



# Arunachal Pradesh Power Corporation Pvt Ltd

**Comments of M/s Arunachal Pradesh Power Corporation Pvt Ltd., a Category II trader with Trading License No. 61/Trading License/2012/CERC issued by CERC in the matter of CERC Draft CERC (Procedure, Terms and Conditions for Grant of Trading Licence and other related matters) Regulations, 2019 and the Explanatory Memorandum**

The Draft CERC (Procedure, Terms and Conditions for Grant of Trading Licence and other related matters) Regulations, 2019 and the Explanatory Memorandum thereof shall need to be examined under the following lenses specified by the **Indian Electricity Act 2003** read with the **National Electricity Policy (NEP)** since the Act specifies that these parameters are mandatory compliances specified by the Indian Electricity Act 2003 and the **Fundamental Rights under the Constitution of India**:

Serial No.	Parameter	Enshrined in (as detailed in the "Part A : Background and References" below)
1	Consistency with the IE Act 2003	Sec 178(1) of IE Act 2003
2	Encouragement of Competition	Sec 2.6, 4.0, 5.7(1)(d), 5.7(1)(e), 5.8.6 of National Electricity Policy (NEP)
3	Commercial Viability and Recovery of Costs and services	Sec 2.0, 4.0 of NEP
4	Conducive environment to Investment by removing barriers to entry and Level Playing Fields	Sec 5.8.1, 5.8.4 of NEP
5	Regulatory Certainty	Sec 5.8.8 of NEP
6	Transparency including Consultation with all concerned	Sec 79(3) of IE Act 2003, Sec 5.7.1(d), 5.8.8 of NEP
7	Right to practise any profession, or to carry on any occupation, trade or business.	Article 19(1)(g) Constitution of India

We believe that the **Draft Regulations have failed to comply with all of these parameters** which we shall show are **mandatory and not discretionary** as per the Indian Electricity Act 2003 (hereinafter referred to as the "IE Act" or "Act") and the National Electricity Policy (hereinafter referred to as "Policy" or "NEP").

In addition to this the Draft works contrary to the **Socio-Economic needs** of the nation by imposing restrictive and prohibitive requirements on Electricity Trading operations of the traders thereby placing in jeopardy the employment of 1000+ personnel employed directly in the activity.

The reasons for arriving at our conclusions are explained in detail in "**Part B: Reasons with Explanations**" of this document.

**We, therefore, request the CERC to seriously review the Draft Regulations to ensure Compliance with the provisions of the Act and the Constitution of India and to align them with market realities.**

## Part A: Background and References

- 1) The Act bestows the Central Commission with many powers and responsibilities all aimed at implementing the vision of the framers of the Act to ensure the availability of economic and reliable power to consumers through many interventions including attraction of investments from the private sector by removing **barriers to entry** (ref: *National Electricity Policy 5.8*) and **balancing the interest of consumers with the need for investments** (ref: *National Electricity Policy 5.8.4*)
- 2) The Act also provides the framework within which the Regulatory Commission has to operate by stating “*The Central Commission may, by notification make regulations consistent with this Act and the rules generally to carry out the provisions of this Act*” (ref **IE Act 2003 Section 178 (1) (Powers of Central Commission to make regulations)**).
- 3) It further states “*The Appropriate Commission shall endeavour to **promote the development of a market (including trading)** in power in such manner as may be specified and **shall** be guided by the *National Electricity Policy* referred to in section 3 in this regard.” (ref: **IE Act 2003 Section 66. (Development of market)**).*
- 4) The Act reiterates the same concept in **Section 178(2)(y) (Powers of Central Commission to make regulations)**: “*In particular and without prejudice to the generality of the power contained in sub-section (1), such regulations may provide for all or any of following matters, namely:-.... the manner by which **development of market** in power **including trading** specified under section 66;*”
- 5) The Act emphasizes the **boundaries of the powers** of the Commission in **Section 79(4) (Functions of Central Commission)**: “*In discharge of its functions, the Central Commission **shall** be guided by the *National Electricity Policy*, *National Electricity Plan* and *Tariff policy* published under section 3.”*

It is noteworthy that the Act clearly defines that it is **mandatory** for the Commission to be guided by the National Electricity policy and does not make it optional.

- 6) It is noteworthy that the Act bestows the power of fixing the trading margin on the Commission but with a rider that such fixation should be done only if it expressly warranted – Ref: **IE Act 2003 Section 79(1)(j) (Functions of Central Commission)**: “*The Central Commission shall discharge the following functions, namely:-..... to fix the trading margin in the inter-State trading of electricity, **if considered, necessary**;*”.

The rider “**if considered necessary**” become significant when we consider that this is the **only** area where the Act provides such a rider and it is easy to understand why – since it runs contrary to the market and competition oriented approach of the Act.

- 7) The Act also lays emphasis on the need for transparency when it states that *“The Central Commission shall ensure **transparency** while exercising its powers and discharging its functions.”*  
Ref: IE Act 2003 Section 79(3) (Functions of Central Commission).

Since the Act mandates that the Commission shall be guided by the **National Electricity Policy** it is necessary that the relevant policies be also brought to the fore:

- 1) **Section 2.6** of the NEP provides insight into the ideas of the Act when it states that *“Electricity Act, 2003 provides an enabling framework for accelerated and more efficient development of the power sector. The Act seeks to **encourage competition** with **appropriate regulatory intervention**. Competition is expected to yield efficiency gains and in turn result in availability of quality supply of electricity to consumers at competitive rates.”*
- 2) **Section 4.0 : ISSUES ADDRESSED** of the NEP reiterates the same idea: *“**Competition aimed at Consumer Benefits**”*
- 3) **Section 2.0 : AIMS & OBJECTIVES** of the NEP lays emphasis on **Commercial Viability of Electricity Sector** and the same is reiterated in **Sec 4.0** of the NEP when it lists that one of the **Issues Addressed** is **Recovery of Cost of services**
- 4) **Section 5.7(1)(d) and (e): COMPETITION AIMED AT CONSUMER BENEFITS:** emphasizes the need to encourage competition and develop the power market in consultation with all concerned when it states: *“Development of power market would need to be undertaken by the Appropriate Commission **in consultation with all concerned**”* and *“The Central Commission and the State Commissions are empowered to make regulations under section 178 and section 181 of the Act respectively. These regulations will ensure implementation of various provisions of the Act **regarding encouragement to competition** and also consumer protection”*
- 5) **Sections 5.8.1 and 5.8.4** clearly state that *“The Act creates a conducive environment for investments in all segments of the industry, both for public sector and private sector, **by removing barrier to entry in different segments**”* and *“... Return on investment will, therefore, need to be provided in a manner that the sector is able to attract adequate investments at par with, if not in preference to, investment opportunities in other sectors. This would obviously be based on a **clear understanding and evaluation of opportunities and risks**. An **appropriate balance** will have to be maintained between the interests of consumers and the need for investments.”*
- 6) **Section 5.8.6** states that *“**Competition** will bring significant benefits to consumers, in which case, it is **competition which will determine the price rather than any cost plus exercise** on the basis of operating norms and parameters. All efforts will need to be made to bring the power industry to this situation **as early as possible**, in the overall interest of consumers.”*
- 7) Finally, **Section 5.8.8** states that *“Steps would also be taken to address the need for **regulatory certainty** based on independence of the regulatory commissions and **transparency in their functioning to generate investor’s confidence**.”*

## Part B: Reasons with Explanations

### I. Process of Framing the Draft Regulations

- a. The Commission has not placed on record any study that would have assisted it to arrive at the conclusions that it has, leading to the framing of the draft regulations. At the time of framing the regulations a **decade ago** it had commissioned a study by KPMG to arrive at certain conclusions. It has thus, at the very least, deviated from established practice.
- b. In the Explanatory Memorandum item 1.4 it has made the following reference "*The Commission conducted several rounds of discussions with stakeholders **including traders** and power exchanges for seeking comments / suggestions / observations on the Procedure, Terms and Conditions for grant of trading licence and other related matters Regulations, 2009 and Fixation of Trading Margin Regulations, 2010.*"

Surprisingly, most of the handful of traders active in the market, are unaware of any such discussions and there are **no mentions** of any such discussion papers, call for consultations or minutes of such meetings available **on the Commission's own website**.

This is a highly opaque and misleading methodology and in direct **contravention** to the mandate of **Section 79 (3) of the IE Act 2003 and Section 5.8.8 of the National Electricity Policy** related to **transparency**.

- c. The Explanatory Memorandum to the current draft Regulations attempts to define the backdrop in which the draft regulations are being proposed. Item 1.5 of the EM states "*Several issues including non-compliance of capital adequacy requirements, non-establishment of payment security mechanisms and non-submission of monthly information by select trading licensees have been brought to the notice of the Commission*".

However it has failed to provide any information about the extent of non-compliances and even perusal of the orders of the Commission on its own website indicate that there are an insignificantly small number of such proceedings in respect of traders in the last three years. Painting the entire Trading community black with the same brush on the basis of an insignificant number of non-compliances out of the thousands of trades annually, provides an insight into the outlook of the Commission with respect to trading.

Such a discriminating view based on opaque data does not present a transparent method of operation on the part of the Commission and is in direct **contravention to the Sec 79(3) of the Act and the associated provisions of the NEP**.

## II. Regulations pertaining to Banking.

The Draft Regulations at several places breaches the mandatory requirements as detailed above and it contradicts its own earlier stand.

- a. In Item 7.9 (a) Regulation 11- Principles of transaction in OTC Markets of SoR of Power Market Regulations, 2010\_it is clearly stated that “OTC market shall provide customized solution to sector participants and bring innovation in the market place. It is expected that Electricity Traders will innovate and as markets mature introduce in future new types of products in the market like tolling agreement, banking agreement, capacity contracts, and spread contracts as standard back to back type of deals move to Exchanges”.
- b. In the current Draft, Chapter V :TERMS AND CONDITIONS OF THE LICENCE Regulation 9 (24) states that “The Trading Licensee shall be subject to the following obligations; namely: -.....Trading Licensee shall not engage in Banking of electricity”.

This restrictive regulation has been introduced since the Draft Regulations has sought to alter the widely understood definition of Banking as “Banking of electricity shall mean and include exchange of electricity for electricity between two grid connected entities directly on mutually agreed terms”.

This alteration of definition, excluding the traders, has been introduced without any explanation about the **overriding need** for making this, without **widespread consultations**, without providing any **rational reasoning** and completely erasing the **contribution of traders** in introducing and assisting the market to attain the current level of maturity using their **wide knowledge** of the demand and availability in the future market across India over the years.

This volte face in the stand of the Commission is in direct opposition to **Sections 178 (1), 66, 79 (3) and 79 (4) of the IE Act 2003 and Sections 5.7 (1) (d), 5.8.1 and 5.8.8 of the National Electricity Policy** in that it violates the principles of being “Consistent with the Act”, being “guided by the National Electricity Policy”, “Transparency in functioning”, of “Consultation with all concerned”, of “removing barriers to entry of different segments” and of “regulatory certainty” – all principles essential to the functioning of the Commission and to framing of Regulations.

We, therefore, are of the opinion that the draft regulations pertaining to banking of Electricity are bad in law and contrary to development of the market. It, therefore, warrants immediate review and revocation.

- c. The Prohibition of traders from engaging in the Banking of Electricity is also in direct opposition to Article 19(1)(g): Right to Freedom to practise any profession, or to

*carry on any occupation, trade or business* of the Constitution of India since the parent Act does not impose any such restriction.

### III. Net Worth

The Draft Regulations propose a re-categorization of the Trading licenses and specifies new net worth criterions as well as energy traded caps for each category.

However, while there was a study carried out in 2010 by KPMG on behalf of the Commission to arrive at a figure of Net Worth then, no such study appears to have been carried out this time around as there is no documentary evidence of the same being shared publicly.

The basis for arriving at a Networth requirement has not been made clear and the lack of thought behind this is clearly apparent in the case of the proposed Category V traders as an example.

- With a required Networth of Rs 2 Cr and a cap of 500 MU of energy annually, with the trading uniformly spread over the year (best case scenario) at a rate of Rs 3.5 per unit, the PSM requirement would be 7.72 Cr. which could be provided with a portion of Debt (usually assumed at 70%, with the Equity at 30%.)
- Thus the Equity requirement works out to be 2.32 Cr, which is higher than his net worth, provided the Trader uses up its entire equity! This would not only not leave him with any funds for O&M but as any business entity would be aware make it virtually impossible to raise the quantum of debt required in today's scenario. With the trade not being evenly distributed over the year, the situation becomes even worse.
- The situation for the other categories is better but not by a significant margin, when one considers the delays in release of LCs by the buyers and the consequent availability of the funds during the next month.

This approach is not only **opaque** (violation of a requirement essential under **Section 79(3) of the Act**) but also goes against **Section 5.8.4 of the NEP** which requires a "**clear understanding and evaluation of opportunities and risks**".

The high Net-worth requirements are a direct result of the insistence of an LC or an Escrow Account as per conditions laid out in Chapter V Section 9(10) of the Draft Regulations. While we appreciate the concerns of the Commission regarding Default in payment, we would suggest that the Commission considers less taxing and rigid conditions for the PSM – one of which has been suggested in Section IV below, to allow a more realistic but working environment for business.

#### IV. Payment Security Mechanism (PSM)

The Commission in its draft has limited PSM on the trader in the form of either a Letter of Credit (LC) or an Escrow Account (EA) with extremely stringent conditions.

- As per proviso to Regulation 8(1)(c) for Short Term Contracts through the Power Exchanges the draft limits the TM to 1 paise per unit in the absence of PSM.
- As per proviso to Regulation 8(1)(d) for Long Term and Medium Term Contracts the draft limits the TM to 1 paise per unit in the absence of PSM.

1. We would like to draw the attention of the Commission to its own definition of OTC contracts in the Power Market Regulations 2010 Part 2 Section 3(1):

***“Over the Counter Market – Over the Counter Market is the inter-State market where buyers and sellers directly transact or transact through an Electricity Trader, and where the price and terms of the contract are determined through negotiations as agreed between the parties or through competitive bidding process or through a Electricity Trader. The risk in contracts executed in such markets is managed between the parties themselves or by the Electricity Trader, as the case may be.”***

This makes it amply clear that the risks are to be managed between the parties and the Trader which is in direct contrast to the present stand of the Commission of imposing specified PSM methodologies on the Trader by placing prohibitively low Trading Margin caps in case the specified PSM is not in place.

**This runs contrary to the mandated concept of Regulatory Certainty envisaged in Section 5.8.8 of the NEP.**

- a. The Commission intends to allow trading without PSM also but with an unrealistic cap of 1 paise per unit.

We refer to the study commissioned by CERC a decade ago which derived the impact of O&M costs on the margin on a per-unit traded basis and the values varied between 1.78 paise to 13.3 paise. With any rational increase these value today will be greater than a minimum of 2.7 paise per unit.

Therefore, the unrealistic and untenable cap of 1 paise proposed by the Commission is lacking in transparency, rationality and appears to be designed as a **barrier to entry** and indicates no intention to address the issue of default.

**This is in direct violation to Section 66, 79(3), 79(4), 178(1) of the Act and Sec 2.0 and 4.0 of the NEP.**

2. While taking into account the need for ensuring a working PSM we would suggest the following mechanisms:
  - A. For short term trade, the billing period may be allowed to be reduced (to say a period between 1 to 7 days) so that the PSM requirement may be limited to only the billing period instead of the contract value with stringent application of cancellation clauses.
    - a. This creates a limitation in liability for the buyer, provides Security cover for the seller and reduces the Net-worth requirement for the Trader.
    - b. A reduction in billing period for long term contracts can also provide similar benefits.
  - B. Another alternative could be a tripartite contract with PSM provided from the Buyer directly to the Seller (effectively a back to back contract) with the trader as an intermediary.

**Such an arrangement already exists in the sector when power is traded through the Power Exchanges.**

The exchange has no investment in terms of PSM and the PSM is provided by the buyer through an Escrow Account in favour of the exchange. Without adequate funds in the account, the Buyer / Bidder is not allowed to bid or schedule power.

In this case, however, the exchange charges a 4 paise per unit service fee (akin to a trading margin) – 2 paise each from the buyer and the seller. This is four times higher than that allowed to the trader who actually would have to invest. Imposition of the proposed caps on the trader would be **highly discriminatory** without allowing them similar options.

3. In case of ultra short term trading of up to 15 days duration at short notice, arising out of sudden plant outages, both planned and unplanned, the Commission will appreciate that the time requirement for putting the specified PSM will not be available. We therefore suggest that the parties be allowed to put mutually acceptable PSM in place to facilitate such transactions.
4. An alternative PSM could be a revolving advance payment for a defined short billing period, such that risks could be either minimized or eliminated.
5. Imposition of the requirement of an LC on the trader as has been suggested in the Draft would also be bad economy for the sector. Since the trader would also seek a similar LC from the buyer, this is equivalent to tying up either double or four times the funds than required, thus depriving the economy of funds which would otherwise have been fruitfully utilized.

**We would therefore urge the Commission to reconsider its proposal and study alternatives to make these regulations meet the aims that it is designed to.**



## V. Fixation of Trading Margin

- The Fixation of Trading Margins is a matter of doubt in the Act as is evident from the introduction of the term "*if considered necessary*" in Section 79(1)(j) of the Act . The framers of the Act were uncertain about the concept as explained above, even as they gave the authority to the Commissions to do so.

Since the market has moved on from its early stages to having a substantial amount of trading volume today, with competition determining the cost of power, it is difficult to envisage that the trading margin needs to be regulated and not left to market forces.

That the market forces are already at work is evident when we see that the level of trading margins paid today are around 2 paise per unit as opposed to and well short of the 7 paise per unit cap allowed by the Commission.

- As per SoR Review of the Central Electricity Regulatory Commission (Fixation of Trading Margin), Regulations, 2005 dated 11.01.2010 Section 8 – "*However, as regards short-term buy and short term sell contracts i.e. contracts where the duration of the power purchase agreement and power sale agreement is less than one year, we are convinced that the market prices are currently governed to a large extent by the demand-supply gap prevalent in the country. In such a scenario, there is a high likelihood of deficient utilities buying power at higher than justified rates to prevent excessive load shedding. With a view to balancing the interests of buyers as well as the traders, it has been decided to prescribe a trading margin cap.*"

However, the high demand-supply gap that existed at that time is now history with the rates stabilizing to around Rs. 3.50 (ref: **Section 2.2.3.2 of the EM of the current draft**) from over Rs 5 at that time, and therefore, the conditions to allow the Trading Margins to be allowed to be determined by the market have existed for the last five years or so.

- **Section 2.2.1.3. of the Explanatory Memorandum** of the draft states "*It has further been submitted by the stakeholders that owing to various macro-economic factors, the short term power prices are expected to increase in medium to long term horizon. Thus the slabs in trading margin for short term contracts should be reviewed.*"

It is not clear on what documents or data has the Commission relied to arrive at this conclusion except hearsay attributed to the "stakeholders" and refrained from releasing the cap on trading margins for short term trade in opposition to its earlier stand and the spirit of the Act.

- The drastic reduction on the caps of TM for short term trades in absence of PSM and for back to back deals from 7 paise to 1 paise is proposed without basis and rationality and ignoring that the trading margin is also required to cover other expenses like “expenses incurred to mitigate risks, expenses incurred towards Operations & Maintenance and return on net worth” (Ref: Section 9 of the SoR for Review of the Central Electricity Regulatory Commission (Fixation of Trading Margin), Regulations, 2005.).

These expenses were determined to be in the average range of 5.11 paise per unit at that time (ref: **Central Electricity Regulatory Commission - Report on Trading Margin by KPMG dated July 2009**). After a decade it is not surprising that the costs have actually gone higher.

However the Commission has proposed to keep the margins so low as not to allow recovery of the basic costs, let alone allow return on investment – thereby creating situations for forcing the Traders to go out of business.

The alternatives of either placing a floor value on the trading margin to allow the traders to recover their O&M costs and Return on Net-worth or allowing the market forces to determine the trading margins without cap have either not been considered or have been considered and deliberately ignored.

This is in contravention to the market based approach of the Act and at the same time does not allow regulated recovery of costs and reasonable return mandated by the NEP.

In this context, the capping at 1 paise is completely without basis and in violation to Sections 66, 79(3), 79(4), 178(1) of the Act and Section 2.0, 5.7(1)(d) and (e), 5.8.1 and 5.8.4 and 5.8.8 of the NEP by working against the mandates of Development of Markets, Transparency, Recovery of Costs, and Regulatory Certainty.

## VI. Competition and Providing Alternatives

The Act has mandated the Commission to promote competition vide Section 66 and 79(4) to be read along with Sections 2.6, 4.0, 5.7(1)(e) of the NEP.

It is revealing to refer to **Section 3: Envisaged Macro Objectives of Power Market Development in India of the SoR – Power Market Regulations 2010**

3.3. To **optimise asset utilisation** through promoting short term trading

3.4. To **promote competition**, efficiency and economy in Power Markets

3.5. To **create a level playing field between different types of entities**

The draft, by imposing prohibitive trading margins and restrictive conditions on traders, has not only failed to promote short term trading but shall be forcing the traders to exit the market thus reducing competition.

As is stands, only about a dozen or so traders remain active in the market in spite of CERC having issued close to 50 trading licences due to intense market competition.

Two of the major entities viz. the **Electricity Traders and the Power Exchanges** do not operate on a level playing field since the draft regulations are tilted heavily in favour of the Power Exchanges as well as some experimental market player initiatives initiated by the Government of India.

While the former are strictly regulated entities the latter are only loosely so.

This is clearly evident in the following areas:

Serial No.	Parameter	Electricity Traders	Exchanges	Impact
1	<b>PSM</b>	need to invest equity and raise debt to provide PSM	operate on the money made available by the buyers to the Exchange through Escrow accounts and thus have no investments in the PSM	Significant Cost Differential
2	<b>Trading Margin / Service fee</b>	1. Traders not providing PSM are proposed to be restricted to a prohibitive 1 paise per unit trading margin  2. Proposed to be Capped at 7 paise if PSM is provided.	1. Exchanges can charge 0.75% of the <b>transaction value</b> from each side of the transaction ( <i>Sec 27 of Power Market Regulations 2010</i> ) without investing in PSM, and presently charge 2 paise per unit from each side.  2. They are also allowed to charge annual membership fees.	Higher Returns to Exchanges with lower investments and risks
3	<b>Cost / Expense audit</b>	Margin caps based on estimated expenses (O&M) and returns earlier, now ignoring mandatory expenses too.	No expense audit for prudence and virtually unlimited returns with limited investments.	Market driven return allowed for the Exchanges.
4	<b>Addition of Products</b>	Traders not allowed to trade in RECs and the traditional Banking product is being proposed to be prohibited.	Exclusive rights to trade in REC, being encouraged to introduce new products.	Uneven permissions.

The draft does not attempt to address these anomalies, but instead skews the playing field further. In this it contradicts its own stand as mentioned above and therefore violates the mandate of **Regulatory Certainty** enshrined in **Section 5.8.8 of the NEP**.

Since such a move would reduce competition, stunting overall development of the market and leave both Suppliers and Users with a monopolistic trading environment on the Power Exchange.

We would urge the Commission to review the Draft Regulations to make it compliant with mandates in the Act and to address the inconsistencies with its own established stance.

## VII. Reasonable Recovery of Expenses and Returns :

**Section 2.0 AIMS & OBJECTIVES** of the NEP lays emphasis on **Commercial Viability of Electricity Sector** and the same is reiterated in **Sec 4.0** of the NEP when it lists that one of the issues addressed is **Recovery of Cost of services.**

Item 9 of the SoR : Fixation of Trading Margin Regulations 2010 of the Commission states that “While prescribing the margin cap, we take into consideration the traders’ requirements of **meeting expenses incurred** to mitigate risks, **expenses incurred towards Operations & Maintenance and return on net worth.**”

In this respect we would request the Commission to peruse the following table which provides an immediate insight on the incorrectness of the restriction of trading margin to 1.0 paise per unit in case the trader engages in a Back to Back transaction or carries out trade without providing the payment security on an ecen spread throughout the tear (best case scenario) as defined by the draft regulations:

Category	Max MU allowed	Net-worth (Rs Cr)	Return on Net-worth (RoNW) rate Post tax )*	RoNW % Pre tax**	RoNW (Rs Cr)***	Trading Margin required (Rs. Per unit)
1	10,000	75	14%	21%	15.91	0.016
2	5,000	35	14%	21%	7.42	0.015
3	3,000	20	14%	21%	4.24	0.014
4	1,500	10	14%	21%	2.12	0.014
5	500	2	14%	21%	0.42	0.008

\*14% return has been assumed to maintain uniformity with the other verticals of the Electricity Sector.

\*\* 34% Corporate Tax has been assumed.

\*\*\* Figures based on the trader being able to utilize the entire quantum of energy entitlement. In case of lower utilization, the Trading margin needs to be higher.

It will be immediately obvious that even if the draft regulations considers only the **Return on Net-worth** in compliance with **Sec 4.0 of the NEP**, the minimum trading margin requirement for all categories of licensees (except Category 5) is nearly 150% higher than the cap proposed by the Commission without taking into consideration the O&M expenses or the cost of providing the payment security.

The minimum trading margin requirement shall be higher if one has to consider the **Operation and Maintenance Expenses** recovery as specified by the commission in its own

earlier SoR (reproduced above for ready reference) and to be in compliance with **Sec 2.0 and 4.0 of the NEP.**

Therefore we conclude that the minimum trading margin (presently proposed as 0.0 paise per unit by the draft regulations) actually needs to be substantially higher than the ~1.5 paise required for meeting the Return on Net worth requirements and much higher than the floor proposed by the Commission through the draft.

**VIII. Market Certainty:**

- a. The Exchanges offer an open platform primarily on the Day-Ahead market without price certainty and often temporary shortages owing to fuel availability, transportation or network disruptions, lead to price surges; they do not offer either availability or price certainty for future planning.

Traders, who primarily operate on the term-ahead market, provide this certainty allowing both suppliers and procurers to plan ahead and be certain of their power planning as well as pricing.

- b. The Banking product, introduced and developed by traders, has allowed demand availability matching without capital investment uncertainty and allowed a stable and certain power system development in a risk free environment.

The expertise of the traders in collecting information about the surplus and shortages well ahead of time either in slots or on a RTC basis through market research has allowed balancing of the power system. The Discoms, bereft of the tools, time, expertise and investment have been able to tap into this information pool to the benefit of the consumers.

The proposal of depriving the Discoms of this information pool by prohibiting the Traders from engaging in Banking transactions is not only bewildering (in absence of any rationale calling for such an action) but also works contrary to consumer interests by implicitly restricting the opportunity presently available.

We would therefore request the Commission to review the proposal in a rational manner so that the market has access to alternatives to ensure stability and certainty.

**PART C : Conclusion and Suggestion**

In conclusion, we would like to bring to the notice of the commission that the draft regulations proposed by it **fails to comply with multiple mandatory requirements** of the laws of India, **contradicts its own specifications** on multiple occasions, appears **arbitrary, discriminatory and restrictive** in nature and appears to have been framed without application of mind ignoring both market as well as socio economic realities.

We would, however, like to work with the Commission to address the concerns, redress anomalies, suggest market driven initiatives in order to encourage robust market development, encourage fair competition, protect consumer interest in a transparent manner through a consultative and non discriminatory approach.

We would therefore urge the Commission to review the draft regulations with a view to make it market and competition oriented, so as to attract investment and introduction of innovative products, to promote choice to the consumer, to utilize the skills and the expertise of the traders and to ultimately make it legally compliant and forward looking.

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