

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**NOTIFICATION (DRAFT)**

Dated the 7<sup>th</sup> May 2012

**No.-7/143/158/2012-CERC:** In exercise of powers conferred under section 178 of the Electricity Act, 2003 and all other powers enabling it in this behalf, and after previous publication, the Central Electricity Regulatory Commission hereby makes the following regulations, to amend Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of trading licence and other related matters) Regulations, 2009, (hereinafter referred to as “the Principal Regulations”), namely:

**1. Short title and commencement:** (1) These regulations may be called the Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of trading licence and other related matters) (First Amendment) Regulations, 2012.

(2) These regulations shall come into force with effect from the date of their publication in the Official Gazette.

**2. Amendment of Regulation 2 of Principal Regulations:**

(1) Sub-clause (g) of clause (1) of Regulation 2 of Principal Regulations shall be substituted as under, namely:

“(g) **economic offence**” means an offence under any of the statutes listed in the Schedule to the Economic Offences (Inapplicability of Limitation) Act, 1974 (12 of 1974);”

(2) Sub-clause (k) of clause (1) of Regulation 2 of Principal Regulations shall be substituted as under, namely:

“(k) ‘**inter-State trading**’ means purchase of electricity from one State for re-sale in another State and includes electricity imported from any other country for re-sale within India;”

(3) A new sub-clause (ki) shall be inserted after sub-clause (k) of clause (1) of Regulation 2 of Principal Regulations as under, namely:

“(ki) ‘**intra-state trading**’ means purchase of electricity for re-sale within the territory of the same State;”

(4) Sub-clause (m) of clause (1) of Regulation 2 of Principal Regulations shall be substituted as under, namely:

“(m) ‘**licensee**’ means a person who has been granted licence for inter-State trading under section 14 of the Act:

Provided that if any licensee undertakes intra-State trading based on the licence for inter-State trading granted by the Commission, the licensee shall be regulated under these regulations for the purposes as specified which shall be in addition to and not in derogation of any regulations specified by the State Commission on intra-state trading;”

### **3. Amendment of Regulation 3 of Principal Regulations:**

(1) A proviso shall be added to Clause (1) of Regulation 3 of the Principal Regulations, namely:

“Provided that the applicant should have been authorized to undertake trading in electricity in accordance with its constitutional/organizational documents such as the Main Objects in the Memorandum of Association (in case of a company incorporated

under the Companies Act, 1956) or the Partnership Deed (in case of a partnership firm registered under the Indian Partnership Act, 1932)”.

(2) Clause 3 of Regulation 3 of the Principal Regulations shall be substituted as under, namely:

“(3) Capital Adequacy and Liquidity Requirements:

(a) Considering the volume of inter-State and intra-State trading proposed to be undertaken by the applicant on the basis of the inter-State trading licence, the minimum net worth of the applicant on the date of application, as per audited special balance sheet accompanying the application, shall not be less than the amounts specified hereunder:

Category of the Trading Licence	Volume of electricity proposed to be traded in a year including intra-State trading, where applicable	Minimum Net Worth (Rs. In crore)
Category I	No Limit	50.00
Category II	Not more than 1500 MUs	15.00
Category III	Not more than 500 MUs	5.00
Category IV	Not more than 100 MUs	1.00

(b) An applicant shall be required to maintain the networth as specified in this clause at all times:

Provided that if an existing licensee is required to possess the networth requirement of any particular category based on the volume of inter-State and intra-State trading proposed to be undertaken during 2012-13 on the basis of the inter-State trading licence, the licensee shall furnish by 31<sup>st</sup> of July 2012, the information about the volume of electricity proposed to be traded during 2012-13 supported by special balance sheet as on 31<sup>st</sup> March 2012.

(c) The applicant shall have minimum current ratio of 1:1 and liquidity ratio of 1:1 on the date of audited special balance sheet accompanying the application.

**Note:** The net worth and the current and liquidity ratios specified in this regulation shall be computed on the basis of the audited balance sheet prepared

in accordance with the financial reporting framework prescribed under the Companies Act 1956.

#### **4. Amendment of Regulation 4 of Principal Regulations**

(1) Clause (c) of Regulation 4 of the Principal Regulations shall be substituted as under:

“(c) An order revoking the licence of the applicant, or any of his associates, or partners, or promoters, or Directors, has been passed by the Commission for the reasons mentioned in sub-section (1) of section 19 of the Act and a period of three years has not passed from the date of such revocation ; or”

(2) Clause (e) of the Regulation 4 of the Principal Regulations shall be substituted as under, namely:

“(e) Where an applicant or any of his associates or partners or promoters or Directors has in the past been found guilty in any proceedings for non-compliance of any of the provisions of the Act or the rules or the regulations made thereunder or an order made by the Commission, the applicant shall be debarred from applying for trading licence for a period of three years from the date such non-compliance was established by an order of the Appropriate Commission:

Provided further that the period of disqualification specified under this clause may be commuted by the Commission depending on the gravity of such non-compliance; or”

(3) A new clause (f) shall be added to Regulation 4 to the Principal Regulations as under, namely:

“On the date of application or thereafter ,if any proceeding for non-compliance of any provision of the Act , or the Rules or the Regulations framed thereunder or for non-compliance of the order of the Commission is initiated against the applicant, the application shall be considered after the final disposal of the proceedings:

Provided that where the applicant is found guilty of non-compliance in the proceeding, its application shall be dealt with in accordance with Clause (e) of this regulation.

## **5. Amendment of Regulation 6 of Principal Regulations**

(1) Sub-clause (a) of clause (1) of Regulation 6 of the Principal Regulations shall be substituted as under, namely:

“(a) such fee as may be prescribed by the Central Government from time to time and payable through NEFT/ RTGS only as per the procedure specified in Central Electricity Regulatory Commission (Payment of Fees) Regulations, 2012 or any subsequent enactment thereof.”

(2) Sub-clause (b) of clause (1) of Regulation 6 of the Principal Regulations shall be substituted as under, namely:

“(b) Copies of the annual reports in case of the persons incorporated under the Companies Act, 1956 (1 of 1956) and audited accounts along with the Directors’ Report, Auditors’ Report, the Schedules and notes on accounts for one year immediately preceding the year in which the application has been made and the special balance sheet as on any date falling within 30 days immediately preceding the date of making the application.”

(3) Sub-clause (i) of clause (4) of Regulation 6 of the Principal Regulations shall be substituted as under, namely:

“(i) Net worth, current ratio and liquidity ratio of the applicant as on the date of the audited special balance sheet accompanying the application;”

(4) A new sub-clause (t) shall be added after sub-clause (s) of clause (4) of Regulation 6 of the Principal Regulations, as under, namely:

“(t) A statement on affidavit in case the applicant is in possession of any intra-State trading licence and the details of the volume of trading allowed (in Million Units) as per the said licence.”

## **6. Amendment of Regulation 7 of Principal Regulations**

(1) The following proviso shall be added after the second proviso to clause (b) of Regulation 7 of the Principal Regulations, namely:

“Provided also that a licensee may make an appropriate Application accompanied by required fees for upgradation of its licence to a higher category or downgradation of its licence to a lower category if it fulfills the conditions of these regulations for grant of such licence but it shall not be required to follow the procedure specified in Regulation 6 of these regulations.”

(2) In clause (l) of Regulation 7 of the Principal Regulations, the first line shall be substituted as under:

“The licensee shall not purchase/sell electricity from/to the entities and the associates of such entities, .....”

(3) In clause (m) of Regulation 7 of the Principal Regulations, after the words “pay the licence fee”, the words “by the stipulated date” shall be added.

(4) Clause (p) of Regulation 7 of Principal Regulations shall be substituted as under, namely:

“(p) The licensee shall maintain up to date record of all trading transactions undertaken by him, separately for OTC inter-State transactions, OTC intra-State

transactions, if any, made on the basis of inter-State trading licence and transactions through the power exchange.”

(5) Two new clauses shall be added after clause (r) of Regulation 7 of Principal Regulations as under, namely:

“(s) The licensee shall immediately but not later than one month report to the Commission any change in the networth which makes it ineligible to continue in the category for which the licence has been granted.

(t) The licensee shall not at any time transfer or assign its license in any manner without the prior approval of the Commission:

Provided that the licensee can transfer or assign its licence only to such person who fulfills the conditions of Regulations 3 and 4 of these regulations:

Provided further that the licensee shall make an appropriate application before the Commission containing the details of the person to whom the licence is proposed to be transferred or assigned, its eligibility to hold the licence under these regulations and an affidavit from the proposed transferee or assignee that it will abide by the terms and conditions of licence and comply with the provisions of the Act, Rules and regulations made thereunder and the orders of the Commission as may be issued from time to time:

Provided also that the licensee shall be required to publish in brief in two daily newspapers having circulation in the area of operation for which licence has been granted about its application for transfer or assignment of its licence and invite suggestions/objections within 30 days and submit the copies of the publication along with its response to the suggestions/objections, if any, within 45 days from the date of publication.”

## **7. Amendment of Regulation 8 of Principal Regulations**

(1) In sub-clause (e) of clause (1) of Regulation 8 of Principal Regulations, the words “accounting statement” shall be substituted with the words “audited annual financial statement”.

(2) A new clause (3) shall be added after clause (2) of Regulation 8 of the Principal Regulations as under, namely:

“(3) The Commission may, if considered necessary, appoint experts to carry out regulatory audit of the affairs of the licensee on such terms and conditions as the Commission may deem fit and in such cases, the cost of audit shall be borne by the licensee.”

## **8. Amendment of Regulation 9 of Principal Regulations**

(1) Clause (b) of Regulation 9 of Principal Regulations shall be substituted as under:

“(b) furnish monthly information in Forms ST1, ST2, ST3, ST4, ST5, ST6, ST7 and ST8, DAM, TAM, and Forms OST1, OST2, OST3, OST4, OST5, OST6, OST7 and OST8, appended to these regulations, separately in respect of inter-State trading, intra-State trading, trading through power exchange and long term trading, cross border trading and banking transactions so as to reach the Commission before 10<sup>th</sup> of the succeeding month.

Provided that the information sent to the Commission shall be posted on the website of the licensee by 10<sup>th</sup> of the succeeding month, and such report shall be available on the website for not less than two years.”

(2) Two new clauses shall be added after clause (b) of Regulation 9 of Principal Regulations and shall be numbered as clauses (c) and (d) as under, namely:

“(c) Submit open position report and tenure of all trades and risk summary report on a quarterly basis as per Form OPN for risk monitoring purpose.



(d) Submit the annual return of inter-State transaction detailing volume transacted (in MU and Rupees), total trading margin earned as applicable , complete list of Buyers and Sellers, as applicable and total volume transacted in intra-state transactions (in MU and Rupees), certified by Chartered Accountant by 30<sup>th</sup> April every year.”

(3) The existing clause (c) of Regulation 9 of Principal Regulations shall be renumbered as clause (e) and the words “and intra-State” shall be added after the word “inter-State” in the said clause.

(4) A new clause (f) shall be added after the re-numbered clause (e) of Regulation 9 of Principal Regulations, namely:

“(f) The information as required under clauses (b) to (e) of this regulation shall also be furnished by the deemed trading licensees as section 14 of the Act for the purpose of monitoring inter-state trading transactions;”

(5) Existing clause (d) shall be re-numbered as clause (g) of Regulation 9 of the Principal Regulations.

(6) A new Sub-clause (v) shall be added under clause (d) {renumbered clause (g)} of Regulation 9 of the Principal Regulations as under, namely:

“(v) Where any proceeding has been initiated in any court of law against the licensee for material breach of any law or before the Appropriate Commission for contravention of the Act, the Rules and Regulations made thereunder or non-compliance with the orders and directions of the Commission or of the State Commissions.”

## **9. Amendment of Regulation 10 of Principal Regulations**

A new clause (3) shall be added after clause (2) of the Principal Regulations, namely:

“(3) The licensee shall display on its website (i) the volume of inter-State and intra-State trading, if any, on monthly basis ; (ii) trading licences held by it; (iii) petitions filed before the Commission and the orders including interim orders, if any, issued by the Commission to ensure dissemination of information to its clients.”

#### **10. Amendment of Regulation 14 of the Principal Regulations**

(1) The Provisos to sub-clause (g) of clause (1) of Regulation 14 shall be deleted.

(2) A new sub-clause (h) shall be added after sub-clause (g) of clause (1) of Regulation 14 of the Principal Regulations, namely:

“(h) Where the licensee has failed to pay the fees or other charges required by its licence or any penalty imposed by the Commission.”

(3) The existing clauses (2) and (3) of Regulation 14 of Principal Regulations shall be substituted as under, namely:

“(2) If the Commission, after making an enquiry, is satisfied that any of the grounds for revocation as mentioned in clause (1) exists and public interest so requires, the Commission may revoke the licence subject to such terms and conditions as may be deemed appropriate:

Provided that the Commission has given a notice of not less than three months to the licensee stating the grounds on which it is proposed to revoke the licence and has considered the cause shown by the licensee within the period of notice against the proposed revocation:

Provided further that the Commission may, instead of revoking the licence, permit the licence to remain in force subject to such further terms and conditions as the Commission may consider appropriate to impose, and any further terms and

conditions so imposed shall be deemed to be terms and conditions of the licence and shall be binding on the licensee.

(3) Where the licensee makes an application for revocation of licence, the application shall contain the following information and documents:

(a) the reasons for seeking revocation;

(b) an affidavit to the effect that the licensee has deposited the licence fee for the year in which revocation is sought; that there are no undischarged liabilities against the licensee; that there are no operative contracts for trading of electricity to which the applicant is a party at the time of filing the said application;

(c) an affidavit to the effect that the applicant has posted the complete application on its website and shall keep the application uploaded on its website till its disposal by the Commission;

(d) documents showing that the licensee has published the notice in two daily newspapers having circulation in the area of trading as per the licence about its application for revocation of licence;

(4) Where the Commission, after considering the application made in accordance with clause(3), is satisfied that public interest so requires, the Commission shall revoke the licence, as to the whole or any part of the area of trading upon such terms and conditions as the Commission may consider appropriate;

(5) Where the licence is revoked under clauses (2) and (4) of this regulation, the Commission shall serve a notice of revocation on the licensee and fix a date from which revocation shall take effect.”

## **11. Insertion of Chapter 6 in the Principal Regulation**

(1) A new Chapter shall be inserted after the existing Chapter 5 as under, namely:

“ **CHAPTER-6**

## **CONTRAVENTION AND PENALTIES”**

(2) Three new Regulations shall be made under Chapter 6 as under, namely:

### **“15. Contravention by Licensee**

(1) Contraventions of the provisions of the Act, Rules and Regulations framed thereunder and non-compliance of the orders of the Commission by a licensee shall be grouped under two categories such as serious contraventions and non-serious contraventions.

(2) Serious contraventions shall cover the following:

(a) Violations and non-compliance of the provisions of the Act, Rules and the Regulations specified by the Commission, particularly, Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of trading licence and other related matters) Regulations, 2009, Central Electricity Regulatory Commission (Fixation of Trading Margin) Regulations, 2010, Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2010, Central Electricity Regulatory Commission (Grant of Connectivity, Long-term Access and Medium-term Open Access in inter-State Transmission and related matters) Regulations, 2009, Central Electricity Regulatory Commission (Open Access in inter-State Transmission) Regulations, 2008, Central Electricity Regulatory Commission (Payment of Fees) Regulations, 2012, Central Electricity Regulatory Commission (Power Market) Regulations, 2010 and as mended from time to time or any subsequent amendment thereof;

(b) Deliberate under-reporting of transaction volume in monthly reporting;

(c) Non-compliance of the orders of the Commission including the orders issued for contravention of any regulation of the Commission;

(d) any willful, repeated and persistent violation of non-serious contraventions committed by the licensee.

(e) Non-payment of the licence fees within the stipulated date as specified in Central Electricity Regulatory Commission (Payment of Fees) Regulations, 2012.

(3) The following contraventions by a licensee for the first time shall be treated as non-serious contravention:

- (a) non-submission or delay in submission of any report required to be submitted by the licensee under any of the regulations mentioned in sub-clause (a) of clause (2) of this regulation;
- (b) delay in submission of monthly transaction information sought under clause (b) of Regulation;
- (c) delay in submission of any other information sought by the Commission ;
- (d) failure to adhere to the Code of Conduct as specified in these regulations;
- (e) failure to make mandatory disclosures or reporting in accordance with the proviso to clause (b) of Regulation 9 of these regulation on licensee's website ;
- (f) Any other form of violation of the provisions of the Act or the Rules or the Regulations framed thereunder or an order passed by the Commission.

**16. Procedure for taking cognizance of the contraventions**

(1) The Commission, on being satisfied on the basis of the information in its possession or on the basis of the information submitted by any person that a prima facie case exists against any licensee under any of the provisions of Regulation 15, shall initiate suo motu proceedings against the licensee and shall direct the licensee to submit such information and explanation as may be considered necessary for the purpose of the proceeding;

Provided that where the proceeding has been initiated for non-payment of fees, the licence of the licensee shall remain suspended till the payment is made or any direction for revocation of suspension is issued in the proceeding.

(2) No penalty shall be imposed on the licensee without giving an opportunity of hearing.

(3) The penalties if any shall be imposed in accordance with Regulation 17 of these regulations.

**17. Penalties for Contravention and non-compliance**

(1) Where the charge of serious contraventions is established against the licensee, the Commission may:

(a) direct that the licensee shall pay, by way of penalty, a sum which shall not exceed rupees one lakh for each contravention;

and /or

(b) debar the licensee, from trading in short term market or medium term market or through power exchanges for a period upto 6 months; or

(c) suspend the licence for trading in electricity for a period upto 6 months; or

(d) revoke the licence of the licensee; or

(e) disgorge unjust profits; or

(f) issue such other directions or impose such other condition as the Commission may deem appropriate.

(2) Where the charge of non-serious contravention has been established against the licensee, the Commission may:

(a) give warning to the licensee subject to such conditions as may be deemed fit in the facts and circumstances of the case; or

(b) direct that such person shall pay, by way of penalty, a sum which shall not exceed rupees one lakh; or

(c) direct that in case of non-payment of fees, the licence shall remain suspended till the contravention persists; or

(d) issue such other directions or impose such other condition as the Commission may deem appropriate

## **12. Insertion of Chapter 7 in the Principal Regulations**

(1) A new chapter shall be inserted after Chapter 6 of the Principal Regulations as under:

### **“CHAPTER 6**

### **CODE OF CONDUCT”**

(2) A new regulation shall be inserted in the Principal Regulations under the heading “CODE OF CONDUCT” as under, namely:

“18. The licensee shall at all times strictly adhere to the codes of conduct as specified hereunder:

- (a) The licensee shall make all efforts to protect the interests of his clients;
- (b) The licensee shall maintain high standards of integrity, dignity and fairness in the conduct of its trading business;
- (c) The licensee shall endeavour to ensure that-
  - (i) inquiries from clients are adequately dealt with and adequate disclosures are made to the client in a timely manner in accordance with the applicable regulations and guidelines so as to enable them to make a balanced and informed decision;
  - (ii) grievances of client are redressed in a timely and appropriate manner;
  - (iii) where a complaint is not remedied promptly, the customer is advised of any further steps which may be available to the customer.
- (d) The licensee shall not divulge to anybody either orally or in writing, directly or indirectly, any confidential information about its clients which

has come to its knowledge, without taking prior permission of its clients, except where such disclosures are required to be made in compliance with any law for the time being in force;

- (e) The licensee shall ensure that any change in category of license or any material change in the licensee’s financial status is promptly informed to the clients;
- (f) The licensee shall have internal control procedures and financial and operational capabilities which can be reasonably expected to protect its operations, its clients from financial loss arising from theft, fraud, and other dishonest acts, professional misconduct or omissions;
- (g) The licensee shall maintain an appropriate level of knowledge and competence which may be applicable and relevant to the activities carried on by it;
- (h) The licensee shall vest adequate freedom and powers in its Compliance Officer for the effective discharge of his duties under these regulations.”

**13. Amendment of Chapter-VI of the Principal Regulations**

- (1) Chapter-VI of the Principal Regulations shall be renumbered as “Chapter-8”.
- (2) The existing Regulations 15, 16, 17 and 18 shall be renumbered as Regulations 19, 20, 21 and 22 respectively.
- (3) The table under clause (1) of Regulation 19 (existing Regulation 15) shall be substituted as under:

Category of Licence (As per Notification dated 6.2.2004)	Category of Licence (As per Notification dated 24.2.2009)	Category of Licence (As per Notification dated 7.6.2010)
F (Above 1000 MUs)	I (No limit)	I (No limit)
E(between 700 and 1000MUs)		II (Not more than 1500 MUs)
D(between 500 and 700MUs)		
C( between 200 and 500MUs)	II (Not more than 500 MUs)	III (Not more than 500 MUs)



B(between 100 and 200MUs)		
A (Upto 100 MUs)	III (Upto 100 MUs)	IV (Not more than 100 MUs)

(4) The licensees shall be categorized in accordance with the Notification dated 7.6.2010 subject to their fulfilling the network criteria as specified in these regulations.

(Rajiv Bansal)  
Secretary

**Note:** Principal Regulations were published on 24.2.2009 in Part III, Section 4 of the Gazette of India (Extraordinary) No 28 and amended in terms of:

(a) Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of trading licence and other related matters) (Amendment) Regulations, 2009 published in Gazette of India (Extraordinary) Part III Section 4 dated 2.6.2009;

(b) Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of trading licence and other related matters) (Second Amendment) Regulations, 2009 published in Gazette of India (Extraordinary) Part III Section 4 No.197 dated 23.10.2009; and

(c) Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of trading licence and other related matters) (First Amendment) Regulations, 2010 published in Gazette of India (Extraordinary) Part III Section 4 No.197 dated 23.10.2009.