

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 124/MP/2013

Coram:

Shri V.S. Verma, Member

Shri M. Deena Dayalan, Member

Date of Hearing: 27.08.2013

Date of Order: 01.01.2014

IN THE MATTER OF

Petition under Regulations 63 (i) and 64 of the Central Electricity Regulatory Commission (Power Market) Regulations, 2010 for making changes in the CERC (Open Access) Regulations, 2008 pertaining to NLDC Operating charges.

AND

IN THE MATTER OF

Power Exchange India Limited
5th Floor, Tower 3, Equinox Business Park,
Off Bandra Kurla Complex, LBS Marg Kurla (West),
Mumbai-400 070

...Petitioner

Vs

1. National Load Despatch Centre
B-9, Qutab Institutional Area, Katwaria Sarai,
New Delhi-110 016

2. Indian Energy Exchange Limited
100 A/1 Ground Floor, Capital Court
Ol of Palme Marg, Munirka, New Delhi-110 067

...Respondents

ORDER

In the present petition filed under Regulations 63 (i) and 64 of the Central Electricity Regulatory Commission (Power Market) Regulations, 2010 (Power Market Regulations), the petitioner, Power Exchange India Limited (PXIL) has prayed for the following:



"(i) Introduce a reasonable methodology for sharing the NLDC Operating charges instead of present procedure; and

(ii) Pass such order, as this Hon`ble Commission deems fit and proper in the facts and circumstances of the case."

2. The petitioner has primarily sought amendment of Regulation 17 of the Central Electricity Regulatory Commission (Open Access in inter-State in Transmission) Regulations, 2008 (Open Access Regulations).

3. Regulation 6 of the Open Access Regulations lays down the procedure for making of application for availing the open access. Regulation 6 provides as under:

"(1) a short-term customer or the power exchange (on behalf of buyers and sellers) intending to avail of short term open access for use of the transmission lines or associated facilities for such lines on the inter-State transmission system, shall make an application to the nodal agency in accordance with these regulations.

(2) The application for a bilateral transaction shall contain the details, such as names and location of supplier and buyer, contracted power (MW) to be scheduled and interface at which it is referred to, point of injection, point of drawal, starting time block and date, ending time block and date, and such other information that may be required in the detailed procedure.

(3) The application for a collective transaction shall contain the requisite details in accordance with the detailed procedure."

4. The petitioner vide its affidavit dated 25.11.2013 has submitted that it has filed present petition seeking amendment of Regulation 17 of the Open Access Regulations. However, due to an inadvertent error, it has quoted Regulation 7 instead of Regulation 17 of the Open Access Regulations.

5. Regulation 17 of the Open Access Regulations lays down the operating charges to be paid to RLDC and/or SLDC for scheduling of bilateral transaction and collective transaction. Regulation 17 is extracted hereunder:

"Operating Charges

17. (1) Operating charges at the rate of Rs. 2,000 /- per day or part of the day for each bilateral transaction for each of the Regional Load Despatch Centre involved and at the rate of Rs.2,000 /- per day or part of the day for each State Load Despatch Centre involved shall be payable by the applicant.

(2) In case of the collective transaction, operating charges shall be payable by the involved and Rs.2,000 /- per day for the State Load Despatch Centre involved for each point of transaction.

(3) National Load Despatch Centre shall share the operating charges with the Regional Load Despatch Centres in such manner as may be decided by the Central Transmission Utility.

(4) All buyers within a State shall be clubbed together and all sellers within a State shall be clubbed together by the power exchange (with necessary coordination with the State Load Despatch Centre) and each of the groups shall be counted as a single entity by National Load Despatch Centre for levy of operating charges and for scheduling:

Provided that for levy of operating charges for State Load Despatch Centre and levy of the intra-State transmission charges, each point of injection or drawal in the State network shall be counted separately.

Note 1

The operating charges include fee for scheduling, system operation and collection and disbursement of charges.

Note 2

The operating charges collected by the nodal agency shall be in addition to the fees and charges specified by the Commission under sub-section (4) of Section 28 of the Act.

6. The petitioner has submitted that since NLDC is the nodal agency for collective transactions, the charges have been defined at level of Regional entities. In case of embedded consumers, for which NOC is issued by respective SLDCs, they are clubbed together for a State and deemed to be as one regional entity for sell and one regional entity for buy, respectively. These are regulatory charges and are to be borne by the participants and exchange works as the collecting agency for these charges. For the purpose of socialization, charges are to be equally distributed amongst all participants on the day. The utilities (deemed regional entities) need to get clubbed with the smaller OA consumers.

7. The petitioner has submitted that the present methodology favors exchange with larger participant base and makes it difficult for smaller Exchange to attract new clientele and consequently competition in the market is getting suffered or not working in the desired manner. The petitioner has also submitted that the current methodology is biased favoring Exchange with more liquidity, makes difficult for shallow liquidity Exchange to attract new entrants due to high cost and is favouring exchange to promote it as an USP to beat competition. The petitioner has proposed that a fixed rate of traded volume for NLDC operating charge may be levied instead of the present procedure. The proposed methodology will bring uniformity in the power market and would allow true competition by removing biasness and hurdles for new entrants. Also, the NLDC operating charge so fixed may be allowed to revise the charges on monthly basis. The revision in charges shall be applicable in case NLDC is unable recover its operating expense for the previous month.

8. The petitioner has submitted that the mechanism should be revised so that the imbalances are removed and participants can be charged irrespective of their size and quantum. At the same time, the basic categorization of the entity as regional entities and embedded entities is honoured. If a flat charge of a reasonable amount per participant is levied instead of the present procedure, it would ensure fairness to participants on one side and on the other side the charge can be decided to make transfer process revenue neutral to NLDC. The system operator in line with the additional complexities emerging as more and more markets open can periodically revise the charges.

9. The Commission, vide Record of Proceedings dated 2.7.2013 directed the petitioner to implead Indian Energy Exchange (IEX) and National Load Despatch Centre (NLDC) as respondents to the petition and served copy of the petition on them. Accordingly, the petitioner has impleaded IEX and POSOCO as respondents to the petition.

10. Reply to the petition has been filed by Indian Energy Exchange (IEX) and National Load Despatch Centre (NLDC).

11. IEX vide its affidavit dated 25.7.2013 has submitted that the present petition is not maintainable on the following grounds:

(a) Hon'ble Appellate Tribunal for Electricity in its judgment dated 6.5.2011 in Appeal No. 170 of 2010 in matter of Madhya Pradesh Power Generation



Company Ltd Versus Madhya Pradesh Electricity Regulatory Commission and others held that inherent power which is akin to Section 151 of the Civil Procedure Code is exercisable only in adjudicatory jurisdiction, not in legislative jurisdiction. In light of the above judgment dated 6.5.2011, Regulation 63(i) of Power Market Regulations can be exercised by the Commission only in case of adjudication of a dispute and in the present petition no dispute has been raised by the petitioner. Therefore, the present petition is liable to be rejected. In the said judgment, APTEL had also held that the removal of difficulty is exercisable only to ensure that the Act is implemented and it is in furtherance of the Act that the power to remove difficulties is conferred. It is only to give effect to the provisions of the regulations that this power is exercised. In the present petition, there is no case of any difficulty in implementation of the regulations. Therefore, the petition cannot be filed under Regulation 64 of the Power Market Regulations.

(b) The petitioner is challenging basic principle of Power Market Regulations by way of expressing disadvantage of current methodology of operating charges levied by NLDC. IEX is not agree with the petitioner's attempt to challenge current methodology on account of hardship faced and being unable to attract clients.

(c) Regulation 3(4) of Central Electricity Regulatory Commission (Fees and Charges of Regional Load Despatch Centre and other related matters) Regulations, 2009 clearly specifies definition of "charges" collected by RLDCs



and NLDC which *inter-alia* provides that these charges are collected by RLDCs and NLDC on account of serviced rendered by them. Elaborating the operating charges, as per procedure of collective transactions approved by CERC, IEX has submitted that NLDC or RLDCs clearly provide services at the group level whereas SLDC is providing services at the individual embedded customer level and accordingly the Open Access Regulation has defined charges to be levied for the services by NLDC/RLDC at the group level (i.e. ₹ 5000 per day per group of buyer and seller at the Regional entity level), whereas charges for the services provided by the SLDC are on the individual embedded customer level (Rs 2000 per day per embedded customer). Therefore compensating for services of NLDC/RLDC at client level or on any other basis like on the basis of volume transacted, would not be commensurate to the services provided by them as they are not taking any part in scheduling of intra-State entities. Therefore, in the present regulations, there is a clear segregation of responsibilities and services rendered by different load dispatch centers and LDCs are being compensated accordingly. Therefore, the petitioner's proposal of per participant charge or per unit charge' is untenable since scheduling of intra state entities are not under the domain of NLDC/RLDCs.

(d) The procedure for collective transactions does not contemplate responsibility of payment of operating charges on the participants of the Exchange, rather it is the responsibility of the Exchange to pay these operating charges and in case of payment default, Power Exchange(s) are liable to pay to NLDC a simple interest at the rate of 0.04% for each day of default, from the due



date of payment. The petitioner's proposal of 'per participant charge/per unit charge' is untenable and illegitimate since the responsibility of payment of operating charges vests with the Exchange instead of the participants themselves.

(e) The petitioner is defying very established concept of "Economy of Scale" which is a basic principle of competition envisaged in the Electricity Act, 2003 by arguing that larger market participants in IEX leads to reduction in charges which is a hurdle for the participants who bid on smaller exchange. IEX corroborated its arguments on the basis of definition of 'Economy of scale' as available on Investopedia.com and Wikipedia.org and in World English Dictionary and maintained that the "Economy of scale" is applicable in present case on the grounds that both the exchanges started their operations at about the same time with the petitioner commencing its operations (23.10.2008) about 3 months after the inception of IEX operations (27.6.2008). On 20.5.2009, CERC notified amendment to Short term Open Access Regulations and Procedure for collective transaction was approved on 25.1.2008 which was amended on 20.5.2009. Also when the first open access consumer was registered on IEX in August,2009, the petitioner was in full operations and therefore equal opportunity was existing for PXIL to nurture its business by increasing participants.

(f) There was no discrimination in the Regulatory framework since inception. Also no preference was given to either exchange thereby providing a level playing field.

(g) In lieu of the equal and level playing opportunity enjoyed by the both the Exchanges, the concept of 'Economy of Scale' is applicable in the present case. In every business, to stand in competition the entities try to achieve economies of scale to optimize the resources and provide cost effective products/services to its customers. Similarly, participants at IEX are enjoying this advantage of economy of scale and this economy of scale attained by IEX by its consistent efforts towards market development.

(h) The present case is clear case of hardship suffered by the petitioner on account of competitive forces and therefore, IEX cannot be put to any additional burden in terms of charges on per client or on volume basis. This is purely matter of business efficiency and not of any difficulty in the implementation of the provisions of the Regulations.

12. NLDC in its reply dated 31.7.2013 has submitted as under:

(a) CERC has envisaged multiple Power Exchanges in the country with the intent of competition amongst the Power Exchanges.

(b) Open Access Regulations specifies the rate of operating charge for NLDC in case of collective transaction. Further, socialization amongst the participants is done by the Power Exchanges and the regulations do not specify any particular methodology.

(c) The charges for any kind of service should be linked to and should be commensurate with the efforts put into the delivery of the service. Efforts of NLDC/RLDC are proportionate to number of transactions scheduled, irrespective of quantum of power scheduled.

(d) NLDC levies operating charges per regional entity involved. Also, for a State, the number of group of seller and buyer are clubbed together separately and are considered as a separate entity for scheduling and levy of operating charges. This has been done in view of the fact that NLDC schedules the transactions at the periphery of the regional entities concerned and does not schedule intra-State entities individually.

(e) With regard to methodology proposed by the petitioner to fix a revenue neutral 'per participant charge' irrespective of size and quantum of the volume transacted by such a participant. NLDC/RLDCs do not go into details of participants within a State and the same is taken care of by SLDCs. Therefore, the proposed per participant charge would not be in line with intent/spirit of the regulations.

13. The petitioner in its rejoinder dated 8.8.2013 to the replies of IEX and NLDC has submitted as under:

(a) The scope of the inherent powers of Civil Courts under Section 151 of Code of Civil Procedure, 1908, and CERC as regulator under Power Markets

Regulations and Electricity Act, 2003 are entirely different. Regulation 63 of the Power Market Regulations does not confer the inherent powers. It merely protects it. The scope of protection under Section 151 of the CPC is limited to the exercise of the inherent powers under adjudicatory proceedings. CERC, being a regulator, acts not only in its adjudicatory capacity, but also in its capacity as a regulator, therefore, it is incorrect to limit the inherent power of CERC as regulator only to adjudicatory proceedings. Clearly, the inherent power of CERC will extend to all such domains where CERC can duly exercise its power. The source of such power has to be found under Sections 79 and 94 of the Electricity Act, 2003. So, such inherent power will also extend to, amongst others, framing regulations, interpreting regulations, adjudicating disputes and other areas. The decision of APTEL has been quoted out of context and is clearly distinguishable. Under Regulation 63 of the Power Market Regulations, the Commission has ample authority to make necessary orders to prevent any injustice in the power market.

(b) In the APTEL's Judgment dated 6.5.2011, the ratio decidendi is that whether the Appellate Tribunal has jurisdiction to enter into the question of validity of the Regulations. As such, the Ratio is not applicable to the present issue raised by the petitioner in the petition. Moreover, the Regulation in question was MYT Regulation 2009 and the inherent power vested with Central Electricity Regulatory Commission (CERC) is as per Power Market Regulations. Therefore, in a strict sense, the said judgment is not applicable to the present case.

(c) IEX is trying to draw a similarity with Section 151 of Civil Procedure Code and drafting of 59.2 of MYT 2009 to misguide the Commission and restrict the inherent powers of CERC provided in Regulations 63 and 64 of the Power Market Regulations. However, CERC had exercised these regulations by the way of issuing orders in number of petitions. Therefore, it is amply clear that vide Regulations 63 and 64, CERC has undoubtedly full powers to issue the orders as prayed by the petitioner in the petition.

(d) Hon`ble Supreme Court In PTC India Ltd Vs CERC [reported in (2010) 4 SCC 603], has held that the Commission has many jurisdictions, legislative, advisory, quasi-judicial as vested in different provisions of the Act. Moreover, APTEL in the said Judgment dated 6.5.2011(MPPGC Vs MPERC) in para-60 has held that the Commission has the power to amend the Regulations and as per Section 21 of the General Clauses Act, 1897, the power to issue notification, orders, rules, bye-laws includes a power exercisable in the same manner to add or amend or vary or rescind.

(e) Regulation 64 conferred power to the Commission for removal of difficulty if any difficulty arises in giving effect to the provisions of these Regulations. IEX has made some attempt to demonstrate that the Commission can exercise this power only if there is any difficulty arises in giving effect to

PMR. The Commission notified Power Market Regulations in exercise of powers conferred under Section 66 read with Section 178(2)(y) of the Electricity Act.

(f) PXIL has merely sought for creation of a transparent, fair and equitable procedure for recovery of the regulatory fee without impacting Regulation 7 of the Open Access Regulations. This is nothing but an instance of removal of administrative difficulty in enforcement of a regulatory provision, which is adversely impacting the fair competition in the power exchange market.

(g) The petitioner has submitted that it is not challenging the amount of Rs 5000/- levied as operating charges and the provisions of the Power Market regulations or CERC (Fees and Charges of Regional Load Despatch Centre and other matters) Regulations, 2009. The petitioner has prayed for introduction of a reasonable methodology for sharing the NLDC operating charges instead of the present process so that NLDC charges are equally socialized to create uniformity for the participants across the power exchanges.

(h) The NLDC Charges payable under Regulation 7 of the Open Access Regulation is in the nature of a regulatory levy. The Exchanges are performing the task of collection, aggregation and communication of bids received for a Day Ahead transaction, whereas the Exchange cannot perform the operation of scheduling of the market cleared volume as it would violate the provisions of

Section 28 and Section 32 of Electricity Act 2003 that defines the functions of RLDC and NLDC respectively. The Scheduling of any transaction on the Exchange is dependent on attaining concurrence from Load Dispatchers vis. NLDC, RLDC and SLDC. Regulation 17 (3) of the Open Access Regulations specifies that the Operating charges collected by NLDC shall be shared with RLDC in a manner to be specified by CTU. The Operating charges of SLDC of ₹ 2000/- per day are for each point of transaction. Since the PXs collect SLDC related Operating charge from every Participant in a similar manner, NLDC charge can be collected from the Participant by an Exchange and deposited to NLDC. The Exchange has to recover the Operating charges from participants, however, in a few cases it may so happen that there may be a single participant either in the Buy or in the Sell grouping done by the Exchange.

(i) Economies of Scale argument is used in terms of fixed and variable charges of an organization and its operations. Usage of this term to explain disparity in levying of regulatory charges is not correct. NLDC Operating charges are levy for the services provided by NLDC for facilitating the transactions. These charges should not become a differentiator in promoting participation on a particular exchange when multi exchange scenario has been adopted in the sector.

(j) With regard to equal playing field, no argument on economies of scale is applicable in case of levy of regulatory fee by NLDC. Further it is in the interest

of the participant as well as the power market to have a fair and equitable mechanism of collection of levy amongst the participants irrespective of their choice to choose a power exchange for trading.

14. The petitioner in its rejoinder dated 8.8.2013 to the reply of NLDC has submitted that Multi Exchange model in the country is further strengthened by creating a level playing field for the participants on the two exchanges by removing the obstacles faced by the smaller exchanges due to existing practices in vogue. It is true that the Respondent No.1 and RLDCs do not seek any details of participants within a State as such responsibility is cast with SLDCs of the State under Section 32 of Electricity Act 2003. The procedure for Scheduling and Collective Transactions specifies payment of operating charge by Power Exchanges based on the provisions of Open Access Regulations. The Power Exchanges can pass-on the information related to number of participants whose bids are finally cleared in the Day Ahead Market which NLDC/RLDCs can verify with SLDCs in case intra-State entities are also cleared in the Day Ahead Market. The present petition has been filed to frame equitable guidelines for recovery of the fee prescribed under Regulation 7 of the Open Access Regulations and to suggest a reasonable methodology for socialization of the charges which is fair, equitable and linked to the efforts required to render the services among others. The present petition has also filed for introduce a reasonable methodology for sharing the NLDC operation charges instead of present procedure.

15. Indian Energy Exchange (IEX) in its written submission dated 26.9.2013 has submitted that the 'operating charges' are not levied by the Exchange. However, these are levied by RLDCs/ SLDCs which are statutory authorities performing functions of scheduling of transactions etc. Though the term 'operating charges' has not been defined in the Short Term Open Access Regulations, the Note 1 to Regulation 17 clarifies that the same are levied and collected for scheduling, system operation and collection and disbursement of charges by RLDC. Therefore, the charges by which the RLDC is to be compensated are being levied for the purpose of Scheduling, System Operation and Collection and Disbursement. The scheme of the Short Term Open Access Regulations is clear, namely that at the RLDC level, all the buyers and sellers will be clubbed together as one entity and therefore, since the Scheduling is also collective, there is only one charge of Rs 5000. However, at the State level, when the scheduling for each entity needs to be carried out individually, the operating charges are levied at each point of injection and drawal. Similarly, for system operation function, RLDC is concerned with total buy and sell quantities at the State periphery, without considering intra-State entities individually. In case the deviations from schedule at the State periphery is causing threat to system security, RLDCs advice concerned SLDC to take corrective action, without considering if such deviation is due to the State's own drawal/ injection or it is caused by intra-State entities. Therefore, RLDC's scope of work does not include overseeing individual entities within the State and as such does not depend upon the number of clients located within the State. In case of collective transactions, the charges are collected and disbursed by the respective exchanges directly to SLDCs and this work is not performed by the RLDCs. However, for bilateral

transactions this task is performed by the RLDC. Therefore, none of the three elements of “Operating Charges” in respect of scheduling of collective transactions by RLDCs, refer to individual clients and operating charges are for compensating RLDC for the functions of scheduling, system operation etc. If this is not compensatory, RLDC may approach CERC for appropriate directions. CERC in its order dated 14.11.2003 in Petition No. 48/2003 has approved the charges. IEX has further submitted that there is no basis to define these charges on client basis as the work content of RLDC remains the same irrespective of number of clients involved in a day`s transactions. The premise on which the petitioner is proceeding is that the charges are an imposition on the Exchanges and on account of commercial difficulty of the petitioner, on the basis of the charges needs to be changed.

16. IEX has submitted there can be no question of amending the entire scheme of Short Term Open Access Regulations by exercising the inherent power under Sections 63 and 63 of the Power Market Regulations. The operating charges prescribed by CERC are in line with the activities to be performed by RLDC for the scheduling. The levy has been affixed on the Exchanges since the Exchange is the aggregator of the transactions from the buyers and sellers. Thereafter, it is for the Exchange to collect the same from its members. Since the petitioner has less number of members, it would be entirely incorrect to say that there is a lacuna in the Regulations or the regulatory .The petitioner is seeking to redress its commercial grievances by seeking an amendment in the relevant Regulations. In fact, the Regulations do not deal with the manner of

apportionment of the operating charges at all and even by the amendment of the Regulations, the commercial grievances of the petitioner will not be resolved.

17. IEX has submitted that if the contention of the petitioner is accepted, it would be akin to a person seeking open access and obtaining the same and thereafter contending that the open access charges should not be levied since the same cannot be passed on by him to the purchasers whom he has not been able to locate. The Open access charges is for right to use/access the system and have nothing to do with the ability to pass the same on to others. Similarly, the operating charges are for compensating the NLDC/RLDC for performing its functions and cannot be changed since the petitioner is unable to pass on the same to its customers. Further, it is also wrong on the part of the petitioner to contend that from the consumer point of view, the consumer would prefer Respondent No. 2 to the petitioner since the operating charges are low. The open access consumers having a load of 1 MW or above purchase power through the Exchanges since it leads to a yearly average turnover of ₹ 25 – ₹ 30 crore. It would be impossible to believe that the consumer would choose the Respondent No. 2 just because operating charges would be lower. In fact it is the other way round. More consumers have chosen to trade through the Respondent No. 2 which has brought down the per consumer operating charge. As far as the petitioner contention that the 'prevailing methodology favours Exchanges with more participants' is concerned, the same is entirely misconceived. The petitioner as well as IEX Indian Energy Exchange Limited are operating under Central Electricity Regulatory Commission (Short Term Open Access) Regulations, 2008, Procedure for collective transaction approved by

CERC, Power Market Regulations and the Rules and Bye-laws, etc. of the respective Exchanges approved by CERC.

18. PXIL in its written submission dated 29.10.2013 has submitted as under:

(a) The present petition has been filed for apportionment of NLDC operating charges on equitable and rational methodology amongst the participants of the Power Exchanges to avoid discrimination. The same will provide a level playing field and encourages competition for the participants. The Respondent No.2 has again tried to divert the issue as the petition is neither for amendment of Power Market Regulations nor the framework in the Central Electricity Regulatory Commission (Short Term Open Access) Regulations, 2008. The petition merely seeks to define methodology, which currently is non-existent, to allocate the charges amongst participants.

(b) IEX is attempting to interpret the regulations and the loop holes to suit its argument.

(c) IEX has been mentioned that Open Access charge is right to use/access the system. This is not the right to use the system but these are scheduling and operating charges. Even if it is a right and that right is conferred by system operator, the charges for the right may not be different at different Exchanges. The charges are not for compensating the NLDC/RLDC but are levied by them. For example, in case of Airlines, the user Development fee is uniform for every

passenger irrespective of the airlines. Further it is worth mentioning here that IEX has been utilizing the Scheduling Charges for its competitive advantage. In this regard, PXIL has placed on record a copy of the mail forwarded by IEX to PXIL present client mentioning high Scheduling Charges paid by them and asking them to consider switching to IEX.

(d) The problems indicated by IEX are fictitious as the nature of transactions are different and cannot be compared. As regards the work done by RLDC, the petitioner maintains that IEX is interpreting beyond its jurisdiction and to suit their context.

19. During the course of hearing on 27.8.2013, the representative of the petitioner submitted that PXIL has filed present petition seeking amendment to the Regulations 17 of Open Access Regulations. He further submitted that the operating charges of NLDC for both the Power Exchanges should be aggregated and allocated equally to every participant of both Power Exchanges. He further submitted that the present practice places exchange with lesser clients at a disadvantage compared to the exchange with a high client base. The representative of IEX referred to various provisions of Open Access Regulations and RLDC Fee and Charges Regulations and submitted that the petitioner is challenging the basic principles of Open Access Regulations by way of expressing disadvantage of current methodology of operating charges levied by NLDC. He further submitted that the present case is a clear case of hardship suffered by the petitioner on account of competitive forces and IEX cannot

be put to any additional burden in terms of charges on 'per client' or 'on volume' basis. The representative of the IEX requested to maintain status quo. The representative of the NLDC submitted that Open Access Regulations specifies the rate of operating charges for NLDC in case of collective transactions and further socialization among the participants is done by the Power Exchanges. He further submitted that the Open Access Regulations do not specify any particular methodology for this purpose.

20. We have perused the petition and heard the representatives of the petitioner and respondents. After going through the contents of the petition, it appears to us that the petitioner is seeking amendment to the Regulation 17 of the Open Access Regulation to prescribed methodology for allocation of NLDC operating charges as CERC has not prescribed any procedure in view of the fact that the operating charges are levied on the regional entity. It is observed that the transactions on Power Exchanges have grown with annual turnover in 2009-10 at 7.5 BU to turnover in 2012-13 at 23 BU. The number and type of participants in Power Exchange have also grown exponentially with over 2500 open access consumer across various States, 170 captive generators, 32 State Discoms, 50 IPP, 15 ISGS and 15 private Discoms. While it was expected that Power Exchange will open up new business possibilities and deepen the power market by bringing in more small customers, the results have been beyond expectation. Participants on national level Exchanges from customers embedded in State network has increased manifold. Talking of the overall short term market, the number of transactions in short term market have grown from 15,400 in 2008-09 to 32,000 in 2011- 12. As for NLDC with increased transaction volume, economies of scale in

business have been achieved and with IT systems and technology implementation, scheduling and operating cost have not gone up linearly with increased transaction volume. It is also to be noted that NLDC recovers all its operating expenses from long term and medium term customers through Central Electricity Regulatory Commission (Fees and Charges of Regional Load Despatch Centre and Other related matters) Regulations, 2009 which is bifurcated into system operation charges and market operation charges. In addition, short term operating charges are collected and parked in the LDC development fund of POSOCO. Also to maintain parity between electricity traders and Power Exchange, holistic view on operating charges for scheduling short term transactions, for both Power Exchange and traders should be taken.

21. In view of the above, there is a case to relook at the level of operating charges as well as the nature in which these charges are presently being imposed. The Commission under Section 178 of the Act has been vested with the power to make, amend and repeal the regulations on the subjects which have been authorized under various provisions of the Act. Action to make or amend the regulations is initiated when the Commission is satisfied that there is need for such regulations or amendment to the existing regulations. Accordingly, We direct the staff to undertake historical data analysis of operating charges of Power Exchanges, traders, revenue earned by NLDC from short term transactions. PXIL, IEX, NLDC and RLDCs are also directed to furnish historical data from 1.4.2010 on operating charges of collective transactions and bilateral transactions within 15 days of issue of the order. The staff shall submit a

proposal for amendment of Regulation 17 of the Open Access Regulations for consideration of the Commission within one month of issue of the order.

22. The petition is disposed of with the above directions.

Sd/-

(M.Deena Dayalan)
Member

sd/-

(V.S.Verma)
Member