

To

Dated:-11th September 2019

The Secretary
Central Electricity Regulatory Commission
3 rd & 4 th Floor, Chanderlok Building,
36, Janpath, New Delhi- 110001

Sub:- RPG Power Trading Company Limited Comments / Suggestions / Objections on the Draft Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of trading licence and other related matters) Regulations, 2019

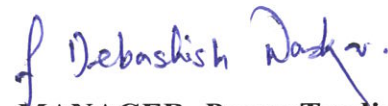
Respected Sir,

With reference to your public notice **No. ECO- 14/06/2019-CERC, dated 24th July, 2019**, please find enclosed herewith (**as Annexure-I**), our Comments /Suggestions / Objections on the Draft Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of trading licence and other related matters) Regulations, 2019. Our comments have been uploaded through SAUDAMINI Portal also.

The above is for your kind consideration please.

Thanking you

Yours Faithfully


MANAGER- Power Trading

Enclosures:-

- 1) **Annexure-I** as cited above.

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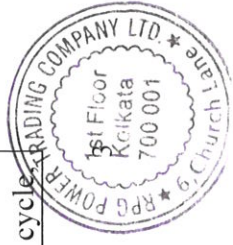
S. No.	Draft Regulation	Draft Provision	Comments
1.	2(1)(c)	" <i>Associate</i> in relation to an Applicant or the Trading Licensee, as the case may be, means associate company or related party as defined in the Companies Act 2013 (18 of 2013)"	<ul style="list-style-type: none"> • Definition of 'associate' has been significantly expanded as it now includes 'associate company' and 'related party' as defined under the Companies Act, 2013. • Resultantly, any infraction of the associate company / related party would automatically relate back to the trading licensee and would, thus, make the trading licensee vicariously liable for consequences under the Regulations. • This is unjust and arbitrary because the trading licensee would have to suffer adverse consequences for the actions/omissions of entities upon whom it has no control (e.g. relative of a director or that of a key managerial person). • No reasons given in the Explanatory memorandum for departing from the existing definition of 'associate' as contained in the CERC (Procedure, Terms and Conditions for grant of trading licence and other related matters) Regulations, 2009. • Hence, it is requested to continue with the current definition of 'associate' contained in the extant Regulations.
2.	2(1)(q)	" Net Worth means aggregate value of the paid up equity share capital and compulsorily convertible preference shares and free reserves (excluding reserves created out of revaluation and write back of depreciation) reduced by the	<p>Companies Act 2013 has defined Net worth as "net worth" means the aggregate value of the paid-up share capital and all reserves created out of the profits and securities premium account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous</p>



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		<p>aggregate value of accumulated losses, deferred expenditure (including miscellaneous expenses) not written off and loans and advances to and investments made in Associates”</p>	<p>expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation;” Hon’ble Commission intends to exclude any loans and advances to and investment made in Associates. Companies Act 2013 permits investment in Associates and is reported to Ministry of Corporate Affairs in a periodic basis and also disclosed in Annual Accounts of the Company. Hence it is humbly requested that loans and advance or investments made in Associates should not be excluded from computation of Net worth.</p>
3.	3(3)	<p>Financial Qualifications-Capital Adequacy and Liquidity Requirements</p>	<p>The proposed re categorization of trading volumes permissible by a trading licensee based on net worth will be more enabling for the lower Category traders and will result into wider participation/competition and restrict market dominance by few players.</p> <ul style="list-style-type: none"> Hon’ble Commission may kindly like to share with us the principle/criteria based on which such slabs of different categories of Trading Licensee have been proposed. It is important for different traders to select category of license based on their anticipation of business volumes in the market. Also, the traders need to ensure payment of a reasonable licensee fee against their desired category of license. It is humbly submitted that the present market for trading licensees is highly competitive and the trading margins are already under extreme pressure. We humbly request Hon’ble Commission to decide the applicable licensee fees for each new category so that the trading licensees are not burdened with higher fees.



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4.	7(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>	<ul style="list-style-type: none"> Hon'ble commission may please clarify as to whether these financial ratios have to be reported to CERC in regular intervals, and if so, then in what frequency? It is humbly submitted that a trading licensee enters into two separate contracts for a bilateral transaction viz. one with seller and another with buyer. There may be certain conditions in the contract which are same on both buyer and seller side and similarly there may be other conditions in the same contract which are different on either side. Further, a trading licensee can enter into a short term contract with one side say buyer while having a long term contract with other side i.e the seller. It is felt that the applicability of trading margin should be made applicable against each transaction where the trading licensee can have short term or long term contract or both or combination of two on either seller or buyer side. Further, it is requested that difference between a Back to Back deal and a Short term contract should be clearly defined to avoid any ambiguity. <p>Hon'ble Commission may please clarify if the following scenarios of agreements /contracts between Seller / Buyer through a trader will not be considered as back to back deal in short term market.</p> <ol style="list-style-type: none"> Traders having more than one year contract with Seller and day ahead/short term contract with Buyer with other terms and conditions remaining same on both sides. Traders having contract with buyer and seller with few different terms and conditions viz billing cycle



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			<p>payment mode, rebate etc., other terms remaining same.</p> <p>3) Traders having advance payment arrangement with Sellers and credit arrangement to the Buyers with other terms and conditions remaining same on both sides</p> <p>4) Traders having contract arrangement with both buyer and seller on the same commercial conditions except trader providing PSM to seller but the same is not being provided to Trader by the buyer. Etc.</p>
5.	Trading Margin 8(1)(b)	<i>"The margin shall include all charges, except the charges for scheduled energy, open access and transmission losses"</i>	<ul style="list-style-type: none"> • It is humbly submitted that exception to all charges as mentioned in this clause should also include the Annual Membership fees payable by clients for trading on power exchange. • Further, the taxes incidents, IGST, CGST, SGST and other existing/new governmental levies payable to different authorities over and above the trading margin should also be payable to the trading licensees at actuals by the clients.
6.	Proviso to 8(1)(c)	<i>"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."</i>	<ul style="list-style-type: none"> • Undue weightage has been given to payment security to be provided by a trader to seller. It is humbly submitted that the various risks associated with trading business (viz. credit risk, default risk, operational risk, price risk etc.) in short term, medium term and long term market are different. • Limiting the trading margin to 1.0 paise/kWh for not providing payment security is excessive and arbitrary.

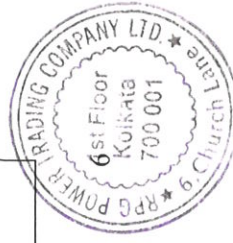


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			<ul style="list-style-type: none"> • The maximum trading margin that a trader can get is 7 paise/unit. This margin gets reduced to 1 paise/unit if no PSM is provided. This in effect means that credit risk carries a weightage of almost 86% in the trading margin allowable to a trader. This is grossly disproportionate. Further, there has to be a rationale based on which it can be concluded that 7 paise/unit is a margin sufficient for a trader to cover credit risk or price risk in any short term contract while providing LC with the existing proposed networth and keeping in view the current credit worthiness of the buyers in the short term market. • Trading margin is in consideration of functions/services which a trader performs and for the risks that it undertakes. Payment risk is just one of such risks. Other significant risks that a trader takes in a short term contract for which it needs to be compensated includes default risk, late payment risk, contract dishonour risk and inflationary risk. This has also been acknowledged by CERC in SOR to the CERC (Fixation of Trading Margin) Regulations, 2009. • Any kind of risk undertaken by a trader including price risk may not be viable with the margins being capped at a certain level say 7 paise/unit. The credibility of buyers also needs to be kept in mind as most of the state utilities are in financial distress and are unable to make payments in time. Payment security is rarely provided by the Discoms in short term market to the traders/sellers. By capping the trading margin, it is being presumed that Traders will be paid timely. • The trading margins charged by trading licensee are often negotiated by the buying Discoms which results into



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			<p>automatic correction of margin based on market conditions. Traders provide the buyers with plethora of services like application for NOC, scheduling of power, liaisoning/coordination with SLDCs/STUs/DISCOMs, billing and commercial settlement, market intelligence inputs etc. It is humbly submitted that the issue of margin is purely driven by market factors and does not require any capping. The capital adequacy requirement for traders provided in the Regulations is sufficient enough to protect a seller from any payment / credit risk. Also, Reg. 7(h) of the extant Trading Licence Regulations is adequately deterrent.</p> <ul style="list-style-type: none"> • The proposed monetary disincentive by way of reduced trading margin would be detrimental to the traders who are already facing huge competitive pressure from power exchanges. It is needless to mention that even Hon'ble Commission recognises presence of multiple power exchange alongside traders for a healthy power market. This ensures bringing in fairness and equity in the market and also restricts market dominance/abuse by few players thereby achieving the objective of a healthy competitive market. The proposal of capping trading margin at 1 paisa/unit for traders would hinder the growth of short-term power market and may alienate the power market towards market dominance by few players which is against the spirit of free electricity market. • It is erroneous to compare a short term contract without payment security with a Back to Back deal as trading margin in both cases have been proposed to be capped at 1.0 paise/kWh.



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			<ul style="list-style-type: none"> Short term contracts are from 1 day to 1 year. In case the contract is only for 1 or two days, providing LC to seller for day-ahead contracts will burden the entities viz. seller or buyer or trader undertaking such transaction. It is requested that Hon'ble commission may kindly consider exemption of this proviso for Day-ahead contracts or for contracts with lesser duration say upto 3 days. Hon'ble commission may kindly also allow trader to charge trading margin upto 7 paise/Kwh in case of advance payment made by trader to seller. It is submitted that Power exchange charges 2 paisa/unit for each entity as a margin under day ahead market. For each set of buyer and seller, the margin is 4 paisa/unit irrespective of the sale price of power. Further, they don't provide any LC/PSM to a seller, where as they collect payment in advance from the buyers. They do not face any price risk nor any credit risk. It is humbly submitted that there should be uniformity in approach for ensuring payment security mechanism for trading licensees and power exchange. The DEEP portal platform offers a standard set of terms and conditions for a seller/trader to sell its power in short term market to a prospective buyer. A trader manages the DEEP Portal bid condition viz. providing EMD, Performance guarantee etc. billing cycles, rebate etc. with the seller on mutually settled commercial terms. It is humbly submitted that any dispute/default in payment in any contract needs to be settled between the two contracting parties mutually and there are proven processes to settle the issues legally. In view of the same, the condition of providing payment security or LC



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7.	8(1)(d)	<p><i>"For long term contracts and medium term contracts, the trading margin would be decided mutually between the Trading Licensee and the seller:</i></p> <p><i>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."</i></p>	<p>or reducing billing cycle or increasing rebate etc. are all commercial terms and need to be freely allowed to be exercised by individual contracting parties.</p> <ul style="list-style-type: none"> The Long/Medium term contracts which are more than 1 year upto 25 years have different risks many of whom cannot be objectively assessed for such a long period. Thus, the draft provision of capping the trading margin at 1 paisa/unit for long term/medium term contracts similar to short term contracts may kindly not be imposed.
8.	9(10)	<p><i>"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:</i></p> <p><i>(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;</i></p> <p><i>(b) one point zero five (1.05) times of contract value for short term contracts."</i></p>	<ul style="list-style-type: none"> Reg. 7(h) of the existing Trading License Regulations already obliges a trader to <i>"always ensure timely payment of dues to the seller for purchase of the agreed quantum of electricity either through a letter of credit or any other appropriate instrument or as may be mutually agreed between the seller and the licensee"</i>. There have been instances in the past where proceedings for revocation of licence have been initiated against traders for violating Reg. 7(h). This shows that the current dispensation is adequately deterrent. The Draft Regulations offers no protection to a trader against the payment risks qua buyers. It is onerous and inequitable to mandate traders to provide payment security to sellers without correspondingly putting in place a payment security mechanism for securing the credit / payment risks that traders run against buyers.



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			<ul style="list-style-type: none"> • Since 2010, licenses of 15 firms have been cancelled by the regulator due to failure in payment. 9 of these companies have lost their licenses in the past year alone. In addition, 6 companies have given up trading permits. The reason behind this is volatility, uncertainty and competition in power market. • It is requested that the value of payment security to be established in favour of seller may be left to the mutual agreement between parties and not be imposed. • It is humbly submitted that Hon'ble Commission may also allow bank guarantees, direct payment through on line transfer & advance payment of future liabilities etc. as alternate options of payment security mechanism equivalent to LC. • Hon'ble Commission may also please specify the minimum period of such LC/BG. Hon'ble Commission may provide a sample LC/BG format with illustrations stating how to compute contract value and term of Escrow/LC/BG in different scenarios. • For sale of power in Power Exchange, Power Exchange shall also be made obligated to provide adequate PSM to all its sellers. • Hon'ble Commission may grant some recourse to Trader for recovery of compensation if any from seller. Suitable provision may please be incorporated in the draft accordingly.
9.	9 (12)	<i>"The Trading Licensee shall ensure that there is no discrepancy or scope for dispute in the scheduling advised to the Regional Load Despatch Centre"</i>	<ul style="list-style-type: none"> • It is suggested that CERC may, in consultation with stakeholders and RLDC, may kindly like to finalise a



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			standard language for giving scheduling advise to this extent
10	9 (13)	<i>"The Trading Licensee shall ensure that the buyer and the seller are, either grid connected entities or represent such entities, with special energy meters on their periphery and that the mechanism for Deviation Settlement accounting by the appropriate authority is in place."</i>	Trader is not a grid connected entity and it has no control for violations of DSM regulations by a buyer or a seller who are grid connected entity.
11.	9(17)	<i>"The Trading Licensee shall not enter into any agreement related to purchase or sale of electricity that may lead to abuse of his dominant position or enter into a combination which causes or is likely to cause a conflict of interest or an adverse effect on competition in electricity industry."</i>	Hon'ble Commission may kindly elaborate further with specific instance as to what kind of agreement (s) will be considered as abuse of dominant position by traders, which causes or likely to cause a conflict of interest or an adverse effect on competition in electricity industry.
12.	9(22)	<i>"The Trading Licensee shall designate one of its officers as Compliance Officer who shall be the nodal officer for communication with the Commission and shall be responsible for compliance with all matters pertaining to the terms and conditions of the licence, the provisions of the Act and the regulations of the Commission. The Trading Licensee shall vest adequate freedom and powers in its Compliance Officer for the effective discharge of his duties under these regulations."</i>	Hon'ble commission may please clarify the modalities for intimation to Hon'ble Commission regarding appointment of such Compliance officer.
13.	9(23)	<i>"In the event Trading Licensee has entered into a contract for sale of power with a buying entity for a particular period, then the Trading Licensee shall not enter into any contract for sale of same power with any other entity for such period except with the prior consent of the buying entity."</i>	In view of the short notice at which a trade happens, it is humbly submitted that the proposed para be modified incorporating the following aspect: <i>"buying entity shall not unreasonably withhold such consent and it shall give consent within say 4 hours. In case consent is not received by the trader from the buying entity for the un</i>



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14.	9(24)	"Trading Licensee shall not engage in Banking of electricity."	<p>requisitioned power within 4 hours from the time of notice by the seller, such instances would be considered as deemed consent by the buyer and the seller/trader can schedule power to any third party.</p> <p>Over the years, traders have played an important role in actualizing Banking Transactions. The role of a trader in a Banking transaction cannot be overemphasized considering the fact that there are no standard norms for banking till date, and also it is not mandatory to float a tender for all Banking transactions.</p> <p>There are different activities which need to be undertaken before carrying a Banking transaction:</p> <ol style="list-style-type: none"> 1) Initial prospecting of banking opportunities 2) Finalization of agreements based on agreeable terms and conditions of both the parties involved. 3) Arranging the consents and approvals required. 4) Determination of terms and conditions for delay in return of banked power, through discussion with the participating entities. <p>In the absence of a trader, the grid connected entities will have to undertake all the above activities themselves.</p> <p>In view of above, it is humbly submitted that Hon'ble Commission may kindly set standard guidelines for Banking transactions to make the product more adaptable to all Discoms.</p>
15.	16(2)	"The notice may be served on him by delivering the same at the registered office or at the usual or his last known place of residence or business, either through	<p>Notice may kindly be also intimated/served through webportal saudigamini.</p>



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16.	21(1)	<p>registered post or speed post or by hand delivery through a messenger or publication in a newspaper or on the website of the Commission where the commission is satisfied that it is not reasonably practicable to serve the notice on the Trading Licensee through registered post or speed post or by hand delivery or by electronic mail.”</p> <p>“The Existing Licensees shall meet the Net Worth, Current Ratio and Liquidity Ratio criteria specified in the Regulation 3 and submit an audited special balance sheet within a period of three months from the date of commencement of these regulations to support the compliance of Net Worth requirement.”</p>	<ul style="list-style-type: none"> • Since preparation of Special Audited Balance sheet entails significant cost, Hon’ble Commission subject to its discretion, may kindly permit the existing traders who are already fulfilling the revised net worth and liquidity criteria based on proposed draft regulations with the submission of latest Annual report and last audited balance sheet. • Hon’ble Commission may kindly specify that in case Special Audited Accounts needs to be prepared by Existing Trading Licensees then the Balance Sheet should be prepared as on which date.
17.	<i>General</i>		<p>Hon’ble commission may kindly allow assignable BG to seller being directly provided from Buyer instead providing LC or BG to Trader by a buyer and trader to seller.</p>



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