

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**RECORD OF PROCEEDINGS**

**Petition No.114/2011 (suo motu) with I.A No. 13/2011**

Subject: Non-compliance of the provisions of the CERC (Fixation of Trading margin) Regulations, 2010.

Date of hearing: 9.6.2011

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

Respondent: National Energy Trading and Services Ltd, New Delhi

Parties present: 1. Shri Sitiesh Mukherjee, Advocate, NETS  
2. Shri Sakya Singha Chaudhuri, Advocate, NETS  
3. Shri M.N.Ravishankar, NETS  
4. Shri Rajendran, NETS  
5. Shri Narendran, NETS  
6. Shri Hemant Gupta, LANCO  
7. Shri Prabhat, LANCO

Pursuant to the order of the Commission dated 20.4.2011, directing the respondent to explain as to why action under Section 142 of the Electricity Act, 2003 (the Act) should not be taken against it for non-compliance with Regulation 4 of the Trading Margin Regulations, 2010 (Trading Margin Regulations), the respondent has filed the Interlocutory Application (I.A.No.13/2011) to recall and review of the order dated 20.4.2011 and to hold that there was no non-compliance with Regulation 4 of the Trading Margin Regulations, for the reasons stated therein.

2. On a specific query by the Commission as to whether the interlocutory application filed by the respondent in reply to the show cause was maintainable, the learned counsel for the respondent submitted that the interlocutory application may be treated as its explanation to the show cause dated 20.4.2011 and may be considered accordingly.

3. At the outset, the learned counsel for the respondent apologized on behalf of the respondent, for violation, if any of the regulations of the Commission. He however submitted that the respondent would be able to demonstrate that there has been no violation of the Trading Margin Regulations and that its activities were within the letter and spirit of the regulations. The learned counsel proceeded to make his submissions as under:

(a) Two Letters of Intent dated 24.2.2010 and 16.4.2010 were issued by BRPL to the respondent for purchase of power upto 100 MW off-peak power at ₹6.17/kWh from April 2010 to September,2010 and 150 MW round-the clock power at ₹6.14/kWh from July 2010 to September, 2010 and in order to meet the

requirements of BRPL, it has aggregated the supply of power from multiple sellers in the Western Region (17 in July 2010 and 16 August, 2010), pooling power from several CPPs (in Chhattisgarh) at different rates and quantum and clubbed with the supply from MPPTCL (during peak hours) to arrive at an average margin of less than 7 paise/kWh

- (b) Regulation 4 of the Central Electricity Regulatory Commission (Trading Margin) Regulations, 2010 (Trading Margin Regulations, 2010) applies for short-term buy and short-term sell contacts for inter-State trading undertaken by a licensee. However, in terms of Para 8 of the Statement of Reasons (SOR) to the Trading Margin Regulations, 2010, the traders could buy power from different sellers at different prices for contracts and aggregate the price so that it fall, within the trading margin of 7 paise/kWh. As shown in Annexure-A of the application, the respondent has aggregated the price which does not exceed the margin of 7 paise /kWh specified under the Trading Margin Regulations and no undue benefit has been derived by the respondent.
- (c) On a specific query by the Commission as to what would the term 'schedule quantity' imply under the Trading Margin Regulations, the learned counsel submitted that it could not be made out clearly from para 10 of the SOR that the trading margin should be in relation to single contract. The term 'scheduled quantity' would mean the quantity of power supplied by a generator to an ultimate buyer and in the case of supply through an intermediary like a trader (i.e the respondent herein), it would mean the schedule of 250 MW supplied to the ultimate buyer. All these schedules for 250 MW have been merged for supply to a single buyer (BRPL) and in each of these contracts a trading margin of more than 7 paise/kWh has not been charged by respondent. Thus, the term 'scheduled quantity' would refer to the contractual obligation to be fulfilled by the trader to the buyer of power (BRPL).
- (d) Regulation 4(b)(III) of the Central Electricity Regulatory Commission (Power Market) Regulations, 2010 (PMR, 2010) notified by the Commission allow aggregation of contracts by sellers and buyers and hence the same should be read harmoniously with the provisions of the Trading Margin Regulations, 2010.
- (e) On a further query by the Commission as to why the trader could not limit the margins within those prescribed under the Trading Margin Regulations, 2010 in order to avoid any violation, the learned counsel clarified that same buyer may not be able to charge the same price for different time of the day, for different time periods and for different quantum and hence aggregation or segregation is to be effected by traders, as one to one mapping was not possible. The facilities conferred in the PMR, 2010 (i.e aggregation/segregation) cannot be reduced.
- (f) In response to the Commission's query as to whether the trading margin will be within the specified ceiling if the trading margins for two transactions, one with a trading margin of 7 paise/kWh and the other with a margin of more than 7 paise/kWh, the learned counsel submitted that market dynamics is to be managed by the traders within the trading margin. He also clarified that it was not within the control of traders to control the buyers/sellers price and the ability to fix price at both ends by the traders was rare. He also submitted that the Commission may be more concerned as to whether the aggregation of contracts

leads to cross subsidization and in which event, the issue of market domination/abuse of domination would come into play and the Commission could issue directions in terms of Section 60 of the Act. He further submitted that the issue of aggregation should not be looked down upon as the market for power deepens and it should allow atleast one of the transactions to be aggregated/segregated.

- (g) In construing the provisions of the PMR, 2010 and the Trading Margin Regulations, 2010, the Commission should consider as to (a) what mischief the Trading Margin Regulations, 2010 seeks to prevent and (b) how it could be construed harmoniously so that both these Regulations are made operational. As regards the principles of interpretation and harmonious construction, reference was made to the judgments of the Hon'ble Supreme Court in District Mining Officer & ors-v-TISCO & anr [(2001)7 SCC 358] and Anwar Hasan Khan-v-Mohd Shafi & ors, [(2001)8 SCC 540]] respectively by the learned counsel.
- (h) As no definition of ' Sale price' is provided under the Trading Margin Regulations, 2010 which applies to short term buy –short term sell contracts, the same should refer only to 're-sale price' only. The table shown in the Annexure-A indicates that resale price on aggregation is within the trading margin specified by the Commission. In the Statement of Reasons to the Trading Margin Regulations, 2010, the Commission had welcomed suggestions on how aggregation and segregation should be taken forward, which envisages the role of traders in market dynamics.
- (i) The learned counsel submitted that the tool of aggregation and segregation of contracts should be allowed to traders for development of market in power which is in conformity with the PMR, 2010.

4. The Commission directed the respondent to demonstrate by example, considering two transactions, one with a Trading margin equal to 7 paise and the other with a trading margin of more than 7 paise/kWh and show by its interpretation of aggregation/segregation, that the margin falls within the Trading Margin Regulations, 2010.

5. The respondent is directed to submit the information at para 4 above, on affidavit, within 30.6.2011. Subject to this, order in the petition was reserved.

Sd/-  
T.Rout  
Joint Chief (Law)