of validity period of the principal PPA for 20 years, as per various orders passed by the Commission from time to time. This petition have been filed under section 86 (1)(f) of the Electricity Act, 2003, as CSPDCL has made deductions from the power sale bills of the Petitioner for the month of Mar'17 on account of calculation of load factor based on the sum of daily schedule, thereby illegally deducting an amount of total Rs. 35,54,583/-.

Petition No. 32 of 2017(D)

- 9.** This petition has been filed by M/s Shanti GD Ispat & Power Pvt. Ltd., which is a generating company registered under the Companies Act, 1956, and has established a 15 MW biomass-based power plant in the State of Chhattisgarh at village Mouhda, Janjgir-Champa. A long term PPA was executed between the Petitioner and the erstwhile Chhattisgarh State Electricity Board [“CSEB”] on 26.06.2010, for supply of 13.5 MW firm power round the clock, till financial year 2014-15. On 26.04.2013, a supplementary PPA was executed between the parties for extension of validity period of the principal PPA from 10 years to 20 years, as per various orders passed by the Commission from time to time. On 19.07.2013, a 2nd supplementary PPA was executed between the parties for extension of commercial operation date of the Petitioner’s power plant to 22.09.2013. On 04.03.2015, a 3rd supplementary PPA was executed between the parties for amending the Clause 12 of the Principal PPA relating to Late Payment Surcharge in line with Regulation 20 of the Principal RE Regulations 2012, with effect from the date of coming into effect of Principal RE Regulations 2012, i.e. with retrospective effect from 27.07.12. This petition have been filed under section 86 (1) (f) of the Electricity Act, 2003, as CSPDCL has made deductions from the power sale bills of the Petitioner for the month of Feb’17 on account of calculation of load factor based on the sum of daily schedule, thereby illegally deducting an amount of total Rs. 43,19,670.60/-.
- 10.** Respondent in all the petitions is the Chhattisgarh State Power Distribution Company Ltd. (CSPDCL) which is a successor company of the CSEB and is a distribution licensee under the Electricity Act, 2003.

Petitioners Submissions:

- 11.** It is submitted that as per unambiguous provisions of proviso to Regulation 11.1 of the RE Regulations 2012 as amended by

the 2016 2nd amendment, the monthly scheduling and deviation modality as per Regulations 11.2-11.4 of the RE Regulations was to be applicable only till notification of the ABT-DSM Regulations by the Commission and since the ABT-DSM Regulations have now come into effect from 01.12.16, the Regulation 11.2 of the RE Regulations is no longer applicable in respect of scheduling and the Petitioner is not liable to submit any monthly schedule to the Respondent. Further, the fixed and variable charges are to be paid by the Respondent as per Regulation 6.1(iv) of the ABT-DSM Regulations, 2016.

- 12.** It is submitted that the monthly scheduling and the load factor modality under the RE Regulations 2012, as amended, was earlier existing because the ABT-DSM Regulations were not notified by the Commission and thus, the limits of over/under injection and consequences in fixed and variable charge for the deviation from schedule was earlier regulated as per Tariff Orders and RE Regulations 2012, as amended. However, after coming into effect of ABT-DSM Regulations 2016, the limits of over/under injection and consequences in fixed and variable charge for the deviation from schedule is covered under the said ABT-DSM Regulations.
- 13.** It is submitted that as per Regulation 8.2 of the ABT-DSM Regulations 2016, for sellers supplying power on long-term and medium-term basis, the provisions of the State Grid Code and the CSERC (Connectivity and intra-state Open Access) Regulations 2011, as amended from time to time, shall be applicable for declaration of capacity as well as scheduling and further requires to submit the daily declared capacity and accordingly the buyers including beneficiary shall submit their requirement to SLDC in 15 minutes time-block and by considering these the SLDC/RLDC/PX, as the case may be, SLDC may finalize the injection / drawal schedule. It is further submitted that the scheduling under the Open Access Regulations, 2011 for long term consumers is also on day ahead and time-block basis which is same as contemplated under Regulation 8.6 of the ABT-DSM Regulations for long-term

and medium-term Sellers and the Petitioners have complied with the same and have also paid the DSM charges separately under the ABT-DSM Regulations, and there can be no further consequences for deviation from daily schedule such as illegal deductions made by the Respondent from the power sale bills of the Petitioner.

14. Facts submitted in the Petitions are as under:

- A.** That all the biomass power plants are supplying power to the Respondent CSPDCL as per generic tariff determined by this Commission vide its tariff orders dated 11.11.2005 and 15.01.2008, as amended from time to time. At that time, there were no regulations existing for renewable energy sector and further there were no provisions specified for scheduling / UI / ABT-DSM Mechanism / Balancing & Settlement Code etc.
- B.** That on 27.07.12, the Commission notified the CSERC (Terms and Condition for determination of generation tariff and related matters for electricity generated by plants based on renewable energy sources) Regulations 2012 ["Principal RE Regulations 2012"] and these Regulations were applicable to those RE plants having achieved COD after 01.04.12, and would remain in force for a period of 5 years. First and second amendments were made on 14.03.13 and 21.03.16, amending the Principal RE Regulations.
- C.** That after amendment of Regulation 3.2 of the Principal RE Regulations vide clause 4 of the 2016 2nd amendment, the norms of all the existing RE power plants were to be governed by the said Principal RE Regulations.

"3.2 In case of existing RE projects having long term PPA with distribution licensee of 20 years or more, which have achieved COD before April01, 2012, applicable tariff (fixed charges) shall be governed by Order dated December28, 2011 in P No 22 of 2011(T) and amendments thereof as issued from time to time by the Commission for the duration of the Tariff Period as

stipulated under Order dated December 28, 2011 in P No 22 of 2011(T) whereas energy charges will be determined as per provisions in these regulations. However on completion of validity of Order dated December 28, 2011 in P No 22 of 2011(T) for such projects, the new tariff will be decided on basis of norms specified in these regulations on generic/project specific basis on the request of generators or licensees. Further in such cases for determination of the tariff after currency of the tariff order, the capital cost shall be allowed as specified in the then prevailing orders and other financial parameters will be governed by these regulations. All the other terms and conditions of existing projects shall be governed by these Regulations."

Further, as per the Regulation 11.1 of the Principal RE Regulations as amended by clause 6 of the 2016 2nd amendment, all the biomass generators whether commissioned prior to the Regulations or the control period, were subjected to monthly scheduling and required to give monthly schedule of their power supply to take place in next month to distribution licensees by 23rd of the current month. Provided that, subsequent to the notification of intra-state ABT/DSM/UI Regulations, scheduling and deviation charges of all RE based power plants will be governed by the intra-state ABT/DSM/UI Regulations.

"11.1 All renewable energy power plants except for biomass power generating station shall be treated as 'MUST RUN' power plants and shall not be subjected to scheduling and merit order despatch principles. The biomass power generating station shall be subjected to monthly scheduling. Provided that subsequent to the notification of intra-State ABT/Deviation settlement Mechanism / UI Regulations, scheduling and deviation charges of renewable energy based power plants will be governed by the intra-State ABT/Deviation settlement Mechanism/UI Regulations."

11.2 Biomass generating plants shall give a monthly schedule of their power supply to take place in next month to distribution licensees by 23rd of the month. If the monthly schedule for the next month is not submitted by biomass generating plants up to 23rd of the current month, the current month schedule shall be considered for all calculation purposes. Monthly schedules accepted by the distribution licensee may be revised on an application to that effect made to the nodal agency by biomass generators. Provided that such revision of the schedule shall not be effective before the expiry of minimum period of two days.

Provided further that the day on which notice for revision of the schedule is served to the distribution licensee and the day from which such revision is to be implemented shall be excluded for computing the period of two days. Provided further that only two revision in the monthly schedule shall be permitted which should not be for successive months."

- D.** That the Commission notified (Intra-state Availability Based Tariff and Deviation Settlement Mechanism) Regulations, 2016 on 07.11.2016 and corrected vide Corrigendum dated 10.02.17 which came into effect from 01.12.2016. As per Regulations 6.1(iv), "**the fixed and energy charges for renewable energy generators shall be paid as per declared schedule**", however, in the event of deviation from declared schedule, the renewable energy generator is liable for charges on account of such deviation as per Table-1 and Table-2 given in the ABT-DSM Regulations, 2016. Also the Regulation 8 of the ABT-DSM Regulations makes detailed provisions regarding Scheduling and Dispatch Mechanism for all sellers/buyers including power plants selling power using RE sources.
- E.** That as per Regulation 8.2 of the ABT-DSM Regulations 2016, sellers supplying power on long-term and medium-term basis, "**the provisions of the State Grid Code**

and the CSERC (Connectivity and intra-state Open Access) Regulations 2011, as amended from time to time, shall be applicable for declaration of capacity, scheduling and elimination of gaming and further requires to submit the daily declared capacity and accordingly the buyers including beneficiary shall submit their requirement to SLDC in 15 minutes time-block and by considering these the SLDC/RLDC/PX, as the case may be, SLDC may finalize the injection / drawal schedule". Further, the scheduling under the Open Access Regulations, 2011 for long term consumers is also on day ahead and time-block basis which is same as contemplated under Regulation 8.6 of the ABT-DSM Regulations for long-term and medium-term Sellers. The declared capacity / daily schedule is required to be conveyed by the seller to SLDC one day in advance.

"8.6 In case of day ahead transactions, the declared capacity/schedules shall be conveyed by the seller to SLDC; in one day advance up to 09.00 hrs of the day. The Buyer including beneficiary shall confirm the time-block wise requirement to SLDC in one day advance up to 11.00 hrs of the day. If the no confirmation from Buyer including beneficiary is received within above time limit the SLDC shall consider zero requirement. Accordingly the SLDC shall issue the drawal and injection schedules by 18.00 hrs of the day for the next day. Thereafter, normally no changes shall be registered in the schedule on the day ahead basis."

However, for sellers supplying power on short-term basis to the distribution licensee, then the procedure is different and would be governed by Regulation 8.3. Whereas if the case is of a short-term seller and / or MSC/SSC and also a long-term / medium-term seller, then he has to submit both, daily declared capacity as well as monthly declared capacity as per Regulation 8.4 of the ABT-DSM Regulations.

- F.** That till the month of November 2016, Petitioner's scheduling, limit for over / under injection, deviation from schedule, fixed and variable charges were governed by Regulations 11.1-11.5 of the amended RE Regulations 2012 and petitioner was required to submit the monthly schedule for November 2016 in the month of October 2016. For the month of December 2016 onwards, petitioners came under the ABT-DSM regime and was thus required to submit only the daily declared schedule to the SLDC, being a long term seller as per Regulations 8.2 and 8.6 of the ABT-DSM Regulations 2016.
- G.** That on 24.03.2017, CSPDCL wrote a letter to the Petitioners referring to the 2016 2nd amendment regulations notified by the CSERC on 21.03.2016. CSPDCL stated that as per the said Regulations, generating plant shall give monthly schedule of their power supply to take place in next month. It was further submitted that if the monthly schedule for the next month is not submitted by biomass generating plants upto 23rd of the current month, the current month schedule shall be considered for the calculation purposes. The petitioners and CBEDA replied to this respondent's letter vide letter dated 30.03.2017 & 31.03.17 stating that now the ABT-DSM Regulations have been notified by the CSERC which govern the scheduling, limit for over / under injection, deviation from schedule, fixed and variable charges.
- H.** That vide its letter dated 09.05.2017, CSPDCL further informed to the Petitioners that the payment of bills of the Petitioner for supply of power during the months of Dec'16 -Mar'17 have been revised based on the scheduled energy only as given in the "SEA" i.e. "Sum of Daily Scheduled Energy" for the month multiplied by applicable tariff. CSPDCL has stated that power purchase bills of the Petitioner shall be verified on load factor modality as given in Regulations 11.3 and 11.4 of the amended RE Regulations.

"11.3 Load factor for the power supplied by the biomass power generating plant to the distribution licensees shall be calculated on the basis of scheduled quantum. Load factor will be calculated as follows:

Load factor = number of actual units supplied during the month (MU) / Scheduled quantum (MU)

11.4 Rates (fixed charges plus energy charges) determined for the biomass power generating station will be base rate for power supply at 80% and above load factor. Effective rate for power supply below 80% load factor will be calculated as follows;

Effective rate (Rs.) = $\frac{(\text{fixed charges} + \text{energy charges}) \times \% \text{ load factor}}{80\%}$

The Respondent has gone ahead and prescribed its own formula as under-

"Load factor = number of actual units supplied during the month (MU) **(sum of daily schedule as per SEA)** / Monthly scheduled quantum (MU).

- I.** That the respondent CSPDCL has further stated vide its letter dated 22.05.2017 that in the absence of monthly schedule, monthly load factor for the subsequent months will be calculated considering full contracted capacity with CSPDCL.
- J.** That from December 2016 onwards, as per the ABT-DSM Regulations 2016, the SLDC is already levying the deviation and settlement charges (DSM charges) on the Petitioners for the deviation from daily declared schedule on time block basis. Thus it can be seen that Petitioner is suffering twice in its tariff for the same consequences of deviation from schedule. As SLDC is already levying the DSM charges for deviation from daily schedule and on the other hand CSPDCL is wrongly deducting the power purchase bills of the Petitioners based on the sum of daily declared schedule. This is leading to double jeopardy and the Petitioners cannot be made to suffer twice for the

same consequences of under / over injection or deviation from schedule.

- 15.** As per earlier scheduling mechanism under the tariff orders of the Commission, generators were paid variable charges along with some part of fixed charges (0.30 paisa) for energy supplied less than 70% of scheduled energy. The part of fixed charge was paid even if the injection was less than 70% since the generator is entitled to recover some part of fixed cost component at any PLF. However, as per the present norms and calculation method of tariff with respect to monthly scheduling, generator is not receiving any fixed cost if the PLF is less than 50% of monthly scheduled energy, and only variable charges are being paid. The same is the case when a generator injects more than 110% of his monthly scheduled energy, only variable charges is being paid for injection over & above 110%. Since the generator is entitled to recover some part of fixed cost component at any PLF, this methodology of calculating tariff on monthly scheduling basis appears inappropriate.
- 16.** Thus, daily scheduling in 15 min time block is sufficient to maintain grid discipline as well as penalize the biomass generator for over/under injection and it is not at all necessary to further regulate the biomass power plant on a monthly basis for maintaining grid discipline and once again penalizing the biomass plant for the same deviation on the basis of monthly load factor and monthly declared schedule.

Relief Sought

- 17.** With the above submissions petitioners have sought following relief:
 - (a) To direct the respondent to make payment of amount illegally deducted from the power sale bills of the petitioner for the month of Dec. 2016 to Feb., 2017 with interest at rates specified under the PPA for late payment;
 - (b) To direct the respondent to make payment of fixed and variable charges for power supplied by the petitioner in

future based on the deviation from daily schedule, in accordance with Regulation 6.1 (iv) of the ABT-DSM Regulations, 2016;

- (c) To hold that the monthly scheduling is only for broad planning for meeting the energy requirement for the month by the Respondent and cannot have any negative impact on the fixed and variable charges to be paid to the biomass power plant consequent to notification of ABT-DSM Regulations, 2016;
- (d) To grant costs of the instant litigation on actual basis in favor of the Petitioner, including legal expenses.

Interim Relief:

- 18.** The Petitioners also prays for interim relief for a direction to the Respondent not to insist upon the monthly declaration by the petitioner and to restrain the Respondent from calculating load factor based on either the illegal modality of SEA i.e. sum of daily scheduling energy or based on full contracted capacity with CSPDCL, which is contrary to the judgment dated 20.03.2015 in Appeal No. 9 of 2014 passed by the Hon'ble APTEL in the case of Balaji Power V/s CSPDCL & Anr.

Respondent Submission:-

- 19.** It is submitted by respondent that they have rightly asked the petitioner to furnish an advance monthly schedule for calculating the load factor, and thereby the base/effective rate payable for power supplied, apart from a daily schedule for grid discipline, and, hence, for calculating deviation charges, because the relevant provisions of the RE Regulations when read harmoniously with the CSERC-DSM Regulations make it evident that in so far as renewable energy plants (such as the petitioner herein) are concerned, daily scheduling as required in terms of the CSERC-DSM Regulations is relevant only for the purpose of determining deviation charges and not for determining and recovering the fixed and variable charges. The

latter, i.e. the determination and recovery of fixed and variable charges in case of biomass generators, is governed exclusively by the 2nd amendment to the RE Regulations that took effect on 01.06.2016. Thus, it is clear that in so far as scheduling for the purposes of recovery of fixed and energy charges is concerned, the relevant provision is the amended regulation 11 of the RE Regulations which subject biomass generating stations to monthly scheduling. The proviso to regulation 11.1 then further establishes that the CSERC-DSM Regulations are relevant only for the purposes of determining the deviation charges to be payable by biomass generating plants.

- 20.** It is further submitted that the proviso to regulation 11.1 of the RE Regulations (as amended) is for the limited purpose of determining deviation charges, it is evident that the term "scheduling" mentioned therein is intended to mean scheduling for the purpose of computing such deviation charges. In so far as the rate for payment of power supplied by the petitioner is concerned, the relevant provisions are regulations 11.2 to 11.5 of the RE Regulations (as amended) wherein the effective rate in regulation 11.4 is to be computed on the basis of the load factor determined in accordance with the formula stipulated in Regulation 11.3 therein. Needless to say, said formula required the renewable energy/biomass generator to provide an advance monthly schedule for computing the load factor.
- 21.** It is submitted that Regulation 11.1 to 11.5 of the RE Regulations (as amended) therefore lay down the methodology for making the payment for the power supplied (i.e. for fixed and energy charges), whereas regulation 3.2 lays down the methodology for determining the fixed and energy charges in terms of the orders of this Commission mentioned therein. Moreover, as per regulation 11.5 of the RE Regulations (as amended), the limits of over/under injection therein are for the purpose of making payment of the fixed and energy charges, whereas the limits of over/under injection specified in the CSERC-DSM Regulations are for the purpose of computing the deviation charges so as to maintain grid discipline.

- 22.** It is submitted that the daily schedule prescribed in regulation 8.2 of the CSERC-DSM Regulations is for the purpose of calculating deviation charges and not for making payment of fixed and variable charges.
- 23.** It is submitted that the Respondent has accounted for the sum of daily scheduled energy for computing the load factor (and thereby, the amount payable to the Petitioner for power supplied) because the difference between the actual units supplied and the scheduled quantum is already accounted for in the deviation charges, if any, that the Petitioner may be liable to pay / receive under the CSERC-DSM Regulations. This in fact fortifies the Answering Respondent's submission that the Petitioner is not suffering twice for the same consequence of under / over injection or deviation from schedule.
- 24.** It is submitted that, in so far as the judgment dated 20.03.2015 in Appeal no. 9 Of 2014 passed by the Hon'ble APTEL in "Balaji Power V/s CSPDCL &Ors." as mentioned by the petitioners in the interim relief, the said judgment is clearly distinguishable on at least two counts: (i) that it was passed prior to the second amendment introduced in the RE Regulations in 2016 and hence does not cover the issue(s) raised by the Petitioner with respect to the proviso in regulation 11.1 of the RE Regulations; and (ii) that the facts and circumstances in Balaji Power were entirely different from those in the present dispute.
- 25.** Furthermore, it is submitted that the petitioner is not suffering any "double jeopardy" as alleged because while it is liable for deviation charges based on daily scheduling and supply under the CSERC-DSM Regulations, it is receiving payment from the Answering Respondent/ licensee for scheduled power (rather than the actual power supplied) as per the base/effective rate.

Analysis and Decision:-

- 26.** In the order dated 15.01.2008 in petition No. 07/2005, provisions related to scheduling and payment of charges was as under:-

"9.6 Scheduling of power for purchase by licensees:

*We had in our earlier order specified that if the biomass generator schedule less than 70% or more than 105% of the scheduled energy, tariff for such power will be at variable cost plus 30P/Kwh. In para 25 of their judgment the Hon'ble Tribunal has directed that capping of 105% energy be relaxed and regulated in manner that 'annual energy PLF does not exceed 100%'. **Accordingly we order that the stipulation of variable cost plus 30P would be applicable only to the supply of less than 70% of scheduled energy. The supplier may provide and be paid normal tariff for supply of energy above 70% of schedule without a cap of 105%. Monthly billing shall be done on the basis of energy delivered at normal rate upto eleven months. At the end of the year necessary adjustment may be made in the bill for the twelfth month of the year to ensure that energy delivered above 100% PLF is billed at the same rate as for supply below 70% of the scheduled energy."***

- 27.** The Chhattisgarh State Electricity Regulatory Commission (Terms and conditions for determination of generation tariff and related matters for electricity generated by plants based on non-conventional sources of energy) Regulations, 2008, was notified on 22nd May 2008. The relevant provisions in the Regulations are as under:

"Firm Power" *In relation to biomass based generating plant means supply of electricity after COD which is equal or more than 70% of the scheduled energy in a given period of time, however, energy supplied more than 100% of the scheduled energy, on annualized basis, will not be treated as firm power. In relation to small hydro-generating stations it means any electricity supplied from and after the COD if the entire generated electricity is supplied to a distribution licensee(s).*

"Infirm Power" means electricity generated prior to declaration of date of commercial operation of generating station/ unit.

"Non-firm power" *means electricity supplied by biomass-based plants after COD of the concerned plant, to a distribution*

licensee which is less than 70% of the scheduled electricity in a given period. Electricity supplied by the generating station more than 100% of scheduled electricity on annualized basis shall also be treated as non-firm power. However, in case of small hydel plants this condition will apply only when the plant supplies power to third party(s) also other than the distribution licensee(s).

Rate for Infirm Power: Rate for power supplied to a licensee prior to declaration of date of commercial operation shall be equal to energy (variable) charges

Rate for non-firm Power: Rate for non-firm power shall be equal to energy (variable) charges plus 30 paise per unit.

- 28.** Subsequently, the Chhattisgarh State Electricity Regulatory Commission (Terms and conditions for determination of generation tariff and related matters for electricity generated plants based renewable energy sources) Regulation, 2012 were notified on 27th July 2012. The relevant provisions in the Regulations are as under:

"Firm Power" *In relation to biomass based generating plant means supply of electricity after COD which is equal or more than the 70% as decided by the Commission from time to time, however, energy supplied more than 100% of load factor of contracted capacity, on annualized basis, will not be treated as firm power.*

"Infirm Power" *means electricity generated prior to declaration of date of commercial operation of generating station/unit;*

"Non-firm power" *means electricity supplied by biomass-based power generating plants after COD, to a distribution licensee which is less than 70% of the scheduled electricity in a given period. Further electricity supplied by such generating station above 100% plant load factor of contracted capacity, on annualized basis shall also be treated as non-firm power. However, in case of other renewable energy plants, there is no concept of Non firm power."*

11.1 All renewable energy power plants except for biomass/non-fossil fuel based co-generation plants with installed capacity of 10 MW and above shall be treated as 'MUST RUN' power plants and shall not be subjected to scheduling and merit order despatch principles.

11.2 The biomass power generating station and co-generation projects with installed capacity of 10 MW and above shall be subjected to monthly scheduling because of categorisation into firm and non-firm power.

- 29.** Thereafter an amendment was issued, the Chhattisgarh State Electricity Regulatory Commission (Terms and conditions for determination of generation tariff and related matters for electricity generated by plants based renewable energy sources) (Second Amendment) Regulations, 2016. These Regulations were effective from April 01, 2016. The provisions related to scheduling and payment for charges were amended. Relevant provisions are reproduced below:

"Firm Power" means any electricity supplied from and after the COD of project"

"Non-firm power" means the power generated from renewable sources, the hourly variation of which is dependent upon nature's phenomenon like sun, cloud, wind, etc., that cannot be accurately predicted;

11.1 All renewable energy power plants except for biomass power generating station shall be treated as 'MUST RUN' power plants and shall not be subjected to scheduling and merit order despatch principles. The biomass power generating station shall be subjected to monthly scheduling.

Provided that subsequent to the notification of intra-State ABT / Deviation settlement Mechanism / UI Regulations, scheduling and deviation charges of renewable energy based power plants will be governed by the intra-State ABT/Deviation settlement Mechanism / UI Regulations.

11.2 Biomass generating plants shall give a monthly schedule of their power supply to take place in next month to distribution licensees by 23rd of the month. If the monthly schedule for the next month is not submitted by biomass generating plants up to 23rd of the current month, the current month schedule shall be considered for all calculation purposes. Monthly schedules accepted by the distribution licensee may be revised on an application to that effect made to the nodal agency by biomass generators. Provided that such revision of the schedule shall not be effective before the expiry of minimum period of two days. Provided further that the day on which notice for revision of the schedule is served to the distribution licensee and the day from which such revision is to be implemented shall be excluded for computing the period of two days. Provided further that only two revision in the monthly schedule shall be permitted which should not be for successive months.

11.3 Load factor for the power supplied by the biomass power generating plant to the distribution licensees shall be calculated on the basis of scheduled quantum. Load factor will be calculated as follows:

Load factor = number of actual units supplied during the month (MU)/ Scheduled quantum (MU)

11.4 Rates (fixed charges plus energy charges) determined for the biomass power generating station will be base rate for power supply at 80% and above load factor. Effective rate for power supply below 80% load factor will be calculated as follows;

Effective rate (Rs.) = $\frac{(\text{fixed charges} + \text{energy charges}) \times \% \text{ load factor}}{80\%}$

However minimum effective charge shall be energy charges as decided by the Commission.

Rates for over injection, over and above 110% of the monthly scheduled energy, shall be energy charges only.

- 30.** Perusal of the above provisions shows that from 2005 till 31st March 2016, the biomass generators were required to schedule their power on monthly basis. If the actual energy supplied in any month was more than 70% of the monthly schedule, the licensee had to pay fixed charges plus energy charges on actual energy supplied by generators. Mechanism for deviations from the schedule was governed as under:
- (a) **For under injection of power:** If in any month the energy supplied by developers was less than 70% of the scheduled energy, the procurer was required to pay energy charges plus 30 paise on actual energy supplied. This power was treated as non-firm power.
 - (b) **For over injection of power:** At the end of financial year, i.e. in last month of financial year, the licensee had to ascertain that the cumulative actual energy supplied in the financial year is below 100% PLF(yearly). The energy supplied over and above 100% yearly PLF had to be paid as energy charge plus 30 paise.
- 31.** On enactment of second amendment, Chhattisgarh State Electricity Regulatory Commission (Terms and conditions for determination of generation tariff and related matters for electricity generated by plants based renewable energy sources) (Second Amendment) Regulations, 2016, the provisions related to scheduling and payment thereof for the charges were amended from 1st April 2016. Also the definitions of **non-firm power** was amended and it was mainly mentioning about the power quality related to solar and wind power. In clause 11.1 of these amended Regulations, the provisions for monthly scheduling was continued. However, provisions for deviations from the schedule was amended. A proviso was specified clarifying that on introduction of intra-state ABT, scheduling and deviation charges of renewable energy based power plants will be governed by the intra-State ABT/Deviation settlement Mechanism/UI Regulations. In these Regulations, it was specified that the procurer has to determine load factor on monthly basis. The load factor was computed as

the ratio of actual energy supplied to the monthly scheduled energy in percentage. For the actual energy supplied at above 80% monthly load factor and upto 110 % monthly load factor, the licensee had to pay normal fixed charges plus energy charges on the actual energy supplied. The deviations mechanism with respect to monthly schedule was specified as under:

a) **For under injection:** If in any month the actual energy supplied by generators was less than 80% monthly load factor, the effective rate of payment had to be recomputed. Accordingly, effective rate was determined as under:

$$\text{Effective rate (Rs.)} = \frac{(\text{fixed charges} + \text{energy charges}) \times \% \text{ load factor}}{80\%}$$

In such cases the procurer had to pay effective rate on actual energy supplied by power generators. The minimum effective rate of power purchase below 80% load factor was fixed at ceiling rate of energy charges.

b) **For over injection-** If in any month the monthly load factor was more than 110%, the buyer had to pay fixed charge plus energy charges on actual energy supplied up to 110% load factor. For energy supplied over and above 110% load factor, buyer had to pay energy charge only.

32. Thereafter "Chhattisgarh State Electricity Regulatory Commission (Intrastate Availability Based Tariff and Deviation Settlement Mechanism) Regulations,2016 (ABT Regulations in short)was notified on November 2016 and made effective from 1st December 2016. Relevant clauses are reproduced below:

Renewable energy based generating plant-All renewable energy based power generating companies including bio-gas, municipal solid waste based generating stations etc. of installed capacity more than 5 MW located in the State) and who have contracted to supply long-term and medium-term power to distribution

licensees in State at tariff determined under Section 62 of the Act and under Section 63 of the Act. **[Clause 5.1(c)]**

The fix charge and energy charge for renewable energy generators shall be paid as per declared schedule. In the event of actual generation of renewable generator being less than the scheduled generation, the deviation charges for shortfall in generation shall be payable by generators to the State DSM pool as given in Table-I below. **(Clause 6.1(iv))**

"For long-term access customers and medium-term open access customers, the provisions of the state Grid code and the CSERC (connectivity and Intra-state open Access) Regulations 2011, as amended from time to time, shall be applicable for declaration of capacity, scheduling and elimination of gaming. The Seller shall submit daily declared capacity and accordingly the Buyers including beneficiaries shall submit their requirement to SLDC in 15 minutes time block and by considering these the SLDC/RLDC/PX, as the case may be, shall finalize the injection/drawal schedule."**(Clause 8.2)**

- 33. As per Clause 5.1(C)** of the intra-state ABT Regulations, all renewable energy based power generating companies including bio-gas, municipal solid waste based generating stations etc. of installed capacity more than 5 MW located in the State) and who have contracted to supply long-term and medium-term power to distribution licensees in State at tariff determined under Section 62 of the Act and under Section 63 of the Act are covered under intra-State ABT. Accordingly, biomass based generators also got covered under intra-State ABT mechanism. Clause 6.1(iv) specifies that the fix charge and energy charge for renewable energy generators shall be paid as per declared schedule. The above provisions specify that when power transaction is on long-term basis, the seller shall submit daily declared capacity. Similar provisions exist in the State Grid Code also. Biomass based generators had tied up long-term PPA with CSPDCL. Therefore, this transaction is under long-term open access category. Clause 11.1 of CSERC (Terms and

conditions for determination of generation tariff and related matters for electricity generated by plants based renewable energy sources) (Second Amendment) Regulations, 2016 Regulations reads as:

"11.1 All renewable energy power plants except for biomass power generating station shall be treated as 'MUST RUN' power plants and shall not be subjected to scheduling and merit order despatch principles. The biomass power generating station shall be subjected to monthly scheduling.

Provided that subsequent to the notification of intra-State ABT /Deviation settlement Mechanism / UI Regulations, scheduling and deviation charges of renewable energy based power plants will be governed by the intra-State ABT / Deviation settlement Mechanism / UI Regulations.

- 34.** The proviso to Clause 11.1 of the mentioned Regulations clearly states that subsequent to notification of ABT Regulations, scheduling and deviation mechanism for renewable shall be governed by ABT Regulations. The ABT Regulations specify for daily scheduling of biomass generators as they have long-term PPA with CSPDCL and their tariff is also determined under section 62 of the Act.
- 35.** The CSPDCL has stated that only deviation charges component will be applicable to biomass generators as per ABT Regulations. This submission is not correct. In clause 5.4 of the Regulations it is clearly specified as to which entities only deviation charges component of the ABT Regulations shall be applicable. Relevant clause is reproduced below:

"5.4 Applicability of only Deviation Charge Component of the Intra-State ABT

(a) All SSC procuring power through open access within the state shall be governed by Intra-State ABT only in respect of applicable deviation charges

(b)All generating companies including RE generator of more than 5 MW & CGP (selling directly or through electricity

trader) who have contracted to supply power only to SSC and/or MSC shall be governed by intra-State ABT only in respect of applicable deviation charges.

(c) All generating companies including RE generator of more than 5 MW & CGP (selling directly or through electricity trader) who have contracted to supply power only to licensee or consumers located outside the state shall be governed by intra-state ABT only in respect of applicable deviation charges."

- 36.** The above provisions clearly specify that when a renewable energy power plant sell power to consumers, fixed charge and energy charge of consumers is not required to be determined or regulated by Commissions, in such cases only deviation charge component of ABT shall be applicable to such renewable energy plant which sells power to consumers directly. But the petitioners are biomass generating plants and they sell power to CSPDCL at a tariff determined under Section 62 of the Act. Fixed charge and energy charges are determined under Section 62 of the Act. Clause 4 of the ABT Regulations specifies as under:

"4. The tariff under the ABT regime will have three components namely the capacity charge, the energy charge and the Deviation Settlement charge.

(a) Fixed charges/capacity charges: capacity charges of the generators are payable on the capacity allocated and are linked to 'Availability' of the generating stations declared on daily basis in MW.

(b) Energy charges/variable charges: Energy charges or variable charges are payable on the scheduled energy irrespective of actual drawal.

Computation of capacity charges and energy charges shall be governed by Regulations 41 and 42 of the CERC (Terms and Conditions for determination of tariff according to Multi- year Tariff Principles and methodology and procedure for determination of expected revenue from tariff and Charges)

Regulations, 2015 or its subsequent amendments or enactments.

(c) Deviation Charges: *Variation between actual generation and scheduled generation or actual drawal and scheduled drawal shall be accounted for through Deviation Settlement Charges and are dependent on the average frequency prevailing at that time block."*

- 37.** In ABT Regulations, it is clearly mentioned that ABT shall comprise of three components. Fixed charges, energy charges and deviation charges. For biomass generators, fixed charge and energy charge has been computed separately and fixed charge has also been determined in Rs/kwh terms under Section 62 of the Act. The ABT regulations clearly specifies that fixed charges shall be payable on declared capacity on daily basis. Also energy charges shall be payable on basis of scheduled energy irrespective of actual drawal. And the third component of ABT, deviation charges is applicable for deviations from the schedule in the particular time block as specified in ABT Regulations.
- 38.** According to the petitioners, CSPDCL is paying fixed charge and energy charge based on a separate monthly schedule provided to CSPDCL by power developers. It has been submitted by petitioners that CSPDCL has devised a new modality of computing load factor which is the ratio of daily declared schedule and monthly schedule. It is clear that subsequent to notification of ABT Regulations, clause 11.2 to 11.4 of Chhattisgarh State Electricity Regulatory Commission (Terms and conditions for determination of generation tariff and related matters for electricity generated by plants based renewable energy sources) (Second Amendment) Regulations, 2016 is repealed and is ineffective from 1st December, 2016. In ABT mechanism, biomass generators are required to declare their schedule on daily basis. If there is any revision in daily declared schedule, it is governed by the State Grid Code. While, the effective or implemented daily schedule has to be considered

for payment of energy charge and deviation charge, daily declared capacity has to be considered for payment of fixed charge. In ABT regime, there is no concept on payment of fixed charges and energy charges on actual energy supplied and load factor modality. The formula devised by CSPDCL for computation of load factor cannot be permitted according to the law. Accordingly, the petitions are allowed and CSPDCL is directed to pay the bills and implement ABT Regulations in its true spirit.

Conclusion:

- I. According to provisions of clause 4 of ABT Regulations, payment of fixed charge has to be done on the basis of daily declared availability.
- II. Energy charges have also to be paid on the basis of daily effective (implemented) scheduled energy.
- III. The deviation charges have also to be paid on the basis of deviations from the effective (implemented) schedule.
- IV. The respondent is directed to pay the bills as per the above order within 30 days from issue of this order.

We order accordingly.

**Sd/-
(ARUN KUMAR SHARMA)
MEMBER**

**Sd/-
(NARAYAN SINGH)
CHAIRMAN**