



एनएचपीसी लिमिटेड
(भारत सरकार का उद्यम)

NHPC Limited
(A Government of India Enterprise)

फोन/Phone : _____

दिनांक/Date : 16.09.2018

संदर्भ सं./Ref. No. NH/Comm/PT/43/2019 / 2059

The Secretary,
Central Electricity Regulatory Commission,
3rd & 4th Floor, Chanderlok Building,
36, Janpath, New Delhi – 110 001.

Sub:- Comments of NHPC on draft Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of trading license and other related Matters) Regulations, 2019.

Sir,

With reference to public notice Eco-13013/2/2019-CERC dated 16.08.2019; kindly find enclosed herewith comments of NHPC on draft Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of trading license and other related matters) Regulations, 2019.

With Regards,

Yours faithfully,

(S.P. Rathour)
General Manager (Comml.)

**Comments of NHPC
on Draft Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of
trading licence and other related matters) Regulations, 2019**

S.No	Proposed Draft Regulation/ Explanatory Memorandum	Comments from NHPC
1	<p>Regulation – 2 (d). Definitions and Interpretation - ‘Back to Back deals’ shall have the same meaning as is assigned to it under Power Market Regulations, 2010, as amended from time to time</p> <p><i>As per Power Market Regulation -2010 (regulation-4-b)- “Back to back deals - The interstate transaction in which an Electricity Trader buys a specific quantity of power for a particular duration from one party and simultaneously sells it to another party on same terms and conditions. Such transaction does not expose the trader to any price risk. It may expose the trader to credit risk and operational risk.</i></p> <p><i>As per explanatory memorandum of draft regulation 2019 (2.2.2.5)– The trading margin was left uncapped only for the reason so that the traders charge a suitable margin to insulate the sellers from all types of risks. However, in actual operations, traders have passed on all risks on back to back basis while charging a significant trading margin. There are instances of contract dishonour, where buyer Discoms have reneged contracts and Power Sale Agreements (PSAs) have not been operationalized by them, leaving sellers in a quandary. However, traders did not step into the shoes of the seller and have not off-taken power from such sellers who were constrained to sell on the spot market at a loss. Default risk and late payment risks has also not subsumed by traders as all liabilities are back to back, and payment is made by trader to seller upon receipt of funds from the buyer Discoms</i></p>	<p>As per Power Market Regulation -2010 (Regulation 4b), in back to back deals , trader are exposed to credit risk and operational risk whereas explanatory memorandum of draft regulation state that trader are not taking default risks and late payment risk in back to back deal. Both statements are contrary to each other.</p> <p>Back to back contract through traders are having Default/Credit risk and late payment risk from Buyer /Discoms. . Hence, such type contract which are not 100 % back to back may be kept outside the ambit of back to back deal Accordingly, demarcation of definition of back to back deal needs to be addressed.</p>



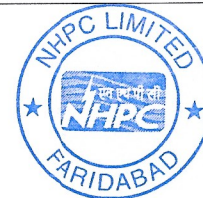
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16/09/19

S.No	Proposed Draft Regulation/ Explanatory Memorandum	Comments from NHPC																								
2	<p>Regulation- (3) Financial Qualifications-Capital Adequacy and Liquidity Requirements</p> <p>(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</p> <table border="1" data-bbox="443 571 1220 1169"> <thead> <tr> <th data-bbox="443 571 517 743">Sno.</th> <th data-bbox="517 571 763 743">Category of the trading licence</th> <th data-bbox="763 571 981 743">Minimum Net Worth (Rs. in crore)</th> <th data-bbox="981 571 1220 743">Volume of electricity proposed to be traded in a financial Year</th> </tr> </thead> <tbody> <tr> <td data-bbox="443 743 517 826">1.</td> <td data-bbox="517 743 763 826">Category I</td> <td data-bbox="763 743 981 826">75.00</td> <td data-bbox="981 743 1220 826">Above 5,000 MUs and upto 10,000 MUs</td> </tr> <tr> <td data-bbox="443 826 517 909">2.</td> <td data-bbox="517 826 763 909">Category II</td> <td data-bbox="763 826 981 909">35.00</td> <td data-bbox="981 826 1220 909">Not more than 5,000 MUs</td> </tr> <tr> <td data-bbox="443 909 517 992">3.</td> <td data-bbox="517 909 763 992">Category III</td> <td data-bbox="763 909 981 992">20.00</td> <td data-bbox="981 909 1220 992">Not more than 3,000 MUs</td> </tr> <tr> <td data-bbox="443 992 517 1075">4.</td> <td data-bbox="517 992 763 1075">Category IV</td> <td data-bbox="763 992 981 1075">10.00</td> <td data-bbox="981 992 1220 1075">Not more than 1,500 MUs</td> </tr> <tr> <td data-bbox="443 1075 517 1169">5.</td> <td data-bbox="517 1075 763 1169">Category V</td> <td data-bbox="763 1075 981 1169">2.00</td> <td data-bbox="981 1075 1220 1169">Not more than 500 MUs</td> </tr> </tbody> </table>	Sno.	Category of the trading licence	Minimum Net Worth (Rs. in crore)	Volume of electricity proposed to be traded in a financial Year	1.	Category I	75.00	Above 5,000 MUs and upto 10,000 MUs	2.	Category II	35.00	Not more than 5,000 MUs	3.	Category III	20.00	Not more than 3,000 MUs	4.	Category IV	10.00	Not more than 1,500 MUs	5.	Category V	2.00	Not more than 500 MUs	<p>Hon,ble commission is requested to do following changes :</p> <ol style="list-style-type: none"> 1. Limit of 5000 MUs and upto 10,000 MUs for Category-I should be amended as “ upto 10000 MUs” . 2. Already issued category-I licenses may be continued and should not be re-opened on ground of volume of electricity traded in preceding financial year unless and until trader itself want to degrade for purpose of reduction in fee.
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5.	Category V	2.00	Not more than 500 MUs																							



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3	<p>Regulation-7 - Applicability of Trading Margin:</p> <p><i>Trading margin shall be applicable to the following types of contracts undertaken by the Trading Licensee:</i></p> <p>(a) <i>Short term contracts (where period of the contract of the Trading Licensee with either or both the seller and the buyer is upto one year including transactions undertaken through power exchanges)</i></p> <p>(b) <i>Long term contracts and medium term contracts (where period of the contract of the Trading Licensee with both the seller and the buyer is more than one year)</i></p> <p>(c) <i>Back to Back deals</i></p> <p>(d) <i>Cross Border Trade of Electricity.</i></p> <p>As per explanatory memorandum -2.3.3. Banking of electricity</p> <p>2.3.3.1. Clause 12 of the Statement of Reasons to the CERC (Fixation of Trading Margin) Regulations 2010 provides that banking of electricity would not fall under the purview of the trading of electricity as no re-sale is involved. Relevant part is extracted below:</p> <p>“12.</p> <p><i>We also make it clear that in the light of the definition of trading in the Act as “purchase of electricity for re-sale thereof”, swapping/banking of electricity would not fall under the purview of the trading of electricity as no re-sale is involved. As such, these transactions are out of the purview of these regulations” (Emphasis supplied)</i></p> <p>2.3.3.2. Pursuant to the above, the Draft Regulations proposes to disallow trading licensees to engage in Banking of electricity.</p> <p>2.3.3.3. It is further established that Banking of electricity shall mean and include exchange of electricity for electricity between two grid connected entities directly on mutually agreed terms.</p>	<p>It has been observed that banking/swapping of electricity is generally executed through trader as discoms/Grid connected entities do not want to involve for applying in open access & other issues related to offset/accounting of energy etc.. Moreover, trader is having network in whole India and may provide better premium/discount to discoms/Grid connected entities for banking.</p> <p>Traders are doing trading of Renewable Energy Certificate & Energy Saving Certificate (ESCerts) & may do trading of Hydro Purchase Obligation (HPO) Certificate in future as per Measures to Promote Hydro Power Sector issued by MoP on 08.03.2019.</p> <p>Hence, Hon’ble CERC is requested to add banking of electricity and trade of REC/ ESCerts/HPO as additional product in type of contracts where trading margin shall be applicable.</p>



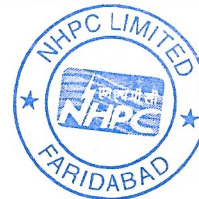
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4	<p>Regulation -8. Trading Margin: (1) Trading Licensee shall comply with the trading margin as given below:</p> <p>(a) The trading margin shall be charged on the scheduled quantity of electricity;</p> <p>(b) The margin shall include all charges, except the charges for scheduled energy, open access and transmission losses: Provided that the charges for the open access include the transmission charge, operating charge and the application fee;</p> <p>(c) For short term contracts and contracts through power exchanges, the Trading Licensee shall charge a minimum trading margin of zero (0.0) paise/kWh and a maximum trading margin of seven (7.0) paise/kWh: Provided that in contracts where escrow arrangement or irrevocable, unconditional and revolving letter of credit as specified in clause 10 of regulation 9 is not provided by the Trading Licensee in favour of the seller, the Trading Licensee shall not charge any trading margin exceeding one (1.0) paise/kWh.</p>	<p>No Comments</p> <p>No Comments</p> <p>If escrow arrangement or irrevocable, unconditional and revolving letter of credit is provided to the seller by trader irrespective of fact whether payment is received from Buyers or not , involves credit risk for trader. Payment through letter of credit is also having certain financing cost. In addition to payment to seller , trader has to bear cost of financing of EMD as BG/CPG/Deep Portal fee of PFCCL / Tender Fee in each tender without any guarantee whether trader will get award or not. Hence, Hon'ble commission is requested to allow minimum trading margin of (4.00) Paisa/kWh and maximum ten (10.0) Paisa/kWh with escrow arrangement or irrevocable, unconditional and revolving letter of credit instead of minimum (0.0) paisa/kWh and maximum Seven (7.0) Paisa/kWh. Minimum Trading margin should not be zero (0.0) Paisa/kWh in any case as every trading activity is having certain cost.</p> <p>Hon'ble commission is also requested to allow Trading Licensee to charge a minimum trading margin of Four (4.00) paise/KWh and maximum of Five (5.0) paise/kWh without escrow arrangement or irrevocable, unconditional and revolving letter of credit.</p>



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<p>d) For long term contracts and medium term contracts, the trading margin would be decided mutually between the Trading Licensee and the seller:</p> <p>Provided that in contracts where escrow arrangement or irrevocable, unconditional and revolving letter of credit as specified in clause (10) of regulation 9 is not provided by the Trading Licensee in favour of seller, then the Trading Licensee shall not charge any trading margin exceeding one (1.0) paise/kWh.</p>	<p>No Comments</p> <p>Hon'ble commission is requested to allow Trading Licensee to charge a minimum trading margin of Four (4.00) paise/KWh and maximum of Five (5.0) paise/kWh without escrow arrangement or irrevocable, unconditional and revolving letter of credit. Minimum Trading margin should not be zero (0.0) paise/kWh in any case as every trading activity is having certain cost.</p>
<p>(e) In case of Back to Back deals, the Trading Licensee shall charge a minimum trading margin of zero (0.0) paise/kWh and a maximum trading margin of one (1.0) paise/kWh</p>	<p>e) When trader are having back to back deal but payment is paid to seller/generators irrespective of the fact whether payment is received from buyers or not which is having huge default and late payment risk .</p> <p>Hence, Hon'ble commission is requested to allow minimum trading margin of four (4.00) Paisa/kWh and maximum ten (10.0) Paisa/kWh with escrow arrangement or irrevocable, unconditional and revolving letter of credit in back to back deal when credit/ late payment risk is borne by Trader.</p> <p>Hon'ble commission is also requested to allow minimum trading margin of four (4.00) Paisa/kWh and maximum of Five (5.0) paise/kWh in back to back deal when credit/ late payment risk is not borne by Trader.</p>
<p>(f) For Cross Border Trade of Electricity, the trading margin would be decided mutually between the Trading Licensee and the seller.</p>	<p>No Comments</p>



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5	<p>Reglation-9 -Obligations of the Trading Licensee (10) The Trading Licensee shall make payment of dues upon the agreed due date to the seller for purchase of the agreed quantum of electricity through an escrow arrangement or irrevocable, unconditional and revolving letter of credit in favour of seller. Such escrow arrangement or irrevocable, unconditional and revolving letter of credit in favour of seller shall be equivalent to:</p>	
	<p>(a) two point one (2.1) times the average monthly bill amount (estimated average of monthly billing amounts for three months or actual monthly billing amount for preceding three months as the case may be) with a validity of one year for long term contracts;</p>	<p>a) CPSU are having Long term PPA with discoms with provision of LC which is 1.05 times of average monthly billing on annual basis. Such provision exists in TPA (TRIPARTITE AGREEMENT) which is signed between MoP- GOI , RBI & state Govt as payment security mechanism.</p> <p>No reasons has been recorded in explanatory memorandum for requirement of LC i.e two point one (2.1) times of the average monthly bill amount (estimated average of monthly billing amounts for three months or actual monthly billing amount for preceding three months as the case may be) with a validity of one year for long term contracts. Opening of two point one (2.1) times LC will create further financing burden to Trader.</p> <p>Hon'ble Commision is requested to provide provision of LC which is 1.05 times of average billing on annual basis in line with existing long term PPA/TPA.</p>



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	(b) one point zero five (1.05) times of contract value for short term contracts.	<p>In short term market, LC is providing as per billing cycle (1.05 times of billing). Billing cycle is either weekly or monthly. As per proposed draft regulation, one point zero five (1.05) times of contract value for short term contracts which may be huge if contract is of 2 to 11 months . This will create further financing burden to Trader.</p> <p>Hon'ble Commision is requested to provide provision of LC which is 1.05 times of average billing cycle of short term contract.</p>
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6	<p>Reglation-9 -Obligations of the Trading Licensee</p> <p>(24) Trading Licensee shall not engage in Banking of electricity.</p>	<p>It has been observed that banking/swapping of electricity is generally executed through trader as discoms/Grid connected entities does not want to involve for applying in open access & other issues related to offset/accounting of energy etc. Moreover, trader is having network in whole India and may provide better premium/discount to discoms/Grid connected entities for banking.</p> <p>Hence, Hon'ble CERC is requested to allow swapping/banking of electricity through trader.</p>



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