

**No.L-7/142/157/2008-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**

In the matter of

The Central Electricity Regulatory Commission (Payment of Fees) Regulations, 2012.

STATEMENT OF REASONS

The Central Electricity Regulatory Commission (hereinafter “the Commission”) has been entrusted with a variety of functions under the Electricity Act, 2003 (hereinafter “the Act”). Under section 79(1)(g) of the Act, the Commission has been empowered to levy fees for the purposes of the Act. For discharging its functions under the Act smoothly and efficiently, the Commission had specified the Central Electricity Regulatory Commission (Payment of Fee) Regulations, 2008 which came into force with effect from 27.10.2008. Over the past three years, the Commission has issued a number of regulations as mandated under the Act and consequently the scope and ambit of the regulatory functions and responsibilities of the Commission have expanded correspondingly. The Commission has accordingly considered it necessary to revisit the Payment of Fees regulations to keep in pace with the multifarious functions and responsibilities being discharged by the Commission. Accordingly, the Commission in compliance with section 178(3) of the Act published on 02.06.2011 the draft Central Electricity Regulatory Commission (Payment of Fee) Regulations, 2011 and invited comments/suggestions/objections from the stakeholders. In response, 21 stakeholders have submitted their views.

The Commission has also held a public hearing on 22.7.2011 to elicit the views of the stakeholders.

2. The comments/suggestions/objections received from the stakeholders have been examined and analysed and our decisions on the various provisions of the draft Payment of Fees Regulations have been summarised in the succeeding paragraphs.

A. General

3. The following suggestions have been received from the stake holders on the proposal for revision of fees in general:

(a) PTC India Limited has submitted that the draft Regulations seek to substantially enhance fee on broad spectrum of applications. Fees should be set at reasonable level with hikes in a manner that is predictable for next 3 to 5 years as they will not only increase transaction costs of the licensees but also put additional burden on consumers. There is also a need to have a correlation between fee and service provided. PTC has requested the Commission for no change in the license fee for at least another 3 years in line with Multi-Year Tariff predictability and stable fee regime.

(b) IEX has submitted that the legal position has been settled on the basis of various decisions of the Supreme Court that the fee levied by an authority may be either compensatory or regulatory. The compensatory fees is charged for rendering specific services which means that there must be an

element of quid pro quo between the service rendered and the fee charged. Regulatory fee is chargeable when the activities of the persons charged are required to be regulated or controlled by the authority levying the fee. The fee, whether regulatory or compensatory, cannot be excessive. IEX has further submitted that as per the Explanatory Memorandum, CERC has already made investment to augment its human resources and does not seem to suggest that the CERC has any outstanding liability on account of these activities requiring augmentation of the financial resources charge. Moreover, on the technology front, CERC is in the process of implementation of regulatory information management system for streamlining its work process and upgrading its IT hardware. The implementation of Regulatory Information Management System is an ongoing project, a part of whose cost has already been met. The fees imposed by CERC are finally recovered by the paying utilities/organisations through tariff. The sharp increase makes the supply of electricity to consumers costly. All categories of consumers, including those in the lower strata of the society, thus bear the brunt of the hikes in fees by the CERC. In the interest of the consumers of electricity, the proposals made in the draft regulations for revision or fresh levy of fees deserve to be reconsidered. Under Section 98 of the Electricity Act, 2003, the CERC is entitled to grants from the Central Government to meet any shortfall in the expenditure incurred in the performance of its functions. Though, the grants made by the Central Government are collected by the Central Government through taxes, it, however, is to be emphasised that the taxes are imposed on those who have the ability to pay. The persons in the lower strata of the

society who do not have the capacity to pay are immune from the impact of taxes.

(c) Confederation of Indian Industry (CII) has submitted that the draft Payment of Fees Regulations seek to substantially enhance fees on broad spectrum of applications such as applications for determination of tariff for generating stations, for inter-state transmission systems, adoption of tariff, grant of license and others. Fees should be set at reasonable levels with hikes in a manner that is predictable, easy to absorb by the market players and with sufficient rationale. Once a fee is decided, it would be desirable not to have frequent changes and keep it at the same level for 3 to 5 years. Such fee hikes across the board at frequent intervals will not only substantially increase the transaction costs of the licensees but the net burden will ultimately be on the already heavily burdened consumers. There is also a need to have a correlation between fee and services provided.

4. We have considered the suggestions/objections of the stakeholders. Section 79(1)(g) of the Act enables the Commission to levy fees for the purposes of the Act. Accordingly, the Commission has proposed levy of fees on those utilities or licensees or persons who are benefited by the discharge of statutory functions and responsibilities by the Commission under the various provisions of the Act. The Commission by its regulatory initiatives through various regulations and by regulatory intervention through its various orders has endeavoured to create an environment for investment in the sector, growth of market and protection of the interest of consumers by ensuring availability of reliable power at competitive rates. Certainly,

there is quid pro quo between the services rendered by the Commission and the proposed structure of fees in the draft regulations. As regards the submission of IEX that the shortfall of the expenditure should be met by grants from the Commission, we are of the view that it is the endeavour of the Commission to manage its affairs through collection of fees and not to depend on the grants which should be resorted to in case of extraordinary and unexpected expenditure during any year and not as a matter of routine. Moreover, the Commission has the vision to usher in market driven cost of electricity which would be available to the consumers at the most competitive rates. For that, the Commission needs to have the necessary wherewithal for monitoring and surveillance of market and market research. Therefore, matching revenue is a necessity to defray the expenditure for the effective and efficient discharge of its statutory functions and responsibilities by the Commission.

5. IEX has submitted that fees whether compensatory or regulatory cannot be excessive. The compensatory fee is commensurate with the cost of rendering the service. Regulatory fee is chargeable when the activities of the person charged are required to be regulated or controlled by the authority levying the fee. The services rendered by the Central Commission are mostly regulatory in nature. The fees proposed to be levied under the regulations are not excessive considering the various statutory responsibilities vested in the Commission under the Act and the regulatory measures already taken and required to be taken in future in due discharge of its statutory responsibilities. The same are discussed below:

- (a) The Electricity Regulatory Commissions have been envisaged as important institutions for furtherance of reforms in power sector. The

Electricity Act, 2003 has substantially enlarged the spectrum of responsibilities of the Regulatory Commissions.

- (b) Apart from the function of tariff fixation envisaged under the erstwhile of Electricity Regulatory Commissions Act, 1998, the Electricity Act, 2003 has vested on the Regulatory Commissions the responsibilities of licensing, promoting competition through open access, specifying Grid Code, specifying, monitoring and enforcing performance standards for licensees, adjudicating of disputes, market development and market regulation. The mandate for the Commission is to balance the interests of the investors as well as consumers, as also to develop Power Markets. The Commission decides and publishes various escalation and payment indices which are used in power procurement through competitive bidding process under guidelines issued by the Central Government. This is a critical requirement for creation of long term markets. To facilitate greater private participation in transmission segment through the competitive bidding, the Commission has notified transmission licence regulations and other regulations. Member, CERC chairs the Empowered Committee to select transmission lines for private sector participation. Further, Commission also tenders statutory advice at regular intervals to the Government of India on matters concerning power sector.

- (c) Independent regulation is an emerging concept and the country is still in a transition phase where the Government is gradually distancing itself from regulation. Adequate provisions have been made in the Act to

ensure independence of the Commissions with a view to ensuring that such institutions are able to discharge their responsibilities with professionalism and expertise. Given the challenging role of the Regulatory Commissions and the fact that the independent regulation is an evolving discipline, the Commission needs adequate staff with necessary knowledge base and skill level, to be able to discharge effectively the responsibilities cast on it.

- (d) With due regard to its statutory responsibilities, the Commission has come out with various regulations covering the terms and conditions of tariff, licensing activities, Grid Code, Open Access regulations etc. Each of these issues involves domain expertise and specialised knowledge of finance, engineering, regulatory affairs, law, commerce, economics and the like. This calls for, apart from discipline based knowledge, thorough understanding of the complexity of power sector and its operations as also the expectations of investors, customers and all other stakeholders. Even in generation one has to recognize the different types of generation based on the fuel as well as different orientation towards renewable energy. Fixation of norms is another specialized subject which has far reaching implication as they cover not only the public sector units but also the private sector stakeholders. The regulations of the Commission are generally by and large followed by the State Commissions also. These cast higher responsibilities on the Commission.

- (e) All the above call for deep understanding of the regulatory philosophy and legal framework, professional approach and perspective outlook to ensure

that the mandates of the Act are fulfilled by the Commission. This definitely calls for attracting the best talents from the various sources which can happen only if apart from job enrichment, the remuneration is attractive with opportunity for growth. The estimates of expenditure are based on the likely increase in manpower, compensation package and infrastructure like adequate office space, maintenance and upkeep of office accommodation, office modernisation, technology and other expenditure required to discharge functions and responsibilities entrusted to the Commission the Commission.

6. The revised fees are proposed to defray the expenditure to be incurred by the Commission for providing the services to the Central and the State utilities and the licensees and other stakeholders. The fees proposed are considered just and sufficient to recover the expenditure of the Commission. The Commission is a statutory autonomous body and financial autonomy in a pre-requisite for effective and independent functioning of the Commission. The fees proposed to be levied will also go to reduce burden on the Central Government.

B. Draft Regulation 1: Short Title and Commencement

7. It was proposed in the draft regulation that the payment of fee regulation would come into force from the date of their publication in the Official Gazette. Damodar Valley Corporation has commented that regulations be made effective from the year 2012-13 as this would allow the utilities to make suitable provisions to take care of the increase in fee in their budget provision. NHPC Ltd. has also suggested that since the due date of depositing the filing fee for 2011-12 i.e. 30.4.2011 has already been paid, the proposed regulation should be made applicable from the year 2012-13 only. NLC in its comments has submitted that since the fees for

determination of tariff for NLC Power Stations have already been paid for year 2011-12, the payment of fees regulation may be implemented from 2012-13.

8. We have considered the suggestion of the stakeholders. For the convenience of all concerned, it has been decided to give effect to the payment of fee regulations from 1.4.2012.

C. Draft Regulation 2 :Definition

9. Comments have been received from the stakeholders with regard to 'miscellaneous petition' and 'compliance petition' as under:

(a) PXIL has submitted that the term 'Miscellaneous petition' defined in Clause 2(j) may be read as 'miscellaneous application' as 'Miscellaneous Application' has been used in Clause 6 (1) (a) of the draft regulations.

(b) NVVN has submitted that reporting information to the Commission on every Tuesday for the contracts tied up, monthly information in the Form-IV and annual submission in Form-V of the Trading Licence Regulations by the trading licensees shall not be covered under the meaning of compliance petition/application.

(c) IEX has submitted that the compliance application is filed for reporting compliance of the direction in any other proceedings, fee for which has already been deposited. There is no justification for payment of such fees.

(d) NPEX has submitted with reference to compliance application that the power exchange is required to file a number of periodic reports and documents in the

Commission in compliance of the applicable regulation. Such reports or documents inter-alia includes annual reports, report of the risk management committee, market surveillance report, market trade report, audit report etc from time to time. The power exchanges may also have to submit such other reports or documents as and when required to do so by the Commission. NPEX has submitted that there should not be any requirement of any fee of such compliances. NPEX has further submitted that the power exchange is required to approach the Commission frequently for approval of amendments to rules, bye-laws or business rules or change in contracts specification. Majority of such applications shall fall under the category of miscellaneous application or other application listed under Regulation 6. NPEX has also submitted that the definition of review application may be included.

10. We have considered the submissions as made out above. In consideration of the suggestion of PXIL, the term 'Miscellaneous Application' has been used in place of 'Miscellaneous Petition' in the definition. As regards the comments of NVVN, it is clarified that the Commission being a quasi-judicial body is required to ensure transparency and fairness in its actions. In terms of section 96 of the Act, all proceedings before the Commission shall be deemed to be judicial proceedings. The word 'proceedings' has been defined in the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 to "mean and include proceedings of all nature that the Commission may hold in the discharge of its functions under the Act". Therefore, the decisions of the Commission in all its proceedings are issued in the form of orders irrespective of whether hearing is required or not. The reports and returns raised from the generating companies or licensees or power exchanges are in terms of the various regulations and orders of

the Commission and are used for the purpose of monitoring the activities of these regulated entities and ensuring compliance with the provisions of the Act and regulations. No order or decision is required to be issued in case of such reports and returns except in cases of non-compliance which are initiated suo motu by the Commission. Moreover, these returns are filed in the form of affidavit in prescribed format and not in the form of applications. Therefore, these reports and returns are excluded from the purview of Compliance Applications. Accordingly, the definition of 'Compliance Applications' has been qualified by the words "but does not include the periodic reports and returns as required under the relevant regulations". Any compliance other than the reports and returns under any of the regulations will be covered under 'Compliance Applications'. Applications by the licensees for change of name of the company, applications by the power exchange for approval of Independent Directors, application for approval of Rules, Bye-laws and Business Rules of Power exchange or any amendment thereto, applications for approval of various contracts or products to be introduced by the power exchange etc. would be covered under "Compliance Application". For these, the licensees or power exchanges are not required to file the miscellaneous petition as they are covered under compliance applications. The term has been changed to 'Regulatory Compliance Application' to convey the true purpose of the application. Keeping in view the suggestion of NPEX, review petition has also been defined.

C. Regulation 3: Fee for Applications for determination of Tariff

11. Draft Regulation 3 provided for application fee for determination of tariff of the generating companies and the transmission licensees. Responses from the following stakeholders have been received to the proposed Regulation:

- (a) DVC has submitted that the percentage hike in fees, as proposed in the draft regulation, is very high and may be considered for mitigation at least to 50% on the analogy of increase in O&M cost by 50 % due to increase in employee cost in the 2009 Tariff Regulation. The draft regulation is silent as to the provision for making instalment payment except in the license fee. Instalment payment may be allowed in the proposed regulation.
- (b) NEEPCO has submitted that though the proposed enhancement of fees is to augment CERC fund for the purpose of upgrading its resources required to meet the Commission's activities and responsibilities effectively, but the proposed enhancement seems to be abnormally high. Moreover, no financial analysis justifying the proposed fee have been provided. NEEPCO has suggested to reduce the proposed fee structure. NEEPCO has further suggested that fee should be allowed to be paid for the first year while making application for determination of tariff and the balance fee may be paid in yearly instalment by 30th April of each year.
- (c) NLC has submitted that the proposed fees are very high in terms of percentage rise over the existing fees and may be reviewed.
- (d) PGCIL has submitted that the proposed increase implies impact of 100% increase in filing fee and this would increase the burden on the beneficiaries.

The increase in fee from present level should be linked with CPI as in case of O&M expenses.

- (e) CII has submitted that the annual escalation has been put at about 10% which is quite a steep hike and may be revised downward. Those who have already paid entire fee for the period 2009-14 should be exempted and any new fee structure should be from the prospective date only.
- (f) NHDC has submitted that where the generating companies have paid the full filing fee for the tariff period 2009-14 in one installment, cut-off date needs to be defined in the regulation, so as to exempt such generating utilities from paying the additional filing fee at a revised rate as proposed for the FY 2011-12, 2012-13 and 2013-14 respectively.
- (g) MPPTCL has submitted that these rates are excessive without any justification. These amendments cannot be allowed retrospectively for petitions already been filed.

12. We have considered the suggestions and comments of the stakeholders. Under section 79(1)(a), (b) and (d) of the Act, the Commission has the responsibility to regulate and determine the tariff of the generating companies owned or controlled by the Central Government and the generating companies which have a composite scheme for generation and supply of electricity in more than one State and determination of tariff of inter-State transmission of electricity. To discharge this responsibility, the Commission has been vested with the power to specify the regulations for terms and conditions of tariff. The Commission is required to undertake the exercise keeping in view the principles laid down in section 61 of the

Act. One of the most important principles is to balance the interest of the utilities and the consumers apart from ensuring that the generation and transmission are carried out on commercial principle, economical use of resources and encourage competition, efficiency, economical use of resources, good performance and optimum investments. While specifying the terms and conditions of tariff, the Commission is required to collect data, prepare concept paper, invite stakeholders inputs, prepare draft regulations, invite comments, hold public hearings, consider the objections and suggestions and issue final regulations. The terms and conditions of tariff regulations specified by the Central Commission are followed as guiding principles by the State Commissions. The Commission also issues amendments to the regulations from time to time to keep in pace with the requirement of the sector. The process of specification of regulations requires expertise, expert advice and manpower resources. After the regulations are specified, the Commission undertakes the determination of tariff of the generating companies and transmission licensees by following a process of transparency, stakeholder consultations etc. The tariff determined by the Central Commission is not subject to redetermination by the State Commission. Not only the generators and transmission licensees are benefited on account of regulatory certainty, the consumers get electricity at the regulated price. Considering the resources of the Commission used for tariff determination and the cost of such resources, the proposed fees for determination of tariff is reasonable. As regards the suggestions of NEEPCO and DVC for provision for payment in instalment, necessary provision has been made in the first proviso to Regulation 3. As regards the suggestion of NHDC to specify a cut-off date in order to exempt the generating companies who have paid the fees for the 2009-14 period, it

is clarified that no such exemption can be made as the fees will come into force with effect from 1.4.2012.

D. Regulation 4: Fee for application for adoption of tariff

13. The Commission has approved ` 25 lakhs per application for adoption of tariff under Section 63 of the Act. PGCIL has submitted that since the fee is not allowed to be reimbursed, the ISTS licence would include this expense as part of capital cost based on which tariff would be quoted, which in turn would increase the burden on end consumers. Thus the fee may be kept at minimal or existing fee of ` 2 lacs may be retained. MPPTCL has submitted that fee is extremely excessive without any justification.

14. We have considered the objection of PGCIL. The Commission is required to adopt the tariff discovered through competitive bidding in respect of the generating stations and transmission systems under section 63 of the Act. While adopting the tariff, the Commission has to be satisfied that the tariff has been arrived at as per the guidelines for competitive bidding. It requires scrutiny of the documents from the stage of RFQ till the filing of the petitions, hearing the stakeholders etc. Moreover, the tariff is being adopted for a period of 25 years which means that effectively, filing fee is at the rate Rs. one lakh per year. In our view, the proposed fee is reasonable.

E. Regulation 5: Fee for application for grant of license

15. No objection or suggestion to this regulation has been received. Accordingly, the filing fee for making the application for grant of licence has been kept as Rs.1lakh.

F. Regulation 6: Fee for other applications

16. The following responses have been received:

(a) PXIL has submitted that proposed fee hike is very steep and in case of miscellaneous application, interlocutory application and review applications, there is an increase of 150%. As regards the compliance petition, PXIL has submitted that the occasion of demanding such compliance would have arisen under some kind of existence or pending proceeding before the Commission for which a fee would have already been paid. PXIL has suggested to withdraw the proposal for this fee.

(b) PGCIL has submitted that in the draft regulation, it has been proposed that the entire amount need to be paid initially at one go and in case of non-admission of the petition, entire amount of fee may have to be foregone. Therefore existing system of part payment along with application and balance on admission may be continued. As the fees are being increased to 2.5 times, this may be reimbursed to the transmission licensees.

(c) IEX has submitted that the compliance application is filed for reporting compliance of the direction in any other proceeding, fee for which has already been deposited. There does not seem to be any jurisdiction for payment of such fee. The proposals for steep hike (250%) in fee for other purposes i.e.

Miscellaneous, Review and Interlocutory Application over the fee fixed less than three years ago prima facie does not appear to be warranted at this stage.

(d) CII has submitted that fees are on the higher side for each kind of application. Highest application fee should not exceed Rs 1 lakh.

(e) MPPTCL has submitted that fee for Miscellaneous Application and Review Application is highly excessive and nominal fee should be charged for Interlocutory and Compliance Applications.

17. We have considered the objections and submission of the stakeholders. The fee structure under this regulation has been finalized as under:

Ser No.	Application	In draft regulations	Fees specified in final regulations
1.	Miscellaneous Application	Rs. 5,00,000	Rs. 3,00,000
2	Review Application	Rs. 5,00,000	Rs.3,00,000
3.	Interlocutory Application	Rs.1,00,000	Rs.1,00,000
4.	Regulatory Compliance	Rs.50,000	Rs.50,000

We are also of the view that fees for review application and miscellaneous application should be paid at one go at the time of filing the application as otherwise it creates complication for collection of balance fee. This will also encourage the generating companies or licensees or the power exchanges or any other person to file miscellaneous applications and review applications in those cases where it is considered absolutely necessary. As regards the Compliance Applications, the fee has been pegged at Rs.50,000 keeping view the concern of the power exchanges.

As regards the amount of fee, it is clarified that it is commensurate with the process involved in processing these applications from the stage of filing till its disposal.

F. Regulation 7: Licence Fee

18. The following responses have been received:

(a) Knowledge Infrastructure Limited Power Trading has submitted that power trading business at present is in a difficult phase wherein electricity traders are subject to various hurdles and adversities including but not limited to (a) shrinking power Business Prospects; (b) increasing payment risk due to poor financial health of distribution licensees; (c) trading volume shift to power exchange due to preferential regulatory treatment given to the exchange and (d) regulated trading margins are extremely low in the present situation. No reason has been given for a hefty increase in license fee. Keeping in the view the market condition and to give power trading business the required boost to achieve the desire level of market maturity and stability, such a hefty increase in the licensee fee should be avoided.

(b) Reliance Energy Limited has submitted that trading market is facing very high competition and is under pressure due to increase in number of traders and increase in activities of Power Exchanges. Trading volume prescribed for various categories is the upper limit, but may not really be achieved by all the traders of that category. It has been submitted that the proposed tariff hike in license fee is very high and the increase may be uniform across all the categories of trading licenses.

(c) Tata Power Trading Company Limited has submitted that the license fee charged towards Short Term transaction should be reasonable and proportionate to the cost of such regulation by CERC while considering the percentage share of Short-Term transactions in total electricity generation in the country (about 5000MW or around 45BUs). CERC determined Tariff regulate the CPSUs and constitute nearly ten times the short term transaction volumes. It has been suggested that the revenues of the Commission should be derived based on the expenditure and cost structure in the regulated vis-a-vis short term electricity market as indicated by the small share of the short-term transactions.

(d) PGCIL has submitted that CTU is a deemed licensee under section 14 of the Act and levy of licence fee is beyond the scope of section 14 and 15 of the Act. Since the transmission licensee has to pay both licence fees and application fees, the liability of the ISTS licensee appears to be disproportionate with respect to the generators. Presently payment of fees is to be made in advance by 30th April of every year. However there is no provision for adjustment on account of new assets or variation in tariff. It has been suggested to continue with payment of licence fee by 30th April of every year followed by subsequent adjustments after completion of audited accounts of that year.

(e) GMR has submitted that year on year growth in electricity transacted through trading licensees since 2007 has been in the range of 7-11% only. Considering that more than 85% of the trading is done by top 5 players only of

which 70% is done by top 3 traders, the proposed hike in the license fee would adversely hit the emerging as well as small traders. GMR has suggested that the proposed hike should be deferred till the market growth is effective and visible. GMR has proposed a lower cap on trading margin and proportionate to hike in license fees.

(f) JSW Power Trading Company Ltd has submitted that the Commission may not consider this steep rise in the license fee and keep the license fee at present level. Such a step may restrain new players to enter into Power Trading area or even may force some of existing traders not to renew the trading licence so as to avoid the steep License fee.

(g) NVVN Ltd has submitted that the revised fee hike for category-I trader from ` 30 Lakh to 52.5 lakhs is 1.75 times of the previous fee. The trading margins of the traders have shrunk due to competition in the market and the traders are able to recover an average margin of 4p/kWh or less considering that a significant amount of power traded in SWAP transactions is having very low margins of 2-3p/kWh only. NVVNL has suggested that the present amount of ` 30 Lakh be maintained at least for two more years and for next five years, escalation in the fee should be 20 to 30 % only.

(h) CII has submitted that the Commission may derive its revenues based on the expenditure and cost structure in the regulated vis-à-vis short term electricity market as indicated by the small share of short term transactions.

(i) Adani Enterprises Limited has submitted that licence fee should not to be increased under the prevailing conditions. Once the volumes are substantially

increased on completion of inter-regional transmission network by power grid, the Commission may consider marginally enhancing the licence fee.

- (j) MPPTCL has submitted that enhancement of transmission licence fee and trading licence fee is excessive and without any justification.

19. We have considered the suggestions and objections in the preceding para. Licence fees include inter-State transmission of electricity and inter-State trading of electricity. The Commission issues licences in accordance with the Transmission Licence Regulations. As per second proviso to section 14 of the Act, CTU is the deemed transmission licensee. CTU has submitted that it is not required to pay the licence fee being a deemed transmission licensee. We are not in agreement with the views of CTU. The Act nowhere prohibits the CTU to pay licence fee. The Commission has been empowered under the Act to levy fee for the purposes of the Act. The Commission has the power to regulate inter-State transmission of electricity, to specify Grid Code, to specify and enforce the standards with respect to the quality, continuity and reliability of service by licensees, to specify the regulations for open access. With respect to the regulation of inter-State transmission of electricity, the Commission has specified the Central Electricity Regulatory Commission (Grant of Connectivity, Long-term Access and Medium-term Open Access and related matters) Regulations, 2009, Central Electricity Regulatory Commission (Open Access in inter-State Transmission) Regulations, 2008, Central Electricity Regulatory Commission (Measures to relieve congestions in real time operation) Regulations, 2009, Central Electricity Regulatory Commission (Grant of Regulatory Approval for execution of inter-State transmission scheme to CTU) Regulations, 2010, Central Electricity Regulatory Commission (Unscheduled

Interchange Charges and Losses) regulations, 2010 etc. These regulations have created a regulatory environment for development and regulation of inter-State transmission of electricity. Apart from these, the Commission has also specified Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2010. The Commission through its regulatory support and intervention has created a congenial atmosphere for inter-State transmission of electricity. Both CTU and the private licensees are beneficiaries of the regulated environment for inter-State transmission. In our view, CTU is equally liable to pay the licence fee as the inter-State transmission licensees. Considering the service rendered by the Commission through its regulatory support and regulatory intervention in facilitating the inter-State transmission of electricity, the licence fee specified in the regulation for inter-State transmission licensees including deemed licensees is commensurate with the services rendered.

20. As regards the trading licensees, it is to be noted that non-discriminatory open access is one of the most important features of the Electricity Act, 2003 for facilitating trading and promoting market development. The Commission has specified the regulations on open access to inter-State transmission of electricity. The Commission has also taken proactive action to ensure non-discriminatory open access. As a result, the inter-State trading licensees have been tremendously benefited. In order to protect the interest of the consumers, the Commission has specified the trading margins. The Market Monitoring Cell of the Commission provides market related information for the benefits of the trading licensees. Therefore, it is appropriate that the inter-State trading licensees also share the expenditure of the Commission by paying enhanced licence fees.

21. One of the comments with regard to licence fees for inter-State traders is that the revenues of the Commission should be derived based on the expenditure and cost structure in the regulated vis-a-vis short term electricity market as indicated by the small share of the short-term transactions. The proposed fee structure as per draft regulations has been further analysed from different angles. One analysis revealed that the central sector generation which is estimated to be of the order of 340 BUs (i.e. 90% of electricity regulated by CERC) is contributing 40.73% of total proposed fee as per the draft regulations and on the other hand, short term market which contributes volume of 43 BUs (i.e. 10% of electricity regulated by CERC), but contributes about 30.38% of total fee in the form of proposed trading licence fee, Registration charges and transaction charges. The contribution from the transmission by way of tariff determination fee and transmission licence fee would be 28.90% of total fee. The above analysis called for re-allocation of sharing of fees by different stakeholders. The Commission is of the view that further increase of fee from any specific stakeholders, after issuance of draft regulations may not be advisable. However, fee in the form of trading licence fee, Power exchange registration charges and short term interstate transaction fee has been reduced to redress concerns of short term market stake holders as well as to balance contribution of fee from short term market vis-a-vis generation and transmission. The proposed reduction of fee from short term market players is estimated to be ` 5.27 crore in each year and the Commission would meet this reduction in fee by way of reduction or economising its expenditure under various heads. After reduction of fee from the short term market stakeholders the contributions from generation,

transmission and short term market stakeholders (inter-state) have been estimated to be around 50.30%, 31.92% and 17.78% respectively during 2013-14.

G. Regulation 8: Annual Registration Charge for Power Exchange

22. In response to Regulation 8 of the draft payment of fees regulations, the following comments have been received:

(a) Knowledge Infrastructure System Private Ltd has submitted that preferential treatment is being given to the power exchanges in terms of low annual registration charge proposed for them. It has been explained that a Category I trading licensee with trading upto 1500 MUs per annum will get an annualised gross earning of Rs 10.5 crore at the maximum trading margin of 7 paise/kWh. The proposed annual licence fees is Rs.52.5 lakh. On the other hand, a Power Exchange carrying trades over 10,000 MUs per annum with 2p/unit trading margin (1paise/kWh from buyer and 1paise/kWh from seller) would get annualised gross earnings of ` 20 Crores. With almost double the earning, the power exchange is required to pay the same annual fee ` 52.5 lacs same as the Category-I licensee. Moreover, the manner of calculation of the fees for a power exchange also requires clarification.

(b) PXIL has submitted that the proposed annual fixed charge are significant and fixed and unless recoverable from clients, these fixed charges will impact the profitability of the power exchanges. The Power Exchanges should be given some time to stabilise before they can be in a position to absorb additional costs.

(c) NPEX has submitted that Annual Registration Charge for Power Exchange as specified in the CERC (Power Market) Regulation 2010 was fixed after detailed deliberations and consultations with the stakeholders. The proposed annual registration charges are 1.5 to 1.75 times of the same. Power Exchanges have to incur huge investment on trading platform and associated infrastructure and are thus exposed to huge sunk cost. Further, there being only three registered/deemed to be registered power exchanges, the incremental contribution of higher Annual Registration Charge to CERC fund will be insignificant. NPEX has suggested that the Annual Registration Charge for Power Exchange may be retained at the same level as specified in the CERC (Power Market) Regulation 2010 at least for five years.

(d) IEX has submitted that CERC is a regulatory body that does not render any service to the Exchange on year-on-year basis. In the absence of the element of quid pro quo, the Annual Registration Charge Levied by the CERC is not the 'compensatory fee'. The Commission has specified a number of measures in Power Market Regulations to regulate and control the functions of the Exchange. Therefore, the annual registration charge levied may be justified as 'regulatory fee' as it facilitates recovery of the cost for the exercise of the regulatory or disciplinary oversight by CERC. IEX has submitted that the occasion for exercise of the regulatory or disciplinary jurisdiction will arise only in the event of violation or non-compliance of the PMR and therefore, the possibility of Power Exchange flouting the regulatory measures specified by the CERC is extremely remote. IEX has submitted that levy of Annual Registration Charge as 'regulatory fee' may factor this viewpoint while

deciding the quantum as the proposed fee, if implemented, will entail additional financial burden on the Exchange to the extent of Rs. 22.5 lakh every year. According to IEX, there is no material change in the situation since levy of the Annual Registration Charge under the Power Market Regulation issued in 2010 which warrants increase of fees and therefore, the proposed Annual Registration Charge of Rs. 52.5 lakh is excessive.

23. We have considered the comments of the stakeholders. IEX has submitted that the occasion for exercise of the regulatory or disciplinary jurisdiction by the Commission will arise only in the event of violation or non-compliance of the PMR and the possibility of Power Exchange flouting the regulatory measures specified by the CERC is extremely remote. IEX has considered the regulatory jurisdiction of the Commission as synonymous with disciplinary jurisdiction by the Commission. Regulatory jurisdiction is much wider than the disciplinary jurisdiction. Power Exchanges owe their origin to the guidelines and regulations of the Commission. The Commission has taken a slew of measures to create proper regulatory environment for the Power Exchange as a market mechanism to grow and operate. The regulatory oversight of the Commission gives confidence among the market players for interchange of powers in the market. We therefore, do not agree with the objections of the IEX. However, in view of our discussion in para 22, registration charges for power exchanges with annual turnover upto 5000 MUs, and above 5000 MUs upto 10000 MUs has been kept as Rs.5 lakh and Rs.20 lakh respectively.

24. Knowledge Infrastructure System Private Ltd has raised a concern that preferential treatment is being given to power exchanges compared to licensed

traders. We have noted the concern and addressed it. The license fee for Category 1 trader with trading volume of over 1500 MUs is being fixed at Rs 40 lacs per annum vis a vis registration fee for power exchanges with annual turnover of “above 10000 MUs” which is being fixed at Rs 50 lacs. This is based on the principle that the regulatory fee charged is higher only when the business volume is higher and thereby the burden does not increase on the regulated entity.

H. Regulation 9 to 13: Short Term Interstate Transaction Fee (STIT Fee)

25. In the draft regulations 9 to 13, it was proposed to impose STIT fees on the short term transaction in the course of inter-State trading or collective transaction in the power exchange. Responses to this regulation are as under:

- (a) PXIL has submitted that STIT fee appears to be in the nature of a ‘tax’ on the transactions, as the same is not linked to discharge of any of its regulatory functions by the commission. The legal validity of such a STIT-fee and the power of Commission to impose such a transaction fee should be examined.
- (b) Tata Power has submitted that the proposed Short Term Inter-State Transaction fee for any type of short-term transaction would be damaging for the sector. This type of fee is not applicable in power market globally. Further both long term and short term transactions should be treated equally.
- (c) Knowledge Infrastructure Limited has submitted that the Introduction of STIT-fee is an add-on cost that will be incremental to the cost of power made available to the general public by distribution licensees. In the present market

scenario, any additional burden on the electricity tariff should be avoided and the proposed STIT- fee should be reconsidered.

- (d) NPEX has submitted that participants in Short-Term Transaction are required to pay various charges over and above the price of traded electricity such as transmission charges, scheduling application fee, system operation charges, exchange transaction fee/member service charges, service tax etc. in addition to compensation for transmission losses in kind. Any additional levy shall only increase, howsoever marginally, the cost of the traded product i.e. electricity. Complexity of trading with too many levies and charges may induce the participants to prefer unscheduled interchange or load shedding.
- (e) Reliance Energy Trading Company Limited has submitted that in purchase and sale of power through the traders, whether in bilateral mode or through the exchange, exchange/seller as the case may be, will be raising the bill on trader, and the trader will be raising the bill on buyer. Since STIT is to be paid by buyer, in all the transactions through the trader, STIT should not be billed to the seller or the exchange but should be billed by the trader to the buyer.
- (f) DVC has submitted that STIT fee will be payable by the buyers. Since DVC is also purchasing power from exchange platform, it will have to pay such fee on percentage basis on the billed amount which in turn will affect consumer tariff.
- (g) NVVN Ltd has submitted that SEBI is levying the turnover Charge only on Futures and options (@0.0002% of turnover/premium) and not on delivery transactions. Therefore, STIT Fee should not be introduced at this stage. This

issue can be revisited when derivative market is introduced, depth of markets increases and real issues of the market complexity actually emerge.

(h) IEX Ltd has submitted that SEBI practice in financial market is not comparable with power market. In the financial market practice, the turnover volume (in terms of Rupees) is more than a thousand times the Short Term Power Market (ST Power Market turnover or gross traded amount is less than 10 thousand Cr while the stock market has a turnover of 100000 thousand Cr.). The financial market also has advanced derivative instruments such as Futures and Options and there are no margin caps in the same. Any comparison between the two markets currently cannot really be made at this stage.

(i) JSW Power Trading Company Ltd has submitted that since the proposed collection of STIT fee on all inter-state transactions is the pass through item and to be collected by trader/exchanges from buyer of the power, it will increase the cost of power and burden the ultimate consumer. Therefore, the Commission may not consider this collection of STIT fee.

(j) Adani Power Limited has submitted that Short term Inter State Transmission fee is not applicable in any power market world over and there is no justification for the same.

26. After considering the comments of the stakeholders on the STIT fee, we are of the view that the power market in India is in a very nascent stage and therefore, it is not the appropriate time to introduce STIT fee. However, the Commission will revisit the matter after the power market in the country matures with the introduction

of new products. Accordingly, we have decided not to include any provision regarding STIT Fee in the final regulations.

sd/-
(M. Deena Dayalan)
Member

sd/-
(V. S. Verma)
Member

sd/-
(S. Jayaraman)
Member

sd/-
(Dr Pramod Deo)
Chairperson