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To,

The Secretary

Central Electricity Regulatory Commission

3rd and 4th Floor, Chanderlok Building

36, Janpath, New Delhi- 110001

16th September 2019

Subject: **Comments/suggestions/objection on behalf of PTC India Ltd to the Draft Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of Trading License and other related matters) Regulations, 2019**

Ref: **Public Notice dated 16.08.2019 and 24.07.2019 issued by this Hon'ble Commission**

Dear Sir,

1. This is with reference to the Public Notice dated 16.08.2019 and 24.07.2019 issued by this Hon'ble Commission inviting comments/ suggestions/objections from stakeholders and interested persons on the Draft Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of Trading License and other related matters) Regulations, 2019 ("**Draft Regulations**").

2. We hereby submit the enclosed comments/suggestions/objections on the Draft Regulations on behalf of our client, i.e., PTC India Limited ("**PTC**") for the kind consideration of this Hon'ble Commission.

For J. Sagar Associates

16/9/2019

(Counsel for PTC)

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BEFORE THE CENTRAL ELECTRICITY REGULATORY COMMISSION, AT NEW DELHI

IN THE MATTER OF:

Draft Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of trading license and other related matters) Regulations, 2019

Comments and suggestions on behalf of PTC India Ltd.

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Advocates for the PTC India Ltd.
B-303, 3rd Floor, Ansal Plaza,
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New Delhi – 110 049

Date: 16th September 2019.
Place: New Delhi

BEFORE THE HON'BLE CENTRAL ELECTRICITY REGULATORY COMMISSION

IN THE MATTER OF:-

Draft Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of trading licence and other related matters) Regulations, 2019

Comments and suggestions on behalf of PTC India Ltd.

Background

1. On 24.07.2019, the Draft Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of trading licence and other related matters) Regulations, 2019 ("**Draft Trading Licence Regulations, 2019**") was notified along with the Explanatory Memorandum seeking to supersede and replace CERC (Procedure, Terms and Conditions for grant of trading licence and other related matters) Regulations, 2009 and CERC (Fixation of Trading Margin) Regulations, 2010 (as amended from time to time). This Hon'ble Commission has issued the public notice inviting comments/ suggestions from stakeholders, due on 16.09.2019.

2. PTC is herewith submitting its comments and suggestions on the Draft Trading License Regulations, 2019 for consideration by this Hon'ble Commission, divided into the following three sections: -

(a) Regulatory and Economic rationale and context of Power Market;

(b) Statutory Objectives vis-à-vis ground realities (2009 vs 2019) – reasons for lag, constraints and issues; and

(c) Proposed amendment and critique.

A. Regulatory and Economic rationale and context of Power Market

3. Before addressing the proposed change, it is important to appreciate the legislative and policy objectives which govern the subject matter.

(a) One of the salient features of the Electricity Act, 2003 is recognition of Trading as a licensed activity, and entrusting the task of developing a market in the power sector to the Appropriate Commission. [**Please refer Sections 2(26) & 71), 12(c), 14(c), 60, 61(c), 66, 79(i)(j) and 86(i)(j) of the Electricity Act, 2003]**

(b) Explicit objectives of the statutory National Electricity Policy dated 12.02.2005 and the Tariff Policy dated 06.01.2006 as extracted below:-

(i) National Electricity Policy 2005: -

"5.7.1 ***To promote market development, a part of new generating capacities, say 15% may be sold outside long-term PPAs.*** *As the power markets develop, it would be feasible to finance projects with competitive generation costs outside the long-term power purchase agreement framework.* ***In the coming years, a significant portion of the installed capacity of new generating stations could participate in competitive power markets.*** *This will increase the depth of the power markets and provide alternatives for both generators and licensees/consumers and in long run would lead to reduction in tariff. For achieving this, the policy underscores the following: -*

a. It is the function of the Central Electricity Regulatory Commission to issue license for inter-state trading which would include authorization of trading throughout the country.

...

d. Development of power market would need to be undertaken by the Appropriate Commission in consultation with all concerned.

e. 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. The Regulatory Commissions are advised to notify various regulations expeditiously.

f. Enabling regulations for inter and intra State trading and also regulations on power exchange shall be notified by the appropriate Commissions within six months."

(ii) Tariff Policy 2006: -

"9.0 Trading Margin

The Act provides that the Appropriate Commission may fix the trading margin, if considered necessary. Though there is a ***need to promote trading in electricity for making the markets competitive****, the Appropriate Commission should* ***monitor the trading transactions continuously and ensure that the electricity traders do not indulge in profiteering*** *in situation of power* ***shortages****. Fixing of trading margin should be resorted to for achieving this objective."*

4. As against the said stated objectives, evaluation of Indian power sector may be summarized below in terms of the position of the market as it existed in 2003 *vis a vis* the current position: -

Evaluation of the Power Market

	Attribute	FY 2003 and % of generation	FY 2009 and % of generation	FY 2019 and % of generation
1	Installed Capacity (MW)	104,918 MW	147,965 MW	356,100 MW
2	Power Generation (MUs)	531,000 MUs	723,556 MUs	1,308,146 MUs
3	Trading Market with Segments			
3.1	Bilateral through Trader and TAM (MUs)	3,840 MUs (0.7%)	20,589 MUs (3.09%)	50,689 MUs (4.07%)
3.2	Direct between Discoms (MUs)	NA	4,545 MUs (0.68%)	19,229 MUs (1.54%)
3.3	Exchange (MUs)	NA	3,975 MUs (0.60%)	50,148 MUs (4.03%)
4	UI/DSM (MUs)	Data not available	20,318 MUs (3.05%)	25,132 MUs (2.02%)
5	REC	NA	NA	12,393,000 (0.95%)

Source: (1) CEA website for installed capacity and Power Generation
(2) CERC website/Regulations for Trading Market data and REC for FY 2009
(3) MOP Annual Report 2002-03, 2003-04 and 2018-19
(4) Form IV of trading licensees
(5) The aforesaid data is only for volumes traded through Bilateral trades and on Exchange

Evidently, in spite of 16 years since enforcing the Electricity Act, 2003, the objective of developing a vibrant market remains to be fulfilled.

5. PTC India Ltd. ("**PTC**") is a trading licensee in terms of Section 14 of the Electricity Act, 2003 ("**Electricity Act**") – having been granted a Category I trading license by this Hon'ble Commission on 30.06.2004. PTC is engaged in trading (purchase and resale) of power on Long Term, Medium Term and Short-Term basis. PTC is a leading provider of power trading solutions in India and has a significant share in traded volumes, although traded volumes by themselves are a miniscule part of the total generation in the country. During the FY 2018-2019, PTC traded 62,491 MUs, which is around 0.5% of the total generation volumes during the said financial year.

B. Statutory Objectives vis-à-vis ground realities: reasons for lag, constraints and issues

6. Section 2(71) of the Electricity Act defines "trading" as "*purchase of electricity for resale thereof and the expression "trade" shall be construed accordingly*". Traders play a critical role in the power sector and have been pivotal for the development of the sector in India. Traders help in, *inter alia*, adding liquidity, providing new / alternative opportunities for sharing risk, facilitating capital investment in generation and transmission sectors, expanding transactional opportunities and substantially enhancing

efficiency of overall market. The importance of the role of traders is evident from the fact that Category-I trading licensees have been able to transact more than 100 billion Units in last 10 years which is more than 80% of the transaction in the overall electricity trades in the Indian power market. In fact, PTC alone has traded more than 250 billion Units since its inception. However, these volumes are a miniscule portion of the addressable market i.e. the total generation available in the grid system. During FY 2018-19, the market for traded power (excluding exchange trades and UI) was limited to ~0.6% of the total generation. The role of the trader in the Indian power markets has not evolved to expected on account of capped trading margin, as detailed in our submissions below. This approach is sub-optimal, intrusive and may not be the best way to continue.

7. The role of traders as a market participant is unique. The aforesaid has been considered and acknowledged in various Regulations and Orders of this Hon'ble Commission. Presently, the operations of trading licensees are primarily regulated by the following regulations: -

(a) CERC (Procedure, Terms and Conditions for grant of trading licence and other related matters) Regulations, 2009;

(b) CERC (Fixation of Trading Margin) Regulations, 2010 ("***Trading Margin Regulations***"); and

(c) CERC (Power Market) Regulations, 2010 ("***Power Market Regulations***").

Thus, it is pertinent to analyze the role of a trader in terms of the aforesaid regulations.

8. The Power Market Regulations envisages two complementary markets, being- Over the Counter (OTC) and Exchange traded markets, and also envisages that exchange driven markets would be more closely regulated than OTC markets. The Statement of Reasons to the Power Market Regulations further provides that OTC traders would play an important role of providing structured and financing solutions to power players and play the role of buyer / supplier / aggregator (Paras 2.6 and 5.3). In terms of Para 5.4 of the Statement of Reasons, back-to-back deals, deals with open position, aggregation of sellers / buyers, spot contracts, derivatives are covered under OTC contracts (short term). The Statement of Reasons further provide that Long-term delivery based OTC contracts would not be controlled by the Power Market Regulations and are mentioned therein only for the purpose of reporting by electricity traders.

9. The role of a trader is also highlighted in Para 7.5 of the Statement of Reasons to the Power Market Regulations which provides that electricity traders can introduce new types of contracts based on market needs, and do not need to take any approval for delivery-based contracts.

10. The Statement of Reasons to the Power Market Regulations dwells on the physical market design from the scheduling point of view (which talks of classification based on flexibility in scheduling and penalties for deviation) and notes that these are general market concepts, many of them being related to OTC markets. It concludes that the Hon'ble Commission is not regulating the contractual aspects in these markets and hopes that these principles would be followed by market participants.

11. Regulation 12 of the Power Market Regulations 2010 ('**PMR 2010**') provides that OTC markets are to provide customized solution to sector participants and endeavor to bring innovation in the marketplace. It is further stated that contracts to be sold to client are to be based on the suitability, appropriateness and full material disclosure of contract pricing, its risks and implications to the parties entering into the contract. Thus, traders are expected to introduce new types of products for clients based on their suitability.

12. In view of the above, it is evident that PMR 2010 intended the adoption of a reasonable and proportionate approach regarding regulation of trading licensees. Such an approach would have been desirable since the trader is the only participant that is a market maker and brings liquidity, provides opportunity for risk allocation and brings transparency to the market. However, the current approach is not in line with the intent and objective of PMR 2010 as detailed in our submissions.

13. The Statement of Reasons ('**SOR**') to PMR 2010 deliberates upon separation of price discovery and clearing functions of the exchanges. The SOR provides that Indian Power Exchanges has a very conservative risk management policy since they charge 100 % margin for any trade (they are free to margin lesser and use a clearing house) (at Para 9.3.2). It is pertinent to mention that, as against the 100% margining provision in exchanges, traders internalize payment / settlement risks and do not have the support of either a corpus / fund akin to the Settlement Guarantee Fund, or an entity like the Clearing Corporation. Further, creation of a Clearing Corporation is made voluntary and left to the discretion of Power Exchanges or any other organization interested in clearing business (Para 9.2 of the SOR). Moreover, the SOR also provides that in case Power Exchanges hive off the clearing function, the Settlement Guarantee Fund shall move from Power Exchange to the Clearing Corporation (at Para 9.4). Such protection, akin to residual function of a Clearing Corporation is not available to traders, while they are in fact subjected to caps on trading margins. A similar level of spread / margin is applicable on exchanges where there is full protection of a Settlement Guarantee Fund and provision for 100% upfront payment for all trades.

14. Thus, the risk-return available to traders (in the form of a fixed trading margin) needs to be viewed in this holistic perspective of a restrictive regulatory regime, lack of

capacity on part of the trader to internalize risks, and therefore inability to grow the market for traded power further by introduction of customized / structured products.

Re. Value Proposition and the Risk-Reward for a trader in the power market

15. The building blocks of the market making process that is the core of the electricity trader's business model are described in the succeeding paragraphs. For this purpose, an illustration has been taken for a medium/long-term trading transaction (trades having a tenure of more than one-year). The key building blocks of a vibrant market development, *inter alia*, are: -

(a) **Ongoing monitoring of market opportunity**: -

(i) *Available Capacity & Energy* – Traders identify the surplus/untied capacity from a specific power plant (generation source) or portfolio (of a Discom / Utility) that is potentially available for off-take for meeting the demand-supply gap of another utility.

(ii) *Demand* – Mapping/identifying the unfulfilled demand of utility (or an entity / institution with energy intensive operations e.g. refineries, SEZs, industrial units) across tenors starting with real-time / near term to long-term time horizons.

(iii) *Evacuation* – After identifying the available capacity in the market and corresponding demand at the relevant time, traders carry out detailed stud(ies) to assess the feasibility for evacuating the power from the location of surplus/untied capacity to the demand center. This entire process sets up the path with the best techno-economic feasibility taking into consideration the non-discriminatory network access to be provided as per the extant laws. The outcome of such stud(ies) also provides signal(s) to the transmission utilities for strengthening of existing / planning for future transmission capacity. Accordingly, the trader plays a pivotal role in identifying evacuation related problems.

(iv) *Commercial Aspects* – Thereafter the contractual terms related to price (discovered through a transparent mechanism), term, period of offtake (round the clock versus peak/off-peak etc.), payment terms, payment security, compensation/penalties for delays, non-performance, relinquishment/surrender and consequences of force majeure etc. are to be considered and managed by the traders.

(b) **Optimizing the load curves and the availability.** The demand-supply gap identified at the demand center is matched with a complimentary position at the

surplus capacity end. The matching of demand - supply is achieved either through a single transaction (one buyer and one seller) or multiple transactions (more than one buyer and one seller). The effect of matching this demand-supply position (which is inevitable in any electricity grid) results in optimizing the load curves (through meeting windows of unmet demand), availability and obviates the need for backing down surplus capacity. Overall, this synergy results in increasing efficiency by greater utilization of generation assets and the entire grid system.

(c) **Scheduling, Dispatch & Delivery Management.** The steps involved in studying the market opportunity and optimizing the load curves and availability results into operational flow of energy. Thereafter this energy is booked for respective customer accounts and tracked for performance / non-performance and possible interruptions.

(d) **Risk Management / Mitigation.** Throughout the steps (a), (b) and (c) described above, the trading transaction involves open risk positions, the mitigation and management of which is the obligation of the trader. For example, covering a period of non-requisition of electricity by the buyer through alternative short-term / exchange trades so that maximum possible utilization of a generation asset can be achieved.

(e) **Coordination with stakeholders and authorities.** The entire process from contracting to operationalization is conducted smoothly by coordination of the interfaces with all relevant stakeholders in the ecosystem (CTU, STUs, grid operator(s) i.e. LDCs, other utilities in the grid system, statutory and regulatory bodies (which have the role of granting approvals for various activities).

(f) Besides handling each of the above five building blocks, PTC has acted to further **Government of India's policy initiatives**, including: -

(i) Schemes for development / revival of power assets. One such scheme is with respect to the sale of power from stressed assets wherein PTC is playing the role of a Nodal Agency as an Aggregator. In this regard, PTC is undertaking various efforts to market the scheme, identify buyers for eventual sale of power to revive the stressed assets;

(ii) Advocating/ counselling/ outreach covering various Government instrumentalities and bulk consumers for promoting trading, open access, use of green power and financial instruments for optimization of power procurement costs, environmental protection and meeting Renewable Purchase Obligations.

16. It is pertinent to mention that in effectively carrying out the actions at every step described above, a trader internalizes and manages risks by itself. By setting up these actions for market making, a trader effectively helps in providing options for multi-buyer, multi-seller models. An aggregation of such market making opportunities leads to a well working market for OTC trades in power. In addition, in the context of India's power markets, the trader (by performing the role of a trader member) provides much needed liquidity to the exchange traded markets.

17. Overall, by undertaking trading in the power market as described above, a trader increases the efficiency by: -

(a) creating multiple opportunities for liquidity; and

(b) creating new possibilities for risk-sharing among market participants and investors.

18. Price discovery is always through an open and transparent mechanism; traders' operations add transparency to the industry and its operations. The outcome of the overall process involved in the trading transaction described above is expected to:-

(a) Attract capital investment into new generation capacity (on the strength of a developed market as against the option of a rigid single-buyer PPA structure).

(b) Provide signals for true merit order based dispatch, more efficient utilization of the network, and for addition of network capacity. However, in the current regulatory regime, the risks allocated to a trader are disproportionately higher compared to the rewards, which are, *inter alia*, restricted through a regulated trading margin.

Re. Risk & Reward Linkage for Intermediaries

19. In the backdrop of the then existing market mechanism and its regulation, PTC had sought the opinion of a leading global expert, Dr. Ashley Brown, who leads the Harvard Electricity Policy Group at John F Kennedy School of Govt, Harvard University, rendered an Opinion in March 2007 covering the first principles of power market, role of an intermediary/trader and the optimal approach towards regulation of traders. The opinion underlines that:-

(a) The trader's orientation is a market maker which leads to a situation of asset light business entities (as against a power utility's asset intensive operations). Therefore, the capex / rate-based regulation for a trader's operations is neither feasible nor desirable.

(b) The trader internalizes risks (and allows their reallocation) through structuring of various transactions. Therefore, pricing / trading margin / spread earned by a

trader in a particular transaction is best left to market forces (as against a cap on margins, based on any `sufficiency of return' approach). This approach is further reinforced by the fact that unlike utilities (which have a near monopoly in their control / defined geographical area), traders are not in any position to control / dominate the market.

A copy of Dr. Ashley Brown's opinion dated March 2007 is attached herewith and marked as **Annexure - I**. PTC is in the process of seeking an updated opinion from Dr. Ashley Brown, which gives a perspective on the existing scenario of power market in India and the same will be provided to the Hon'ble Commission shortly.

In the Indian context, the desirability of the approach outlined by Dr. Brown is further underscored by the fact that the market for OTC as well as exchange trades is a purely voluntary market. Further, this market forms a miniscule percentage of the total generation. Total generation / energy in the grid system represents the addressable market, and volumes traded by traders in OTC and exchange traded markets have to be viewed in this context.

20. It is submitted that the approach adopted by the Hon'ble Commission since 2006, wherein it adopted fixing of a trading margin governing all traded transactions, has not appreciated these specifics of the trader's operations. PTC had, at the time also, highlighted the necessity for adopting a light-handed approach. Such an approach should consider fixing of trading margin (if considered necessary), in specific cases where undue enrichment of the trader is evident.

(a) The Hon'ble Commission, after consideration of the situation prevailing at the time, had adopted an intrusive approach.

(b) Subsequently, the need for minimal regulation of OTC markets and the role of traders in providing structured / customized products has been spelt out in CERC Power Market Regulations 2010. It is evident that, in the period since then, the market for traded power, particularly the OTC market, has remained stunted and traders have not been able to fully perform their role. The traders have not been able to introduce too many customized products / structures for hedging the participants' risks due to the restrictions imposed by a capped margin. A capped margin effectively limits the ability of a trader to internalize risks. However, as stated below at Para 21, traders like PTC are subjected to disproportionate risks and a skewed risk-return equation in the existing transactions.

Re. Economics of the Market

21. In the current regulatory regime, traders like PTC are compelled to take risks that are disproportionate to the returns. An illustrative list of contractual disputes resulting

from such skewed risk-return equations is detailed below for the consideration of the Hon'ble Commission: -

(a) On 30.11.2009, PTC accepting the terms and conditions of the tender issued by GUVNL, offered to purchase 200 MW power from GUVNL for the period 16.12.2009 to 28.02.2010. However, due to the prevalent market situation, PTC was unable to find buyer for power to be procured from GUVNL for most of tenure. Therefore, PTC was unable to offtake such power. Accordingly, GUVNL demanded compensation of Rs.41.70 crores with interest, which was disputed by PTC. Pursuant thereto, the matter was adjudicated by Ld. GERC and Hon'ble Tribunal, whereby PTC was directed to pay 50 % of the compensation amount claimed by GUVNL. Accordingly, PTC paid the amount and appealed before Hon'ble Supreme Court.

(b) PTC entered into agreements with KSEB for supply of 300 MW power from Simhapuri Energy Limited for the period 01.06.2015 to May 2016 on back to back basis. Due to low supply from Simhapuri (as Simhapuri started diverting the power to third party) PTC was not able to supply the contracted power to KSEB. Accordingly, KSEB threatened to invoke the BG submitted by PTC and eventually deducted Rs.25 Crore from energy bills raised by PTC.

(c) PTC entered into a PPA with TNEB on 16.06.2008 for onward sale of power to PSEB. TNEB failed to deliver the contracted power to PTC as a result PTC was not able to supply the contracted power to PSEB. Consequently, PSEB deducted Rs.16 crores from the energy bills of PTC for short supply. In terms of the contract, PTC claimed the amount from TANGEDCO, which was disputed and led to an arbitration. The arbitration award was held against PTC. The matter is now pending before Hon'ble Madras High Court.

(d) PTC entered into an agreement for supply of 90 MW power from Aarkay Energy Ltd to TANGEDCO for the period February 2017 & March 2017. Due to non-availability of gas, Aarkay Energy could not supply power to TANGEDCO. Consequently, TANGEDCO levied penalty of Rs. 8 Crore on PTC, which was disputed by PTC. However, TANGEDCO deducted the same from other payables of PTC. Aarkay Energy Ltd has denied reimbursing such deduction to PTC.

(e) PTC entered into PSA with PSPCL on 6.05.2010 for supply of 200 MW RTC Power and 300 MW RTC power for different periods. The power was to be supplied to PSPCL from allocation of GoHP Power from centrally owned hydro generating plant located in Himachal Pradesh. Due to high silt level, Nathpa Jhakhri and other central generating hydro plants suffered outages on certain dates

and correspondingly revision of schedules could not be done as regulation did not permit real time revision. Accordingly, PSPCL paid at UI rates for power supplied on such dates (plant outage) and deducted an amount of Rs. 3.15 Crore from energy bills raised by PTC on the ground that power was supplied under UI, even though PTC had already made payment to GoHP at contracted rate. PTC contested the deduction made by PSPCL in an arbitration proceeding, which was held against PTC.

(f) PTC supplied power from various sources including CPPs, to TANGEDCO during FY 2009-10 to FY 2011-12 under various LOIs. TANGEDCO stopped making payments from December 2011 against power supplied under the agreement. Accordingly, an amount of Rs.220 Crores remained unpaid by TANGEDCO, which was challenged by PTC in arbitration proceedings. After the arbitration award was passed in favour of PTC, TANGECO made payment of Rs. 220 Crore in parts over a period of one year. However, out of Rs. 164 Crore of LPS, TANGEDCO agreed to only pay 50% of the amount.

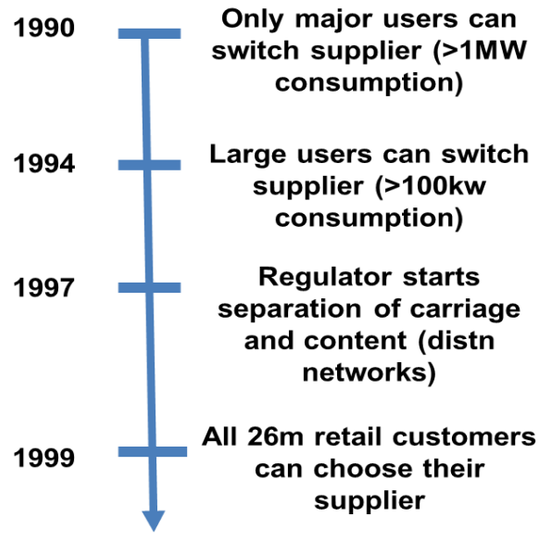
(g) PTC supplied power, from various sources to UPPCL for the period June 2011 to April 2012. Total energy bills raised for the power supplied by PTC was Rs. 1280 crores, which was paid by UPPCL on 8.10.2013, almost a year and a half after the end of supply period. Due to late payment by UPPCL, LPS of Rs. 320.63 Crore was levied by PTC. However, UPPCL agreed to pay only 40% of the surcharge amount to PTC.

The common thread in all these disputes adversely affecting PTC is uncontrollable exposure of the trader due to default of other parties resulting in liabilities that are multiple times the total economic interest of the trader in the transaction.

22. For a comparative analysis we may refer to the model adopted by the United Kingdom (**UK**). It is submitted that UK power market observed gradual market liberalization starting with bringing competition in the wholesale markets.

(a) The first step being separation of generation from system operations followed by establishment of regulatory bodies, introduction of Energy Act and opening market for bulk customers. Indian power market has also achieved this stage of development and is at a matured stage for further progression.

(b) Thereafter UK power market was liberalized by organized unbundling of retail sector. The unbundling was done by separation of content & carriage in a sequential manner, thereby providing choice. The same is illustrated below: -



(c) It is submitted that UK adopted an approach of opening markets by different 'size of the customers and gradually progressed by opening markets to all level of customers through framework of system operators & market operators. Initially the price was regulated, which was gradually removed and left open to market competition. The trends observed in UK shows that on liberalization of the market i.e., by removing the capping on price many private power retailers emerged offering better customer experience & services gaining market share gradually.

Re. Risks borne by Traders in India

Re. Credit Risk

23. Credit risk is the risk if the purchaser / DISCOM defaults on or delays its payments due to the trader, while the trader remains obligated to pay to the supplier in a timely manner. This risk is mitigated by realizing revenue from the purchaser / DISCOM. The Payment Security from the purchaser is just one instrument that partially mitigates this risk. Payment security, if at all furnished by the DISCOM, is a stand-by mode of payment and covers the energy related payments. More often than not, the LTOA / open access related payments are made 'on-account' and a trader like PTC takes balance sheet exposure, which is an open position.

24. In this regard it is submitted that the cash flow statements of PTC for the last 5 years, which are detailed below in the table, establish that PTC is always exposed to a receivable and payable mismatch and generates negative cash flow in three of the last five periods.

(Table 1)

PTC INDIA LIMITED						
Extracts from the Cash Flow Statements in PTC Annual Reports						
						(in INR crores)
Particulars		**For the Year ended 31.03.2019**	**For the Year ended 31.03.2018**	**For the Year ended 31.03.2017**	**For the Year ended 31.03.2016**	**For the Year ended 31.03.2015**
Cash flows from operative activities						
Net profit before tax		**397.48**	**444.77**	**409.01**	**344.13**	**301.31**
Adjustments for:						
Depreciation and amortization expense		3.03	2.85	2.71	3.53	4.16
Employee compensation expense (ESOP)		-	-	-	(0.10)	(0.06)
Provision for investment		-	-	-	-	(0.50)
Profit/ (loss) on sale of fixed assets (net)		(0.03)	(0.02)	0.02	(0.03)	0.03
Bad debts/ advances written off		0.56	1.17	15.99	-	-
Excess provision written back		-	-	-	-	(0.77)
Unrealized foreign exchange fluctuation loss / (gain)-(net)		-	(0.53)	0.96	0.81	(1.22)
Impairment allowance for doubtful debts / advances		5.45	4.56	3.20	0.12	0.03
Provision for impairment losses in an associate company		-	-	-	37.55	33.21
Miscellaneous income		-	-	-	-	(0.10)
Liabilities no longer required written back		(0.51)	-	(29.48)	-	-
Finance costs		143.03	117.28	134.59	102.62	0.96
Dividend income		(9.44)	(81.57)	(64.74)	(61.54)	(43.80)
Interest income		(119.25)	(117.10)	(132.95)	(100.63)	(22.22)
Rental income		(0.05)	(0.05)	(0.02)	(0.19)	(0.24)
Profit on sale of investment (net)		(0.11)	(3.89)	(10.33)	(16.28)	(0.08)
Operating profit before working capital changes		**420.16**	**367.47**	**328.96**	**309.99**	**270.71**
Adjustments for:						
(Increase)/ Decrease in trade receivables		**(1,452.98)**	**(4.20)**	**417.31**	**(914.19)**	**(429.44)**
(Increase)/ Decrease in loans and other financial assets		7.09	(11.32)	18.13	51.26	(9.00)
(Increase)/ Decrease in other current assets		(58.07)	(18.59)	(9.50)	(24.21)	-
Increase/ (Decrease) in trade payable		**717.34**	**(501.17)**	**283.05**	**591.78**	**521.93**

Increase/ (Decrease) in other current liabilities		5.88	0.74	-	-	-
Increase/ (Decrease) in other financial liabilities		17.98	0.90	(9.96)	(53.02)	-
Increase/ (Decrease) in provisions		0.19	(0.92)	1.06	0.72	0.45
Cash generated from/(used in) operating activities		**(342.41)**	**(167.09)**	**1,029.05**	**(37.67)**	**(354.65)**
Direct taxes paid (net)		(139.18)	(131.51)	(86.97)	(140.96)	(96.92)
Net cash generated/(used) from operating activities (A)		**(481.59)**	**(298.60)**	**940.94**	**(181.36)**	**257.73**
Annual Energy Traded (Billion Units)		**62.48**	**57.01**	**48.30**	**42.36**	**37.12**

25. Thus, a trader like PTC has open positions in many contracts, i.e., payments are made to suppliers / generators from its own resources while not having realized the payments from purchasers. In this regard, it may be noted that PTC as a trader makes timely payments to Sellers, despite not receiving the same from the Buyer. Further, there have been multiple instances where PTC had to provide partial/ complete waiver of surcharge to distribution companies, considering their financial position. PTC's open position on account of the aforesaid risk is consistently reflected in the closing books of accounts of PTC in any given financial year (refer to Table 2). As is evident from Table 2, PTC has net outstanding from its purchasers in all years, and even a negative Cash Flow from operations in many of the years. To further substantiate this point, details evincing the funds generated (used in operating activity), total receivables and payables for PTC in the last five financial years is given below: -

(Table 2)

	FY 19	FY 18	FY 17	FY 16	FY 15
Volume (Bus)	**62.48**	**57.01**	**48.30**	**42.36**	**37.12**
Cash generated from/(used in) operating activities (INR crores)	**-481.59**	**-298.60**	**940.94**	**-181.36**	**257.73**
Closing Receivables (INR crores)	**4,716.97**	**3,270.00**	**3,271.00**	**3,708.12**	**2,515.10**
Closing Payables (INR crores)	**2947.82**	**2230.93**	**2732.10**	**2478.57**	**1620.71**

Re. Performance Risk

26. The aforesaid risk refers to the risk wherein a counterparty in a trading transaction does not perform its obligations under the contract, leaving a trader like PTC exposed to a liability with the other counterparty. The risk in such a situation is covered by (a) Performance Guarantees and (b) Compensation related provisions. However, given the liquidity crisis and stress in the generation as well as distribution sectors, counterparties

have not been able to furnish Performance Guarantees, and a trader like PTC often takes open positions (i.e. furnishing Performance Guarantees to buyers, while not obtaining back up Performance Guarantees to sellers) to operationalize the transactions in the interest of all stakeholders.

Re. Operational Risk

27. Operational risk refers to the risk of a transaction being interrupted / curtailed due to transmission issues and other factors like unscheduled shutdown of the seller's generation source which are beyond the control of a trader. This risk is partly mitigated in a situation if events qualify as Force Majeure in terms of the contracts with the respective buyers. However, there are several situations where the trader would be liable for compensation payment due to such operational issues. Further, an interruption in a transaction lowers volume and impacts short-run profitability of the trader.

Re. Market / Pricing Risk

28. At all times, a trader is exposed to the risk of pricing, as the tariff is locked in with the seller and the on-sale price of power discovered later can be lower than the price paid to the seller. A trader like PTC largely does not take such pricing risk. However, in the interest of promoting investments, PTC has taken limited (and conservative) pricing risk in the form of `Take-or-Pay' obligations in its long-term PPA agreements with generators. These constitute yet another type of Open Position taken by a trader like PTC.

Re. Duration / Term of Agreement related Risk

29. Traders are exposed to risks arising out of a situation where a trader enters into a long-term PPA and sells it through a series of short-term and medium-term PSAs. This position has been recognized and acknowledged by the Hon'ble Commission in Power Market Regulation 2010 i.e., a trader buys power under long-term arrangement and sells through multiple short-term arrangements. Accordingly, the open position of PTC in term of Long-Term PPA is detailed below: -

Project/Plant Category	**UOM**	**PPA Capacity**	**Tied-up Capacity**	**Open Position***
Thermal (Coal & Gas)	MW	4370	2671	1699
Hydro (Incl. CB)	MW	4719	4359	360
Renewables	MW	1214	1173	41
Total	**MW**	**10303**	**8203**	**2100**

* Open positions are in respect of duration.

30. The cumulative effect of the aforesaid categories of risk that PTC is exposed to is also highlighted in PTC's Annual Report of 2018-2019. The same is being summarized below for consideration of the Hon'ble Commission: -

S. No.	*Description of the Variable*	*Value as on 31/03/2019*	*Value as on 31/03/2018*	*Remarks*
1.	Trade Receivables - Considered good-unsecured	4711.52	3266.05	44.25% increase in unsecured trade receivables is a reflection of the increased exposure taken by PTC
2.	Receivables which have significant increase in credit risk	11.51	8.51	35.25% increase in receivables which may be prone to provisioning shows the increased credit risks being assumed by PTC
3.	Receivables credit impaired	11.25	7.3	53.97% increase in receivables against which a full provisioning has been provided indicates the increasing level of risks assumed by PTC
4.	Trade Payables	2947.82	2230.93	More than 1000 INR crores gap between receivables and payables in FY18 which has increased to more than 1700 INR crores in FY 19 shows how PTC's exposure is increasing

31. From the above submissions, it is evident that even in back-to-back transactions, a trading licensee like PTC carries and manages inherent risks related to credit, performance and operations. The pricing and duration related risks are the only risks that the trader is not exposed to in a `back-to-back' transaction. Our detailed comments/suggestions in this regard are provided in Annexure 1. The traders play a pivotal role in the entire chain of power supply which has developed over the years and has increased the trading activity in the sector. This is evident from the fact that, as on 31.03.2018, this Hon'ble Commission had granted trading licenses to 79 applicants out of which 43 licensees had surrendered/revoked their license. Out of the 36 remaining licensees, about 28 licensees undertook trading during FY 2017-18 All of these point out the fact that traders have always been encouraged to ensure that risk allocation and liquidity in the market remains at determinable levels and is not prohibitive for new entrants.

C. Proposed amendment and critique

32. The risks elaborated above exposes the trader to Open Positions and liabilities, and the regulation / fixation of trading margin on long-term transactions (including those termed `back-to-back') will further exacerbate the risk for traders' operations, leaving

them exposed to a skewed risk-return equation. The same was correctly analyzed by this Hon'ble Commission in the past. In this regard it is submitted that: -

(a) On 11.01.2010, this Hon'ble Commission issued the Trading Margin Regulations along with the Statement of Reasons. The Trading Margin Regulations were *inter alia* based on a report prepared by KPMG that was appointed to conduct a study on trading margin and suggest appropriate levels of trading margin that encourages a healthy trading market and protection of consumer interest. Based on the study, KPMG had arrived on an overall margin for different categories of traders, as given below.

Trader Category	**MUs traded**	**Default Risk**	**Late Payment Risk**	**Contract Dishonor Risk**	**O&M Expenses**	**Return on Net Worth**	**Overall Margin**
	MU			**(All figures in Paise/kWh)**			
III	50	1.04	0.57	0.88	13.33	2.93	18.75
III	100	1.04	0.57	0.88	7.54	2.93	12.96
II	500	1.04	0.57	0.88	2.91	2.93	8.33
I	1000	1.04	0.57	0.88	2.33	2.93	7.75
I	5000	1.04	0.57	0.88	1.86	2.93	7.28
I	10000	1.04	0.57	0.88	1.81	2.93	7.23
I	20000	1.04	0.57	0.88	1.78	2.93	7.20

It may be noted that the Trading Margin Regulations are only applicable to short-term trading contracts and were not made applicable to long-term transactions.

(b) Moreover, in terms of Paragraph 7 of the Statement of Reasons to the same Trading Margin Regulations, this Hon'ble Commission stated that:

> *"7. The Commission is cognizant of the fact that the traders are providing different types of products by entering into contracts on long-term, medium-term and short-term basis. The risk profile of each of these contracts is different. Accordingly, the Commission is of the view that where traders enter into long term power purchase agreements of duration exceeding a year, the risks cannot be completely mitigated through a trading margin. Also, since the long term power procurement market is witnessing competitive forces at work, the Commission feels that the determination of an appropriate trading margin be best left to the market forces."*

33. In contrast to the aforesaid analysis for determining the trading margin for short terms contracts in terms of the Trading Margin Regulations, this Hon'ble Commission

has in the case of the Draft Trading License Regulations, 2019 not provided any rationale for capping the trading margin to 1 paisa per unit.

34. In the Explanatory Memorandum to the Draft Trading License Regulations, 2019, this Hon'ble Commission has stated that in actual operations traders have passed on all risks on back to back basis while charging a significant trading margin and that payment risk and default risk has also not been subsumed by traders. Basis the aforesaid, this Hon'ble Commission has capped the trading margin to 1 paisa per unit. It is submitted that since separate contracts are executed in back to back deal, trader has privity of contract with buyer on one side and seller/generator on other. Accordingly, the trader is responsible and bears contractual risks that flow separately under both the contracts. Further, buyers / sellers interpret the agreements keeping in mind their own perspective, the risk of which has to be borne by the Trader. There have been multiple instances deliberated at Para 21 above, where the seller/buyer has reneged from its contractual obligation of supplying/off-taking power and the financial obligation arising out of such breach has been borne by PTC.

35. In contrast to the capping of trading margin, the changes proposed to capital adequacy and liquidity requirements are a welcome step, as the additional net worth requirement will ensure proportionately better financial health of trading licensees qualifying for various categories of licenses. These changes would ensure credit-worthy licensees, with the capacity to handle contractual and financial obligations in an orderly manner, enter and sustain operations in the power markets. This would reduce systemic risk and help market stability. Moreover, the changes to procedures for compliance, upgradation and down-gradation of license are also a welcome change since the same bring clarity. The abovementioned changes entail entity level safeguards that ensure sufficient checks on qualifying and continued financial capacity of the trading licensees.

36. Trader is a buyer, supplier and an aggregator of power. Traders as market makers in the OTC market bring liquidity, provide opportunity for risk allocation and bring transparency in operation. Further, traders provide structured and financing solutions to power players. Trader discovers the pricing in an independent / public platform, and then performs the role of clearing and settlement of trade positions. PTC trades not only benefit the parties involved, but also relieves the customers of the selling utility from paying for surplus capacity and provide the customers of the purchasing utility with cheaper energy as compared to the price in open market.

37. Role and operation of traders is diverse and wide and therefore calls for light-handed regulation, which is stymied by the current regulatory approach. The regulatory framework proposed by the Hon'ble Commission further limits the ability of the trader

to take open positions and internalize risk. It is pertinent to mention that traders are rarely in a position to abuse market power, or indulge in any wilful default, since trading is an inherently competitive business in a voluntary market. Profits are limited by market forces viz; competition and demand elasticity. Every type of trading transaction has a different risk profile. With the incentive to earn high profits, there is a very real prospect of suffering losses. Capping of trading margin have been counterproductive to market development and efficiency. Therefore, putting a cap on profits and not setting a floor on losses is inherently asymmetrical. Such framework is unsustainable for the growth of trading / OTC market. Therefore, there is a case for liberalising / adopting light-handed regulation for traders.

38. PTC's detailed comments on specific provisions of the Draft Trading License Regulations, 2019 are provided as **Annexure II** to these submissions.

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ANNEXURE - I

Qc D

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The Role of the Trader in Competitive Electric Markets

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March 2007

The opinions expressed herein are exclusively those of the author and do not represent the opinions of Harvard University or any other entity to which the author may be affiliated.

INTRODUCTION

The role of traders in competitive electric markets is a critical and sensitive one. Historical experience from many locations around the world has demonstrated that traders can, and do enrich markets exponentially. They do so by adding liquidity, by skillful arbitrage, by affording new opportunities to lay off risk, by facilitating the attraction of capital to the generation sector, by adding transparency to previously opaque markets, by expanding transactional opportunities, and finally, by substantially enhancing the efficiency of the overall market.

In nascent competitive markets, the role traders play can be central to successful market evolution. That is because they bring to the newly competitive markets, a perspective that is significantly different than the incumbent players. They do not suffer from a "monopoly mindset," are oriented toward transactions on a dynamic basis, bring new insights to the opportunities for enhancing trade and commerce, are more entrepreneurial in their willingness to take on risks, are more wiling to take on barriers that heretofore constrained market evolution, and make the exposure market inefficiencies more certain. In short, traders are an absolutely essential element in making a successful transition to competition. As the market matures, their role remains a vital one to make certain that the market is sustainably robust, efficient, and open. To put the role of traders in context, a brief historical note is required.

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HISTORICAL CONTEXT

The electricity has historically been viewed as a "natural monopoly." Companies, often state owned, but sometimes private, mostly vertically integrated (i.e. generation, transmission, distribution, and energy sales), have been accorded the right to do business on a monopoly basis within a geographically defined territory. In exchange, the monopoly company has accepted an open ended obligation to serve the full electric requirements of all customers within their defined service territories,[1] on the basis of pre-approved tariffs that limited the profit potential of the monopoly. In short, as an economic proposition, electric utility companies were assured of no competitors in exchange for limiting their ability to profit from their unchallenged market dominance in the defined territory they were obligated to serve.[2] As part of that arrangement, the companies were also required to acquire and maintain the capacity to serve the ever growing demand for electricity. Most companies, including the SEB's in India, did so on a "stand alone" basis, whereby they would forecast demand, and based on those prognostications, would build all of the infrastructure, generation, transmission, and distribution, as well as back office facilities, required to meet all of the electricity requirements of the customer base.[3]

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[1] Where service was not yet universally available, the open ended obligation to serve all customers may have been limited by defined planning parameters.

[2] This was the situation that emerged in India as well under the provisions of the Indian Electricity Act, 1910 read with Electricity (Supply) Act, 1948 and got crystallized with nationalization of various assets in view of the Industrial Policy Resolution, 1956[IPR-1956] which mandated that *"all industries of basic and strategic importance, or in the nature of public utility services, should be in the public sector"*. IPR 1956 sets out the industries wherein *"all new units, save where their establishment in the private sector has already been approved, will be set up by the State" in Schedule A, where at item 17 was listed "Generation and distribution of electricity"*.

[3] The difficulties associated with the stand alone proposition were made worse by what economists call the "lumpiness" problem. When new capacity, particularly, generation, but to a considerable degree,

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Over time, it became apparent to policy makers, key consumer constituencies, and to many in the electric industry itself, that the monopoly, internally self sufficient, fully regulated paradigm, was inefficient and perhaps unsustainable in the long run. The evidence supporting that view was manifested in many forms. [4]There were geographic imbalances, where some regions were short on supply while others were surplus, but there was no physical means of trading to take allow for regions surplus on supply to sell to those who lacked sufficient capacity. Interestingly, these disparities in the availability of capacity existed at the very time that the technology for controlling the transmission grid was making rapid gains that permitted electricity to be efficiently dispatched over more and more distant geographic reaches. In short, some of the technological constraints that had previously dictated the need for stand alone planning, had ceased to exist, but the economic paradigm being used discouraged taking advantage of those technological gains. Stated succinctly, enormous economies of scale were left unutilized. To the extent that tariff formulation was an administrative function of the government, and to the extent that companies were state owned, economic prudence in tariff formulation was often discarded in favor of political expediency, thus causing serious price distortions, grossly inefficient cross-subsidies, and the precluding full cost recovery. Those circumstances often necessitated significant subsidies from already over burdened

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transmission, as well, was needed, it was virtually impossible, from both an engineering and economic perspective, to address the need with precision. The economies of scale and scope, as well as the anticipation of future demand, almost always dictated the building of more capacity than was required to meet current or near term demand. As a result, significant near term costs were incurred for longer term purposes and there was no place to lay those costs off other than to impose them on consumers or on the investors, often the state.

[4] In this context, it is instructive to note that even today, the level of gross subsidies in the Indian power sector are stated to be in the region of Rs. 40,131 crores(US $ 10.03 billion) annually. Further, the rate of return of SEBs has deteriorated to -27.4% in 2006-07 (revised estimate) where in spite of net subsidies of Rs 26,261 crores (US $ 6.55 billion), the uncovered subsidy is in the range of US $ 3.5 billion where commercial losses are estimated at Rs 26,150 crores (US $ 6.54 crores) {Chapter 9 of the Economic Survey of Government of India dated 27.02.2007}

state treasuries.[5] The management of electric utility companies in such circumstances had little incentive and few resources to improve efficiency and productivity, to make strategic investment decisions, to accumulate needed capital, or even to keep its own costs down. As a result, there was often a diminution in the quality of service, as demonstrated by reduced reliability, slow responsiveness to consumer demand, and an inability to assure the availability of needed infrastructure to meet the demands of a growing economy. The mounting evidence of inefficiency and unsustainability of the old paradigm, led governments throughout the world, India included, to conclude that fundamental change was required.[6] Those changes included, to the extent possible, the unleashing of market forces onto what had heretofore been a monopoly market in order to allow society to benefit from greater efficiency in the delivery of electricity.[7]

RESTRUCTURING THE POWER SECTOR

[5] Under the monopoly paradigm, there were only two places to assign the risks associated with capital investment in infrastructure capacity. One was to assign it to customers, who would have to bear the residual revenue responsibility for all capacity built for the purpose of serving them whether they used it or not. The other option was to impose it on the investor, which, in the case of the Indian SEB's, meant on the state governments which owned them. To the extent, of course, that there was no ability to sell excess capacity "off system," or to buy needed capacity rather then building it on a stand alone basis, those risks were substantially exacerbated. The exacerbation was further reinforced by the lack of utility management incentives to find better ways of coordinating with neighboring systems.

[6] This was a phenomenon that propelled reforms in various States in the Latin American economies like Chile, Argentina, and Colombia as also some US States like California. Please refer to discussion at Foot note 10 below.

[7] While some commentators, particularly defenders of the *ancient regime*, have suggested that the introduction of market forces into electricity was the result of ideologically driven agendas that characterization is generally off the mark. While there were undoubtedly free market ideologues involved in the debate over electric restructuring, most policy makers were motivated by practical considerations in light of the unmistakable evidence of inefficiencies, real worries about the ability to provide the energy need to sustain economic growth, about the need for more flexibility in allocating risk, about taking full advantage of technology advances, about attracting new capital to the sector, and about the need to be more responsive to consumer demand.

The basic components of restructuring the power sector, while having various nuances in various localities around the world are strikingly familiar everywhere. The key characteristics are de-monopolization, promotion of competition, particularly in generation, unbundling (de-verticalization) of services, independent, financially disinterested, control of bottleneck, network facilities, and a de-concentration of governmental powers, principally through the delegation of regulatory powers to an independent agency.[8] It is also characterized by opening up the market to new actors who can attract new sources of capital for needed investment, and/or those who can increase the overall efficiency of the sector. Typically, those new actors might include independent power producers, network service providers such as grid companies, energy service providers who can enhance end use efficiencies, and traders who can add liquidity and entrepreneurial skills to a market that has historically been lacking in both. Restructuring may, but does not necessarily have to involve privatization of existing state owned assets. It often does involve the introduction of private actors in heretofore paristatal activity, but it does not necessarily have to do so.[9] Stated simply, the goal of restructuring was to align policy, governance, market design, and the roster of players in the market in ways that would allow for the attraction of new capital and increase efficiency on the sector in ways that would produce significant benefits for both customers and the economy as a whole.

It is in this context that the role of traders can best be understood and the policies in regard to them should be contemplated.

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[8] Like the Electricity Regulatory Commissions in India.

[9] It is notable that the complete restructuring of the power sector in Norway involved virtually no change in the state ownership of most of the actors in the sector. Similarly, in the U.S., the restructuring of the electricity industry has done little to change the balance of ownership of sector assets between private companies, government owned entities, and cooperatives.

ROLE OF TRADERS IN COMPETITIVE ELECTRICITY MARKETS

Traders bring a perspective to their mission quite different than others in the electricity market. While most actors in the sector are asset based with intensive commitment of capital, traders are largely information based, with heavy commitment of intellectual capital in an effort to profit from providing overall efficiency gains to the system as a whole.[10] The value they add to the market is quite different that that brought by other market participants. As a result, nature and extent of regulation accorded to them ought, necessarily be thoughtful, proportionate and appropriate for the goals of market development [11]different than that experienced by others. The nature and extent of regulation of traders cannot be equated with that which is accorded to asset-based power producers and suppliers, many of whom are essentially in a "monopoly" mode. In fact, while the traders are seen inducers and facilitators of market development, tariff fixation

[10] Some have blamed much of the California electricity crisis on the misbehavior of certain traders. While it may be true that some, although certainly not all, traders misbehaved, it is entirely too simplistic to blame the failure of that restructuring on traders. The failure was the result of many factors, most notably a terribly flawed market design, regulatory negligence, severe drought, environmental constraints, jurisdictional gaps between federal and state regulators, a long period preceding restructuring of inadequate investment in generation, and a number of other factors having nothing whatsoever to do with traders. While there may or may not have been some misbehavior by some traders, the effects of any adverse actions by them were marginal. More importantly, when one looks more specifically at the types of misbehavior alleged, most of it was enabled by and not contrary to the market rules that had been put in place. It is also worth noting that behavior in the California crisis often defied stereotypes. The classic example of that is that one of the biggest profiteers from the crisis, perhaps the single biggest in *pro rata* terms was the government owned Los Angeles Department of Water and Power. Interestingly, the other catastrophic electric restructuring failure occurred in Brazil, which adopted a terribly misconceived market design, albeit one quite different from California's, which provided for a very limited role for traders. In fact, one of the many reasons for the failure of the Brazilian model was that it provided for very limited liquidity and very limited opportunity to lay off risk, the very values that traders can bring to a market in abundance.

[11] It is revealing that today in a national market of over 130,000 MW capacity and 6.63 billion units of production, around 2 % of generated power is traded which the Policy seeks to take the level of trading to 15% of generation capacities to promote market development in Indian power sector. The obligation to develop power market is cast on the Appropriate Commissions in terms of Section 66 of the Electricity Act, 2003 read with Para 5.7.1 of the National Electricity Policy dated 12.02.2005.

for trading is intrinsically contradictory, indeed downright harmful, to developing a market and should only be resorted to for traders in the case of demonstrated market failure. First, however, it is useful to explore in some depth what value they add to the market.

Values Produced By the Trading Function: Liquidity, Enhanced Risk Allocation, and Transparency

The most significant contribution of traders is in the area of liquidity. This is particularly true in markets such as India's, where competition is still in its embryonic state. Traditional utilities, the industry incumbents, as noted above, have historically looked at the market in a self sufficient, fully internalized manner, where, if they needed new capacity, they simply raised the capital and built it themselves. They did not, as a general rule, look around them and see which of their neighbors might have capacity or energy to sell which might be less costly than the building their own units or producing their own energy. In fact, under the *ancient regime*, there was no energy market to speak of and capacity sales may well have been precluded by the absence of sufficient transmission to accommodate such a transaction. Thus, the incumbents mindset was not only the result of this mode of doing business, but also because there was often insufficient infrastructure to support a different way of approaching carrying out its business. With a paradigm change in favor of competition, a different perspective is called for, one that looks to the market to see what is available. Which utilities, for example, have surplus capacity and which are short on capacity? How can those complementary needs be brought together for a mutually advantageous deal? Such deals,

of course, not only benefit the parties involved, but also relieve the customers of the selling utility of having to pay for capacity they do not need, and provide the customers of the purchasing utility with less expensive energy than they might otherwise have been able to obtain. Traders might also serve the needs of large consumers who may be allowed to purchase off the grid, more efficiently than that customer could either do for itself, or by buying from the incumbent utility. In short, traders can, and often have, created competitive markets in electricity where none other than the traditional monopoly had existed.

Traders have played a major role in identifying opportunities for arbitrage between markets. The old stand alone model produced circumstances in India and elsewhere in which some regions had excess capacity and others were short, but the market making perspectives that in other industries would have seized such opportunities was almost completely lacking in electricity. In other circumstances, where significant cost differentials exist between energy producers, particularly in the marginal costs of production, traders are able to arbitrage transactions where the higher cost producer buys from the lowers cost ones. The result is a lower overall cost of production and a major efficiency gain. Thus, the traders serve the purpose of identifying transaction opportunities and thereby making cost disparities more transparent, but also creating trades that might not otherwise have taken place. Certainly, in the U.S., traders have played a critical role in helping to take advantage of the synergies that can make the market more efficient. In doing so, they also contribute significantly to enhancing the transparency of the market by exposing constraints that may have been previously ignored or overlooked. They play that role because they earn their money by finding and

exploiting the very opportunities to which the traditional players have historically paid little attention, and where, particularly in cases where production cost differentials can prove embarrassing to a utility, a utility preferred to avoid disclosure of its higher cost structure and/or lower productivity.

Similarly, traders can play a major role in attracting new investment to the sector in two critical ways. In generation, they often serve the purpose of providing a hedge to independent power producers, by agreeing to purchase a certain amount of energy or capacity, thus enabling investors to build capacity, where they might otherwise have deferred. Traders can assume an agreed upon level of risk that might help investors attain the requisite revenue stream to enable a plant to be built that otherwise might not have been completed. In transmission, the role of the trader in identifying market opportunities and efficiency gains that go unfulfilled because of the absence of transmission infrastructure has proven critical in motivating the construction of new or enhanced transmission capabilities. The benefits of constructing new transmission is not only that it enables the transactions that motivated it, but it is almost always the case that once a line is built, it is put to mores uses and produces much greater liquidity and value than was originally anticipated.

Finally, traders enhance liquidity because they bring new products to market that inevitably produce greater value and efficiency. Examples would include various types of hedge products, such a heat rate indices, tolling arrangements, various types of swaps, and a host of other innovations that have enhanced the efficiency of electricity markets. Traders have played a major role in making the real time and short term energy markets viable and effective instruments for achieving greater efficiency and productivity.

Indian Power Sector and its challenges

The Indian Power Sector today is being seen as a constrained and inefficient system[12] requiring additional capacity (generation, transmission and distribution) creation of the magnitude of around 78,000 MW in the next 5 years at a projected aggregate investments of around US $ 2 million per MW for generation and attendant evacuation capacity. To appreciate the investment needs, the following facts are relevant:-

• Privately owned installed capacity	17,000 MW ~ 12.9% of 132,000 MW
• Total Generation	663 billion units
• Peak-Demand shortages	11% to 14%
• Base-Load shortages	8% to 9%
• Aggregate losses (Technical & Commercial)	40%
• Gross Subsidy	Rs 40,131 crores ~ US $ 10.03 billion
• Net Subsidy	Rs 26,201 crores ~ US $6.55 billion
• Uncovered subsidy	Rs. 13,930 crores ~ US $3.5 billion
• Commercial losses	Rs.26,150 crores ~ US $ 6.54 billion
• Investment Needs	Rs.600,000 crores in five years ~ US$ 150 billion
• Private Sector Investment Needed	30% ~ US$ 45 billion[13]

[12] It is an acknowledged fact in the planning and policy documents in India that the amount shortages are in the region of 11 -14 % in the peak-load and 7% in the base load. Losses in the system hover around 35% which combined with subsidies and irrational tariff result in the financial mismatch between revenue generated and revenue required of around US $ 10.03 billion annually. On this shortfall, the subsidy burden borne by the tax payer is estimated at around US $ 3.5 billion annually while the balance is an overhang borne by the consumers.[Please refer to footnote 4 above]

[13] As per the Budget and the Economic Survey (2007), the estimated investment of US $ 320 billion is required in all infrastructure over 5 years. Around 40% of investment is required in power sector alone.

When contrasted with the total present installed generation capacity of over 130,000 MW and inter-regional transmission capacity of around 11,000 MW, as also the additional capacity created in last 5 years of around 23,000 MW, this target is both daunting and ambitious. The investment needs being around US $ 25 to 30 billion annually, even on a conservative estimate of cost of capital of 14 %, the cost of capital to service such investments not made out of internal surplus accruals of the sector will be between US $ 3.5 to 4.2 billion per annum. The current level of system wide aggregate revenue shortfall of US $ 10.03 billion [Please see Footnotes 4 & 12] requires significant improvements in the level of losses as also role back of populist policies of free power and irrational tariffs. While the scenario has changed significantly from the 1990's debacle of independent/private power failing due to lack of market, the mere creation of legal/regulatory framework under the Electricity Act 2003 permitting a multi-buyer multi-seller wholesale market, will not suffice. Investments need suitable price signals through market forces of demand and supply with unconstrained evacuation to achieve a more balanced and vibrant market and investments needed in India. The current sustained economic growth of GDP @ 9 % per annum and the projected growth @ 10% per annum provide a very strong economic foundation for making the investments more productive and viable. This economic pull and the changed market structure in the power sector provides a strong foundation for the projected market development in India provided that appropriate –economic signals and regulatory treatment is meted out to different constituents. Of course, the annual growth levels of GDP of over 9% give a very important bed-rock for this change to be achievable.

As noted above, the value that the trading function adds to the market is enormous. To fully benefit from it, it is imperative that traders be accorded appropriate regulatory treatment. Based on experience with competitive markets in various places, certain principles are clear.

The first principle relates to rate regulation of trading activity. Absent the possession and abuse of market power (more fully discussed below), or misbehavior of some sort, there is no economic or policy reason to regulate the profitability of trading activity.[14] In deed, there are good reasons not to do so. Trading, almost by definition, is an inherently competitive business. Profits are earned by efficiency, diligence, and creativity. They are limited by market forces, both competition and demand elasticity. Unlike utilities, which possess physical assets, very discreetly identifiable cost structures, fairly well defined risk profiles, and market power over their customers, all of which make them both subject to rate regulation and relatively easy to apply ratemaking principles to, traders lack all of those characteristics. Moreover, applying the critical ratemaking principle of symmetry, namely that the reward allowed be symmetrical to the risk undertaken, is very difficult to apply to traders. Every transaction has a different risk profile. How does one create and apply administratively derived ratemaking incentives

[14] Any need for the imposition of rate regulation on trading activity, is, by definition, fact specific and not generic in nature. Thus, any order or dispensation regulating the prices charged by a trader, needs to be preceded by a factual inquiry finding that there is market power possessed by the trader upon whom rate regulation is being proposed and that the trader has exercised that market power to cause an adverse effect on competition in the electricity industry. That factual inquiry needs to be balanced in terms of both the benefits and costs associated with implementing such a practice. For that reason, the imposition of rate regulation on traders is a decision that is best placed with regulatory agencies. If there is to be a policy, for whatever reason, of regulating the prices charged by traders, then that is a decision to be made by the Parliament or other policy making arm of the state. In no circumstances should such a decision be made by an entity that is neither a fact finder or policy maker.

for efficiency that are better suited for trades than ones that are inherently derived from the market incentives. The simple answer is that administrative ratemaking is not relevant to traders and trying to apply them will almost certainly reduce, if not eliminate, the value traders bring to the market. Trading is an inherently risky business. The incentive to undertake it is to earn high profits, but there is the very real prospect, as in any risky enterprise, that the trader will suffer losses. Presumably, regulators will not put a floor under those losses. Putting a cap on profits and not a floor on losses is inherently, indeed, blatantly, asymmetrical, and unsustainable if one wants to retain the trading function. Thus, absent market power and/or abusive behavior of some sort, rate regulation of trading activities is simply inappropriate and counterproductive

In regard to market power, the probability that a trader would possess market power is extremely low. The reasons for that are fairly clear. Generally speaking, traders have few physical assets, so any new energy source which enters the market poses a competitive threat to the trader. To eliminate or reduce the competitive threat a trader would have to have contracts with multiple suppliers, something which would require many millions of rupees to lock in even a significant market share, much less market dominance. Significantly, were a trader to pursue such an aggressive and expensive strategy, there is no assurance that he would be able to recoup his expenses, since prices would rise to levels where the demand will likely decline to some degree, and the high prices would almost certainly motivate new, competitive, entry into the market. Thus, for a trader to put together a supply portfolio of sufficient supply to gain market power, is a highly risky endeavor perhaps more likely to result in losses than gains.[15]

[15] The likelihood of a trader gaining market power in India is rendered even less likely because of significant transmission constraints. Transmission capacity can only be purchased for more than 25 years or

Regardless of the improbability of a trader gaining market power, it is nonetheless, of some value to at least consider how regulators might assess whether a market participant has dominance. For a trader's position to be assessed, the market must be viewed holistically and not defined narrowly. The relevant market context for assessing market power is the market as a whole.[16] The reasons for that are self evident. The traders do business in the larger market and hope to capture a piece of that overall market. Buyers looking to purchase energy look for resources in the entire market and their choices are demonstrably not limited to offers forthcoming from traders alone. There is not only a discreetly identifiable trading market, but to even try to identify one is bad public policy. From the public interest point of view, if traders can add value, then it is desirable for them to have access to the entire market so that the value they produce is even greater. The second reason is that there are all types of trades going on in the market,[17] some involving traders and others not. It is of no consequence whatsoever in defining the relevant market to assess whether traders are involved in particular transactions or not. In fact, there is considerable evidence that mere exposure to the trading function is likely to inspire even traditional utilities to engage in trading. Thus, the abiding principle in defining the market in which traders participate is that it is the market as a whole and not

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for less than three months, thus locking in a significant market share of generation does not assure market access for the purchased supply for periods greater than 3 months or less than 25 years. Secondly, the transmission access which can be purchased is subject to "pancaking," whereby each transmission owner along a path from generation to customer is entitled to add additional charges to the delivered supply of electricity, and circumstance which automatically raises the delivered cost of energy and makes any particular supply more vulnerable to competing bids.

[16] Optimally, the relevant market would be all of India, but there may well be system constraints, both physical and operating, that may cause the relevant market to be of more limited geographic scope. The key point, however, is that the market must be defined by its geographic scope and not by the nature of the transactions involved. For regulatory purposes, what is relevant is the availability of energy resources, not the transactional basis under which resources are available.

[17] It is important to note that even a totally self sufficient utility which produces all of what it sells to its customers, is part of the broader market even if there is no transaction other than with the end user, because it takes a certain part of the overall market out of contestability and because there may be trading opportunities that open up for that company.

any discreet portion thereof, and most assuredly not defined by the nature of transactions or by the specific types of parties to transactions. The market is electric power, both capacity and energy, not the niche that is occupied by traders.

Finally, in regard to regulatory treatment, there is the question of how to deal with traders who either possess market power (however improbable that may be) or who may misbehave in the ways, such as violating market rules. The governing principle to be followed in regard to such circumstances is proportionality and reasonableness. In short, the remedy or penalty should match the facts at hand. It is important to note that no measures should be taken absent proof of wrongdoing or market dominance. When action is to be taken, it should be taken only against the specific perpetrator(s), and never against an entire class of market participants, such as traders. In fact, if there is an abuse of market power by a particular trader, there is virtual certainty that among the victims, will be other traders who were competitively disadvantaged; punishing victims simply because they happen to be members of the same class as a perpetrator of market abuse is clearly inappropriate. If remedial steps are required, then they should be proportional to wither the nature of the violation, or to what is needed to remedy a problematic situation, such as a party possessing market power.[18] They should also be designed to remedy the specific problem identified. Thus, in the case of abuse of monopoly power, the remedy is to protect consumers through the use of price constraints of some sort, and/or penalties for wrongful behavior and not ongoing and prospective management of profit margins.

[18] In the PJM market in the Mid-Atlantic States in the U.S., perhaps one of the most successful examples of a robustly competitive electric market, the rules call for generators located in "load pockets," should have their prices capped in order to prevent the abuse of market power. A "load pocket," is a geographic region, where, because of physical of operating constraints, one generator or subset of generators are the only source of energy supply for customers in that area. The market power those generators possess is not the result of abusive behavior, but because of system conditions, so the caps are imposed solely for transactions within that geographic areas as a prophylactic against abuse.

CONCLUSION

Traders add enormous value to competitive electric market. That value is perhaps greatest in nascent competition. That is when they can be actual inducers of market development through unleashing of market forces. It is, therefore, critical that the regulatory treatment accorded them provide appropriate incentives and not discourage this vital activity. Given the state of evolution in the electricity market, and given the lack of any demonstrated monopoly power possessed by traders, tariff regulation for trading surely is neither warranted nor desirable in India at this point in time. Of course, the rules of the market must be transparent and well established *ex-ante*. Against these rules, the conduct of the market constituents must be vigilantly monitored for any aberrations like abuse of market power or dominance which, if found, must be controlled and corrected post-facto by suitable measures.

The concern of a regulator from consumer perspective ought to be the price paid by the consumer and its justifiability in situation of market imperfections. As such putting a cap on margin for traders is both irrelevant and counter productive so long as the retail price and efficiency are preserved and / or benefited. Such margin cap is counter productive to market development and efficiency, and perhaps is a regulatory distortion in market development.

COMMENTS AND SUGGESTIONS ON THE DRAFT CENTRAL ELECTRICITY REGULATORY COMMISSION (PROCEDURE, TERMS AND CONDITIONS FOR GRANT OF TRADING LICENCE AND OTHER RELATED MATTERS) REGULATIONS, 2019

S.No	REGULATION NO.	DRAFT REGULATION	PTC COMMENTS / SUGGESTION / PROPOSED AMENDMENT (WITH RATIONALE)
1	**Procedure of Publishing Draft Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of trading licence and other related matters) Regulations, 2019** **Clause 1.4 of Explanatory Memorandum**	"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 license and other related matters Regulations, 2009 and Fixation of Trading Margin Regulations, 2010."	Possibly due to oversight by the Hon'ble Commission, we humbly submit that we were not given adequate opportunity to present our views on the subject and they were not actively solicited. Effectively, PTC was neither contacted nor PTC's comments/suggestions/observations were sought on the subject matter.
2.	**Regulation No. 2(1)(e): 'Banking of electricity'**	(e) **'Banking of electricity'** shall mean and include exchange of electricity for electricity between two grid connected entities directly on mutually agreed terms;	Banking of electricity has been defined by the Hon'ble Commission for the first time in this draft Regulation. It is submitted that the Trading Licensees ought not be restricted from engaging in Banking of electricity. PTC's detailed comments on this issue are deliberated below in comments to Regulation 9 (24).
3.	**Regulation No. 2(1)(e): 'Banking of electricity'**	(e) **'Banking of electricity'** shall mean and include exchange of electricity for electricity between two grid connected entities directly on mutually agreed terms;	Banking of electricity has been defined by the Hon'ble Commission for the first time in this draft Regulation. It is submitted that the Trading Licensees ought not be restricted from engaging in Banking of electricity. PTC's detailed comments on this issue are deliberated below in comments to Regulation 9 (24).

<table>
<tr><th>S.No</th><th>REGULATION NO.</th><th>DRAFT REGULATION</th><th>PTC COMMENTS / SUGGESTION / PROPOSED AMENDMENT (WITH RATIONALE)</th></tr>
<tr><td>4.</td><td>Regulation No. 3(3)(a): ‘Financial Qualifications-Capital Adequacy and Liquidity Requirements’</td><td>Provided that for Category I Trading Licensee, an additional net worth of Rs. 20 Crores would be required for every 3000 MUs of electricity traded over and above 10,000 MUs during a Year: Provided further that volume of electricity traded shall include inter-State, intra-State and Cross Border Trade in long term, medium term and short-term transactions, including transactions undertaken through power exchanges.</td><td>In the draft Regulation, Hon'ble Commission has framed norms to classify the trader under various categories. Further, the draft Regulation also provides the mechanism for upgrade/downgrade of trading license category, and for imposition of penalty in case of non-compliance. However in real time the proposed norms i.e. transacted cumulative MUs during any financial year needs to be strictly monitored. Hence PTC proposes that these responsibilities may be delegated to NLDC/RLDC/SLDC, to ensure transparency.

The Hon’ble Commission in the draft Regulations has proposed the following technical and financial qualifications: -

<table><tr><th>Technical Qualifications</th><th>Financial Qualifications</th></tr><tr><td>Applicant to have at least one professional with five years of experience in each discipline –

(1) Power trading, Energy Risk, System Operation

(2) Finance, Commerce, Accounts</td><td>Minimum Net Worth of Rs. 2 Crs for Category-V (500 MUs and less) to Rs. 75 Crs for Category-I (5000 to 10000 MUs) and for every additional 3000 MUs (after 10,000 MUs) additional Rs. 20 Crs Net Worth</td></tr></table>
PTC welcomes the approach of the Hon’ble Commission for tightening the criterion for financial qualifications. However, PTC believes that the said criterion, which is a carry-over from Trading License Regulations issued since 2004, would be inadequate and could be improved further.

Also, the proposed technical criterion, which are same since 2004 Regulations find little relevance today, as the stipulation of a two-member team with 5 years’ experience in two domains is an obvious requirement. Any trader would need an endowed team with various skill sets which would be many times the proposed threshold. In this regard it is submitted that the Hon’ble Commission ought to leave the matters of staffing / organizational capacity to the licensee.</td></tr>
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			Failure of a trader as a counterparty has repercussions as the trader is a systemically important entity. Such failure can subject the market to systemic risk leading to market failure. Therefore, capital adequacy norms for grant of trading license should ensure the licensee's: - (a) solvency (b) ability to manage inherent risks in the power trade; and (c) liquidity commensurate to the trading volumes of the trader. Specifying Net Worth limits as the sole metric for determination of trader's ability to conduct its business may be inadequate. Net Worth, being an accounting measure, does not always adequately reflect the cash flow / exposure of a trader. The proposed Net-Worth criteria does not reflect the liquidity and solvency levels that needs to be maintained by a trader while taking exposure to counterparties on both sides of a bilateral trade. This may potentially lead to induction of "weak" participants in the electricity trading market who are able to satisfy the Net Worth criterion but will be unable to manage the credit, liquidity, market and performance exposures inherent to trading activity due to lack of high quality liquid assets in the form of cash equivalents to manage such risks. Additionally, specifying current and liquidity ratios as a proxy for capital adequacy is also inadequate. Current Ratio and Liquidity Ratio are both accounting ratios that include trade receivables as an essential element in their computation. This leads to a flawed structure where a trader can potentially keep increasing the exposure to trade receivables and show high metrics for these ratios whereas the risks of failure increase dramatically. In view of the above PTC suggestion/comments are: - 1. **Ability to take credit exposures**: The Trader should be required to establish creditworthiness based on the following standards: - (a) Bank limits for funded and non-fund based limits like letter of credit, bank guarantees etc. equivalent to a reasonable proportion of the annual turnover (either projected as in the case of a new licensee or historical levels for active licensees. e.g. it can be half a month to one month's billing)

S.No	REGULATION NO.	DRAFT REGULATION	PTC COMMENTS / SUGGESTION / PROPOSED AMENDMENT (WITH RATIONALE)
			(b) Cash and cash equivalents like money market mutual funds, short-term deposits (< 3 months) to be maintained at a ratio that is atleast equal to that of the funded and non-fund based limits described above. 2. **Liquidity Risk Management** – A trading licensee shall maintain a 'Liquidity Ratio' for sustainable trading operations to manage cash flow mismatches arising out of delayed receipts lasting for few billing cycles. PTC propose that the licensee shall maintain a level of cash and cash equivalents described in 1 (b) at a certain proportion of the annual turnover to address the cash flow mismatch risk. This component of the Liquidity Ratio must be unencumbered and shall not include any undrawn bank limits or contingent capital in any form. 3. **Net Worth:** Additionally, the Net Worth criteria may also be modified commensurate to the risk profile of the Trading licensee. PTC propose that: - (a) Net Worth limits may be enhanced post a comprehensive review; (b) Net Worth may be considered only on a standalone basis for the Trading entity and not on a consolidated basis; and (c) Certain elements like revaluation reserves or cost of Information Technology systems be excluded in the determination of Net Worth to disallow any accounting manipulations towards computation of the Net Worth. Power trading, being an important activity for development of the electricity markets, needs to be promoted by encouraging credible and financially sound participants who are able to take informed risks regarding these markets and fulfill the role of an effective intermediary and counterparty in OTC contracts. A Trading license shall be competent to undertake obligations, risks and open positions independently on its balance sheet.
5.	**Regulation No. 7(c): 'Applicability of Trading Margin'**	Back to Back Deals	It is submitted that there ought not to be a separate category for back-to-back deals as, most of the transactions involving Trading Licensees are back-to-back deals. PTC's detailed comments on this issue is deliberated below in comments to Regulation 8 (1) (e).

S.No	REGULATION NO.	DRAFT REGULATION	PTC COMMENTS / SUGGESTION / PROPOSED AMENDMENT (WITH RATIONALE)
6.	**Regulation No. 8(1)(a): 'Trading Margin'**	(a) The trading margin shall be charged on the scheduled quantity of electricity;	**Clarification Sought:** The scheduled energy means the energy at the Delivery Point as per individual contract or the energy scheduled at the Regional Periphery for which the approval is accorded by the nodal RLDC. The Hon'ble Commission may kindly clarify the same.
7.	**Regulation No. 8(1)(c): 'Trading Margin' – Short term contracts**	(c) For short term contracts and contracts through power exchanges, the Trading Licensee shall charge a minimum trading margin of zero (0.0) paise/kWh and a maximum trading margin of seven (7.0) paise/kWh: Provided that in contracts where escrow arrangement or irrevocable, unconditional and revolving letter of credit as specified in clause 10 of regulation 9 is not provided by the Trading Licensee in favor of the seller, the Trading Licensee shall not charge any trading margin exceeding one (1.0) paise/kWh.	The Hon'ble Commission has not provided any rationale for capping the Trading Margin at 1 Paisa/kWh in the absence of Payment Security Mechanism/LC in favor of seller either in the Draft Regulation or in the Explanatory Memorandum. Further, the basis for arriving at the figure of 1 Paisa/kWh has not been provided. The rationale for such capping should be shared for the understanding of the stakeholders so that comments/objections on the same can be prepared and filed. The Hon'ble Commission being the custodian of the sector is expected to act in a fair and transparent manner. The figure of capping is irrational, arbitrary and unexplained under the present framework and hence contrary to law. It is to be noted that the trading transactions through DEEP portal bidding or medium-term and long-term transactions through competitive bidding are done on a "back-to-back" basis in accordance with the Standard Bidding Document/Competitive Bidding Guidelines issued by Ministry of Power ("**MoP**"). Traders participate in the bidding process on behalf of sellers, inter-alia considering the following costs and risks on their account: - 1. Cost of Earnest Money Deposit and BG handling; 2. PFC Fees & Non-refundable tender fee/bid processing fees; 3. Trader issues Contract Performance Guarantee to buyers, which entails Bank Charges; 4. OA credit financing - Payment of open access charges by traders to RLDC on behalf of seller/buyer; 5. Advance transmission corridor booking on behalf of buyer/sellers is the responsibility of the trader. Therefore, the risk of delayed payment of open access charges/energy charges is borne by the Trader. Such delay in payment by the buyer results in deployment of additional working capital by the trader; and

S.No	REGULATION NO.	DRAFT REGULATION	PTC COMMENTS / SUGGESTION / PROPOSED AMENDMENT (WITH RATIONALE)
			6. Payment security to Generators 7. Other operational and legal costs, along with the cost attached wherein the opportunity is not converted into material transaction and in the process, a trader incurs similar costs with no returns. A detailed analysis of the inherent credit, performance, operational, market pricing and contractual risks are deliberated at Para 23 to 31 of PTC Submission on Draft Trading License Regulation 2019 Apart from LC/Escrow cost & risk, there are other costs & risks involved that are undertaken by the traders. Therefore, it is humbly requested that the Hon'ble Commission ought to consider various other costs associated with trading activity such as Return on Equity (Return on Net worth), EMD Cost, tendering related fees, Cost of LC/BG, Interest burden on handling Open Access charges which is borne by Trading Licensee in favor of the seller. It is pertinent to mention that PTC has been diligently making payments to all its sellers. There are various instances wherein PTC has paid the seller/generator even without receiving payment from the buyers/discoms; and such delays in receipts are for reasons not attributable to PTC. Traders will not be able to recover the basic cost incurred in facilitating the transaction with trading margin being capped at 1 paisa/kWh. Further, such stringent capping of trading margin will pose as a deterrent for trading activity. Even otherwise, linking the trading margin with the existence/non-existence of an escrow arrangement or irrevocable, unconditional and revolving letter of credit has no basis or rationale. Therefore, the capping of 1 Paisa/kWh in case of absence of LC/Escrow shall be removed. In the alternative, the capping shall be increased in order to cover the above-mentioned costs and to avoid major risks on trading business.
8.	**Regulation No. 8 (1)(d): 'Trading Margin'** ***Long Term Contracts***	(d) For long term contracts and medium term contracts, the trading margin would be decided mutually between the Trading Licensee and the seller:	**Amendment:** "For long term contracts and medium-term contracts, the trading margin would be decided mutually between the Trading Licensee and the seller/**buyer**: ……"

S.No	REGULATION NO.	DRAFT REGULATION	PTC COMMENTS / SUGGESTION / PROPOSED AMENDMENT (WITH RATIONALE)
		Provided that in contracts where escrow arrangement or irrevocable, unconditional and revolving letter of credit as specified in clause (10) of regulation 9 is not provided by the Trading Licensee in favour of seller, then the Trading Licensee shall not charge any trading margin exceeding one (1.0) paise/kWh.	**Rationale:** The trading margin should be decided mutually between the Trading Licensee and the seller **and/or the buyer** i.e. trading margin can be paid by Seller and/or Buyer as per mutual agreement and final contract entered by the Trader with Seller and **Buyer.** With regards to capping of Trading Margin at 1 paisa/kWh in case of absence of LC/Escrow, PTC's comments on Draft Regulation 8(1)(c) is reiterated.
9.	**Regulation No. 8(1)(e): 'Trading Margin' – *Back to Back***	(e) In case of Back to Back deals, the Trading Licensee shall charge a minimum trading margin of zero (0.0) paise/kWh and a maximum trading margin of one (1.0) paise/kWh.	"Back to Back" deal is an interstate transaction in which an electricity Trader/Trading Licensee buys specific quantity of power for a particular duration from one party and simultaneously sells it to another party on same terms and conditions. In a "Back-to-Back" deal, the Trading Licensee procures power from the Generator under a Power Purchase Agreement ("**PPA**") and identifies the buyer for offtake of contracted capacity and enter into requisite commercial agreement (i.e., Power Supply Agreement "**PSA**") on a back to back basis. In such a framework, the PPA and PSA are co-terminus and one cannot exist without the other, as the actual sale and purchase of electricity takes place between the Generator and the Distribution Licensee with trader designing and facilitating the entire transaction since inception. The Hon'ble Commission in the explanatory memorandum to the Draft Regulations, has stated that in actual operation of back to back deals, traders have passed on all risks on back to back basis while charging a significant trading margin. It is submitted that since separate contracts are executed in back to back deal, trader has privity of contract with buyer on one side and seller/generator on other. Accordingly, the trader is responsible and bears contractual risks that flow separately under both the contracts. Further, buyers / sellers interpret the agreements keeping in mind their own perspective, the risk of which has to be borne by the Trader. There have been multiple instances deliberated at Para 21 of PTC Submission on Draft Trading License Regulation 2019, where the seller/buyer has

S.No	REGULATION NO.	DRAFT REGULATION	PTC COMMENTS / SUGGESTION / PROPOSED AMENDMENT (WITH RATIONALE)
			reneged from its contractual obligation of supplying/off-taking power and the financial obligation arising out of such breach has been borne by PTC. Back to back contract necessitates identification of a source and buyer in an open (OTC) process. The buyer-seller merely have the comfort of an identified source and demand center, which can match each other's duration / term. Even in situations where the terms of the back to back contracts are similar and closely replicated, the residual risks inherent in trading transaction lies with the trader. As such, the use of the term `back-to-back' needs to be understood in the specifics of the contractual structure and cannot imply that there are no risks assumed by the trader. This aspect is recognized by the PMR 2010, specifically Regulation 4(i)(b)(I) of PMR 2010, which provides that in a back to back deal the trader is exposed to credit risk and operational risk. However, Hon'ble Commission in the draft Regulation has completely ignored the efforts and risks undertaken by traders in such transactions. It is pertinent to mention that in back to back deal, substantial effort is put by a trader in the pre-tendering phase. The support provided by the trader is not limited to advisory, but also includes financial aspects, such as providing the cost of bidding documents, Earnest Money Deposit (EMD) and Contract Performance Guarantees despite not receiving the same from generators/ sellers. Further, generators/ sellers demand support on post-bid activities, including assistance in reverse auction (RA) and pricing strategy. In addition, thereto, Trading Licensee facilitates the entire transaction by managing Open Access, scheduling, Energy accounting, payment security & other system compliance/approvals. Overall, it is evident that in `back-to-back' deals, trading licensee like PTC carries and manages inherent risks related to credit, performance and operations. Thus, internalizing and managing risks in transactions termed 'back-to-back' is the same as for any other trading transaction. Therefore, cases where traders absolve themselves of their responsibilities, should be reviewed by this Hon'ble Commission on a case to case basis by providing appropriate measure/relief to the aggrieved party. Imposing a blanket cap on trading margin for all deals termed as `back-to-back' would be arbitrary, disproportionate and unreasonable. Trading margin ought to be best left to market forces, as we are operating in a competitive environment of a purely voluntary market.

S.No	REGULATION NO.	DRAFT REGULATION	PTC COMMENTS / SUGGESTION / PROPOSED AMENDMENT (WITH RATIONALE)
			Re: Separate category for "Back-to-Back" deals for the applicability of Trading Margins would render Regulation 8 (1) (d) otiose and redundant As per the current framework all medium-term and long-term procurement of electricity by Distribution Licensees have to be done through competitive bidding in terms of the Competitive Bidding Guidelines dated 19.01.2005 ("**CBG**") notified by the Ministry of Power (as amended from time to time). Clause 2.1.2.2 (g) and 3.2 of the CBG provides that if the Bidder is a Trading Licensee, it shall have executed exclusive PPA for the quantity of power offered in its Bid and shall provide a copy of the same as part of its Bid. Therefore, existence of an exclusive PPA with the Generator is a necessary requirement for a trader to participate in a bidding process for supplying power to Discoms. Relevant clauses of the CBG is reproduced below: - *"2.1.2.2 Consents, Clearances and Permits:* *(g) If the Bidder is a Trading Licensee, it shall have executed exclusive power purchase agreement(s) for the quantity of power offered in its Bid and shall provide a copy of the same as part of its Bid.* *……..* *3.2…….If the Bidder is a trading licensee, it shall have executed exclusive power purchase agreement(s) for the quantity of power offered in its Bid and shall provide a copy of the same as part of its Bid. In such a case, the Bidder shall ensure that the entity with whom it has executed the exclusive power purchase agreement for supply of power under the bid process has completed the project preparatory activities as mentioned in (i) to (v) above."* Even the trading transactions through DEEP portal bidding are done on a "back to back" basis in accordance with the SBD issued by MOP. Further, as per CERC (Grant of Connectivity, Long-term Access and Medium-term Open Access in inter-State Transmission and related matters) Regulations, 2019, Open Access is made available for specific injecting entity and drawl entity, which means seller and buyer needs to be pre-identified by the Trading Licensee.

S.No	REGULATION NO.	DRAFT REGULATION	PTC COMMENTS / SUGGESTION / PROPOSED AMENDMENT (WITH RATIONALE)
			Trading Licensees are effectively not permitted to enter into contract with Discoms without identification of a source. Therefore, each power procurement by Discoms through a trading licensee is source specific where Generator and Discoms both are aware of each other prior to entering into contract with the Trading Licensee. In view of the above it is unequivocal that all medium-term and long-term transaction of electricity involving a Trading Licensee would by design, fall into the category of "back-to-back" deals. In the present framework, carving out a separate category of "Back-to-Back" deals for the applicability of Trading Margins would render Regulation 8 (1) (d) otiose and redundant. On one hand the Hon'ble Commission has proposed that Trading Margin for Medium-term and Long-term contracts can be mutually decided between the Trading Licensee and the Seller and on the other hand the Hon'ble Commission has restricted the Trading Margin to a maximum of 1 paisa/kWh by creating a separate category for "back to back" deals, which involves medium-term and long-term transactions. Such overlapping provisions would create ambiguity and render Regulation 8 (1) (d) redundant. In effect, Trading Licensees despite having the right to mutually negotiate the Trading Margin, which has existed since inception, would not be able to charge more than 1 Paisa/kWh due to an artificial distinction created by the Hon'ble Commission. The Indian Power Market has matured with time where both sellers and buyers are well informed. Thus, trading margin should be best left to the market forces only where risks involved could be fully understood by the parties and an appropriate margin could be agreed upon among them. **Hence, no separate category for "Back to Back deals" is required and should be deleted.** The Hon'ble Commission has also not provided any basis or justification for creating a separate category for "back-to-back" deals.
10.	**Regulation No. 9(10), 'Obligations of the Trading Licensee'** ***(Payment Security Mechanism)***	The Trading Licensee shall make payment of dues upon the agreed due date to the seller for purchase of the agreed quantum of electricity through an escrow arrangement or irrevocable,	Escrow or letter of credit shall only be used as a payment security mechanism. Maintaining LCs or Escrow entails substantial cost i.e., banking charges, which is normally 0.5 to 1.5 percent of the amount covered by the LC and other related costs. Further, a certain amount of fee is charged by the bank while releasing the amount secured under the Escrow or LC. Therefore, using it as a tool for

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		unconditional and revolving letter of credit in favour of seller. Such escrow arrangement or irrevocable, unconditional and revolving letter of credit in favour of seller shall be equivalent to: (a) two point one (2.1) times the average monthly bill amount (estimated average of monthly billing amounts for three months or actual monthly billing amount for preceding three months as the case may be) with a validity of one year for long term contracts; (b) one point zero five (1.05) times of contract value for short term contracts.	payment of monthly dues will burden the Licensee with unnecessary costs, which can be easily avoided by payment through electronic bank transfer. Therefore, mode of payment of dues to the seller for purchase of the agreed quantum of electricity shall be through electronic bank transfer mode like RTGS or as per mutual agreement between the seller and the licensee, as provided in the 2009 Regulations. Trading Licensee enters into an appropriate agreement for purchase and sale of electricity with the sellers and the buyers prior to scheduling a transaction. Such contracts are entered in terms of the model PPA/Standard Bidding Document notified by MoP, which provides for establishing certain kinds of payment security mechanism in favour of the seller. However, such instruments are only provided as a Payment Security Mechanism, which is a fall back option to secure the seller from any financial risk, in case the buyer fails to make timely payment of monthly dues in terms of the contract. Terms and conditions of LC including its value should be as per the PPA. In case the same is not provided in the PPA then, it should be as per the draft Trading Regulations 2019. **Suggested amendment:** "The Trading Licensee shall make payment of dues upon the agreed due date to the seller for purchase of the agreed quantum of electricity through electronic bank transfer. Payment security mechanism will be as provided in the Agreement. Provided that in case payment security mechanism is not provided in the Agreement, then an escrow arrangement or irrevocable, unconditional and revolving letter of credit in favour of seller shall be established by Trading Licensee and shall be equivalent to:(a) one point zero five (1.05) times the average monthly bill amount (estimated average of monthly billing amounts for three months or actual monthly billing amount for preceding three months as the case may be) with a validity of one year for long term contracts;(b) one point zero five (1.05) times of the bill amount as per the billing cycle for short term contracts with validity period equal to validity of the contract.
11.	**Regulation No. 9(11): 'Obligations of the Trading Licensee'**	(11) The Trading Licensee shall enter into an appropriate agreement for purchase and sale	All the contracts entered into by Trading Licensee or otherwise are as per tender documents issued by Discoms, which are based on the standard bidding documents and is mandatory in nature. Hence,

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		of electricity with the sellers and the buyers prior to scheduling a transaction, and that the agreement shall specify the following, namely- (a)..... ..... (f) the liabilities of the parties (seller, buyer and Trading Licensee) in case the scheduled quantum (MW) and time of scheduling differs from the agreed terms, or in case of modification in schedule, and in the latter case, the party that will bear non-refundable part of short-term open access charges.	any deviation from same would not be possible without the approval of the Appropriate Commission.
12.	**Regulations No. 9(13): 'Obligations of the Trading Licensee'**	The Trading Licensee shall ensure that the buyer and the seller are, either grid connected entities or represent such entities, with special energy meters on their periphery and that the mechanism for Deviation Settlement accounting by the appropriate authority is in place	The clause may be deleted as providing grid connectivity is the responsibility of CTU/STU and the same is governed by Connectivity Regulations and Grid Code, which is independent of nature of transaction whether it is done directly or through a Trading Licensee.

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13.	**Regulation No. 9(14): 'Obligations of the Trading Licensee'**	(14) The Trading Licensee shall not purchase electricity from the entities and the Associates of such entities, defaulting in payment of Charge for Deviations as per the Central Electricity Regulatory Commission (Deviation Settlement Mechanism and related matters) Regulations, transmission charges, reactive energy charges, congestion charge and fee and charges for National Load Despatch Centre or Regional load Despatch Centre or the Unified Load Despatch and Communication Scheme or any other payment levied by the Commission or any of the State Electricity Regulatory Commissions under the provisions of the Act or any regulation made thereunder, when so advised by the Commission.	Settlement of DSM and payment defaults by entities are separate causes of action for which remedy is provided under respective Regulations or contracts. Further, such defaults relating to the payment of transmission charges, energy charges and congestion charges may arise due to numerous reasons, which will be validated only after an adjudication by the Appropriate Commission. Therefore, restricting the Trading Licensees from purchasing electricity from such entities without any validation/confirmation of default by the Commissions would adversely affect the Trading Licensees contractual obligation to supply power to its buyers, thereby resulting in breach, which may attract penalty. Most of the Trading Licensees are privately owned entities bestowed with contractual obligation to trade (purchase and resale) power and are amenable to the jurisdiction of Civil and Writ Courts. Restricting the Trading Licensees from performing their contractual obligations due to the fault of others is unreasonable and arbitrary. Therefore, such payment defaults should be kept separate and no obligation shall be imposed on the Trading Licensee regarding sale/purchase of power from such entities. Default in payment of DSM charges by the seller in middle of the contract period may result in dispute between the seller and the Trading Licensee and compensation may be levied by buyer for the same. Load dispatch centers should be appointed designated entities for such settlement and a separate mechanism for recovery of such charges should be proposed instead of obligating the trader from not purchasing electricity from such entity.
14.	**Regulation No. 9(16): 'Obligations of the Trading Licensee'**	(16) The Trading Licensee shall not omit or neglect to undertake trading activity.	There may be instances wherein Trading Licensees may not engage with certain entities due to reasons such as governance issues, credibility of the party, previous conduct of the party etc. Even the Electricity Act 2003 does not prescribe such obligatory conditions for Trading Licensees. Further, it is a settled position of law that a court cannot force a party to enter into contract with

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			another party. Therefore, this clause may be deleted, or exceptions may be provided by the Hon'ble Commission
15.	**Regulation No. 9(23): 'Obligations of the Trading Licensee'**	(23) In the event Trading Licensee has entered into a contract for sale of power with a buying entity for a particular period, then the Trading Licensee shall not enter into any contract for sale of same power with any other entity for such period except with the prior consent of the buying entity.	Such a regulation/provision, more appropriately, should be part of a Bidding Document / Guidelines. Further, such event of defaults are attributable to Generators / Selling Entity and are in least control of a Trading Licensee which is why ensuring compliance of such obligations may not be responsibility of traders. Also, a selling entity sells its power under multiple short-term contracts through multiple traders. As such a trader's obligation can be limited to obtaining undertaking for the selling entity in this regard.
16.	**Regulation No. 9(24): 'Obligations of the Trading Licensee'**	(24) Trading Licensee shall not engage in Banking of electricity.	Energy banking is a well-established mechanism, which has existed for over a decade. Even before the Electricity Act 2003, the State Electricity Boards of major States like Himachal Pradesh, Punjab, Jammu & Kashmir, Madhya Pradesh, etc. used to exchange energy amongst them directly with a view of balancing their seasonal load variations at minimum costs. Banking of power is essential to maintain grid discipline and for the most optimal utilization of power, which is the need of the hour. Since inception, swapping or banking arrangement has been allowed for inter-state Trading transactions and the same has been acknowledged by this Hon'ble Commission, which is evident from perusal of the reporting formats such as Form-IV A of the 2009 Trading License Regulations. ***Re: Judicial Recognition of Banking*** The Hon'ble Appellate Tribunal for Electricity ("**Tribunal**") vide Judgment dated 21.09.2011 in Appeal No. 53, 94 & 95 of 2010 '***Tamil Nadu Electricity Board vs. Tamil Nadu Electricity Regulatory Commission & Ors'*** @ Para 25, 26 & 27 (d) has held that the concept of banking has been evolved by the State Regulatory Commissions, which is in line with the provisions of the Electricity Act 2003, National Electricity Policy and the National Tariff Policy. Pursuant thereto, banking facility has been provided to all stakeholders by way of orders that have since been

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			enforced/implemented by way of wheeling and Banking Agreements. In effect, the concept of banking has been contractually and judicially recognized. Therefore, allowing Banking of power promotes the object of the Act/Rules and the purpose it serves. When the concept of Banking is in line with the mandate of the Act, it is a statutory right available to all stakeholders within the purview of the Electricity Act 2003, including Trading Licensees. It is settled position of law that a statutory right, cannot be taken away by way of a delegated legislation framed under the principal statute. Therefore, debarring Trading Licensees from engaging in banking of electricity will be contrary to mandate of the Electricity Act, 2003 and policies framed thereunder, which implies no such restrictions on Trading Licenses. The Hon'ble Tribunal in Judgment dated 29.03.2019 passed in Appeal No. 42 of 2018 held that any order of the regulatory body reversing or doing away with established principles i.e. concept of banking of power on an annual basis with no restrictions on drawl of banked energy will undermine the principle of regulatory certainty and adversely impact the economic viability of the Projects. The Hon'ble Tribunal also held that if based on the existing mechanism a party who has invested and executed the commercial agreements cannot be left in lurch in the midstream. Therefore, once banking has been allowed by the Hon'ble Commission in transactions involving Trading Licensees, it ought not to be taken away subsequently. ***Re: Importance of Banking in Trading transaction and vice-a-versa*** After enactment of the Electricity Act 2003 to transform the power sector in India, the Electricity markets were structured with a mandate under Section 66 for ***Development of market.*** Section 66 provides that: - *"66. The Appropriate Commission shall endeavor 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."* Post Electricity Act 2003, Trading Licenses were granted to many firms in order to promote and catalyze the Growth of Energy Markets in India. This Hon'ble Commission in 2005 issued 'Fixation of Trading Margin' Regulation wherein the trading margins charged by the Electricity Traders were capped at 4 Paisa/kWh with no such restriction on traders to undertake energy banking. Till 2006-

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07, the Energy Banking product gained very less momentum with only few other States/Utilities commencing banking transactions directly. However, after the Banking trade was undertaken by the Trading Licensees i.e. by 2008 the share of Energy Banking markets was increased with more and more Utilities exchanging power through the help of Traders.

Before the inception of traders into banking transactions, the Utilities were limited to the intra-region power banking transactions. Traders through their capabilities and with approach to integrate the power markets on pan India basis initiated inter-regional banking transaction between various regions across India. PTC being the leading trader executed many inter-regional banking transactions such as J&K (NR) – W.B. (ER), Delhi (NR) – M.P. (WR), Assam (NER) – J&K (NR), etc. To emphasis on the trader’s role as a catalyst in expanding the Energy Banking product as an efficient portfolio management tool across India, following are the last three-year data trends and inferences drawn from it: -
<table>
<tr><th rowspan="2">FY</th><th colspan="3">Energy Banking</th><th rowspan="2">Sale / Purchase (DEEP Portal)</th><th rowspan="2">Total Bilateral Short Term</th></tr>
<tr><th>through Traders</th><th>Direct b/w Utilities</th><th>Total</th></tr>
<tr><td>2018-19</td><td>23035 (+52%)</td><td>19229 (+15%)</td><td>42264</td><td>27654</td><td>69918</td></tr>
<tr><td>2017-18</td><td>15115 (+17%)</td><td>16770 (-22%)</td><td>31885</td><td>22835</td><td>55710</td></tr>
<tr><td>2016-17</td><td>12958</td><td>21380</td><td>34338</td><td>20552</td><td>54890</td></tr>
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In view of the above-mentioned data it is evident that: -
• There has been sharp increase in banking transactions through Traders vis-à-vis Direct between Utilities.
• 61% of bilateral short-term transactions are Energy Banking whereas sale/purchase is only 39%
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			Banking arrangement is wherein two utilities/states trade power in order to match seasonal variation in surplus & deficit situations. It is a cashless transaction wherein there is no tariff paid for the energy availed/supplied. The role of the Trading Licensees is vital in hand holding various activities related to banking arrangements at a nominal cost. Since, the promulgation of Electricity Act 2003, traders have played a very important role in the development of power market and banking arrangement has been crucial in achieving the objective. In this regard it is pertinent to mention that: - **I. Value addition by Traders in Banking Transactions: -** • Traders aid in implementation of generator open access & consumer open access in consultation with various stakeholders at transmission companies as well as distribution companies at various levels. • Credit Services: Bearing the OA corridor booking costs on advance basis to the RLDCs on behalf of the State Discoms/Utilities. Utilities like J&K, A.P., Tamil Nadu, etc. those having financial crisis are doing banking only with the help of Traders and the credit extended by them on OA payments. • Traders have played a key role in creating awareness & developing open access consumer base to increase the depth of power market while working towards consumer benefit. • Expert know-how of power portfolios of State's across India: Traders have a team of experts working on power scenario for all the states on PAN India basis including R&D and analytics team. • Power demand is weather sensitive in most parts of the country and time sensitive in metropolitan areas. Therefore, to bridge the gap of Discom's power demand and supply banking is essential as Traders manage the power surplus/deficit situation between various regions in India through cost effective banking arrangements, which results in major cost savings to the utilities. In the absence of banking facility through a Trading Licensee, Discoms during peak demand will either procure power from power exchanges at high prices or avail short term power procurement which will entail additional working capital requirements, thereby burdening the

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			end-consumers with unnecessary costs. Therefore, Inter-State trading transactions through banking arrangement is essential as it helps in managing power deficit/surplus situations. • As traders are in day to day discussions with various state utilities/DISCOMs, they have large pool of information and are aware of actual deficit/surplus positions of states in granular time periods. Accordingly, best suited proposals are worked with matching utilities for banking arrangements between utilities/DISCOMS by providing counter party confidence on supply/drawl. • New Innovative Products: Traders have proven to be instrumental in bringing newer products to optimize the energy banking advantages for Utilities like the Time of the Day (ToD) banking, Tri-partite Banking, Day-Ahead Banking, etc. • Risk Hedging: Energy banking has an inherent risk involved for the utility which is supplying first i.e. default by other utility while returning the power. Traders have proven to be instrumental in hedging such risks by means of their market reach and prudent practices such as arranging return guarantee mechanisms/BG/instruments, alternate power, etc. • Banking transactions by Traders also put a check on the discovery of high prices on exchange and bilateral tenders. Inter-State Trading transactions through Swapping or Banking Arrangements provides an important alternative for state utilities/DISCOMS to match demand & supply of power thereby ensuring reliable supply of power to the Distribution Licensee which is ultimately in the consumer interest and overall development of the power market as envisaged in the Electricity Act, 2003. In view of the above it is humbly submitted that restricting the Trading Licensee from engaging in Banking of electricity will adversely affect the short-term market and management of power deficit/surplus situation in the country. Taking into cognizance the importance of banking for a Discom through traders, prudent State Regulators also recognized such transactions and regularized the same through individual SERC orders. Ld. UERC vide its Order passed in Petition Nos. 22 of 2015 dated 9.10.2015 and Order dated 07.08.2018 passed in Petition Nos. 37, 38 & 39 of 2018 duly approved the banking transactions

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			entered by UPCL through various traders including PTC. The aforesaid clearly establishes that banking of power is inherent to trading activity. Discoms are the direct beneficiary of the benefit of Inter-State Trading Transactions through Banking Arrangement. Therefore, considering the stakes involved, it is suggested that the Hon'ble Commission also seek comments of other stakeholders, specially the Distribution Utilities in regard to benefits stated above in meeting their seasonal demand through banking arrangements through trading licensees. In light of above facts and submissions, it is most respectfully prayed that proposed amendment debarring banking for Trading Licensee should be reviewed and Traders should be allowed to do banking transaction as per existing regulations for short-term trades.
17.	**Regulation No. 10(3): 'Cost of Audit'**	The Commission may, if considered expedient appoint auditors and/or experts to carry out regulatory audit to verify the compliance of the terms and conditions of the licence by the Trading Licensee in accordance with Section 128 of the Act and in such cases, the cost of audit shall be paid by the Commission and recovered from the Trading Licensee.	The Trading Licensee should not be burdened with the cost of audit as required by the Hon'ble Commission.
18.	**Regulation No. 12(3): Standards of performance**	The Trading Licensee shall display on its website (i) the volume of inter-State and intra-State trading on the basis of the inter-State trading licence, if any, on monthly basis; (ii) trading licences held by it; (iii)	**Suggested amendment:** "The Trading Licensee shall display on its website (i) the volume of inter-State and intra-State trading on the basis of the inter-State trading license, if any, on monthly basis; (ii) trading licenses held by it;"

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		petitions filed before the Commission and the orders including interim orders, if any, issued by the Commission to ensure dissemination of information to its clients.	**Rationale:** Petitions filed by the Trading Licensees would have respondents such Generators, Discoms, CTU, RLDC etc. and similar compliance is not required for other entities except Tariff and ARR related matters. Hence, the same may be deleted.
19.	**Regulation No. 21(2): 'Applicability on Existing Licensee'**	The Existing Licensees shall charge trading margin in accordance with Regulation 8.	**Suggested amendment:** "The Existing Licensees shall charge trading margin in accordance with Regulation8. Provided that any Agreement entered into prior to coming into force of these Regulations shall continue to be governed as per the existing Agreement between the parties till the expiry period of the said Agreement." **Rationale:** It is submitted that existing Trading Licensees have entered into numerous PPA/PSA with other stakeholders based on the norms for Trading Margin prescribed under the 2009 Trading Regulations. Most of these contracts have been termed as "back-to-back" contracts, therefore applying the norms proposed under the present Regulations will change the entire landscape. Further, such PPAs/PSAs having been approved by the Regulatory Commissions has been elevated to a 'Statutory Contract' under Section 86 (1) (b) of the Act. Any attempt by the Hon'ble Commission to revise the norms approved thereunder would tantamount to revising and vacating the approval accorded to such PPAs/PSAs under Section 86 (1) (b) of the Act. Clause 5.8.8 of the National Electricity Policy dated 12.02.2005 notified under Section 3 of the Act provides that steps should be taken to ensure regulatory certainty to generate investor's confidence. However, applying the new proposed norms relating to Trading Margin to existing contracts will undermine the principle of regulatory certainty and adversely impact the economic viability of the Licenses.

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			It is a settled proposition of law that a concluded contract between the parties which has received regulatory approval ought not to be disturbed. Such an approved contract ought to be given effect for the period set out therein. The principles governing the supremacy of the Regulation over the PPA would not stricto – sensu apply in the case of a PPA approved by the Regulatory Commission. If such would be the case than there would literally be no difference between an approved PPA and an unapproved PPA, and the same would defeat the purpose of giving any significance as to the approval accorded to a PPA under the statutory provisions. **The approved PPA ought to be given effect to and not reduced to a nullity.** If new norms are made applicable to existing PPAs/PSAs, the entire sub-stratum of contractual relations will stand imploded and exploded. In other words, the entire commercial world/Trading market will be in complete turmoil if sanctity of contract is not maintained. Such retrospective implementation of the new proposed norms would also be in violation of the doctrine of Legitimate Expectation as the existing Trading Licenses have made substantial investments and entered into commercial arrangements based on the Trading Margin and norms prescribed under the 2009 Regulations.