

No. L-7/143/158/2008-CERC

**Central Electricity Regulatory Commission
New Delhi**

Coram:

Dr. Pramod Deo, Chairperson
Shri R. Krishnamoorthy, Member
Shri S. Jayaraman, Member

In the matter of

Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of trading licence and other related matters) Regulations, 2009

STATEMENT OF REASONS

The Commission, in exercise of its powers under the Electricity Act, 2003 (the Act), had published the draft of the Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of trading licence and other related matters) Regulations, 2008 (hereinafter referred to as “the draft regulations”) to invite suggestions and comments from the stakeholders. The draft regulations were separately sent to the existing licensees for similar purpose. The suggestions and comments received in response to the public notice and the communications sent to the existing licensees have been considered very carefully and our decisions thereon are recorded in the succeeding paragraphs.

REGULATION 2, CLAUSE (1) : DEFINITIONS

Sub-clause (c) - Associate

2. Sub-clause (c) defines the term “associate”. Lanco Electric Utility Ltd has suggested simplification of the definition. Shri Gajendra Haldea has commented that the definition is contrary to the well accepted definition. He has suggested his own

definition. Considering the comments, we have sought to simplify the definition as under, namely –

(c) "associate", in relation to an applicant or the licensee means the person–

(i) who owns or controls shares carrying not less than twenty-six percent of the voting rights of the applicant or the licensee, as the case may be; or

(ii) in respect of whom the applicant or the licensee, as the case may be, owns or controls shares carrying not less than twenty-six percent of the voting rights; or

(iii) who is under the same management as the applicant or the licensee, as the case may be;

Explanation: For the purpose of this sub-clause, the applicant or the licensee, as the case may be, and the person concerned shall be deemed to be under the same management:

(i) if the managing director or manager of the applicant or the licensee, as the case may be, is the managing director or manager of such person; or

(ii) if a majority of the directors of the applicant or the licensee, as the case may be, constitute or any time within six months immediately preceding, constituted a majority of the directors of such person; or

(iii) if not less than one third of the total voting power with respect to any matter relating to the applicant or the licensee, as the case may be, and such person is exercised or controlled by the same individual or body corporate; or

(iv) if one or more directors of the applicant or the licensee, as the case may be, while holding the majority of shares also hold the majority of shares in such person.

Sub-clause (k) – Inter-State Trading

3. Sub-clause (k) defines “inter-State trading” as transfer of electricity by an electricity trader from the territory of one State for re-sale to the territory of another State and includes electricity imported from or exported to any other country for re-sale. Ministry of External Affairs (MEA) has pointed out that cross-border trading in electricity with special treaty countries, like Bhutan and Nepal is not covered by the provisions of the Act and falls within the purview of MEA who is responsible for prescribing the terms

and conditions of such transfers of electricity, as the Act does not apply beyond the territory of the country. It has been represented that any attempt to dilute MEA's control mechanisms on international trade in electricity would adversely impact national and strategic interests. MEA has accordingly suggested omission of the clause "includes electricity imported from or exported to any other country for resale" and has recommended to provide that cross-border transactions shall be governed by the notifications of MEA. As an alternative, it has been suggested that appropriate provision be made in the regulations to the effect that before grant of licence for import and export of electricity, concurrence of MEA shall be obtained and no licence shall be granted except after concurrence of MEA. Ministry of Power has conveyed views similar to those of MEA. PTC India Ltd has also commented that electricity imported from or exported to any other country should not fall under the purview of the Commission.

4. The above suggestions have been duly considered. At the outset, it needs to be clarified that the proposed regulations are not intended to regulate import or export of electricity *per se* or grant licence for those purposes. The scope of the proposed regulations is to lay down the procedure for grant of licence for trading of electricity within the country, specify the duties and obligations of the electricity traders and some other incidental matters. There is not any dispute that import and export of goods (including electricity) fall within the exclusive policy jurisdiction of the Central Government. The proposed regulations after enactment are not, in any manner, to be applied so as to interfere with the policy of the Central Government relating to import or export of electricity. These regulations are intended to regulate electricity trade after the stage of import, by subjecting the electricity imported to the regulatory jurisdiction of the Commission to achieve the objects and purposes of the Act. The Act defines trading as

“purchase of power for resale thereof”. It does not specify that both, purchase and resale must be within the geographic limits of the country. In the absence of any definite statement about the situs of the purchase and/or sale, it does not necessarily follow that the acts of purchase and re-sale, both, must be performed within the geographic limits of the country. The Act repeatedly emphasizes on safeguarding the consumers’ interest. For this purpose, it has put in place an elaborate regulatory framework. Therefore, the electricity imported from outside but sold within the country cannot be left out of regulatory framework, since such a construction of the Act will fail to achieve one of the major objectives of the Act. However, the Act does not envisage grant of licence by the Commission for export of electricity. Therefore, export of electricity needs to be excluded from the definition of inter-State trading. We, therefore, direct that the definition of “inter-State trading” be modified as under:

“inter-State trading” means transfer of electricity from the territory of one State for re-sale to the territory of another State and includes electricity imported from any other country for re-sale in any State of India;

5. In the context of definition of the term “inter-State trading“, Shri Gajendra Haldea has opined that the definition would enable an inter-State trader to purchase electricity from an intra-State trader at any price, in which case the proposed regulations would become ineffective and purposeless in regulating prices as they would be confined only to regulating inter-State traders and their operations instead of regulating inter-State trade. He has suggested that the definition should be suitably modified to cover the entire chain of transactions in the course of inter-State trading in keeping with the definition of inter-State transmission given in the Act.

6. We fully appreciate the concern of Shri Haldea. However, it is to be understood that the purpose of the proposed regulations is, as stated above, to lay down the procedure for grant of licence for inter-State trading in electricity, duties and obligations of electricity traders and cater for other incidental matters. Further, only the inter-State electricity traders are within the regulatory jurisdiction of the Commission. This proposition follows from the judgment of the Hon'ble Supreme Court dated 13.8.2008 in Civil Appeal No 5722/2006 (Grid Corporation of Orissa Ltd Vs Shri Gajendra Haldea and others) whereby the Hon'ble Supreme Court set aside the judgment of the Appellate Tribunal which held that intra-State traders like Grid Corporation of Orissa Ltd selling electricity to the inter-State electricity traders for conveyance outside the State are not governed by the trading margin fixed by the Commission. Therefore, it does not seem feasible for the Commission to regulate sale price of the intra-State traders. We expect the State Commissions to take note of the concern of Shri Haldea and take suitable action to remedy the situation.

Sub-clause (m)- Licensee

7. Sub-clause (m) defines the term "licensee" as a person who has been granted licence. NTPC Vidyut Vyapar Nigam Ltd has suggested that the term should be defined to mean as a person who has been granted a licence under section 14 of the Act to undertake inter-State trading in electricity as an electricity trader. We do not think any modification on the lines suggested is called for. As per sub-clause (l) of the draft regulations, "licence" is defined as licence granted to any person by the Commission to undertake inter-State trading in electricity as an electricity trader. Therefore, by reading together the two definitions it follows that the licensee is a person who has been granted

a licence to undertake inter-State trading in electricity. The definition amounts to the same as suggested by NTPC Vidyut Vyapar Nigam Ltd.

Sub-clause (o) – Net worth

8. Sub-clause (o) defines “net worth” as aggregate value of the paid up equity capital and free reserves (excluding reserves created out of revaluation) reduced by the aggregate value of accumulated losses, deferred expenditure (including miscellaneous expenses) not written off and loans and advances to the associates. Lanco Electric Utility Ltd has suggested that loans and advances to the associates should not be excluded while computing net worth because such loans are always backed by genuine transactions, necessary for conduct of business such as to meet the working capital requirements or so. It has suggested that only the long-term loans and advances could be adjusted. It has branded the definition as illogical, inasmuch as if a trading company gives loans and advances to a third party those loans and advances would be counted towards net worth, but not loans and advances to the associates. Accordingly, Lanco Electric Utility Ltd has suggested revision of the definition in the light of its comments.

9. The definition has been proposed to prevent window-dressing of the net worth by an applicant to meet the requirement of the regulations without having real funds in the business. It has been experienced that an applicant shows share capital in one hand and gives the said amount as loans and advances to the associates thereby, in theory, seeking to comply with the requirement of the net worth. Such a situation is sought to be avoided through the proposed regulations. Hence, the modification of the definition on the lines suggested by Lanco Electric Utility Ltd is not required.

REGULATION 3: QUALIFICATIONS

Clause (2) – Technical Qualifications

10. It has been proposed in clause (2) that the applicant for grant of licence shall have at least one full-time professional having, experience in disciplines, such as power system operations and commercial aspects of power transfer; and finance, commerce and accounts. PTC India Ltd has suggested that the technical qualifications may be further elaborated to cover number of years of experience and professional qualifications. Depending upon the category of licensee, minimum requirement of manpower of each discipline could also be specified, it has been suggested. We generally agree with the suggestion of PTC India Ltd. We direct that it shall be provided that every licensee shall engage at least one person having Degree in Engineering or equivalent and another person who should be CA or ICWA or MBA in Finance.

Clause (3) - Capital adequacy and Liquidity Requirements

11. Clause (3) lays down the minimum current ratio of 1.5:1, liquidity ratio of 1:1 and net worth requirement for different categories of trading licences as under:

Ser No.	Category of the Trading Licence	Volume of Electricity proposed to be traded in a year	Net Worth (Rs. in crore)
1	Category I	No limit	50.00
2	Category II	Not more than 500 Million units	25.00
3	Category III	Not more than 100 Million units	5.00

12. Audhunic Alloys & Power Ltd has suggested that net worth requirement should not be increased drastically. Lanco Electric Utility Ltd has though expressed a view that

increase in net worth would encourage only the serious players, has yet suggested to segregate genuine players from others by allowing new players in category III only and based on performance/experience in power trading their licences can be upgraded to category II and category I in a graded manner. It has also suggested that prompt payment discount be increased from the present 2% to 5% to facilitate prompt payment by the buyers. According to Lanco, in a surplus situation, volumes for trading will improve and at that time net worth criteria could be increased, if required. GMR Energy Trading Ltd too has represented against increase in net worth requirement and licence fee as power trading is considered to be in nascent stage. It has also opposed prescription of current ratio and liquidity ratio on the ground that the power trading company does not have any other business inventory. JSW Power Trading Company Ltd. has sought a clarification the existing licensees would need to comply the net worth criteria and current and liquidity ratio by 31.3.2010 without complying with these requirements even if these regulations commence before 31.3.2009.

13. In the recent past, there has been a phenomenal increases in the cost of electricity traded. In view of these increases in the cost, net worth requirements have been revised and rationalised. It is true that an exclusive power trading company does not maintain any inventory. However power trading activities can be undertaken along with any other business except transmission in electricity. It is, therefore, considered appropriate to specify current and liquidity ratios. However, we have decided to specify the minimum liquidity requirement of 1:1 for current ratio to bring it at par with the requirement of liquidity ratio. Clause (2) of Regulation 15 of the draft regulations specifies that the existing licensees shall meet the net worth, current ratio and liquidity

ratio criteria by 31.3.2010. This takes care of the concern of JSW. We do not consider it desirable to provide for grant of licence for category I and then upgrade them gradually.

REGULATION 4: DISQUALIFICATIONS

Clause (b)

14. As per clause (b) of Regulation 4 of the draft regulations, a person can be disqualified in case he, or any of his associates or partners, or promoters, or Directors is involved in any legal proceedings, which, in the opinion of the Commission, may adversely affect the interest of the electricity sector or the consumers. PTC India Ltd has suggested that mere involvement in the legal proceedings should not be the basis for disqualification and that entry barrier should be minimum. In the light of the suggestion made and after giving serious consideration to the issue, we have decided to omit this clause. In view of this decision, the applicant for grant of licence need not furnish such information to the Commission or publish it in the newspapers.

Clause (c)

15. As per clause (c), in case the applicant, or any of his associates or partners, or promoters, or Directors has been convicted of an offence involving moral turpitude, fraud, or any economic offence during the year of making the application or three years immediately preceding that year, the applicant will be disqualified. PTC India Ltd has commented that only such provisions should be kept which are tenable under law and the provisions should be applicable on applicant only. The comments received from PTC in this regard have been considered. The emerging electricity sector has to be insulated from the persons with criminal antecedents. For this reason, we do not favour

dilution of the provision proposed in the draft regulations. Therefore, clause (c), as provided in the draft regulations, shall be retained.

Clause (e)

16. In accordance with clause (e) of the draft Regulation 4, the applicant cannot be said to be qualified in case he or any of its Directors holds a licence for transmission of electricity. PTC India Ltd has sought a clarification whether this provision applies only for a Director who holds transmission licence in his personal capacity. Based on the past practical experience, we are of the view that no individual in his personal capacity may obtain licence for transmission of electricity. Therefore, we feel that the provision in relation to the Director is superfluous. Accordingly, we direct that the provision be suitably revised so as to operate as a disqualification only in case the applicant for grant of trading licence himself holds a licence for transmission of electricity. The corresponding provisions made in the forms for application and publication of notices in the newspapers shall also be modified.

Clause (f)

17. Under clause (f), a person is considered to be disqualified for grant of licence in case he or any of his associates or partners, or promoters, or Directors has in the past been –

- (i) refused a licence on the grounds which continue to remain valid, or
- (ii) found guilty in any proceedings for non-compliance of any of the provisions of the Act or the rules or the regulations made thereunder during the year of making the application or five years immediately preceding that year.

18. PTC India Ltd is of the opinion that this provision should apply only in respect of the applicant itself. For the reasons already recorded while dealing with the suggestion of PTC on clause (c) above, we do not consider any modification is necessary. Accordingly, this clause shall be retained as per the draft regulations.

Clause (g)

19. Under clause (g), the applicant may be refused licence in case he is not considered a fit and proper person for any reason other than those specified in the previous clauses, to be recorded in writing. For this purpose, the Commission may take account of such factors as financial integrity of the applicant, his competence, reputation and character; and his efficiency and honesty, among any other factor. PTC India Ltd in its comments has stated that the attributes such as reputation and character, efficiency and honesty, competence etc. for the purpose of determining whether the applicant is fit and proper person, are quite subjective in nature and cannot be defined undisputably. Hence, PTC feels, this should not be in the purview of the Commission. We do not agree with the suggestion. A view whether or not the applicant is a fit and proper person will be taken by the Commission on an analysis of the material available on record and the reasons will be conveyed to the person concerned. This will lend credibility to the Commission's decision, which is also appealable. Therefore, we are of the view that the provision shall stand as per the draft regulations

REGULATION 6, CLAUSE (1): PROCEDURE FOR GRANT OF LICENCE

Sub-clause (a)

20. Sub-clause (a) provides that an application for grant of licence shall be accompanied by such fee as may be prescribed by the Central Government from time

to time payable through Bank Draft or Pay Order drawn in favour of Assistant Secretary of the Commission. NTPC Vidyut Vyapar Nigam Ltd has suggested that the following may be added at the end of the sub-clause (a)-

“The prescribed fee may also be deposited by RTGS/NEFT in “CERC Account” at the designated Bank of the Commission as may be specified by the Commission.”

21. Under Section 15 of the Act, power to prescribe fee for making application for grant of licence is vested in the Central Government. As per Ministry of Power notification dated 23.3.2004 on payment of fee for application for grant of licence, issued in exercise of power under Section 176 of the Act, the fee is payable through demand draft in favour of Assistant Secretary, CERC. Pay order being a form of demand draft, it has been added in the draft regulations. Suggestions by NTPC Vidyut Vyapar Nigam Ltd, though proper and in tune with the present-day technological advancements is not being acted upon at this stage, and till such time Ministry of Power notification *ibid* is amended. The secretariat of the Commission shall approach the Ministry for appropriate amendment of the notification and also take steps for making arrangements for receipt of fee in accordance with the suggestion made by NTPC Vidyut Vyapar Nigam Ltd. for future.

REGULATION 7: OBLIGATIONS OF THE LICENSEE

Clause (c)

22. Clause (c) obligates the licensee not to charge any amount exceeding the trading margin fixed by the Commission from time to time. PTC India Ltd has pointed out that fixation of trading margin for the inter-State trading in electricity by the Commission is *sub judice* before various courts, including the Hon'ble Supreme Court. In our opinion

pendency of the judicial proceedings impugning the trading margin presently specified by the Commission or that may be specified in future cannot be the reason for not seeking enforcement of a statutory provision so long as it stands on the statute book. Hence, the provision shall stand.

Clause (f)

23. This clause provides that the licensee may coordinate with Regional Power Committees, the Central Transmission Utility, State Transmission Utilities, the Regional Load Despatch Centres, and the State Load Despatch Centres with regard to his trading-related activities, to the extent authorized by the concerned buyer and seller.

24. PTC India Ltd and NTPC Vidyut Vyapar Nigam Ltd have recommended deletion of the last line which reads as “to the extent authorized by the concerned buyer and seller”. According to them, the licensee should have the authority and freedom to coordinate with the concerned entities with regard to his trading related activity and should not be through authorization by buyer or seller as the requirement of authorization by buyer or seller puts barrier to the growth of power market and may also lead to disputes. Audhunic Alloys and Power Ltd and JSW Power Trading Company Ltd have opined that since the licensee takes all risks as an open access customer, he would be required to coordinate for operational and commercial activities related to any transaction under bilateral power trading. As such, It has been urged, there is no need for authorization by buyer or seller. NTPC Vidyut Vyapar Nigam Ltd has suggested the modified provision to read as under-

The licensee may coordinate with Regional Power Committee, the Central Transmission Utility, State Transmission Utilities, the Regional Load Dispatch Centres, and the State Load Dispatch Centres with regard to his trading-related activities.

25. The licensee is expected to be coordinating with the concerned entities on behalf of the buyer and seller, who must not later on disown the acts of the licensee, performed on their behalf and raise disputes. The stipulated authorization is, therefore, necessary and we do not feel that any modification is necessary. Hence the provision as per the draft published shall stand.

Clause (h)

26. As provided in this clause, the licensee is required to carry out trading in accordance with the agreed terms and conditions, and the licensee may take such safeguards as he may consider necessary with regard to payment security mechanism from the buyers, but shall always ensure timely payment of dues to the seller for purchase of the agreed quantum of electricity either through a letter of credit or any other appropriate instrument or as may be mutually agreed between the seller and the licensee.

27. Audhunic Alloys and Power Ltd has urged that the provision should not be insisted on and be left to the licensee since otherwise it would restrain the licensee from introducing any innovative product in the market.

28. In our view the provision cannot be said to be restrictive so as to restrain the licensee from introducing innovative products, especially in view of the flexibility allowed for the seller and the licensee to mutually agree on the payment arrangement. Therefore, the provision shall be retained in the form it was published in the draft regulations.

Clause (i)

29. Clause (i) has proposed to enjoin upon the licensee to ensure that proper agreements for purchase and sale of electricity are entered into with the sellers and the buyers prior to scheduling a transaction. PTC India Ltd and NTPC Vidyut Vyapar Nigam Ltd have suggested that the qualifying word “proper” may either be omitted or suitably defined so as to avoid any ambiguity. We have considered the suggestion. The qualifying word “proper” preceding the word “agreement” means a valid agreement enforceable by law. The word proper needs to be read in that context. However, for this purpose, the word “proper” shall be replaced by the word “appropriate” in the final regulations.

30. This clause further lays down that the agreements shall specify, *inter alia*, the following, namely –

- (i) the boundaries, that is to say, upper and lower MW limits of electricity to be purchased or sold,
- (ii) modalities for scheduling,
- (iii) persons authorized to specify the schedule, or to modify the schedule after it has been intimated to the Regional Load Despatch Centre or the State Load Despatch Centre,
- (iv) whether the buyer or the seller can unilaterally advise modification of the schedule, or whether the modification can only be advised jointly by the seller and the buyer,

31. PGCIL has pointed out that though modification of schedule for long-term (and medium-term) transactions are allowed, such freedom to allow scheduling advice by either or both would lead to confusion and should be avoided. Hence it has suggested that a provision may be made that only the applicant can advise modification of schedule to RLDCs, if required, after taking consent from the parties involved. We do not think that any modification on the lines suggested by PGCIL is necessary, since the clause is only to ensure that the party which can advise a schedule change is duly identified in the contract, and there is no dispute on this account later on.

Clause (k)

32. According to clause (k), the licensee shall ensure that the buyer and the seller are either grid connected entities or represent such entities, with special energy meters on their periphery and that the mechanism for Unscheduled Interchange accounting by the appropriate authority is in place.

33. JSW Power Trading Company Ltd finds it difficult to ensure connectivity of a seller/ buyer to the grid and also whether UI accounting mechanism is in place. It has argued that for connectivity with the grid and installation of the Special Energy Meters for UI accounting, nodal Regional Load Despatch Centre or the State Load Despatch Centre at the seller/buyer ends are the appropriate authorities and they need to ensure the same. PTC India Ltd has also opined that it may not be possible for trading licensee to ensure that the buyers and sellers have installed energy meters and the mechanism for UI accounting by appropriate authority is in place. According to PTC, this needs to be implemented as per the prevalent rules/ regulations by the appropriate Regulatory

Commission or concerned utility. It also feels that the Special Energy Meters should not be mandatory, particularly for small buyers and sellers.

34. Grid connectivity and installation of the Special Energy Meters, pre-requisites for inter-State trading, are the responsibility of the Central Transmission Utility and the State Transmission Utilities. The provision suggested in the draft regulations cannot be read to have imposed any obligation for grid connectivity and installation of the Special Energy Meters on the electricity traders, beyond ascertaining that they are in place. Therefore, the provision shall stand.

Clause (I)

35. According to this clause, the licensee is required to ascertain that MW quantum of a buyer does not exceed the maximum deficit that the buyer can have, that is to say, maximum consumer load minus minimum generation and that, MW quantum of a seller does not exceed the maximum possible surplus of the seller, that is to say, maximum generation minus estimated consumer load. For the purpose of this clause, 'generation' is to include entitlements under power purchase agreements entered into for catering to the consumer demand in utility's system.

36. PTC India Ltd, PGCIL, Lanco Electric Utility Ltd, Audhunic Alloys & Power Ltd, GMR Energy Trading Ltd, JSW Power Trading Company Ltd and JSW Power Trading Company Ltd have represented that the licensee cannot ensure the implementation of this provision as there does not exist any mechanism through which the licensee may ascertain the maximum surplus available with the seller or the maximum demand of a buyer. It has been suggested that this provision may be incorporated in the agreement

to be signed by the licensee with the buyer and seller and a declaration may be taken by the licensee to this effect, which may be updated/reconfirmed on regular intervals. In addition, if it is found that any seller or buyer is indulging in such practice, the Commission may impose suitable penalties, including debarring trading with such entities.

37. In the light of the difficulties pointed out by the stakeholders, we have decided to omit this clause.

Clause (m)

38. This clause prohibits the licensee from purchasing electricity from the entities and the associates of such entities, who make default in payment of Unscheduled Interchange charges, transmission charges and fee and charges for National Load Despatch Centre or Regional load Despatch Centre or the Unified Load Despatch and Communication Scheme, when so advised by the Commission.

39. The stakeholders have spoken against this provision. According to them, it may act as a barrier for growth and development of power market and will have a very negative impact on short-term trading business. PTC has suggested that measures like opening of LC, curtailment of government allocation of ISGS, appropriation of central plan allocation or other legal steps could be taken for addressing the payment defaults. PGCIL has suggested that this provision may be incorporated in the agreement to be signed by the licensee with the buyer/seller and a declaration from the buyer and seller may be taken by the licensee to this effect on regular intervals. Lanco Electric Utility Ltd has stated that the defaulting entities are not known to the trader. In these cases, the

Commission has to give notice well in advance, as the contracts are entered at least three months in advance and the charges for open access are paid accordingly in advance. Audhunic Alloys and Power Ltd. has represented that by such a provision, the purpose of grid discipline may not be served since alternatives will be available with the defaulters to trade directly. As such, restriction may be covered under the open access regulations so that such entities are not permitted to avail any open access directly or indirectly. According to GMR Energy Trading Ltd., since the trading licensee is not a constituent of pool account, the Commission or any other authority has to declare the defaulter and his period of disqualification. JSW Power Trading Company Ltd has opined similarly. It has also suggested that restriction may be covered under open access regulations so that such entities are not permitted to avail any open access from SLDC/RLDC directly or indirectly. NTPC Vidyut Vyapar Nigam Ltd has pleaded for deletion of the provision since in any case the licensee is under an obligation to comply with any directive issued by the Commission and specific advice should not become part of the regulations.

40. The Commission proposes to add similar provisions in open access regulations which would prevent the defaulters from trading directly. Also, before issuing a direction in the matter, the Commission will seek to ensure that contractual arrangements are not disrupted unnecessarily, and may even direct the trading licensee to divert the payments to the relevant account in which the seller has a default. The clause in the draft regulations has, therefore, been retained., but with addition of reactive energy charge and congestion charge to the list of payment defaults to be covered.

Clause (n)

41. This clause casts an obligation on the licensee to regularly pay the licence fee specified by the Commission from time to time. Lanco Electric Utility Ltd and Audhunic Alloys and Power Ltd have objected to any increase in the licence fee on the ground that such increases are likely to cause additional burden on the traders and that too in a thin trading environment. The comment made by the two electricity traders is alien to the scope of the proposed provision since it does not deal with specification of any fee, but only mandates that the fee specified from time to time shall be payable by the licensee. Therefore, no action is called for on the comment received on the draft regulations.

Clause (o)

42. According to this clause, the licensee shall not omit or neglect to undertake trading activity. NTPC Vidyut Vyapar Nigam Ltd has pointed out that the clause does not specify the conditions or circumstances, which would render licensee liable for omitting or neglecting to undertake trading activity.

43. In the draft regulations, an obligation has been proposed to be imposed on the electricity trader not to omit or neglect to undertake trading activity. A failure to undertake trading in electricity has been made a ground for revocation of licence under sub-clause (e) of clause (1) of Regulation 14 of the draft regulations. However, proviso to clause (1) of the proposed Regulation 14 provides for an enquiry by the Adjudicating Officer appointed under Section 143 of the Act before revocation of licence. A decision on revocation may be taken on consideration of the circumstances placed before the Adjudicating Officer. It is neither possible nor appropriate to lay down the circumstances

which may render the electricity trader liable or he will be exonerated of its failure to meet the obligation as it will introduce rigidity. The existing provisions which are quite flexible are considered to be adequate and in the interest of justice to take care of various situations.

Clause (q)

44. This clause has proposed that the licensee shall maintain up-to-date record of all the trading transactions undertaken by him, separately for bilateral transactions and those through the power exchanges. GMR Energy Trading Ltd has suggested that the power exchanges may be the appropriate agency for furnishing all the data of the traded power and, therefore, each entity may not be required to separately furnish the data pertaining to transactions through power exchanges

45. We feel that the information on trading through the power exchanges shall be required to be maintained by the licensees as per the proposed regulation and furnished to the Commission in accordance with any general or specific direction. The power exchanges even though they may be maintaining similar information for their own purposes may not be required to submit the periodical information for the business of electricity traders. The information is to be maintained by the licensee himself.

Additional Provision

46. Shri S.Surya Prakash Rao has considered it desirable to incorporate the following additional clause in Regulation 7:

Notwithstanding any thing contained in the agreements entered into by the Trader, the seller and buyer shall be responsible for scheduling of respective transactions in Open Access and shall make payments to UI pool A/c for deviations from schedules issued by RLDC.

47. These regulations deal with the procedure for grant of trading licence, and the obligations of the trading licensee. The matter raised is outside the scope of these regulations.

REGULATION 9: SUBMISSION OF INFORMATION

Clause (b)

48. Clause (b) provides that the licensee shall furnish such information as he may be asked from time to time, to monitor his performance and compliance of the terms and conditions of the licence and any other legislative or regulatory requirement separately for inter-State trading and intra-State trading, bilateral trading and trading through power exchanges.

49. PTC India Ltd has suggested that the information submitted by licensee may be consolidated and kept at the Commission's website for the requisite time period to help the market in accessing information at a single point. Audhunic Alloys and Power Ltd and JSW Power Trading Company Ltd have opined that the power exchanges may be the appropriate agency to provide the data on power traded by the licensees through power exchanges.

50. The power exchanges even though they may be maintaining similar information for their own purposes cannot be required to submit the periodical reports for the business of electricity traders. The information is to be submitted to the Commission by the electricity trader himself.

REGULATION 14: REVOCATION OF LICENCE

Clause (1)

51. Clause (1) of Regulation 14 of the draft regulations specifies the circumstances and the procedure for revocation of licence. PTC India Ltd has averred that the Commission has proposed to appropriate to itself sweeping powers for revocation of licence. It has been suggested that revocation of licence should be only in exceptional cases and that too after giving sufficient time and opportunity of hearing the licensee to defend him. Specifically, with reference to sub-clause (g). PTC India Ltd has submitted that there should be a provision of at least serving 2-3 notices at reasonable intervals to the licensee for submitting the information before notice on revocation is given. It has further stated that licensee should be given sufficient opportunity to present his case before the Commission and being heard before revocation of licence by serving notices at reasonable intervals.

52. Section 19 of the Electricity Act is the statutory basis for the draft Regulation 14. However, the licence can be revoked only after the detailed proceedings, whatever may be the ground for action, before an Adjudicating Officer appointed by the Commission. There should not be any cause for concern on any body's part as the licensee will be given reasonable opportunity before the Adjudicating Officer. The provision has been retained as such.

Form III - Para 6

53. It has been proposed that as a condition for grant of licence for trading, the licensee or any of its Directors shall not engage in the business of transmission of electricity. PTC India Ltd has given a comment similar to that given against clause (e) of

the draft Regulation 4. For the reason already recorded, reference to the Director has been omitted.

MISCELLANEOUS

54. Shri Gajendra Haldea: has pointed out that the proposed regulations do not envisage sale by an inter-State electricity trader to an open access consumer. He has suggested that there should preferably be a separate section to cover this aspect.

55. Clause (4) of Regulation 2 of the trading regulations, presently in force, lays down that the regulations apply to trading carried out bilaterally between the generating company, including captive generating plant, distribution licensee and the electricity trader on the one hand and the electricity trader and the distribution licensee on the other. This is a restrictive provision. This has been omitted from the draft regulations. Therefore, the consumer, by virtue of Section 42 of the Electricity Act can buy power from any licensee (including the electricity trader), other than the distribution licensee of his area. The statutory right of the consumer to buy electricity from an electricity trader is thus secured. The limitations under the existing trading regulations will not operate in view of omission of clause (4) of the existing Regulation 2. However, considering the scope of the draft regulations, a clause shall be added to Regulation 7, dealing with the obligations of the licensee, that the licensee shall not, subject to settlement of commercial terms in accordance with law, omit sale of electricity to a consumer allowed open access by the concerned State Commission.

56. Shri S.Surya Prakash Rao has suggested that the power of the Commission to invoke provisions under Section 60 of the Act may be mentioned along with the

procedure therefor so as to avoid problems in implementation of those provisions when need arises.

57. The power under Section 60 of the Act is a general power invocable in case of abuse of dominant position by the generating company or a transmission licensee or an electricity trader. There is no necessity to provide for a procedure to invoke that power in the regulations presently under consideration. Clauses (a) and (p) of the draft Regulation 7 are considered to be adequate to address the concern of Shri Rao.

58. Shri S.Surya Prakash Rao has further suggested that the open access regulations, tariff regulations and the Grid Code do not recognize traders as players in ABT regime, hence it may be desirable to minimize or eliminate the role of traders in open access transactions. Alternatively, it has been pointed out, the role of traders may be defined in the new tariff regulations to be notified from 1.4.2009. In our view, the suggestions are beyond the scope of the present regulations

DIRECTION

59. We direct that the regulations be finalized in the light of above discussion and decisions, and be notified in the Official Gazette, to come into force from the date of their publication.

Sd/=
 (S. Jayaraman)
 Member

Sd/=
 (R. Krishnamoorthy)
 Member

Sd/=
 (Dr. Pramod Deo)
 Chairperson

New Delhi, dated the 16th February 2009