

No. L-1/42/2009-CERC
CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI

Coram : Dr. Pramod Deo, Chairperson
Shri S.Jayaraman, Member
Shri V. S. Verma Member
Shri M. Deena Dayalan, Member

Date: 17th September 2010

In the matter of

Central Electricity Regulatory Commission (Regulation of Power Supply) Regulations, 2010.

STATEMENT OF REASONS

1. Introduction

1.1 In exercise of powers conferred under Section 178 of Electricity Act, 2003 (the Act), the Commission had made the draft regulations, namely the Central Electricity Regulatory Commission (Regulation of Power Supply) Regulations, 2010 and posted the same along with explanatory memorandum on the website of the Commission on 1st June, 2010 inviting suggestions and comments from the stakeholders. Subsequently, a public hearing was conducted on 20th July, 2010 to get the views and suggestions of the stakeholders.

1.2 The suggestions and comments have been received on the draft regulations from the interested persons/stakeholders as per the Annexure attached to this Statement of Reasons. We have considered the views and comments received and our decisions thereon are discussed in the succeeding paragraphs.

CHAPTER I: GENERAL

2. Regulation 2 (Definitions)

2.1 In the draft Regulation at Sub-Regulation 2(1) (b) following definition of “Agreement” was given:

“ “Agreement” means the Power Purchase Agreement between the Beneficiary and the Generating Company which owns the generating stations or the bulk power transmission agreement between the Beneficiary and the Transmission Licensee, as the case may be, or such other agreements by whatever name called binding the Generating Company / Transmission Licensee and the Beneficiary.”

2.2 North-Eastern Electric Power Corporation Ltd.(NEEPCO) has submitted that the meaning of “Agreement” should also include the Tripartite Agreement (TPA) entered into between the Government of India, the Reserve Bank of India and the respective State Government. At present, the regulation of power supply to the defaulting Beneficiary is being done on the basis of the provisions of the said Tripartite Agreement only. Accordingly, the Clause should be modified to replace the phrase “such other agreements by whatever name called” by “ any other agreements such as the Tripartite

Agreement entered into between the Government of India, the Reserve Bank of India and the respective State Government”.

2.3 In this regard, we are of the view that the draft regulations provide for regulation of power supply only if there is a specific provisions in the PPAs. Since most of the PPAs have already included the Tripartite Agreement, we do not intend to include the Tripartite Agreement in the definition of agreement. Therefore, no modification is needed.

2.4 In the draft regulations at sub-clause (c) and (d) of clause (1) of Regulation 2, following definitions of “ Beneficiary” and “ Defaulting Entity” were given:

“ "Beneficiary" means the person who has been allocated electricity or being supplied electricity generated from a generating station through long-term access or medium – term open access or, as the case may be, user of the transmission system of a transmission licensee;

"Defaulting entity" means a beneficiary having outstanding dues of a generating company or a transmission licensee or not maintaining the required Letter of Credit as per Agreement;”

2.5 Power Grid Corporation of India Ltd. (PGCIL) submitted that a Generator (an entity injecting power into the inter–state transmission system) is the user of the transmission system and accordingly, it should be explicitly reflected in the definition.

There may be a situation where in a Generator could also be a defaulting entity and accordingly, suitable provisions need to be incorporated in the regulations to address
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the contingency of default by a Generator. Reliance Power Transmission has also submitted that regulations do not cover a situation whereby a generator being a long term customer is a beneficiary and becomes the defaulting entity.

2.6 In this regard, it is clarified that in case of long term access and medium term open access, the beneficiaries of the generating station have to pay the transmission charges directly to the licensee as per the power purchase agreement/contract in accordance with the Central Electricity Regulatory Commission (Grant of Connectivity, Long-term Access and Medium-term Open Access in inter-State Transmission and related matters) Regulations, 2009 as amended from time to time. The transmission charges for the short-term open access are to be paid upfront to the nodal Regional Load Despatch Centre (RLDC), in accordance with the Central Electricity Regulatory Commission (Open Access in inter-State Transmission) Regulations, 2008, as amended time to time. Thus, there would be no problem of non-payment in case a generator is a beneficiary of transmission licensee and therefore, the regulations are not required to be modified in this regard.

2.7 PTC India Limited has suggested to include trading licensee also in the definition of "Defaulting Entity" by including words "or a trading licensee" after transmission licensee. In this regard we feel that implementation of regulation of power supply for trading licensees would be very difficult as the trading licensees have back to back contracts for buying and selling of power and therefore, cancellation of one leg of the contract would upset the Load-Generation Balance. Further, the trading licensees can

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easily seek legal recourse from other available forums for breach of contract in case of non-payment.

2.8 NTPC Limited has suggested that the words “*Letter of Credit as per Agreement*” may be replaced by “*PSM as per Agreement*” in order to include other Payment Security Mechanisms (PSM) like Escrow etc. We are agreement with the suggestion and the Regulations have been modified accordingly.

2.9 Following definition of “Default Trigger Date” was given at Regulation 2(i)(e) of the draft regulations:

““Default Trigger Date” means the date from which the default in payment or default in maintaining Letter of Credit has been established.

Explanation I:- In case of non payment of dues, this date shall be the third working day after completion of the 60 days period from raising of the bill by the generating company or the transmission licensee as the case may be.

Explanation II:- In case of non maintenance of the required Letter of Credit, the Default Trigger Date shall be eighth day after expiry of the renewal/replenishment date as per the Agreement ;”

2.10 PTC India Limited submitted that care needs to be taken so that the mechanism is not used to legalize delays in payment during the low demand period of the utility. NEEPCO has suggested that the Explanation-II may be modified and another Explanation, namely the Explanation-III may be incorporated in order to

cover two distinct aspects of the Letter of Credit, namely the Yearly Renewal and Monthly Replenishment. The suggested Default Trigger Date for Yearly Renewal and Monthly Replenishment of LC has been suggested to be eighth and third day, respectively.

2.11 Considering the views of the stakeholder, the Default Trigger Date in case of non-maintenance of PSM has been reduced to third day.

2.12 NHPC Limited suggested that the phrase “from raising of the bill” in Explanation-I of Default Trigger Date should be replaced with the words “from the date of service of bill” to be in consistency with the definition of Outstanding dues & provision of the Tariff Regulations, 2009. We agree with the suggestion and the clause has been modified accordingly.

2.13 NTPC Limited submitted that in order to fulfill the conditions of Tripartite Agreement (TPA) it would be necessary to issue a notice for default immediately on occurrence of default, i.e. on the 61st day from date of issue of bill or the day immediately after which agreed PSM ceases to be available. Otherwise, there may be difficulties in implementing the TPA. It was suggested that the default trigger date should be next day after completion of 60 days period from the date of raising of the bill or the next day after expiry of renewal/ replenishment date of PSM as per Agreement. We appreciate the concern of NTPC Limited and in case of default in payment of dues, the Default Trigger Date has been amended as the next working day. However, for

default in case of other PSM, it is third working day keeping in view the time required for getting the validation from bank by the Regulating Entity regarding non-maintenance of the PSM.

2.14 The definition of 'Outstanding dues' given at 2 (1) (g) in the draft Regulation reads as under:

“ ‘Outstanding dues’ means dues of the generating company or of the transmission licensee, which remains unpaid for a minimum period of 60 days from the date of service of the bill;”

2.15 NHPC Limited has suggested that the phrase 'for a minimum period' should be replaced as 'beyond a period'. We agree with the suggestion and the definition has been modified accordingly.

2.16 NHPC Limited has also submitted that the bills by the generating company are being uploaded on the website and also being served through e-mail and suggested that the date of uploading of bill should be treated as date of service of bill.

2.17 We are of the view that since web-service may not be available sometime to all utilities, keeping the provision for web based billing exclusively may not be suitable to some utilities. Therefore, we are of the view that any mode of servicing the bill as mutually agreed between the concerned parties shall be applicable.

3. Regulation 3 : Scope

3.1 The draft Regulation 3 provided as under:

“These Regulations shall be applicable to the Generating Stations, Transmission Systems and their beneficiaries where in the Agreement, there is a specific provision for power supply regulation , in case of non-payment of outstanding dues or non-maintenance of Letter of Credit”

3.2 NEEPCO has suggested to replace the word “Agreement” with “Power Purchase Agreement, the Bulk Power Transmission Agreement or the Tripartite Agreement between the Government of India, the Reserve bank of India and the respective State Government” and the words “outstanding dues or non-maintenance of Letter of Credit” with “current (i.e. dues after the securitization) dues or non-maintenance / non-replenishment of Letter of Credit”.

3.3 We have given our views on the first issue in Para 2.3. With respect to outstanding dues mentioned in the scope, it may be mentioned that the same covers all outstanding dues, whether current or past. We are therefore, of the view that no modification is needed in this regard.

3.4 Neyveli Lignite Corporation Ltd. (NLC) submitted that in respect of generating companies where Power Purchase Agreements (PPA) are already in force, no specific clause has been provided in the PPA for regulating the power supply and it has been suggested that that the scope of these regulations may be extended to such generating companies also.

3.5 We are of the view that the intention of these regulations is not to modify the existing PPAs to provide new measures for regulating the power supply to the Defaulting Entities. These regulations only provide for the procedure for facilitating the regulation the power supply under the conditions mutually agreed by the utilities in their contracts. Inclusion of the generating companies who do not have provisions of regulation of power supply in their contracts would amount to interference in the contracts. Therefore, this suggestion has not been accepted.

3.6 NLC has further submitted that opening LC is optional for payment of power bills as per Tariff Regulations, 2009 whereas under these Draft Regulations, the drawal schedule can be restricted for not opening LC. When Tariff Regulations do not make it mandatory for opening of LCs, a beneficiaries cannot be penalized for not opening the LCs.

3.7 In our view, apprehension of NLC is not correct as these regulations do not make it mandatory for opening of LCs. These regulations only seek to regulate power supply in those cases where appropriate provisions with regards to Payment Security Mechanisms including LCs have been included in the power purchase agreement.

CHAPTER II : PROCEDURE FOR REGULATION OF POWER SUPPLY

4. Regulation 4

4.1 *Regulation 4 of the draft regulations provided as under:*

“In case of Outstanding dues, or in case the required Letter of credit is not maintained as per the Agreement , the generating company or the transmission licensee , as the case may be, may serve a notice for regulation of power supply,

to the Defaulting Entity, for reducing the drawl schedule of the Defaulting Entity. Such notice may be served on or after the default trigger date. The notice shall include the following details:

(a) The amount of outstanding dues against the defaulting entity or the duration of non-maintenance of Letter of Credit, as the case may be ;

(b) Quantum and duration of reduction in drawl schedule of Defaulting Entity;

Provided that in case the Regulating Entity is a Generating company such notice shall also include the following details :

(i) Source(s) of power from which reduction/diversion is to be made in case of regulation of power supply and quantum or reduction of schedule drawl / diversion of power from each of them ; and

(ii) Whether reduction of drawl schedule of Defaulting Entity is likely to cause reduction in generation or the excess power available consequent to regulation is to be sold to any other entity or to be injected into the grid through the UI mechanism; and

(iii) In case of diversion of power, the particulars of the person to whom power is to be diverted to and the price agreed to be charged from such person, if determined in advance.

Provided that in case of sale through Power Exchange, the price may be intimated as and when such price is discovered.”

4.2 PTC India Limited has suggested to include the term “trading licensee” in Regulation 4 (b) for the sake of clarity because generator will have the option to dispose its surplus power by taking services of trading licensees besides other modalities.

4.3 We agree with the suggestion of PTC India Limited and proviso to Regulation 4(b) (ii) has been modified accordingly.

4.4 PTC India Limited has also submitted that while implementing regulation of power, it is also important to prioritize regulation in such manner that the first priority goes to bilateral sale followed by UI and reduction in generation should be the last priority.

4.5 In this regard it is clarified that injection of power through UI is not a prudent option as a mechanism for sale of power, since it may upset the load – generation balance. Power rendered surplus due to regulation of power could be sold through bilateral contracts directly or through trading licensees or through the Power Exchange. It is best left to the wisdom of the Regulating Entities to dispose of the surplus power in whatever way they want and modes of sale of power should not be prioritized. We are, therefore, of the view that no modification is required in this regulation.

4.6 PTC India Limited has also suggested to make provisions for putting up the notice regarding regulation of power supply on the website. We agree with the proposal and the Regulation has been modified accordingly. Besides this, the implementation plan should also be posted on the website. The same has also been added in the Regulations.

4.7 Reliance Power Transmission had expressed apprehension that it may not be possible for a transmission licensee to calculate the quantum and duration of reduction in drawal schedule and it has been suggested that this task may be performed by RLDC

and clause 4 (b) may be deleted. Similar views have been expressed by PGCIL. It has been submitted that the quantum and duration of reduction in drawl schedule of defaulting entity is envisaged as part of notice to be furnished by the generating company/transmission licensee which apparently should be equivalent to the default amount. Since the price of power has not been defined/known, the source of the cheapest generating company, equivalent MW, duration of the default amount cannot be ascertained by the Transmission Licensee in case of default.

4.8 We appreciate the difficulty of Transmission Licensees. However, in our view the Transmission Licensees can propose the quantum and duration of regulation of power supply based on an estimated price, indications of which can be taken from the Power Exchange Uniform Market Clearing Price and the prevailing price of electricity sold through traders directly. Accordingly, Regulation 4 has been modified to include this provision. Further, we are in agreement with PGCIL that the quantum and duration of regulation must be such as to recover the outstanding dues only. In the Regulations, a provision has been added to stop the regulation of power as soon as the dues are recovered. However, due to possible variation in the amount actually recovered as compared to estimated value after meeting incidental expenses and recovery of energy charges, and due to the notice period for withdrawal of Regulation of Power Supply, there may be recovery of some extra amount. Treatment of the same shall be in accordance with these regulations.

4.9 Shri S.P. Arya , in his individual capacity , has submitted that the entity who will bear the burden of additional capacity charges and deemed energy charges in case of

reduction in generation under Regulation 4(b) (ii) should be clarified. Shri Arya has suggested that as in case of Regulation 4(b) (ii), the long term beneficiaries of a particular generating company should have the first right of refusal for the purchase of power. He has also suggested that the Power rendered surplus due to regulation should be first provided to long- term beneficiaries then may be sold to Power Exchange rather than allowing flow through UI mechanism.

4.10 In this regard it is clarified that in case of reduction in generation, the capacity charge has to be borne by the Regulated Entity, since during regulation there is no capacity re-allocation or diversion and the capacity of the generating station shall remain with the Regulated Entity. In case of thermal generating stations, for reduction of generation, fuel would be conserved to that extent and hence no energy charges would be incurred. However, in case of Hydro generating stations, to avoid spillage of water power could be injected through UI, if grid conditions allow, subject to stipulations in Central Electricity Regulatory Commission,(Unscheduled Interchange charges and related matters) Regulations, 2009 as amended from time to time. The loss of energy charge, in the case of spillage of water, shall have to be made good from the revenue earned through UI from injection of power rendered surplus due to regulation on first charge.

4.11 As regards the suggestion to include provision for first right of refusal by the beneficiaries of the generating station other than the Regulated Entity, We are of the view that such a provision will only delay the implementation of the regulation of power as the Regulating Entity will be under an obligation to seek the consent/refusal of the SOR for CERC (Regulation of Power Supply) Regulations,2010

other beneficiaries before selling the power under regulation to any other entity. Further, the intention of these regulations is to facilitate recovery of charges in shortest possible time and with least duration of regulation of power. If the condition of first refusal is adopted, the generating company may not get the best price for the power to be sold, as it has to sell power to a beneficiary, at whatever priced offered. Accordingly, this suggestion has not been accepted.

5. Regulation 5 :

5.1 Draft Regulation 5 reads as under:

“A copy of the notice referred to Regulation 4 shall be forwarded by the regulating entity with a request to prepare implementation plan to the Regional Load Despatch Centre (RLDC) or State Load Despatch Centre (SLDCs) in which control area the Regulating Entity is situated. The copy of notice shall also be served to other concerned RLDCs, SLDCs, RPCs. Provided further that the notice and request for preparing implementation of regulation of power supply shall be served on the Defaulting Entity, RLDC, SLDC, and RPC at least 3 days in advance of the proposed date of commencement of regulation of power supply.”

5.2 PGCIL has suggested that in the event, the defaulting entity is a State or an entity within the State viz., Distribution company, the relevant implementation plan should be submitted to Defaulting entity/ entities and concerned RLDC(s). RLDC(s) as part of implementation plan may forward the same to the concerned State Load Despatch Centre (SLDC), Regional Power Committee (RPC), etc. as this approach

shall facilitate focus on regulation of power supply and avoid unnecessary issues regarding applicable control area etc.

5.3 In this regard it is mentioned that the SLDC in which the Regulating Entity is located is a key system operator who has to implement the regulation and if the Regulating Entity is located in its control area, that system operator is responsible for grid security in its area. We have also mentioned that the Regulating Entity would give a copy of the notice to other concerned RLDCs, SLDCs and RPCs. The control area jurisdiction is to be decided on the basis of stipulations given in IEGC. We therefore, feel that there is no need for modification of the provision of the above regulation.

5.4 HPPC has suggested that three days time is too low and should be made one week. We are of the view that three days' notice time is sufficient and there is no need for extending the time.

6. Regulation 6

6.1 In the Draft Regulations the Regulation 6 was as under:

“Upon receipt of the notice referred to in Regulation 4 and within 3 days thereafter, the SLDC / RLDC, in whose control area the Defaulting Entity is situated, shall make a plan in writing for implementing the regulation of power supply and shall inform the Regulating Entity, Regulated Entity, SLDCs, RPCs, other RLDCs of the said Plan .

Provided that if in the opinion of the RLDC or SLDC, as the case may be, the proposal for regulation of power supply made by the Regulating Entity cannot be carried out under the prevailing system conditions then it shall inform the Regulating Entity of its decision in writing and the basis for such decision within 3 days of receipt of the notice referred to in Regulation 4.”

6.2 NTPC Limited has proposed that RLDC/SLDC may also communicate the necessary system conditions after which the said power regulation can be carried out (availability of a particular transmission line or generator etc.) along with the expected date by which such a condition is likely to be available. Further, where power regulation is to be implemented in a phased manner, in case the same is deferred on the advice of RLDC/ SLDC, it has been suggested that power regulation can be directly started from the appropriate phase as may correspond to the actual date of commencement of such regulation.

6.3 We are of the view that since the power system is dynamic, the conditions can keep changing over a period of time. However, in case regulation cannot be allowed due to outage of a specific power system element, then the expected date by which the element would come back into service may be informed by the concerned RLDC/SLDC. This Regulation has been modified accordingly.

6.4 GMR Energy Trading Ltd. (GMR) has suggested that 'system condition' may be defined in the regulations. An apprehension has been expressed that SLDC clearance may defeat the purpose of the regulation of power and therefore, implementation of notice should be mandatory for SLDC/RLDC except in cases of transmission constraint. It has also been suggested that this Clause should be made applicable for the existing PPAs.

6.5 We have considered the suggestions and are of the view that appropriate system conditions may be judged by the system operator and it cannot be defined here as

system conditions can keep on changing over a period of time. Regarding apprehension about SLDC clearance, it is clarified that opinion of SLDC is required only when the generating station from which regulation of power supply is to be implemented comes under SLDC control area jurisdiction. In other cases, RLDC has to decide about the appropriateness of system conditions for implementing the regulation of power supply to the Defaulting Entity. Moreover, it is clarified that the clause shall be applicable in existing PPAs also, if it has provision for regulation of power supply.

7. Regulation 10

7.1 In the draft Regulations, the stipulation in this Regulation was as under:

“Regulation in Power Supply by the transmission licensee shall be preferably from Central Generating Stations supplying power to the Regulated Entity at the lowest cost.”

7.2 NHPC Limited suggested that the phrase “provided that the transmission licensee takes full obligation of compensation of monetary loss, if any to the generating company” may be added at the end of the Regulation.

7.3 We are of the view that since capacity charge is to be paid by Regulated Entity and Energy charge is to be recovered from sale of power, there would not be any loss to generating company. However, there may be loss in case of water spillage in hydro-station, for which the generating station can inject power through UI, if grid conditions allow and also subject to stipulations in Central Electricity Regulatory

as amended from time to time. The loss of energy charge in the case of spillage of water would have to be made good from the revenue earned through UI from injection of power rendered surplus due to regulation, on first charge. This has already been mentioned in clause 3.6.

7.4 PGCIL has submitted that since the price of power has not been defined / known, the source of the cheapest generating company, equivalent MW, duration for the default amount cannot be ascertained by the Transmission company in case of default.

7.5 On this issue, we have already expressed our views in para 4.8, above. Further, this clause has been deleted in view of the addition of provision in Regulation 4.

CHAPTER III: REGULATION BY GENERATING COMPANY

8. Regulation 13 (1)

The Regulation in the draft Regulations was as under:

“The generating company shall be entitled to sell the power rendered surplus due to regulation of power supply, to any person including any of the existing beneficiaries, during the regulation of power supply, subject to grid security as ascertained by the concerned RLDC , or may reduce generation in case any of the above options is not possible. The Generating Company shall inform the RLDC or the SLDC, as the case may be, and Member-Secretary, Regional Power Committee, of the quantum, duration and rate of such sale.

Provided that, and unless the Agreement otherwise provides, the liability to pay the capacity charges of the generating station in respect of which the schedule has been restricted, shall be of the Regulated Entity.”

8.1 NLC has submitted that in case of non-availability of parties to sell the surplus power, the generation has to be brought down even during low frequency conditions, leading to revenue loss to generators.

8.2 In this regard, we are of the view that there would not be loss to generators due to the reasons explained above.

8.3 NHPC Limited has suggested that the provision regarding injection of power rendered surplus due to regulation through the UI mechanism should be incorporated in both Regulations 13(1) and 15 in line with Regulation 4(b)(ii) of the Draft Regulations.

8.4 In this regard it is clarified that as explained in the above paragraphs, UI mechanism cannot be used as a regular commercial mechanism for sale of power during regulation of power supply. However, to prevent spilling of water in case of a hydro power station, that option has been given to prevent loss of notional energy charge.

8.5 GMR suggested that the annual availability should be calculated by including the regulating period when the power is being sold to third party and the words “and the availability during the regulating period shall be included for determination of Annual Availability of the generating stations for determination of capacity charges.” may be added at the end of the proviso after the words ‘Regulated Entity’.

8.6 We are of the view that the Annual Availability is independent of the generation scheduled for the plant. Therefore, there would be no effect on the Availability. Therefore, no modification is required in the Regulations on this account.

9. Regulation 14

9.1 The draft Regulation 14 reads as under:

“The amount received from sale of surplus power received by generating company due to regulation of power supply, shall be adjusted against the outstanding dues of the regulated entity after deduction of energy charges, trading margin and other incidental expenses borne by the generating company , if any and the remaining amount shall be passed on the Regulated Entity.”

9.2 We have received comments from stakeholders like NTPC Limited, NHPC Limited, NEEPCO, GMR and PGCIL on the issue of sharing of excess amount received from sale of regulated quantum of power. NEEPCO has suggested to retain the provisions in existing ‘Generic Procedure for Regulation of Power supply’, i.e. from the difference between the sale proceeds and notified tariff after making adjustments for the transmission charges and trading charges, if any, 2/3rd would be adjusted against the outstanding dues of the Regulated Entity and the balance 1/3rd would be retained by the generating utility. NHPC Limited has suggested for sharing in the ratio of 50:50 between the Regulating and the Regulated Entities. NTPC Limited has suggested that the entire amount should be retained by the Regulating Entity or shared as per the terms of the agreement, wherever explicitly provided. GMR has suggested for use of the amount as Payment Security Mechanism. PGCIL has expressed their concern that repatriating the balance amount to the defaulting entity shall provide a perverse incentive for default in payment. Sale proceeds from the reduced power may, at times,

far exceed the default amount and shall provide windfall revenue stream to the defaulting entity.

9.3 We have considered the comments and are of the view that a balance has to be maintained between the benefit and risk of the Regulating Entity as well as Regulated Entity. As a result of regulation of power supply, the generator is already ensured of getting all its expenses, including the capacity charge, energy charge and incidental charges like trading margin, if sold through a trader. So, there would not be loss to the generator due to regulation of power. As per the provisions of these regulations, the Regulated Entity has to pay capacity charge even if the power is not scheduled to him due to regulation. In the earlier procedure for regulation of power supply, the Regulated Entity was liable for payment of capacity charge up to the extent it has not recovered from sale of power. Now, the Regulated Entity has been made fully responsible for payment of capacity charge since the capacity is allocated to him. The Regulating Entity can sell this power only to recover its dues and other incidental expenses. The remaining amount, if any, from sale should go to Regulated Entity who has a right on the allocated capacity. To maintain the balance, a provision has been made to stop regulation of power, as far as possible, immediately after the dues are recovered. With this provision, the excess quantum is envisaged to be small.

CHAPTER IV: REGULATION BY TRANSMISSION LICENSEE

10. Regulation 15

10.1 The draft Regulation 15 reads as under:

“On the request of a Transmission Licensee for Regulating the power supply , the Regional Load Despatch Centre may under intimation to the concerned generating company, restrict the drawl schedule of the allocated power of the Defaulting Entity , preferably from the cheapest generating station. The generating company shall be entitled to sell the power rendered surplus due to regulation of power supply, to any person including any of the existing beneficiaries, during the regulation of power supply. The revenue received on account of sale of this power shall be passed on to transmission utility as first charge to the extent of outstanding dues and remaining revenue shall be passed on to the Regulated Entity after deduction of energy charges of the generating company and trading margin and other incidental expenses borne by the generating company, if any and these energy charges shall be paid to the Generator.”

10.2 Comments/suggestions from the stakeholders like NLC, NTPC Limited, Reliance Power Transmission, GMR and PGCIL were received on the issue of regulation of power supply for default in dues of Transmission Licensee.

10.3 NTPC Limited has submitted that its PPAs with the beneficiaries provide for power regulation only in case of defaults by the beneficiaries in their obligations towards NTPC Limited (payment or PSM defaults). The PPAs do not provide for any power regulation for default in obligations towards others including Transmission Service Providers (TSPs). Regulation from a NTPC Limited station in the event of such defaults may not be tenable. NTPC Limited has suggested an alternative methodology under which the Regulating Transmission licensee shall serve a notice for withdrawal of Transmission Access (Long-term or medium-term) granted to the Defaulting Entity, and then the Regulation is to be implemented by restricting the scheduled drawal from the generating station.

10.4 We agree with the above suggestions and the Regulation has been modified accordingly.

10.5 NTPC Limited has suggested the methodology for utilization of the amount received from the sale of surplus power. It has been submitted that while the objective of the power supply regulation is to recover the outstanding dues of the transmission licensee, all the consequences of the regulation will be felt by the Regulated Entity and the generating company and not the Regulating Entity.

10.6 This point has already been addressed in para 9.3 above.

10.7 PGCIL has expressed its apprehension that apparently there is no incentive for the generating company to sell the power to address the default towards a transmission licensee.

10.8 We appreciate the concern of PGCIL and as per the methodology now included in the regulations, when the transmission licensee withdraws the access/ open access, the generating company would be required to implement the regulation of power supply to that extent.

11. Regulation 17

11.1 The draft Regulation 17 reads as under:

“In case of outstanding dues for both the generating company and the transmission licensee, the payments received from sale of power shall be shared

by the generating company and the transmission licensee in proportion to their outstanding dues”.

11.2 NTPC Limited has suggested that as elsewhere in the regulation, the first charge on any third-party sale proceeds during power regulation should be towards expenses of the generating company (energy charges plus incidental expenses). Accordingly, the phrase *“after adjustment of energy charges and incidental expenses of the generating company”* may be added at the end of the clause.

11.3 we agree with the suggestion and the Regulation has been modified accordingly.

11.4 NLC has suggested that the revenue received has to be passed on to the generators as first charge, as the generators’ share would be more, instead of making proportionate payment.

11.5 We are of the view that sharing should be in proportion to outstanding dues, and not on first charge basis. Hence, no modification is required.

CHAPTER V: MISCELLANEOUS

12. Regulation 19

12.1 Draft Regulation 19 reads as under:

“Notwithstanding the provisions made under these regulations, the generating company or transmission licensee may take action as per agreed terms and conditions between the beneficiary and the generating company or transmission licensee”.

12.2 North Delhi Power Ltd. (NDPL) has submitted that these regulations should become standard industry practice for regulating power supplies for beneficiaries in case of default as it would be easier for the RLDCs/SLDCs to implement a set procedure of regulating power supply. NDPL has suggested that the procedure so finalized by the Commission for regulating power supply should supersede the agreements executed between generator and beneficiaries in relation to the regulation of power supply due to payment default.

12.3 We do not agree with the suggestion by NDPL as the scope of these regulations is limited to those cases where specific provisions have been made in the agreements for regulation of power supply due to payment default or non maintenance of Payment Security Mechanisms. Where the agreements do not contain the provisions, the generating company or transmission licensee cannot invoke the provisions of these regulations. They can settle the matter between them as per any other legal recourse available to them. However, any generating company or transmission licensee and their beneficiaries are at liberty to realign their agreements in line with these regulations.

Further, we consider that, in view of the permissible scope of these regulations and the freedom available to the contracting parties to mutually settle commercial terms and conditions, draft Regulation 19 is not necessary and accordingly not being retained in the final regulations.

13. General Comments.

13.1 While many stakeholders including NTPC Limited, NHPC Limited, NLC, PTC India Limited etc. welcomed the regulations, the Power System Operator i.e. POSOCO and some state utilities have expressed that these regulations may not be required. POSOCO has submitted that various regulations issued by the Commission, and BPTAs and BPSAs signed by transmission licensees and generating companies respectively already have provisions of payment security mechanism. No separate regulation is required to address the issue of payment default as it is a purely commercial problem which needs to be solved by alternate legal mechanisms.

13.2 We have already explained the need for these regulations in the Explanatory Memorandum of the draft regulations. Presently the regulation of power supply is being implemented in accordance with generic procedure given in the Commission order dated 11.01.2001. This order has repeatedly been extended from time to time which justifies the requirement for an appropriate regulatory mechanism to implement the regulation of power supply, wherever considered necessary. The relevant extract of the Explanatory Memorandum is reproduced below:

“3. After hearing the interested parties, the Commission, vide Order dated 11.01.2002, have the final approval of the generic procedure for power supply regulation on commercial grounds. The validity of this generic procedure had been extended by the Commission from time to time. But it is felt that this mechanism should be specified through regulations instead of extending our order repeatedly.”

13.3 Further, Khurana Committee has recommended for providing Payment Security Mechanisms in Standard Bid Documents for competitive bidding under section 63 of the Act. These regulations also aim to facilitate the implementation of Khurana Committee recommendations. The relevant para of the Explanatory Memorandum is given below:

“This recommended mechanism has been accepted and incorporated in the Standard Bidding Documents by Central Government .However, CERC needs to empower RLDCs through regulations to implement this mechanism. The Empowered Committee which is chaired by Member, CERC has also desired to expedite these regulations because the selected bidders are feeling uncertain about implementability of the PSM recommended by Khurana Committee in the absence of regulatory authorisation to RLDC.”

13.4 Power System Operation Corporation Limited (POSOCO) has submitted that Regulation 25A of the Central Electricity Regulatory Commission(Open Access in inter-State Transmission) Regulations, 2008 provides for denial of open access by the NLDC/ RLDC for non-payment of transmission and other charges on specific directions by the Commission and that any default in payment of dues to the transmission Licensee can be dealt with under the said provision. We are of the view that the suggestion of POSOCO will not serve the desired purpose as the Transmission Licensee would be required to invoke the jurisdiction of the Commission every time a payment default takes place whereas we intend that these regulations should provide a self regulating mechanism for settlement of dues under the respective agreement without much intervention from the Commission. Moreover, this provision does not cover dues of generating companies and non-maintenance of payment security mechanism apart from the fact that denial of short-term open access may not be sufficient deterrent. Therefore, we are of the view that a comprehensive mechanism to facilitate the regulation of power supply of generating

companies and transmission licensees is a long felt need which is sought to be served through these regulations.

13.5 We would like to again clarify that these regulations do not stipulate any extra measures that have not already been agreed to by the generator/transmission licensee and the beneficiary/user in the agreements. As provided in the scope of these regulations, these regulations seek to facilitate the implementation of the provisions of the agreement for regulation of power supply.

13.6 M. P. Power Trading Co. Ltd. (MPPTCL) has submitted that the Regulating Entity may regulate the supply of power resulting in reduction of drawal of power by the Regulated Entity while on the other hand it will continue to receive bills on firm allocated power. In such cases, the Annual Charges payable by Regulated Entity should be adjusted proportionately. Uttar Pradesh Power Corporation Ltd (UPPCL) has also submitted that the condition of charging capacity charges for the regulated quantum of power may not be made 'Condition sine qua-non' i.e. necessary or indispensable condition with the condition of charging UI charges for regulated power mentioned in clause 12 (1) of the draft regulations as it will be against the spirit of Note-2 under Regulation 32 of the CERC (Terms and Conditions of Tariff) Regulations, 2009 and section 61 (d) of Electricity Act, 2003 regarding safeguarding of consumers' interest.

13.7 We are of view that during the regulation of power, the allocation of generating capacity remains with the Regulated Entity and only the power generated from it is being diverted for the specific reason of non-payment of outstanding dues by the Regulated Entity. Therefore, the responsibility of bearing the capacity charges has to remain with

the Regulated Entity. The Note-2 under Regulation 32 of CERC (Terms and Conditions of Tariff) Regulations 2009, refers to the condition of surrender of allocation by the beneficiary and re-allocation of this surrendered power to other entity. This is not applicable in case of regulation of power supply, where the allocation is not surrendered.

13.8 POCOSO has submitted that the default in payment should be minimized by suitable financial instruments such as LC and Escrow etc. and in addressing this issue the focus of the RLDCs should not be diverted from their primary function. RLDCs/SLDCs neither have the expertise nor the means to ascertain the authenticity of the claims made by the regulating entities. Grid operation could be hampered if all the utilities start resorting to settle commercial scores by requesting the RLDCs/SLDCs for power curtailment measures. POSOCO has further submitted that in case of disputed claims between the parties, RLDCs cannot play a role in resolving the issue.

13.9 We are of the view that RLDCs are not expected to get involved in disputes regarding validation of the claims of Regulating Entities. They are only required to accept the information as provided by the Regulating Entities and proceed as per these regulations. However, in order to indemnify the concerned RLDCs/SLDCs against any liability arising out of regulation of power supply in accordance with these regulations, suitable provision has been made in Regulation 5 requiring the Regulating Entities to give a declaration on affidavit to that effect.

13.10 POSOCO has expressed apprehension that the proposed regulations would encourage a shift of the default between two contracting parties to the UI pool resulting in an impact on larger number of participants. Even if the drawal schedules were

restricted by the RLDC, the actual drawal from the grid would be restricted only if the utility abides by the schedule.

13.11 In this regard, it is clarified that there is a limit on the UI as per Central Electricity Regulatory Commission (Unscheduled Interchange Charges and related matters) Regulations, 2009 and action under Section 142 of the Act can also be taken in case of contravention of the regulations.

Sd/-

sd/-

sd/-

sd/-

[M DEENA DAYALAN]

[V.S.VERMA]

[S. JAYARAMAN]

[Dr. PRAMOD DEO]

MEMBER

MEMBER

MEMBER

CHAIRPERSON

List of Stake holders

SR. NO.	COMMENTS OF COMPANY
1.	Bharat Heavy Electricals Limited
2.	Bihar State Electricity Board
3.	Chhattisgarh State Power Trading Company Limited
4.	GMR Energy Trading Limited
5.	Gujarat State Electricity Corporation Limited
6.	Haryana Power Purchase Centre
7.	M.P. Power Trading Company Limited
8.	North Delhi Power Limited
9.	Neyveli Lignite Corporation Limited
10.	NHPC Limited
11.	North Eastern Electric Power Corporation Ltd.
12.	NTPC Limited
13.	Power Grid Corporation Of India Limited
14.	Power System Operation Corporation Limited
15.	PTC India Limited
16.	Reliance Power Transmission
17.	Uttar Pradesh Power Corporation Limited
18.	Shri. S.P. Arya, Uttarakhand