

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Coram:

- 1. Shri Ashok Basu, Chairman**
- 2. Shri K.N. Sinha, Member**
- 3. Shri Bhanu Bhushan, Member**
- 4. Shri A.H. Jung, Member**

**Re: Amendment of regulations on grant of licence for inter-state trading –
Statement of Reasons**

The regulations on terms and conditions for grant of licence for inter-state trading in electricity were notified on 6.2.2004 under the title the Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of Trading Licence and other related matters) Regulations, 2004 (the principal regulations). In the light of the experience gained over a period of time, it was thought appropriate to make certain amendments. Accordingly, the draft amendments to the principal regulations on grant of licence for inter-state trading were published to invite suggestions/comments/objections from the stakeholders. The stakeholders named in the Appendix attached to this statement have submitted their suggestions/comments/objections. These have been examined and our decisions thereon have been discussed in the succeeding paragraphs.

2. It was proposed to insert definition of “associate” in relation to the applicant for grant of licence to include a person, owning or controlling directly or indirectly shares carrying not less than 10% of the voting rights of the applicant or

a person in respect of whom the applicant is carrying not less than 10% of the voting rights or majority of the directors of which own or control the shares carrying not less than 10% of the voting rights of the applicant or whose director or officer or employee is also the director or officer or employee of the applicant.

3. Reliance Energy Trading Limited (RETL) has opined that the threshold limit for shareholding of associate should be raised to 20%, in accordance with the limit set in the Accounting Standards issued by the Institute of Chartered Accountants of India for being treated as an “associate company”. Global Energy Limited (GEL) has opined that the terms used in the definition are extremely wide, particularly when the word “control” used in the definition is not defined, in the absence of which a fool proof test for determination whether voting rights of the shareholder are controlled by any other shareholder related to him will be prone to subjectivity. GEL has also commented that a company holding 10% shares in another company cannot be held responsible for their doings of such company.

4. We have considered the submissions. The issues raised by GEL are in regard to interpretation of some of the expressions used in the definition of the terms “associate”. These are the expressions widely in use and have well-defined connotations. There should be no difficulty in giving a judicious interpretation to the expressions as and when a necessity arises. Therefore, we do not consider any need for further changes. We have, however, accepted the

suggestion made by RETL, and we have decided to increase the threshold limit of shareholding from 10% to 20%. The revised definition of the term “associate” is accordingly being notified.

5. In the draft amendments it was proposed to include the definitions of “economic offence” and “relative”. No suggestions or comments or objections to these definitions have been received from any quarters. Accordingly, these definitions are being notified.

6. In the draft amendments, it was proposed to insert the definition of the term “net worth” though used but not defined in the principal regulations. The definition was adopted from that given in the Companies Act, 1956. No suggestions or comments or objections to the definition are received. However, in order to keep always the definition of the term “net worth” in tune with that given in the Companies Act, we have decided to define the term “net worth” as defined in the Companies Act, 1956 as amended from time to time, including re-enactment thereof and the revised definition is being notified.

7. Clause (4) of Regulation 4 of the principal regulations was proposed to be amended to solicit additional information about the insolvency of the applicant or promoters or directors or associates of the applicant, relating to cases resulting in conviction or fraud or economic offence and also the details of civil and criminal cases pending since through insertion of an additional provision (Regulation 6A),

these could under certain circumstances, depending on the facts, be considered as disqualifications for grant of licence. The information is proposed to be published in notice under sub-section (2) of Section 15 of the Electricity Act, 2003 (the Act).

8. GEL has pointed out that asking for this information is not relevant and it may be unreasonable to require the applicant to furnish these details or applicant in the public notices to be published under sub-section (2) of Section 15 of the Act. It has also questioned the propriety of insertion of Regulation 6A, on disqualifications, alleging that insolvency of promoters, directors, etc or their conviction and involvement in the legal proceedings cannot be considered to be an appropriate ground for denial of licence.

9. Under Section 52 of the Act, the Commission is mandated to specify, among others, the requirement of creditworthiness of a person to be an electricity trader. The disqualifications proposed have a direct relationship with the assessment of creditworthiness of the applicant to be an electricity trader. Also, the prescription of the disqualifications by inserting regulation 6A serves the public purpose. The disqualifications have been proposed to protect the general public from the activities in electricity sector of any undesirable person. The regulation after notification will enable the Commission to take note of the past conduct of the persons associated with the applicant and keep them away from trading activities. In this manner, the public is protected against repetition of past

conduct by any undesirable person. Incidentally, the provision has been adapted from the Securities and Exchange Board of India (Credit Rating Agencies) Regulations, 1999 where these have been implemented. Therefore, we overrule the objections raised by GEL. The regulation as proposed is being published.

10. The business of trading in electricity is considered to be very sensitive and that is why the law provides for its regulation by the Commission. Therefore, it is necessary that the antecedents of the person who seeks licence for trading and those who are managing the affairs of such person should be known to the Commission, the public and other persons likely to have dealings with him as an electricity trader. There is no purpose of specifying the requirement of creditworthiness, and not calling for the information or making that information known to the persons who are likely to have dealings with the person getting licence for trading in electricity. The information proposed to be called for is to be based on public records. For all these reasons, the information called for and requiring publication thereof is considered to be relevant. Accordingly, the revised provisions made in clause (4) of regulation 4 of the principal regulations are being notified.

11. Regulation 6 of the principal regulations laid down capital adequacy requirement and credit worthiness of the applicant for grant of licence based on the volume of inter-state trading proposed by it to be undertaken. The net worth has also been specified corresponding to the volume of electricity proposed to be

traded. The existing regulation 6 does not specify the period during which the volume specified has to be applied. Through the amendment of regulation 6 it was proposed that volume of trading specified should pertain to a “year”. Accordingly, the draft amendment was published.

12. PTC has proposed a two-part capital adequacy norm. It has suggested that the net worth specified at the minimum level of volume in electricity should be the fixed component of capital adequacy and variable component that adequately covers additional volume levels should also be specified.

13. We are not inclined to accept the suggestion of PTC. In the first place, no changes in the existing net worth requirement were proposed in the draft amendments since the intention was to make specific the period for which volume of trade is to be attained. It is also noticed that incorporation of suggestions made by PTC may complicate the matter by making difficult the monitoring of net worth. Accordingly, it does not seem to be practicable.

14. In the draft amendment, it was proposed that in case the licensee intends to increase the volume of electricity to be traded in a year, he should increase his net worth in keeping with his proposal and obtain prior approval of the Commission. It was further proposed in the draft amendment that in case the licensee moved from one category to another category based on the volume of

electricity traded, the technical and capital adequacy requirement should apply accordingly.

15. NTPC Vidyut Vypar Nigam Ltd (NVVNL) has pointed out that the Commission shall duly endorse the change of category on the original licence after verification of technical net worth requirement commensurate to the changed category. Lanco Electric Utility Limited (Lanco) has stated that the proposed amendments will delay the licence upgradation process and may adversely affect the traders with lower category of licence. In the opinion of Lanco, the amendment proposed, if notified, is liable to be misused against the persons who have obtained licence for a lower category.

16. We do not find any merit in the suggestions made by Lanco. When a person proposes to move from a lower category to a higher category, it is necessary that the Commission should satisfy itself with the capital adequacy, creditworthiness and technical requirements as applicable to the higher category. The movement from a lower category to higher category cannot be automatic, to be left to the trader since this has the propensity of being misused. As regards suggestions made by NVVNL such an endorsement is already being made whenever any person moves from a lower category to a higher category. Accordingly, the amendments in this regard already proposed are being notified.

17. The existing regulations provide for submission of periodical reports by the traders to the Commission, which are also to be endorsed to the Regional Load Despatch Centres for compilation and display on their websites. The reports prescribed contain information relating to volume of electricity traded, as also the purchase/sale price of the electricity.

18. PTC has pointed out that the information relating to volume of average traded, purchase price/sale price etc. are not relevant and their disclosure affects the commercial interests of the trader. It has, therefore, suggested that the information should not be furnished to the Regional Load Despatch Centres. PTC has suggested amendment of the concerned provisions. A similar suggestion has been received from NRVNL.

19. We have considered the suggestions, but we do not consider it necessary to make any amendments to the existing provisions. These have been formulated in the interest of transparency and promotion of competition in the electricity trading which is still at the developmental stage, having been introduced as concept during 2003 after the enactment of the Act.

20. In the draft amendments the procedure for alteration and modifications in the licence has been proposed to be specified. Lanco has stated that the procedure will delay the licence up gradation process and may affect the traders in lower category of licence. The procedure has been proposed keeping in view

the requirements of sub-section (2) of Section 18 of the Act. Therefore, there is no merit in the objection raised by Lanco.

21. In keeping with the provisions of Section 129 and 130 of the Act, procedure for securing compliance of terms and conditions has been prescribed. Although RETL has made some suggestions on this, we do not consider it appropriate to accept any suggestions for modification of the procedure proposed since the procedure is being specified for compliance of the statutory requirements under the Act.

22. The forms presently specified for submission of information to the Commission were proposed to be revised to make them more specific and targeted. These may be finalized, with appropriate modifications.

23. We direct that the revised regulations based on the above decisions be notified in the Official Gazette.

Sd/-
(A.H. JUNG)
MEMBER

Sd/-
(BHANU BHUSHAN)
MEMBER

Sd/-
(K.N. SINHA)
MEMBER

Sd/-
(ASHOK BASU)
CHAIRMAN

New Delhi dated the 28th March 2003