

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**Petition No. 20/MP/2019
along with IA No.35/2019**

**Coram:
Shri P.K. Pujari, Chairperson
Dr. M. K. Iyer, Member
Shri I.S.Jha, Member**

Date of Order: 13th January, 2020

In the matter of

Petition under Section 66, 142 & 149 of the Electricity Act, 2003 read with Regulation 24, 37(ii), 53, 63 & 64 of CERC (Power Market) Regulations, 2010 for seeking urgent intervention of the Commission and issue of appropriate direction to Indian Energy Exchange (IEX) and Power Trading Corporation (PTC) of India Ltd.

**And
In the matter of**

NHPC Limited
(A Govt. of India Enterprise)
NHPC Office Complex, Sector-33,
Faridabad (Haryana) - 121 003

...Petitioner

Versus

- (1) The Managing Director
Indian Energy Exchange, (IEX)
Unit No. 3, 4, 5 and 6, 4th Floor,
TDI Centre, Plot No.-7,
Jasola District Centre,
New Delhi-110001
- (2) Chairman & Managing Director
PTC India Limited
2nd Floor, NBCC Tower,
15 Bhikaji Cama Place,
New Delhi – 110066
- (3) Chief Engineer (Commercial & Survey wing)
Power Development Department, J&K
Gladni Complex, Narwal, Jammu-180006

...Respondents

Parties Present:

Shri Sachin Datta, Senior Advocate, NHPC
Shri S.K. Sarkar, Advocate, NHPC
Shri Prashant Kaul, NHPC
Shri Naresh Bansal, NHPC
Shri A.K. Pandey, NHPC
Shri S.P. Rathour, NHPC
Shri Anand K. Ganeshan, Advocate, IEX
Ms. Swapna Seshadri, Advocate, IEX
Ms. Ritu Apurva, Advocate, IEX
Shri Akhilesh Awasthy, IEX
Shri Indranil Chatterjee, IEX
Shri Amit Kapur, Advocate, PTC
Shri Yeshaswi Kant, Advocate, PTC

ORDER

The Petitioner, NHPC Limited, has filed the present Petition seeking direction to Respondent No.1, Indian Energy Exchange (hereinafter referred to as 'IEX') to register Power Development Department, Jammu and Kashmir (hereinafter referred to as 'JKPDD') as client of the Petitioner for initiating trading business. The Petitioner has made the following prayers:

- “(a) To direct IEX to remove its manipulative requirement of "NOC from previous Trader" as pre-requisite for change in Trader for client registration;*
- (b) To direct IEX to activate PDD, J&K as client of NHPC and allow NHPC for Power Trading in Energy exchange;*
- (c) To pay compensation to NHPC for loss incurred out of denial of the trading business in IEX and loss of credibility in the market as petitioner being the premier Central Hydro Generating Company;*
- (d) To pass strict direction to the respondent no. 1&2 to refrain from such illegal malpractices in future, and*
- (e) To recover all the cost of legal & incidental expenses for filing this petition till its outcome.”*

Background of the case

2. The Petitioner is a Government company, engaged in generation of electricity and has been granted Category-I inter-State trading licence by the Commission vide order dated 23.4.2018. The Petitioner is also Member of IEX w.e.f. 17.5.2018.

3. The Respondent No. 2, JKPDD vide its tender dated 25.9.2018 invited bids for engagement of traders for client Membership on the Power Exchanges for sale and purchase of power for one year, wherein the Petitioner was declared the successful bidder. Thereafter, on 12.12.2018, Letter of Award for the same was issued to the Petitioner.

4. On 18.12.2018, the Petitioner applied to IEX for registration of JKPDD as its client, along with requisite documents and fee, requesting to start trading of power by NHPC on behalf of JKPDD. As part of application, the Petitioner had also furnished an undertaking signed and submitted by JKPDD that it has cleared/undertakes to clear all dues from the existing Member.

5. IEX vide its e-mail dated 18.12.2018 intimated Respondent No. 2, PTC India Limited (hereinafter referred to as 'PTC') who was the existing trading Member for JKPDD, regarding change of member and requested issuance of No-Objection Certificate (NOC) for start of trade by NHPC on behalf of JKPDD. On the same day, PTC informed IEX that due to outstanding dues of Rs. 586 crore as on 18.12.2019, NOC cannot be issued for change of Member by JKPDD and the same was intimated to the Petitioner by IEX vide its email dated 19.12.2018.

6. Subsequently, on 19.12.2018, the Petitioner intimated IEX that as per Business Rules and Bylaws of IEX as approved by the Commission from time to time, there is no requirement of NOC from existing trader and accordingly, requested IEX to take necessary action for activation of client. In response, IEX vide its letter dated 21.12.2018, informed the Petitioner that IEX has been following the practice of obtaining NOC from existing Members to ensure that there are no pending commercial disputes between client and Member before a client is shifted to new

Member. IEX has further stated that in the absence of NOC from PTC, it was unable to process the registration.

7. On 30.1.2019, a high level meeting was convened to resolve the issue under the Chairmanship of the Secretary (Power), Ministry of Power, Government of India. The meeting was attended by the Joint Secretary (Hydro) and Under Secretary, Ministry of Power, Chief (Economics), Central Electricity Regulatory Commission, senior officers of NHPC including CMD, and Director (Market Operations), IEX. In the said meeting, IEX agreed to allow the Petitioner to trade power of JKPDD without insisting on NOC from the existing trader and it was agreed that the Petitioner may withdraw the present Petition after commencement of trading of power. The relevant portion of the outcome of the meeting is extracted as under:

- a. *Requirement of NOC from existing Trader is a practice introduced by IEX to maintain financial discipline.*
- b. *IEX has admitted that the requirement of NOC is not supported by any rules/regulations approved by CERC.*
- c. *CERC confirmed that CERC has not meant /prescribed the requirement of NOC from existing Trader.*
- d. *CEA stated that requirement of NOC is not a good practice for ensuring competition in business of power trading.*
- e. *Joint secretary (Hydro) Ministry of Power, Government of India opined that existing practice of IEX is beyond the stipulated rules and regulations and is against transparent business practices. Traders are supposed to take a call on the credit risk as a part of their business and cannot restrict the entry of other traders by withholding NOC. Moreover, such conditions were not a part of bidding documents.*
- f. *Most importantly, after discussion, IEX agreed to allow NHPC to trade Power of J & K, PDD immediately without insisting NOC from existing Trader.*
- g. *As far as financial risk of the Trader is concerned, IEX was asked to develop appropriate mechanism with the approval of CERC.*

h. It was decided regarding the petition filed by NHPC in the above matter with CERC that NHPC may withdraw the petition after trading of J& K, PDD power commences to NHPC in the IEX.”

8. The matter was heard on 31.1.2019. During the course of hearing, the representative of the Petitioner appraised the Commission regarding the arrangement between the parties and outcome of the meeting held in the Ministry of Power, Government of India. Accordingly, the representative of the Petitioner sought permission to withdraw the Petition. However, the Commission decided to admit the Petition and directed parties to complete the pleadings.

9. Subsequently, on 4.2.2019, IEX wrote to Ministry of Power, Government of India stating that since the matter is sub-judice before the Commission, its learned counsel has advised that IEX may take further action based on the direction of the Commission in the matter. In response, the Petitioner, vide its letters dated 5.2.2019 and 12.2.2019, informed IEX that it will withdraw the instant Petition if IEX allows the Petitioner to trade without insisting the NOC. However, IEX vide its letter dated 18.2.2019 reiterated the contents of its earlier letter dated 4.2.2019 and submitted that before taking any further action it would await decision of the Commission.

10. The matter was further heard on 19.3.2019. After hearing the learned counsel for the Parties, vide Record of Proceedings for the hearing dated 19.3.2019, IEX was directed to allow registration of JKPDD under trader Member, NHPC and to facilitate transaction by the Petitioner in the Power Exchange with immediate effect. As per the above direction of the Commission, IEX has allowed the Petitioner to trade power for JKPDD from 22.3.2019, which is continuing.

11. The Respondents, IEX and PTC have filed their reply to the Petition and the Petitioner has also filed rejoinder thereof.

Reply by IEX:

12. IEX, vide its affidavit dated 22.02.2019, has mainly submitted as under:

(a) The client, JKPDD, sought for change in the registration under a member from PTC to the Petitioner, NHPC. For this purpose, upon the request of the Petitioner, IEX sought for NOC from existing Member to the client as a precondition for change of the Member.

(b) The present Petition has been preferred by the Petitioner in view of non-grant of NOC by PTC. The sole challenge by the Petitioner is on the correctness of the requirement of the NOC to be obtained by the Client for changing the Member for operating on the Power Exchange. However, no dispute has been raised by the client - JKPDD in the present case.

(c) Apart from framing of the Central Electricity Regulatory Commission (Power Market) Regulations, 2010 (hereinafter referred to as “the Power Market Regulations”), the Commission has also approved the Rules, Business Rules and Bylaws of IEX, which *inter-alia*, provides for the terms and conditions for the functioning of IEX, the powers of IEX, the relationship between IEX and its Member and between the Members and their clients, etc. Subject to the provisions of the Power Market Regulations, Rules, Business Rules and Bylaws, IEX has power to specify the terms and conditions for the conduct of the Members and Clients, etc. The said power has been delegated

by the Commission to IEX, subject to the condition that such terms and conditions specified by IEX should not be contrary to any specific provision of the Regulations.

(d) Accordingly, IEX has prescribed the condition for change of the Member by the client for trading on the IEX platform to be on the condition of a NOC being issued by the incumbent Member, to ensure that the client does not default on its obligations, particularly on clearing the dues with the existing Member before seeking change to another Member to continue operating on the exchange platform. The client, before shifting to another Member, ought to maintain financial discipline and settle the amounts due towards the transaction for which he has already taken benefit of.

(e) The requirement of NOC is in the interest of the operation of the Power Exchange and development of the market. Otherwise, it would result in a situation wherein a client piles up huge outstanding against the Member for the electricity traded on the Power Exchange platform, defaults in the payment of the dues while enjoying the use of the electricity and thereafter, shifts to another Member and continues its operations of purchase of power. To ensure the discipline, the condition that all the dues of the existing Member being cleared is also incorporated in the very format under which the client requests for the change of Member for trading on the IEX Platform.

(f) Since 2014-15, there have been 597 instances of change of Member, out of which 42 cases involved PTC wherein NOCs were duly issued. As

against the above, there have been only 5 instances (including instant case) where NOC was not granted on account of outstanding dues to existing members. This establishes that the requirement of NOC has served its purpose and is not in any manner being misused.

(g) The contention of the Petitioner regarding the case of TRN Energy Private Limited is misconceived. In the said case, NOC was perhaps not granted by PTC and the change of Member was not given effect on account of the fact that the client, TRN Energy Private Limited, itself confirmed in writing that it wishes to continue with the existing Member, PTC.

(h) Even de-hors any specific provision, it is only prudent utility practice that the provision is prescribed for maintaining financial discipline and ensuring that person who defaults in clearing dues are not allowed to avoid their obligation and continue trading through another member.

(i) NOC condition is legal and valid as well as desirable. The requirement of NOC was always there and was not introduced for the present case alone.

Reply by Respondent No. 2 (PTC)

13. PTC, vide its affidavit dated 29.3.2019, has mainly submitted as under:

(a) PTC and JKPDD entered into Member-Client Agreement on 17.4.2018 after the receipt of Letter of Intent by JKPDD after tender process, whereby PTC was required to execute contracts for transaction on IEX on behalf of JKPDD. The validity of the said agreement was extended by JKPDD on

22.9.2018, for a period of 3 months effective from 27.9.2018 or till issuance of fresh Letter of Award subsequent to fresh tendering whichever earlier. Accordingly, the agreement expired on 27.12.2018.

(b) JKPDD issued fresh tender inviting bids for client membership on both the Power Exchanges on 25.9.2018, pursuant to which the Petitioner was issued the Letter of Award on 12.12.2018. Thereafter, on 18.12.2018, the Petitioner applied for change in Member to IEX and IEX wrote to PTC asking to provide NOC to change Member for JKPDD from PTC to NHPC. In response, PTC wrote to IEX stating that due to huge outstanding dues (Rs. 410.434 crore along with surcharge of Rs. 55.6 crore), NOC cannot be issued for change in Member.

(c) Clearing of dues is a prerequisite for such transfer/ change of trading Member by a client. Allowing a client to shift/ change trading Member is prejudicial, contrary to the Business Rules and Bylaws of IEX. Such transfer without NOC will undermine the financial and operational stability of Power Exchanges.

(d) In terms of Clause 6.1 of the Business Rules of IEX, in order to transfer membership, the Member requires prior approval of IEX and is required to settle all pending dues and claims. As a corollary, a client which is in effect accessing the Exchange through a Member ought to comply with the same requirements.

(e) PTC, being a trading Member for JKPDD for a period of approximately 6 years, has as part of its services rendered to JKPDD, it has extended a line of credit for amounts including deposit of margin for executing contracts on the Power Exchange. In such circumstances, JKPDD ought to meet the requirement of NOC and obtain the same from PTC before engaging services of the Petitioner to continue trade on the Power Exchange.

(f) Further, the Commission's direction dated 19.3.2019 is based on the minutes of meeting held on 31.01.2019, wherein IEX, contrary to its position taken before the Commission in the present case, has indicated that it shall allow the Petitioner to trade on behalf of JKPDD without insisting the NOC. PTC cannot be bound or prejudiced by such decision to which PTC was not a party. Failure to include participation of PTC and failure to consider views of PTC is a violation of principles of natural justice.

(g) In accordance with the Business Rules and Bylaws in particular Article 3.3 (a) Article 5.5 of the Bylaws read with Clause 18 of Business Rules, IEX has power to insist on NOC, as it has powers to issue rules and directions for operation of the Power Exchange including regulating activities of Exchange Members.

(h) The procedures laid down by IEX for the Exchange Members including requirement of NOC, ought to apply uniformly to all Members, irrespective of whether they are public or private companies. The relief claimed by the Petitioner, if allowed would set a bad precedent that a client who has

defaulted in clearing dues to one Member, changes the Member and continues to trade on the Power Exchange, without suffering consequences of default.

Rejoinders by Petitioner (NHPC)

14. NHPC, vide its affidavits dated 6.3.2019 and 8.4.2019 has mainly submitted as under:

(a) In terms of the provisions of the Power Market Regulations, Business Rules and Bylaws of IEX as approved by the Commission, there is no requirement of NOC from existing traders and thus denial of business opportunity to the Petitioner by IEX is not correct. Apart from correctness of the requirement of NOC, the legal authority of IEX to have introduced such a requirement is questionable and challenged.

(b) The necessity of NOC as introduced by IEX has not been approved by the Commission. IEX has failed to demonstrate any enabling authority to introduce this provision. IEX has the power to specify terms and conditions, but this is not an unfettered power and the same cannot be prohibitive and manipulative.

(c) As per Power Market Regulations and the Business Rules of IEX, maintaining an adequate margin is responsibility of the respective trading Member. The risk management is sole responsibility of the trader and IEX cannot take the responsibility for the same. Therefore, IEX should not involve itself and act as a recovery agent of the traders against their clients. As a

matter of record, PTC has not invoked any arbitration or legal mechanism against JKPDD to recover its outstanding dues. It is thus seeking to take advantage by letting the outstanding mount to a high level and then use this outstanding to keep JKPDD 'locked-in' with itself.

(d) As per the prescribed undertaking in the application for change of Member, JKPDD has already given an undertaking to the effect that it will clear all the outstanding dues from the existing Members. IEX is giving more importance and weightage to the NOC of PTC over the undertaking given by JKPDD. The recovery of money is matter between PTC and JKPDD and IEX in no capacity can impose such condition which is dependent upon outcome of the bilateral relation.

(e) In the meeting held on 30.1.2019 at the Ministry of Power to resolve the issue involved, IEX admitted that requirement of NOC is a practice and not supported by any Rules or Regulations approved by the Commission. IEX also agreed to allow the Petitioner to trade on behalf of JKPDD immediately without insisting on NOC. However, subsequently on 4.2.2019, IEX informed the Ministry of Power that since the matter is sub-judice before the Commission, it had been advised to not allow the trading at the moment. However, the present matter was already sub-judiced before the Commission on 30.1.2019 which was in the knowledge of IEX and thereby admission of matter on 31.1.2019 by the Commission made no change in situation. Accordingly, IEX has violated its own undertaking, given in the meeting in presence of representatives of Commission, CEA and the Power Secretary.

(f) The precondition of NOC is promoting cartelization which is aided and abetted by IEX. In past also, IEX denied NHPC for activation of its client, namely, TRN Energy (P) Limited for power trading. Due to insistence for NOC by IEX, NHPC lost the business opportunity and previous trader, PTC continued with the business.

(g) Reliance on the Clause 6.1 of the Business Rule by PTC is misplaced as the present case is not a case of transfer of membership nor JKPDD is claiming to take the membership of IEX nor the Petitioner is claiming for any change of membership.

(h) Credit extended by PTC to JKPDD is in violation of the provisions of the Business Rules of IEX and under the guise of NOC, PTC is trying to take advantage of its own mismanagement and retain JKPDD and thereby denying the opportunity to the Petitioner to act as trader for JKPDD.

(i) In the present case, open bidding had taken place wherein the Petitioner and PTC had participated as bidders. Even though the Petitioner had outbid PTC and was awarded the LoA, JKPDD was compelled to work with L-2 bidder, namely PTC on account of imposition of illegal requirement of NOC by IEX. Since, IEX has allowed PTC to work on the rate quoted by the Petitioner, the Petitioner is entitled to reimbursement of trading margin earned by PTC from 19.12.2019 till the Petitioner is allowed to work as trader for

JKPDD. In addition, the Petitioner is also entitled to recover compensation for the loss of goodwill and other relevant heads.

IA No. 35 of 2019 filed by Respondent No. 2 (PTC)

15. PTC has filed IA No. 35/2019 to recall the Commission's order dated 19.3.2019 and to direct IEX to not allow JKPDD to access the Power Exchange as a client, in light of pending outstanding dues from JKPDD to PTC. PTC has submitted that the Commission's direction is prejudicial, contrary to Business Rules and Bylaws of IEX. Further, the direction has been passed by the Commission based on undertaking given by IEX during the meeting held on 30.1.2019 in the Ministry of Power, Government of India. However, in the said meeting, neither PTC was invited nor it was intimated of the decision taken in the said meeting. JKPDD has sought to engage the Petitioner as its trader on the Power Exchange without clearing the outstanding dues of PTC. It has been stated that being trader Member of IEX, PTC has extended a line of credit to JKPDD for contracts executed on Power Exchange. Therefore, JKPDD ought not to be permitted to renege on its obligations, switch to another trader without clearing the outstanding dues of the existing trader and continue to benefit from trading on the Exchange platform. Accordingly, PTC has requested the Commission to recall its order dated 19.3.2019 or alternatively to modify the said order and to issue directions to JKPDD to pay the outstanding dues payable to PTC by JKPDD so that no prejudice would be caused to PTC and its rights to recover outstanding amounts from JKPDD are protected.

16. The matter was finally heard on 9.5.2019 and during the hearing, learned senior counsel for the Petitioner submitted that after the direction of the Commission

dated 19.3.2019, IEX has allowed the Petitioner to trade power on behalf of JKPDD w.e.f 22.3.2019, which is continuing. After considering the submissions of the learned counsels for the parties, the matter was reserved for order and liberty was granted to the parties to file their written submissions. Accordingly, the Petitioner, IEX and PTC have filed their respective written submissions reiterating the submissions made in respective pleadings.

Analysis and Decision

17. After considering the above settlement and the submissions of the parties and perusal of documents placed on record, the following issues arise for consideration in present Petition:

- (a) Issue No. 1: Whether “NOC” is required from previous trader as a pre-requisite for change in trader for client registration?
- (b) Issue No. 2: Whether the Petitioner is entitled for compensation? And
- (c) Issue No. 3: Whether any direction is required to safeguard the interest of the traders?

The above issues have been dealt with in the succeeding paragraphs.

Issue No. 1: Whether “NOC” is required from previous trader as a pre-requisite for change in trader for client registration?

18. The Petitioner has submitted that the insistence of IEX for NOC from the previous trader as a pre-requisite for change in trader for client registration has no basis in any of the extant Regulations, rules or statutory provisions. It has been submitted that during the meeting convened by the Secretary, Ministry of Power, Government of India on 30.1.2019, IEX itself had admitted that the requirement of NOC from existing trader is a practice which is not supported by any rules and

regulations approved by the Commission. The Petitioner has submitted that in terms of the provisions of the Power Market Regulations and Business Rules of IEX, it is the responsibility of respective trading Member to maintain an adequate margin from a client and the IEX being merely a trading platform cannot be impediment in way of a client for transacting through any trader.

19. *Per contra*, IEX has submitted that in terms of the provisions of the Power Market Regulations, Business Rules and Bylaws of IEX, it has the power to specify the terms and conditions for the conduct of the Members and clients, etc., and in terms thereof, IEX has specified the terms and conditions for change of Member including NOC from the existing Member for the smooth, efficient and proper operation of the Power Exchange. According to IEX, requirement of NOC is in the best interest of the operation of Power Exchange and stakeholders, to maintain financial discipline and avoid defaults by clients and is a prudent utility practice. It has been submitted that the discussions recorded in the meeting dated 30.1.2019 are not in the correct context and the issue raised in the proceedings ought to be decided based on legal provisions and in the best interest of the operation of Power Exchange.

20. PTC has submitted that in terms of the Bylaws, Rules and Business Rules framed by the IEX under the Power Market Regulations and as approved by the Commission, the procedure put in place by the IEX in exercise of such power ought to be given effect to and cannot be superseded. PTC has further submitted that undertaking given by IEX in the meeting dated 30.1.2019 is contrary to its Bylaws and Business Rules and the Commission's direction dated 19.3.2019 to IEX to allow

registration of JKPDD under trader Member, NHPC and to facilitate transaction by NHPC in Power Exchange has caused grave prejudice to PTC.

21. We have considered the submissions made by the Parties. The Petitioner has contended that the requirement of NOC has no basis in the Power Market Regulations as well as Bylaws and Business Rules of IEX as approved by the Commission. *Per contra*, IEX and PTC have submitted that IEX has power to insist for NOC on basis of its power to frame rules by specifying the terms and conditions for the conduct of the members and clients. IEX and PTC have submitted that the requirement of NOC from the existing Member is necessary from the view point of financial discipline and risk management/avoiding defaults by clients. In this regard, it is pertinent to refer to the relevant provisions of the Power Market Regulations and the Business Rules/Byelaws of IEX.

22. Regulation 24 of the Power Market Regulations provides as under:

“24. The Power Exchange shall function according to its Byelaws and Rules as approved by the Commission, which amongst other requirements would cover the following:

- (a) Price Discovery and matching mechanism;*
- (b) Rights and liabilities of its members;*

.....

(t) Indemnification of Central Transmission Utility, National Load Despatch Centre, Regional Load Despatch Centres, State Load Despatch Centres by the Power Exchange.

Provided that Byelaws and Rules may be amended subject to obtaining prior approval of the Commission”

As per the above provisions, Power Exchanges can only amend the defined procedures after approval of the Commission. While the Commission has delegated certain powers to the Power Exchanges, including the framing of its Byelaws and

Rules, these are Bylaws and Rules as well as amendments thereto are subject to the approval of the Commission. While the IEX and PTC have sought to rely upon the Rules making power of Exchange and the Business Rules framed thereunder, in particular, *Dealing with Clients*, admittedly, the requirement of the NOC from the existing trading Member is also not expressly provided therein. Hence, in the view of the above, we find that requirement of NOC from the existing trading Member in case of change of trading Member is not supported by any of the provisions of the Power Market Regulations, Byelaws and Business Rules of the IEX.

23. IEX and PTC have contended that the requirement of NOC is necessary from the view point of financial discipline and risk management/avoiding defaults by clients. With regard to risk management by Power Exchange, Regulation 28 (v) of the Power Market Regulations provides as under:

“28(v) Members should, wherever applicable, have a prudent risk management and timely margin collection system from their clients. The quantum of margins collected by members from client shall be at the discretion of the members and as per bye laws of Power Exchange.”

24. Further, Clause 16 of the Business Rules of IEX provides as under:

“Risk management System:

16.1 A member or the Client, as applicable, is allowed to transact only when it maintains the requisite Margin, including any additional Margin as specified for the respective trading segment or the type of contracts or the directions issued by the Exchange. Bank balance lien marked in favour of Exchange can also be allowed towards margin required for facilitation of intraday and day ahead contingency products, at the discretion of the Exchange.”

As per the above provisions, trading Member is required to maintain adequate margin before undertaking trading. Further, trading Member has to ensure timely margin collection from clients and settlement. In our view, contention raised by the

IEX to the effect that since JKPDD has huge outstanding dues payable to PTC, it cannot be allowed to change the trading Member is not legally tenable.

25. In view of the above, we observe that the requirement of NOC is neither supported by the provisions of the Power Market Regulations nor by the Byelaws and Rules of IEX as approved by the Commission. Further, as per the Power Market Regulations, the risk management and ensuring timely collection of margin is responsibility of the trading Members. In our view, NOC from the previous trading Member is not a prerequisite for change of trading Member by a client on IEX. Therefore, contention of IEX and PTC in this regard is not sustainable.

Issue No. 2: Whether the Petitioner is entitled for compensation?

26. The Petitioner has prayed for compensation for loss incurred towards denial of the trading business on IEX and loss of credibility in the market as the Petitioner is a premier Central Hydro Generating Company.

27. We note that the Petitioner had been awarded the Letter of Award by JKPDD on 12.12.2018 for being engaged as trading Member on behalf of JKPDD for sale and purchase of power for the period of one year. However, at the time of submission of application by the Petitioner for registration of JKPDD as its client, IEX had sought NOC from the existing trading Member, namely, PTC which was denied by the PTC on the ground of outstanding dues. Further, during the pendency of the Petition, vide Record of Proceedings dated 19.2.2019, IEX was directed to allow registration of JKPDD under trader Member, namely, NHPC and to facilitate transaction by NHPC in Power Exchange with immediate effect. Accordingly, IEX allowed the Petitioner to trade power on behalf of JKPDD w.e.f. 22.3.2019. Since, the IEX has been following the requirement of NOC as a prerequisite for change of

trading Member by a client on the Power Exchange on bona fide basis until the decision taking by the Commission in the present case, we are not inclined to grant any compensation to the Petitioner in this regard.

Issue No. 3: Whether any direction is required to safeguard the interest of the traders?

28. PTC through its IA No.35/2019 has sought direction to JKPDD to clear the outstanding dues payable to PTC to safeguard the interest of PTC. In this regard, Regulation 7 (h) of the repealed Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of trading licence and other related matters) Regulations, 2009 provided as under:

“7(h) The licensee shall carry out trading in accordance with the agreed terms and conditions, and may take such safeguards as he may consider necessary with regard to payment security mechanism from the buyers, but shall always ensure timely payment of dues to the seller for purchase of the agreed quantum of electricity either through a letter of credit or any other appropriate instrument or as may be mutually agreed between the seller and the licensee.”

The above regulation provided that a trading licensee may have a payment security mechanism in place from the buyers which could be in form of a letter of credit or an instrument as mutually agreed with the client.

29. Annexure-1 of the Member Client Arrangement dated 19.10.2012 executed between PTC and JKPDD provides as under:

“Clause (e) Payment schedule -Amount due to JKPDD shall be remitted by PTC in JKPDD’s current account through electronic transfer, within 5 days from date of submission of credit bills by PTC. Amount due to PTC shall be remitted by JKPDD in PTC’s current account through electronic transfer, within 5 days from date of submission of Invoice by PTC.

...

Clause (g) Payment Security Mechanism (In case of Credit option) - JKPDD shall provide standby, Irrevocable, Revolving Letter Of Credit (LC) equivalent to 18 days of contracted energy billing in MU based on average monthly tariff of previous month as discovered in power exchange of the region where the buyer is located in favour of PTC. Please note that LC will act only as payment security mechanism and JKPDD shall be making direct payment to PTC. All LC charges shall be borne by the JKPDD.

The transaction shall be taken up only after opening of LC by JKPDD and at any point of time PTC shall not purchase power on behalf of JKPDD exceeding the available payment security.”

30. Thus, the contractual arrangement between PTC and JKPDD did provide for a payment security mechanism. Therefore, no separate direction is required in this regard.

31. In light of the above discussion, the Petition No. 20/MP/2019 along with IA No. 35 of 2019 stands disposed of.

**Sd/-
(I.S.Jha)
Member**

**Sd/-
(Dr. M.K. Iyer)
Member**

**Sd/-
(P.K. Pujari)
Chairperson**