

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Coram: Shri Gireesh B. Pradhan, Chairperson  
Shri M Deena Dayalan, Member  
Shri A K Singhal, Member**

**Date: 3.4.2014**

**In the matter of:**

**Central Electricity Regulatory Commission (Power Market) (First Amendment) Regulations, 2014**

**Statement of Reasons**

The Central Electricity Regulatory Commission (hereinafter "the Commission") notified the Central Electricity Regulatory Commission (Power Market) Regulations, 2010 (hereinafter "Power Market Regulations") in exercise of powers conferred under Section 66 read with Section 178(2)(y) of the Electricity Act, 2003 (hereinafter "2003 Act") which came into effect from 21.1.2010. All existing power exchanges which were in operation as on 21.1.2010 were deemed to have been registered under the Power Market Regulations.

2. Two Power Exchanges namely, Indian Power Exchange Limited and Power Exchange of India Limited, are functioning at present under the regulatory oversight of the Commission. These Power Exchanges are being operated by companies registered under the Companies Act, 1956. A company's Board of Directors play an important role in the company's corporate governance. Therefore, a company's Board of Directors should consist of persons with financial integrity and probity in public life. This requirement is all the more important in case of market infrastructure institutions like the Power Exchanges. Though Power Market Regulations contain provisions for appointment of Independent Directors, they are silent regarding the appointment of Directors in the Board of the Exchange and their qualifications/disqualifications.

3. In order to ensure transparency, professionalism and probity in the management and functioning of the power exchanges, the Commission felt the need to prescribe

qualifications and disqualifications for appointment of Directors in the Board of Power Exchanges in the Power Market Regulations. Accordingly, a new Regulation prescribing the qualifications and disqualifications for appointment of Directors namely "22A Qualifications and Disqualifications for appointment of Director in the Board of Power Exchange" was proposed to be introduced by way of first amendment to the Power Market Regulations.

4. In compliance with the requirement of section 178(3) of the 2003 Act read with the Electricity (Procedure for Previous Publication) Rules, 2005, the proposed amendment was posted on the website of the Commission inviting comments/objections/suggestions from the stakeholders and other interested persons. In response, Indian Energy Exchange Ltd. (IEX), Power Exchange Indian Ltd. (PXIL), MNK and Associates (MNK), and Haryana Vidyut Prasaran Nigam Ltd. (HVPNL), have submitted written comments. A public hearing was held on 6.2.2104 to elicit the views of the stakeholders and other interested persons in which oral submissions were made by PXIL and IEX.

5. After taking into consideration the comments/objections/suggestions made by the various stakeholders, the Commission has finalized the amendment to the Power Market Regulations for notification in the Gazette of India. The proposed amendment, the comments/objections/suggestions received and the decision of the Commission thereon are discussed in the succeeding paragraphs.

#### **(A) General Comments**

6. IEX has welcomed the steps taken by the Commission to further strengthen the demutualised nature of the power exchange. PXIL has submitted that the proposed amendment would lead to improving the governance standards in a market infrastructure institution like Power Exchanges. HVPNL has submitted that the proposed amendments to the Power Market Regulations are acceptable.

7. PXIL has submitted that in areas such as "Qualification & Disqualifications for appointment of Director", specific legislations exist in the Companies Act, 1956 and the

Companies Act, 2013 and the Commission may adopt the same mutatis mutandis while incorporating additional provisions.

**Commission's decision:** The first amendment to the Power Market Regulations has been made consistent with the provisions in the Companies Act, 1956 and the Companies Act, 2013. However, certain additional provisions have been made to take care of the public interest and the requirements of the power markets in general.

8. PXIL has submitted that four years have passed since the notification of the Power Market Regulations and during these four years, power markets especially the Power Exchanges have evolved significantly and there are tremendous opportunities for the growth and development of Power Exchanges in coming years. In these 4 years, the securities, commodities, and other markets have seen a number of developments which may have direct or indirect bearing on the functioning of power markets in the country. Therefore, the provisions of the existing Power Market Regulations should be revisited. PXIL has requested the Commission to issue a Staff Paper inviting comments from the stakeholders and public at large with an objective to further strengthen the Power Market Regulations.

**Commission's decision:** The Commission has taken note of the suggestions of PXIL. Comprehensive revision of the Power Market Regulations will be undertaken at the appropriate time. The present amendments have been introduced to strengthen the existing Power Market Regulations, especially with respect to the requirement of improving the corporate governance of the power exchanges.

**(B) Regulation 22 (A)(1)**

9. Regulation 22A (1) of the proposed amendment provides as under:-

“(1) A person shall be considered as qualified to be appointed as a Director in the Board of Power Exchange if such person has a record of fairness and integrity including but not limited to financial integrity, good reputation and character, and honesty.”

**Comments:** PXIL has submitted that Regulation 2(1) (g) of the Power Market Regulations defines clearing corporation and Part-6 of the Power Market Regulations

contains provisions relating to setting up and functioning of Clearing Corporation. Since the Clearing Corporation has been envisaged as a separate independent corporate entity in the Power Market Regulations, PXIL has suggested to include Clearing Corporation in Regulation 22A.

**Commission's decision:** At present Power Exchanges are self-clearing institutions and there are no separate Clearing Corporations under the regulatory jurisdiction of Commission. As and when the Commission receives any proposal for independent Clearing Corporations, appropriate provisions will be made in Part-6 of the Power Market Regulations providing for the shareholding pattern, governance structure and other aspects including the qualifications/disqualifications for appointment to the Board of the Clearing Corporation. At this stage, there is no need to extend the provision of qualification and disqualification criteria for Board of Directors of power exchanges to the Clearing Corporations.

10. PXIL has suggested that a clause should be added under Regulation 22(A)(1) to the effect that "only an individual who is at least 21 years old may be appointed as a Director of a Power Exchange". PXIL has submitted that Listing Agreement specifies a minimum age criteria for appointment of Director. Even the examination of Companies Act of other countries like Australia and UK indicates a minimum age qualifying criteria for appointment as a Director. However, the Companies Act, 1956 and Companies Act, 2013 as well as Power Market Regulations do not specify any minimum age criteria for appointment as Director of a Company. PXIL has requested the Commission to provide clarity in this regard.

**Commission's Decision:** The Commission is of the view that the Power Market Regulations should be consistent with the Companies Act, 1956 and 2013 and the Commission is not inclined to prescribe a minimum age limit for appointment as a Director of Power Exchange.

**(C) Regulation 22A (2) (a), (b) & (c)**

11. Draft Regulation 22A (2) (a), (b) and (c) of the first amendment provides as

under:

"(a) the person has been convicted by a Court for any offence involving moral turpitude, fraud, or any economic offence or any offence against any law.

(b) the person is found guilty in any proceedings for non-compliance of any of the provisions of the Act or the rules or the regulations made there under or any order made by the Appropriate Commission and a period of three years from the date of the order has not elapsed;

(c) an order restraining, prohibiting or debarring the person has been passed by any other Regulatory Authority constituted under any law in force in India under their respective Acts or regulations and a period of three years from the date of the order has not elapsed;"

### **Comments Received:**

(i) PXIL has suggested that Regulation 22A (2) (a) may be modified and a proviso under 22A (2) (b) may be added as under:

"(a) the person has been convicted by a Court of any offence whether involving moral turpitude or otherwise, fraud, or any economic offence against any law.

"(b)\*\*\*\*\*

Provided that if a person has been convicted of any offence and sentenced in respect thereof to imprisonment for a period of seven years or more, he shall not be eligible to be appointed as a director in the Exchange as well as the Clearing Corporation".

PXIL has further submitted that section 164(1) (d) of the Companies Act, 2013 envisages a time period of disqualification of 5 years from the date of conviction for appointment as Director. The proviso to the said section provides that a person is permanently disqualified for appointment as director if he is sentenced for imprisonment for a period of seven years. PXIL has submitted that the same may be included in the Power Market Regulations to avoid regulatory contradiction.

(ii) IEX has submitted that as per the draft regulation, a person is disqualified for appointment as Director on the Board of Power Exchange if he has been convicted by a Court, found guilty in any proceedings of the Appropriate Commission and an order restraining, prohibiting or debarring the person has been passed by any other Regulatory Authority. In this regard, IEX has submitted that law permits 'right to appeal' to its appellate forum. Considering such legal provision, a proviso may be incorporated to the extent that if an appeal has been filed against such order of any court/

Appropriate Commission or Regulatory Authority, Regulation 22.A (2) (a), 22.A (2) (b) and 22.A (2) (c) will not be applicable. Further, with regard to Draft Regulation 22 A (2) (c), IEX has submitted that the criteria of prohibition or restraint or debarment by an order of any Regulatory Authority suffer from vagueness. IEX has suggested that for enforcing any such order of any Regulatory Authority, the Commission should apply its discretion whether to act upon such order or not. Accordingly, this Clause should provide that the Commission would consider and apply its discretion on the orders passed by any other Regulatory Authority and an opportunity of hearing should be given before applying such discretion.

(iii) MNK & Associates has submitted that in view of the 'right to appeal', a further proviso should be added to Regulation 22.A (2) (a), 22.A (2) (b) and 22.A (2) (c) prohibiting the applicability of the Regulations during the pendency of the appeal so that a genuine person may escape from implication of these Regulations.

**Commission's decision:** As regards PXIL suggestion to insert the word "otherwise" in Regulation 22 A (2) (a), we are of the view that the draft clause (a) is quite exhaustive and caters to other situations where a person has been convicted for fraud or any economic offence or any offence. The said clause requires no change. As regards the inclusion of the minimum period of disqualification for five years in case of conviction of any offence and permanent disqualification in case of conviction for seven years and more, we are of the view that these suggestions are in consonance with the provisions of Section 164 (1) (d) of the Companies Act, 2013 and accordingly have been accepted. As regards the suggestion of IEX and MNK & Associates to provide for non-applicability of the provision in case of filing an Appeal against the conviction, we are of the view that mere filing of an appeal will not be sufficient and unless the appropriate court/tribunal grants a stay on the order of the conviction, the provisions of the Regulations shall continue to apply. Even section 167(1)(f) of the Companies Act, 2013 provides a director of a company shall vacate office in case of conviction even if he has filed an appeal against the order of conviction. Therefore, the suggestion has not been accepted. As regards IEX suggestion regarding exercise of discretion by the Commission to apply the order of any other Regulatory Authority, we are of the view

that if any Regulatory Authority in India has issued an order restraining, prohibiting or debarring any person to hold the post of Director in the Company under its regulatory control, such person should be automatically disqualified to hold the post of Director in the Power Exchange. The Commission cannot be expected to sit on judgment on whether the order passed by such Regulatory Authority is correct or not as the same falls within the jurisdiction of the appropriate Appellate Authority/Tribunal. We do not agree with the suggestion of IEX that the Commission should apply the order of any other Regulatory Authority at its discretion while deciding the disqualification of any person to be appointed as Director or continue as Director in the Power Exchange. However, we agree that there is requirement for some clarity in Regulation 22A (2) (c). Accordingly, clauses (a), (b), and (c) of sub-regulation (2) of Regulation 22A have been modified as under:-

"(a) he is convicted by a court of any offence involving moral turpitude or fraud or any economic offence or any offence against any law and a period of five years has not elapsed from the date of expiry of the conviction:

Provided that if the person is convicted of any offence and sentenced in respect thereof to imprisonment for a period of seven years or more, he shall not be eligible to be appointed as a Director in any Power Exchange; or

(b) he is found guilty in any proceedings for non-compliance of any of the provisions of the Act or the rules or the regulations made thereunder or any order made by the Appropriate Commission or the Appellate Tribunal for Electricity and a period of five years has not elapsed from the date of the order; or

(c) An order restraining, prohibiting or debarring him to hold the post of Director in the Board of a Company has been passed by any other Regulatory Authority constituted under any law in force in India under their respective Acts or regulations; or"

#### **(D) Regulation 22 A (2) (d)**

12. Regulation 22 A (2) (d) provides as under:-

"(d) an order for winding up has been passed against the person."

**Comments:** PXIL has submitted that the above clause may be deleted as only an individual or natural person can be appointed as Director. IEX has submitted that winding up orders and proceedings are relevant in case of a company rather than a person. Therefore, the proposed regulation may be deleted as it does not seem valid for persons. MNK & Associates has submitted that winding up orders and proceedings

are possible only in case of body corporate and no winding up order can be passed against the individual person.

**Commission's Decision:** An adverse order can be passed against an individual in a winding up proceedings in terms of Section 273 read with section 203 of the Companies Act, 1956. Similar provisions also exist in the Companies Act, 2013. Therefore, this provision has been retained with slight modification as under:

“(d) an adverse order has been passed against him by a competent court/tribunal in a winding up proceedings; or”

**(E) Regulation 22 A (2) (e), (f) and (g)**

13. Draft Regulation 22 (A) (2) (e), (f) and (g) provides as under:-

"(e) the person has been declared insolvent and has not been discharged.

(f) the person has been found to be of unsound mind by a Court of competent jurisdiction and the finding is in force.

(g) if the person is financially not sound."

**Comments:** PXIL has submitted that to ensure consistency with the Companies Act, 2013, clauses (e), (f) and (g) may be modified as under:-

"(e) the person is an undischarged insolvent.

(f) the person is of unsound mind and stands so declared by a competent court.

(g) the person has applied to be adjudicated as an insolvent and his application is pending."

IEX has submitted that the criteria in draft regulation 22 A (2) (g) suffer from vagueness as there is no clarity on when a person is financial sound or unsound. Moreover, a financially unsound person or poor person cannot be held ineligible on the basis of his economic condition which may go against the Constitution of India and therefore, the said Clause should be omitted. MNK & Associates has submitted that this Clause will create hassles for genuine individuals because there is no standard set for "financially sound". In absence of any specific definition, it is very difficult to invoke the provision of this Regulation on the part of the Commission and it will also lead to litigation.

**Commission's Decision:** In the light of the submission of the stakeholders, we are of



the view that there are no objective criteria for assessing the financial soundness of a person. Therefore, we have decided to delete Regulation 22 A (2) (g). As regards Clauses (e), the same has been modified in the light of the provisions of the Companies Act, 2013 and additional clause has been added where the proceedings for adjudication regarding insolvency is pending before the competent court. The clause (f) in the draft regulation has been renumbered as clause (g). Accordingly the clauses (e), (f) and (g) are as under:-

"(e) he is an undischarged insolvent; or

(f) he has applied to be adjudicated as an insolvent and his application is pending; or

(g) he is found to be of unsound mind by a court of competent jurisdiction and the finding is in force."

#### **(F) Additional Suggestion**

14. PXIL submitted that Power Market Regulations should also contain a provision regarding the consequences of violation of Regulation 22A and the Commission may like to frame suitable provision in this regard including the penalty and compounding of offence. PXIL has further submitted that the following clause may also be added:

"22 (A) (5) An appointment made in contravention of Regulation 22A shall be void."

**Commission's decision:** Regulation 22A (1) and (2) shall apply to the persons who shall be considered for appointment as Director in the Power Exchange in future. Regulation 22 A (3) provides that the qualification or disqualification criteria shall also be applicable to the existing Directors of the Power Exchange. Therefore, Regulation 22A applies to the existing directors as well as the directors to be appointed in further in the Power Exchange. It is incumbent on the Power Exchanges to ensure that the continuance of existing directors or appointment of new directors complies with the provisions of Regulations 22A. In our view there is no requirement to insert the additional clause suggested by PXIL.

15. A person may be disqualified to be appointed as a Director under various provisions of the Companies Act, 2013 which are not covered under any of the provisions of the Amendment Regulations. It will lead to an anomalous situation if the person is disqualified under the Companies Act but is allowed to continue as a Director.

Therefore, the Commission is of the view that any person who suffers from any of the disqualifications prescribed under the Companies Act, 2013 should also be made ineligible for appointment or continuation as a Director of the Power Exchange. Accordingly, a new clause has been added as under:-

"(3) No person who suffers from any of the disqualification prescribed under the Companies Act, 2013 shall be eligible for appointment or continuation as Director of the Power Exchange."

16. There may be cases where a shareholder may suffer from any of the disqualifications mentioned in Regulation 22A (2) and is debarred from taking up a board position in the power exchange. Such shareholder may appoint his nominee on the board of the power exchanges in order to safeguard his interest. This practice will defeat the purpose of strengthening the demutualised nature of the power exchange and its corporate governance. Hence, the Commission is of the view that where a shareholder suffers from any of the disqualifications, he shall be debarred from appointing his nominee in the board of the power exchange. Accordingly Regulation 22A (5) has been added as under:-

"(5) If any shareholder of the Power Exchange suffers from any of the disqualifications as mentioned in clauses (2) and (3) of this regulations, such shareholder or his nominee shall be debarred from being appointed as Director in the Board of the Power Exchange."

17. In the light of the above discussion, Regulation 22A shall be included in the Power Market Regulation as under:-

**"22A Qualifications and Disqualifications for appointment as Director in the Board of Power Exchange**

(1) A person shall be considered as qualified to be appointed as a Director in the Board of Power Exchange if such person has a record of fairness and integrity, good reputation and character, and honesty.

(2) A person shall be considered as disqualified for appointment as Director of the Power Exchange, if:-

(a) he is convicted by a court of any offence involving moral turpitude or fraud or any economic offence or any offence against any law and a period of five years has not elapsed from the date of expiry of the conviction:  
Provided that if the person is convicted of any offence and sentenced in respect thereof to imprisonment for a period of seven years or more, he shall not be eligible to be appointed as a Director in any Power Exchange; or

(b) he is found guilty in any proceedings for non-compliance of any of the provisions of the Act or the rules or the regulations made thereunder or any order made by the Appropriate Commission or the Appellate Tribunal for Electricity and a period of five years has not elapsed from the date of the order; or

(c) an order restraining, prohibiting or debarring him to hold the post of Director in the Board of a Company has been passed by any other Regulatory Authority constituted under any law in force in India under their respective Acts or regulations; or

(d) an adverse order has been passed against him by a competent court/tribunal in a winding up proceedings; or

(e) he is an undischarged insolvent; or

(f) he has applied to be adjudicated as an insolvent and his application is pending; or

(g) he is found to be of unsound mind by a court of competent jurisdiction and the finding is in force; or

(3) No person who suffers from any of the disqualifications prescribed under Companies Act, 2013 shall be eligible for appointment or continuation as Director of the Power Exchange.

(4) The qualifications and disqualifications specified in this regulation shall also be applicable to the existing Directors of the Power Exchanges.

(5) If any shareholder of the Power Exchange suffers from any of the disqualifications as mentioned in clauses (2) and (3) of this regulations, such shareholder or his nominee shall be debarred from being appointed as Director in the Board of the Power Exchange.

(6) If any question arises as to whether a person is qualified/ disqualified to be a Director in a Board of the Power Exchange, the decision of the Central Commission on such question shall be final."

17. The Central Electricity Regulatory Commission (Power Market) (1st Amendment) Regulations, 2014 shall be notified accordingly.

sd/-  
(A K Singhal)  
Member

sd/-  
(M Deena Dayalan)  
Member

sd/-  
(Gireesh B. Pradhan)  
Chairperson