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Date: 16th Oct. 2023

To

The Secretary,

Central Electricity Regulatory Commission

3rd & 4th Floor, Chanderlok Building,

36, Janpath, New Delhi – 110 001

Sub: Comments on the 'Staff Paper on Market Coupling' issued on 21.08.2023

Dear Sir,

This has reference to the Staff Paper on Market Coupling issued by the Hon'ble Commission on 21.8.2023 and the public notice inviting suggestions on the same. Our comments/suggestions are enclosed herewith for your kind consideration.

Thanking You

Yours Sincerely

A handwritten signature in blue ink, appearing to read 'Rohit Bajaj', is written over a circular blue stamp. The stamp contains the text 'Indian Energy Exchange Limited' around the perimeter and a small star at the bottom.

Rohit Bajaj

Executive Director

(BD, Regulatory Affairs & Strategy)

IEX COMMENTS ON CERC STAFF PAPER ON “MARKET COUPLING”

A. CERC’S PROPOSAL FOR MARKET COUPLING

1. The Hon’ble Central Electricity Regulatory Commission (“**Commission**” or “**CERC**”) vide Public Notice dated 21.08.2023 invited comments on its Staff Paper on “Market Coupling” (“**Staff Paper**”). The Staff Paper states the following with respect to market coupling:
 - a. Globally, market coupling has been introduced to integrate electricity markets operating in different geographies. However, in the Staff Paper, the Market Coupling has been proposed to couple exchanges operating in the same geography.
 - b. Challenges of market coupling-
 - i. Diminished role of power exchanges,
 - ii. Dampen innovation & technology investments,
 - iii. Reduce competition,
 - iv. Discourage investments and
 - v. No improvement in transmission utilization.
 - c. Given the existing market share of power exchanges in the collective transaction segment, while the implementation of market coupling may not cause any major change in terms of price discovery, the bids could be divided among the exchanges, which at present are mostly in one exchange.
 - d. The Staff Paper also recognises that the role of exchanges would be reduced to that of a bid-collecting agency. Further innovation, ease of transaction, technology solutions, dissemination of information, analytical tools, high-quality service will all be lost if the coupling of exchanges is centralized.
 - e. It has highlighted issues related with functioning of Market Coupling Operator (“**MCO**”) and financial clearing and settlement process.
2. Summarily, the Staff Paper invites comments on the following broad issues: -
 - a. Does the current Indian Power Market scenario form a compelling case for market coupling?
 - b. Effect of coupling on technological innovation and competition
 - c. Who shall be the Market Coupling Operator?
 - d. Which algorithm should be adopted for a coupled market?
 - e. How will the clearing & settlement be carried out?

- f. Changes in the settlement process?
- g. In which market segment should the coupling be introduced first?

Through this submission, while we seek to reply to the above specific questions, we also aim to present our views to submit the reasons for not implementing coupling in the current set-up of power market in India.

B. BRIEF INTRODUCTION ABOUT IEX

3. IEX is a Company incorporated in 2007 under the Companies Act, 1956. IEX is operating a Power Exchange since 2008 as per the approval granted by the Hon'ble CERC under the prevailing regulatory framework specified by Hon'ble Commission in accordance with its mandate of developing the market under Section 66 of the Electricity Act, 2003 and National Electricity Policy. IEX is a widely held, demutualised, professionally managed, Board run, public listed company at Indian Stock Exchanges since 2017 with over 16 lakh investors as on date.
4. IEX with its pan-India footprint has successfully established itself as a leading market platform with state of art technology, agility towards market participants' needs and a highly qualified dedicated team of 170+ professionals. IEX has ISO Certifications for Quality Management, Information Security Management and Environmental Management since August 2016.
5. The Power Exchange operated by IEX is a transparent and automated trading platform for physical delivery of electricity enabling competition, efficient price discovery and counter party risk management for its participants in all the market segments. The platform has increased the accessibility and transparency of the power market while also enhancing the speed and efficiency of trade execution as a consequence of which the participation in the market has steadily grown over the time.
6. IEX has a robust ecosystem of 7,900+ participants located across 29 States and 5 Union Territories comprising of around 60 distribution utilities and 742 generators. It also has a strong base of around 4860 commercial and industrial consumers representing industries such as iron & steel, aluminium, food processing, textile, cement, ceramic, chemicals, automobiles, information technology industries, institutional, housing, and real estate, and commercial entities.

C. THE PURPORTED OBJECTIVES SOUGHT TO BE ACHIEVED THROUGH MARKET COUPLING PROPOSAL ARE ULTRA VIRES OF THE AMBIT OF PMR 2021 AND VIOLATES ARTICLE 14 OF THE CONSTITUTION OF INDIA, 1950

7. Regulation 37 of the PMR 2021 provide that the objectives of market coupling are-
- “(1) Discovery of uniform market clearing price for the Day Ahead Market or Real-time Market or any other market as notified by the Commission;*
 - (2) Optimal use of transmission infrastructure;*
 - (3) Maximisation of economic surplus, after taking into account all bid types and thereby creating simultaneous buyer-seller surplus.”*
8. It is submitted that once the law itself prescribes the statutory objectives for market coupling, then market coupling can only be done for above three objectives alone or not at all. Effectively, there cannot be any other objective sought to be attempted through market coupling [*Manohar Lal Sharma v. Principal Secretary, (2014) 9 SCC 516*].
9. The three objectives stated above are already being achieved through current set-up of power exchanges in India. This is clear for the reasons narrated below: -
- a. **1st objective of Discovery of uniform Market Clearing Price (“MCP”) in DAM/RTM [See: Regulation 37(1)]: -**
- i. As far as wholesale market is concerned, the concept of seeking single price itself is a flawed notion as the cost of electricity varies with the fuel, the technology type and the contracts. This Hon’ble Commission itself determines/adopts tariff of generating stations u/s 62 and 63 of the Act which varies from generating station to generating station considering different parameters. In fact, the 95% of the total market volume (long + medium + short term) is based on the bilateral transactions which have different prices as per the PPA between the parties. It is inconceivable as to what benefits will be achieved by arriving at a uniform price in collective transactions which merely form ~5% of the entire generation.
 - ii. Further, even after coupling there is a possibility of 4992 different prices in a day considering that there are 13 bid areas, 96-time blocks and four markets, i.e., GDAM, DAM, HPDAM and RTM. This will further increase manifold after implementation of GNA as National Load Despatch Centre (“NLDC”) is

intending to increase the number of Bid Areas from 13 to 67. In such a construct, any benefit in terms of uniform price is inconceivable.

- iii. Nevertheless, the representation in the Staff Paper of existence of multiple prices in the DAM is not providing a true picture on account of ignoring the weights against each of the prices. Thus, as shown in the table below, when the MCP is weighted with the corresponding volumes of the respective exchange, the overall average price comes to be same as that of the MCP of IEX: -

TABLE 1 OF THE CERC STAFF PAPER RECASTED WITH COMPLETE DAM DATA

	PXIL				IEX				HPX				Wt. Avg. MCP of all Exchanges	Variation of Wt. Avg. MCP w.r.t IEX MCP (in %)
	Sell	Buy	MCV	MCP	Sell	Buy	MCV	MCP	Sell	Buy	MCV	MCP		
Jul-22	223	84	32	5.03	6695	5749	3517	5.50	2.16	7.11	1.43	6.51	5.49	-0.07%
Aug-22	192	61	10	7.29	7200	5791	3529	5.43					5.44	0.09%
Sep-22	130	75	13	7.44	7551	6865	4050	5.88					5.88	0.08%
Oct-22	106	78	3	4.4	10662	6459	4325	3.96					3.96	NIL
Nov-22	51	84	0		8915	8096	5084	4.80					4.80	NIL
Dec-22	51	10	0		8882	8321	4977	5.60					5.60	NIL
Jan-23	68	7	0	11.33	8651	8920	4948	6.38					6.38	NIL
Feb-23	46	4	0		6673	8630	4659	6.64					6.64	NIL
Mar-23	71	4	0		7978	8736	4718	5.44					5.44	NIL

All volume in Million Units, Price in Rs /kWh

Source: CERC Staff Paper

RTM DATA COMPARISON FOR THE THREE POWER EXCHANGES

	PXIL				IEX				HPX				Wt. Avg. MCP of all Exchanges	Variation of Wt. Avg. MCP w.r.t IEX MCP (in %)
	Sell	Buy	MCV	MCP	Sell	Buy	MCV	MCP	Sell	Buy	MCV	MCP		
Jul-22	2.71	2.06	10.73	2.71	3623	3389	2131	4.73	0.00	0.01	0.00	0.00	4.72	-0.21%
Aug-22	0.00	0.00	0.12	0.68	3611	3800	2266	4.98					4.98	0.00%
Sep-22	0.25	0.25	0.25	12.00	3423	3271	2198	4.82					4.82	0.02%
Oct-22	0.05	0.00	0.00	0.76	3793	3138	2265	3.80					3.80	NIL
Nov-22	3.83	0.00	0.00	0.16	3332	2551	1407	4.76					4.76	NIL
Dec-22	0.32	0.00	0.00	0.18	3102	3033	1763	5.18					5.18	NIL
Jan-23	1.64	0.00	0.00	0.00	3364	3889	2102	5.75					5.75	NIL
Feb-23					2528	3751	1714	6.91					6.91	NIL
Mar-23					3363	3394	2098	4.95					4.95	NIL

All volume in Million Units, Price in Rs /kWh

Source: CERC Market Monitoring Reports, IEX, PXIL, HPX websites

- iv. Therefore, it is evident from above that the objective of uniform MCP is already being achieved.

- v. However, Hon'ble Commission may like to carry out a simulation study on actual bid data of all exchanges for last 5 years to assess the impact of coupling on prices.
 - vi. In any case, the Staff Paper itself notes that the implementation of Market Coupling may not cause any major change in terms of price discovery. [*See: Para 5.2.4 of the Staff Paper*]
 - vii. Further, it is often argued that the multiple prices in different Exchanges for same time duration leads to the audit queries against Discoms if power is purchased at a higher price. In this regard, it is submitted that, in the last 2 years other two Exchanges have garnered higher market share in few market segments such as DAC & TAM and in these segments the price at which transactions are happening in the same time duration are different. We have not come across any such case of audit query on the Discoms during our interactions. From a detail analysis of the power purchase by Discoms under different mode of transactions it can be seen that the prices are different for the different transaction in the same time period and no audit queries are raised. Hence, what is important is to follow the right process of power procurement and not the outcome of the process.
- b. **2nd objective of Optimal use of transmission infrastructure [*See: Regulation 37(2)*]:**
- i. The transmission infrastructure of the country is one of the largest in the world and due to timely policy and regulatory interventions, we have moved from a system with acute congestion to one with almost negligible congestion. The robustness of the transmission infrastructure is evident from the fact that in the recent years, there have been very few instances in the market when any volume is lost owing to congestion and as per the Market Monitoring Reports issued by the Hon'ble Commission, congestion remained at a level of around 0.06% in FY 2020-21 and 0.09% in FY 2021-22.
 - ii. The Staff Paper itself mentions the views of stakeholders that since the exchange market is only 7% of the total generation. Hence, the objective of optimal utilization of transmission infrastructure by coupling the small share of market does not seem to be relevant in the current market scenario [*para 4.3.5, Staff Paper*]. In the current scenario with ample availability of transmission corridor for DAM/RTM, the current approach of transmission corridor

allocation amongst the power exchanges on a pro-rata basis by the System Operator does not leave any further scope for optimising the utilization of transmission corridors for the exchange market.

- iii. In light of the above, considering that one Exchange has significant share in DAM & RTM market, there is no scope of bringing any further efficiency in transmission system utilisation in DAM & RTM segments.
- c. **3rd Objective of Maximisation of economic surplus [See: Regulation 37(3)]:**
- i. Presently, almost entire transactions in DAM & RTM segment are executed on IEX. As no new geographical area is being added, market coupling will not result into lowering of MCP or increase in the cleared volume. As such, there will no improvement in economic surplus.
 - ii. This Hon'ble Commission in its Staff Paper has argued (at paragraph no. 4.2.3) that there will be an economic surplus when market coupling is implemented. However, the data used to arrive at this conclusion is merely hypothetical data based on surmises. In other words, it has not been derived from the present market transactions.
 - iii. If at all the Hon'ble Commission needs to assess the economic surplus through coupling, it is imperative that the Hon'ble Commission should carry out simulation based on actual bid data of all exchanges for the last 5 years to arrive at any conclusion.
- d. **The ultra vires fourth objective-** As the three objectives are already being achieved through current set-up of power exchanges in India, the requirement of market coupling does not arise. However, the Staff Paper notably tries to achieve a fourth objective as observed in para 5.2.4, i.e.- **“Given the existing market share of power exchanges in the collective transaction segment, it seems that while the implementation of market coupling may not cause any major change in terms of price discovery, the bids could be divided among the exchanges, which at present are concentrated in one exchange.”** Hence, the market coupling seems to be driven by an objective of redistribution of market share for the benefit of other private exchanges, which is not an objective under PMR 2021. Thus, implementing market coupling in order to achieve the afore-stated fourth objective is not only ultra vires of the PMR 2021 but also is arbitrary. The purported objective of market sharing with other private exchanges *inter alia* does not flow out of the discernible criteria set out under PMR 2021. Further, such untrammelled discretion which is unanchored from the legislative

principles set out in PMR 2021 is violative of Article 14 of the Constitution of India, and consequently ultravires [*State of W.B. v. Anwar Ali Sarkar, (1952) 1 SCC 1*].

D. PROPOSED MARKET COUPLING IS ARBITRARY AND UNREASONABLE AND HENCE NOT PERMISSIBLE UNDER LAW

10. Market Coupling is against the doctrine of legitimate expectation and it will amount to ‘cancelling of approval’ granted to IEX

a. It is stated that introduction of market coupling will amount to cancellation of the power exchange approval granted to IEX. Further, it is also against the principle of substantive legitimate expectation. In this regard, the IEX applied for approval of Power Exchange on the basis of policy assurances that the approval will allow it to carry out the essential function of price discovery. The policy assurances given to IEX are borne out of the following regulations and policy documents: -

i. On 06.02.2007, this Hon’ble Commission issued its Guidelines for Power Exchange. Clause 3 of the said Guidelines noted as follows: -

“3. In keeping with the Commission’s approach towards development of power trading market with minimal regulations, the Commission for the present does not propose to prescribe any particular organizational structure of the Power Exchange or need for licensing for establishment and operation thereof. The Commission seeks to encourage Power Exchange to emerge as a market-based institution for providing price-discovery and price-risk management to the generators, distribution licensees, traders, consumers and other stakeholders. The promoters shall be required to develop their own model of the Power Exchange and seek permission from the Commission before start of operation.

[Emphasis Supplied]

ii. Thus it is seen that this Hon’ble Commission provided for development of power exchanges to emerge as a market-based institution for providing price discovery. This was in consonance with the mandate of this Hon’ble Commission to promote development of a competitive power market.

iii. Based on above policy assurance, the IEX made its foray into the business of the Power Exchange and obtained approval from this Hon’ble Commission *vide*

its Order dated 31.08.2007 in Petition 38/2007. Although, initially, the said approval did not provide any time period. However, as explained subsequently, PMR 2010 and PMR 2021 stipulated that the approval shall be for 25 years from the date of start of operations.

- iv. On 20.01.2010, this Hon'ble Commission notified the PMR 2010. Notably, PMR 2010 allowed the Power Exchanges to perform their essential function of price discovery, subject to checks and balances. In view of the afore-mentioned, it is evident that the PMR 2010 allowed the Power Exchange to perform the function of price discovery, with minimal regulation.
 - v. Thus, the policy intent of this Hon'ble Commission was to develop Power Exchanges as a market-based institution for providing price discovery. Further, this Hon'ble Commission wanted to allow multiple power exchanges which could have different price discovery mechanisms. The Power Exchanges were to be developed through market forces with minimal regulations. As such, the important function of price discovery was left with the Power Exchanges, with checks and balances.
- b. In view of the aforementioned policy documents and regulations, IEX had a legitimate expectation that its approval shall be for a period of 25 years. Further, IEX was also under a bona fide belief that it will be allowed to carry out the essential function of price discovery since this Hon'ble Commission did not provide for a single price discovery mechanism despite specifically allowing for establishment of multiple power exchanges.
 - c. Since IEX had a legitimate expectation to run the business of power exchange (which included price discovery), IEX made significant investments over a period of 15 years on its technology. Notably, this Hon'ble Commission in its various policy documents (as stated above) has clearly stipulated that price discovery is an essential function of a power exchange. Further, IEX has become a market leader by ensuring robust price discovery which requires substantial investment in the form of inducing market participation, evolving technology and algorithm.
 - d. Considering that price discovery is an essential function of a power exchange, which has also been recognized by this Hon'ble Commission, it is clear that introduction of

market coupling will take away the essential function of price discovery thereby amounting to cancellation of the approval granted to IEX.

- e. In this regard, the Hon'ble Supreme Court in '*Sivanandan C.T. and Others v. High Court of Kerala & Ors.*', 2023 SCC OnLine 994 ("**Sivanandan Judgment**") has held that the doctrine of substantive legitimate expectation applies when a claimant expects conferral of a substantive benefit based on the existing promise or practice of public authority (*Relevant para 29*). Further, the principles of good administration require that the decisions of public authorities must withstand the test of consistency, transparency, and predictability to avoid being regarded as arbitrary and therefore violative of Article 14. (*Relevant para 48*). The relevant paragraphs of the Sivanandan Judgment are reproduced below: -

"60. The following are our conclusions in view of the above discussions:

(i) The principles of good administration require that the decisions of public authorities must withstand the test of consistency, transparency, and predictability to avoid being termed as arbitrary and violative of Article 14;

(ii) An individual who claims a benefit or entitlement based on the doctrine of substantive legitimate expectation has to establish the following : (i) the legitimacy of the expectation; and that (ii) the denial of the legitimate expectation led to a violation of Article 14"

- f. Reliance is also placed on the decision of the Hon'ble Supreme Court in '*Delhi Electricity Regulatory Commission v. BSES Yamuna Power Ltd.*', (2007) 3 SCC 33 wherein the Hon'ble Supreme Court held that the decision of the Regulatory Commission to disallow/reduce depreciation rates was against the earlier policy decision of privatization. Therefore, the impugned actions were against the doctrine of legitimate expectation. The relevant paragraph of the said judgment is reproduced below: -

*"...In other words, what is given by one hand is taken away by the other. In other words, the return on the total package becomes illusory if the rate of depreciation is reduced from 6.69% to 3.75%. The certainty for 5 years is also obliterated for reducing the rate of depreciation. **This violation also infringes the doctrine of legitimate expectation of the DISCOMs to get lawful and reasonable recovery of expenditure. DERC was expected to fix the rate in the context of the policy of privatisation. The object behind fixation of principles***

for 5 years was to impart certainty and consistency in tariff designing, putting the prospective investors to notice regarding their tariff entitlements for 5 years and to provide a level playing field to the DISCOMs to compete with other competitors in the electricity industry. As stated above, DERC had to give good reasons for departing from the principles in the Sixth Schedule to the said 1948 Act.”

[Emphasis Supplied]

In view thereof, this Hon’ble Commission ought to consider that introduction of market coupling will lead to a violation of doctrine of legitimate expectation as IEX had a legitimate belief that the license granted to it for a period of 25 years will allow it to carry out the essential function of price discovery. However, on account of such disruptive policy, the entire effort and investment made by IEX over the years would be rendered nugatory and will have serious financial loss for over 16 lakh shareholders of IEX.

11. Introduction of market coupling would be violative of Article 14 and 19 of the Constitution of India, 1950

- a. **Contravention of Article 14:** The Hon’ble CERC is bound to act in a just, fair and reasonable manner that conforms with the mandate of Article 14 of the Constitution of India, 1950. It is a settled position of law that Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. It requires that State action (here legislative action) must not be arbitrary and must be based on some rational and relevant principle which is non-discriminatory. It must not be guided by any extraneous or irrelevant considerations, because that would be denial of equal protection of law. [State of Punjab v. Brijeshwar Singh Chahal, (2016) 6 SCC 1, para 21-24]
- b. **Contravention of Article 19(1)(g):** The Hon’ble CERC is bound to act in a manner that is not in contravention with Article 19(1)(g) of Constitution of India, 1950. Article 19(1)(g) of the Constitution of India, 1950 confers on all citizens the right to practise any profession, or to carry on any occupation, trade or business. Market coupling, if enforced, would reduce the role of the exchanges to merely bid collecting agencies and would let any fly-by-night operators to come in the system. Market coupling will make the power exchange redundant institutions. The Hon’ble CERC has created power exchanges, and these have been functioning efficiently since last 15 years. There has

to be strong rationale before considering market coupling which could obliterate the power exchange as market institutions. In fact, the Staff Paper also points out that the traders may be allowed to submit bids to the MCO directly which would ultimately cease the case of having power exchanges at all. Power exchanges will become redundant institutions incapacitated from playing any meaningful role in the market. While the right under Article 19 are subject to reasonable restrictions, the restrictions can be on account of legislation. Hence, any attempts at imposing restrictions without legislative sanction through an executive act would end up violating Article 19(1)(g). The route suggested by the Hon'ble CERC seems to indicate a path which not only violates Article 14 as mentioned above but also Article 19(1)(g) in the absence of any legislative sanction [*Nagar Rice and Flour Mills v. N. Teekappa Gowda & Bros., (1970) 1 SCC 575, para 8-9*].

- c. ***Expropriation without any public interest:*** IEX's market share which has been brought about by its efforts, entrepreneurship and innovation would be appropriated to be shared not with the public at large but with two other private exchanges, if market coupling is enforced. This is without there being a public interest justification as to why the other exchanges are entitled to the re-distribution of market share, in the absence of any finding of market manipulation or an adverse impact on competition in the electricity industry. The redistribution is in favour of other privately owned exchanges which cannot by any stretch of imagination be considered to be of public interest. That is purely of private interest. Hence, the action of introducing a MCO seems to be an action that effectively expropriates the share of IEX and distributes it to the other two exchanges without any rationale or a constitutionally valid objective [*Satish v. State of U.P., (2009) 14 SCC 758, para 27*]. This tantamounts to expropriation without the authority of law and a disproportionate intrusion into IEX's right to do business and equality under law. This would amount to violation of Article 14 and Article 19 of the Constitution of India.
- d. ***Contravention of the Wednesbury principles of reasonableness:*** The Hon'ble CERC's proposal to enforce market coupling is unreasonable and falls short of the Wednesbury principles of reasonableness. The Wednesbury principle prohibits an authority exercising the discretion to take a decision which is devoid of any plausible justification [*Delhi Science Forum v. Union of India, (1996) 2 SCC 405 para 11*]. It is trite law that use of power for a purpose different from the one for which power is conferred is colourable exercise of power and hence what cannot be done directly

cannot also be done indirectly . [Uddar Gagan Properties Ltd. v. Sant Singh, (2016) 11 SCC 378 para 18, 23]

12. **Introduction of market coupling would be against the Electricity Act, 2003**

- a. The reasons for proposing market coupling in the Staff Paper are completely antithetical to the objective of the Act as well as PMR 2021 itself. In this regard, it is relevant to note that that under the Act, this Hon'ble Commission is mandated to promote competition and a competitive power market. In fact, the entire thrust of the Act is to promote competition. In this respect, following is noteworthy: -
 - i. It has been held in PTC India Ltd. v. Central Electricity Regulatory Commission, (2010) 4 SCC 603 (“**PTC Judgment**”) that the Act has distanced the Government from all forms of regulation, namely, licensing, tariff regulation, specifying Grid Code, facilitating competition through open access and open market, etc.
 - ii. Section 23 enables the Appropriate Commission to issue directions to licensees if it is necessary to do so to inter-alia **promote competition**.
 - iii. Section 66 of the Act mandates that the Appropriate Commission shall endeavour to promote **the development of a market** (including trading) in power and shall be guided by the NEP. In this regard, PTC Judgment holds that Section 66 confers substantial powers on the Appropriate Commission to develop the relevant market in accordance with the principles of competition, fair participation as well as protection of consumers' interests.
 - iv. Further, Section 61 enables the Appropriate Commission to frame tariff regulations while being guided by the factors which would **encourage competition**, efficiency, etc. Further, the Appropriate Commission shall also be guided by NEP. [See: Judgment dated 23.11.2022 passed in ‘*The TATA Power Company Limited Transmission v Maharashtra Electricity Regulatory Commission*’, Civil Appeal No. 1933 of 2022]
 - v. Therefore, it is evident that the Act has been enacted *inter-alia* to promote competition. Further, under Section 66, this Hon'ble Commission is mandated to promote development of power market.

- b. In view of the above, it is clear that this Hon'ble Commission has to be guided by the principles of competition and market development. Further, Section 66 specifically mandates this Hon'ble Commission to be guided by NEP, 2005 to endeavour to promote the development of market. Para 5.7.1 of the NEP also specifically mandated the Appropriate Commission to formulate regulations on power exchange to promote market development.
- c. Pertinently, this Hon'ble Commission under Section 66 notified Guidelines for the grant of permission for setting up and operation of Power Exchange dated 06.02.2007 ("**Guidelines for Power Exchange**").
- d. IEX had based on the representations in the "Guidelines for Power Exchange" had invested in the power exchange business. Therefore, it is unjust to now change the guideline principles after the substantial investment. The principles of estoppel work against such an imposition. The Hon'ble CERC is bound by the principle of promissory estoppel. The Hon'ble Supreme Court in *Manuelsons Hotels (P) Ltd. vs. State of Kerala*, (2016) 6 SCC 766 held that "*the doctrine of promissory estoppel is a doctrine whose foundation is that an unconscionable departure by one party from the subject-matter of an assumption which may be of fact or law, present or future, and which has been adopted by the other party as the basis of some course of conduct, act or omission, should not be allowed to pass muster.*"
- e. Notably, Clause 3 of the said Guidelines observed as follows: -
- "3. In keeping with the Commission's approach towards development of **power trading market with minimal regulations**, the Commission for the present does not propose to prescribe any particular organizational structure of the Power Exchange or need for licensing for establishment and operation thereof. **The Commission seeks to encourage Power Exchange to emerge as a market-based institution for providing price-discovery** and price-risk management to the generators, distribution licensees, traders, consumers and other stakeholders. The promoters shall be required to develop their own model of the Power Exchange and seek permission from the Commission before start of operation.*
- [Emphasis Supplied]**
- f. Further, the Statement of Reasons issued along with the Guidelines for Power Exchange provide an insight into the ideology with which the power exchanges were

setup in India. Particularly, at Clause 20 of the said Statement of Reasons, this Hon'ble Commission opined that operational freedom must be granted to the exchanges:

“Regulation of PX

20. The general approach of the Commission is to allow operational freedom to the PX within an overall framework. The regulation would be minimal and restricted to requirements essential for preventing derailment/accidents and collusion. Private entrepreneurship would be allowed to play its role. The Commission shall keep away from governance of PX, which would be required to add value and provide quality service to the customers.”

[Emphasis Supplied]

- g. It is thus clear from the aforementioned, that keeping in view of the policy objective of development of competitive market, Guidelines for Power Exchange were formulated by this Hon'ble Commission to encourage Power Exchange to emerge as a market-based institution. This is in line with the overall objective of the Act to promote competition. In case, at this stage, if the process of price discovery is taken away from the exchange, the entire objective of having a market driven power exchange would be distorted.
- h. Subsequent to Guidelines for Power Exchange, this Hon'ble Commission introduced CERC (Power Market) Regulations, 2010 (“**PMR 2010**”) under Section 66 of the Act. The Statement of Reasons (“**SOR**”) to PMR 2010 in its Clause 3 specifically notes that macro-objective of Power Market Development in India is to promote competition, efficiency and economy in Power Markets.
- i. It is stated that the entire thrust of the Act and regulations framed thereunder is to develop a competitive power market. A competitive power market would include multiple power exchanges which compete with each other by providing the best products and discovery of price. The competition which would entail will obviously mean that the power exchange with better offerings/services will attract larger market share. However, the market coupling is proposed to deal with the issue of concentration of liquidity as “*the bids could be divided among the exchanges, which at present are concentrated in one exchange*”. In case, such mechanism is allowed, the role of power exchange would be reduced to that of a broker which was not the objective with which private participation was invited when exchanges were setup. This is contrary to the representations held out in the guidelines basis which IEX had invested time, effort

and resources in the setting up of not only an exchange but also market facing products all of which were approved by the Hon'ble CERC.

13. *The Hon'ble CERC's introduction of market coupling would nullify the objective of the Act viz. to distance government from regulatory affairs of Commissions:*

- a. The objective of the Act was to distance government from regulatory affairs of Commissions and grant independence to Commissions in their decision making. The role of the Ministry of Power under the scheme of the Act is limited. It is not empowered to interfere with the functions and powers of the Regulatory Commissions [A.P. TRANSCO vs. Sai Renewable Power (P) Ltd., (2011) 11 SCC 34 para 59, 108 Southern Electricity Supply Co. of Orissa Ltd. v. Sri Seetaram Rice Mill, (2012) 2 SCC para 1,2; PTC India Ltd. v. Central Electricity Regulatory Commission, (2010) 4 SCC 603 para 17]
- b. The Hon'ble CERC's proposal to enforce market coupling on the exchanges has come up suddenly post the letter dated June 02, 2023 by the Ministry of Power. This is contrary to the Hon'ble CERC's own order in *Power Exchange India Limited v. National Load Despatch Centre (NLDC)* dated 17.10.2021 that the conditions did not exist for market coupling. Hence, a deviation from the Hon'ble CERC's own stand on the basis of said letter, would be contrary to the objective of the Act and will do away with the statutory boundaries of separation of the regulator and the Government.

14. *The Hon'ble CERC ought to act in a fair and reasonable way.*

- a. It is settled that a regulator must act in a fair and reasonable manner and in accordance with law [A.P. Power Coordination Committee v. Lanco Kondapalli Power Ltd., (2016) 3 SCC 468 para 30; Peerless General Finance and Investment Co. Ltd. v. RBI, (1992) 2 SCC 343 para 31].
- b. It may be noted that economic legislation can be tested on the anvil of the doctrine of proportionality. Accordingly, it is trite law now that any legislative, including quasi-legislative measure can be tested if it is disproportionate and be struck down on account of the same [Dharani Sugars and Chemicals Ltd. v. Union of India, (2019) 5 SCC 480, Internet & Mobile Assn. of India v. RBI, (2020) 10 SCC 274]. Accordingly, legislative intervention by CERC needs to be mindful of the protection of equality guaranteed under law under Article 14 which requires inequality and arbitrariness to be avoided.

- c. The Hon'ble CERC in the Staff Paper noted that “*Given the existing market share of power exchanges in the collective transaction segment, it seems that while the implementation of market coupling may not cause any major change in terms of price discovery, the bids could be divided among the exchanges, which at present are concentrated in one exchange.*”
- d. From the above, it is clear that the Hon'ble CERC's objective for market coupling is to *inter alia* facilitate the growth of two private exchanges, namely HPX and PXIL. Unlike IEX, the two exchanges consistently defaulted on their compliances and operations and have been granted relief by the Hon'ble CERC to carry on their operations as usual.
- e. Hence, the Hon'ble CERC ought to act considering the compliance track record and governance standards followed by IEX and examine the market coupling proposal from the lens of reasonableness and fairness. The proposal changes the rules to benefit the other private exchanges, even though IEX has for the last 15 years operated within the four corners of the regulations framed by the Hon'ble CERC.

15. *There ought to be regulatory certainty in the regulations framed by the Hon'ble CERC.*

- a. The Hon'ble Supreme Court in a catena of cases has held that legal certainty is an important aspect of the rule of law [*Vodafone International Holdings BV v. Union of India, (2012) 6 SCC 613 para 180-186; Reliance Energy Ltd. v. Maharashtra State Road Development Corporation, (2007) 8 SCC 1 para 36-38; National Buildings Construction Corporation v. S. Raghunathan, (1998) 7 SCC 66 para 18-26*].
- b. The principle of regulatory certainty as enshrined in Clause 5.8.8 of the NEP, 2005 and Clause 4 of the National Tariff Policy, 2016 mandates that steps should be taken to ensure 'regulatory certainty' so as to minimise perceptions of regulatory risks, ensure financial viability of the sector and generate investor's confidence to attract investments.
- c. Further, while deliberating on the period of license of a power exchange, the Hon'ble CERC in Statement of Objects and Reasons of PMR 2010 states as follows :

“8.6.2. Decision and rationale

After considering stakeholder feedback, the Commission has decided that the registration granted to a Power Exchange shall continue to be in force for a period of twenty five (25) years from the date of commencement of operations,

*unless if such registration has been revoked earlier. The registration shall be considered for renewal for a period of another 25 years and an application for renewal can be made 5 years before expiry of registration. **This should reduce any uncertainty in business operations of the Power Exchange.***”

- d. Reliance is placed on Judgment dated 28.08.2020 passed in ‘*Talwandi Sabo Power Limited v. Punjab State Electricity Regulatory Commission & Ors*’, Appeal No. 21 of 2019 by the Hon’ble Appellate Tribunal for Electricity (“**APTEL**”) (“**TSPL Judgment**”) wherein it has been held that regulatory uncertainty is against the very spirit of the Act. (*Relevant Para 114*)
- e. It was only on Hon’ble CERC’s approval and in compliance with the Hon’ble CERC’s regulations that IEX spent significant time, cost and effort towards setting up and conducting exchange operations summarized hereinbelow :
 - i. Firstly, the Hon’ble CERC granted the permission to IEX to set up a power exchange under the “*Guidelines for the grant of permission for setting up and operation of Power Exchange*” dated February 06, 2007. IEX entered into the business of the power exchange with the approval of the Hon’ble CERC *vide* order dated August 31, 2007 in Petition No. 38/2007.
 - ii. IEX ensured that the exchange functions in accordance with the highest standards of governance. IEX’s emphasis on governance is evident from the fact that significant public money has been invested in IEX. The investment is based on the comfort provided to investors including foreign investors by its robust governance, regulatory experience, consistent track record of performance and market leadership.
 - iii. IEX’s products were introduced only after Hon’ble CERC’s approval and strictly in terms thereof.
 - iv. Thereafter, IEX complied with the Power Market Regulations as notified by the Hon’ble CERC from time to time.
 - v. IEX constantly strives to introduce innovative and new products on its platform with the approval of the Commission from time to time.
 - vi. IEX has onboarded a highly qualified dedicated team of approximately 170+ professionals, of whom 70+ professionals are domain experts on market development, 80+ professionals in IT and exchange technology. It has a pan-India footprint with resources located across the country to help interact with

market participants. This allows IEX to coordinate, collaborate and customize products for market participants across the country.

- f. The level of certainty embedded into the regulatory regime by the Hon'ble CERC instilled the confidence in IEX to invest into the power market.
- g. It is submitted that IEX is a listed company having public shareholding and has more than 16 lakh shareholders. Based on the above assurance provided by the Hon'ble CERC and the government policies to ensure regulatory certainty, the shareholders invested in IEX.
- h. Retail investors of IEX have invested keeping in mind the regulatory certainty. At this stage, to bring about regulations which would change the rules of the game, would tantamount to playing a deception on the retail investors. This is because the entire ecosystem and business structure of the market exchanges is effectively going to change without any basis, reasoning or need which is justifiable of such a drastic change.
- i. Therefore, the Hon'ble CERC by enforcing IEX to share its business by way of introduction of market coupling will send a strong anti-investor signal. This will in turn adversely impact the overall endeavour to attract investment in the sector. This will also be in violation of the National Electricity Policy which provides that:

“5.8.1 The Act creates a conducive environment for investments in all segments of the industry, both for public sector and private sector, by removing barrier to entry in different segments.

...

5.8.4 Capital is scarce. Private sector will have multiple options for investments. Return on investment will, therefore, need to be provided in a manner that the sector is able to attract adequate investments at par with, if not in preference to, investment opportunities in other sectors. This would obviously be based on a clear understanding and evaluation of opportunities and risks. An appropriate balance will have to be maintained between the interests of consumers and the need for investments.

..

5.8.8 Steps would also be taken to address the need for regulatory certainty based on independence of the regulatory commissions and transparency in their functioning to generate investor's confidence.”

(Emphasis provided)

- j. The Hon'ble CERC's proposal to introduce market coupling would be contrary to the principles of regulatory certainty. It would erode the legitimate expectations of the investors as well as of IEX to be dealt with regularity, predictability and certainty.
- k. In light of the above, the Hon'ble CERC is bound by the principle of promissory estoppel. The Hon'ble Supreme Court in *Manuelsons Hotels (P) Ltd. vs. State of Kerala*, (2016) 6 SCC 766 held that "*the doctrine of promissory estoppel is a doctrine whose foundation is that an unconscionable departure by one party from the subject-matter of an assumption which may be of fact or law, present or future, and which has been adopted by the other party as the basis of some course of conduct, act or omission, should not be allowed to pass muster.*"

E. INTERNATIONAL EXPERIENCES REFERRED IN THE STAFF PAPER ARE NOT RELEVANT

- 16. In the Staff Paper example of market coupling in Europe is included. Market coupling is generally considered in the context of integrating multiple markets existing across different geographies. In Europe, the electricity markets across 27 countries are coupled with the underlying objectives to increase economies of scale, better utilization of diverse resources, and optimal utilisation of cross border transmission links between these countries. In Europe, multiple players in the same market have not been coupled under the guise of market coupling. In other words, in Europe different geographical markets have been coupled and not players operating in the same market.
- 17. The situation in India is completely different. There is already a single coupled market with practically no transmission congestion. In India, the market is neither divided nor functions as different geographies but functions as a single geographical market catering to the entire country. Unlike Europe, proposed market coupling in the Indian context is essentially the coupling of power exchanges which are not destined to meet any of the objectives associated with market coupling.
- 18. It is pertinent to mention that international experience of the United Kingdom market post Brexit also suggests that the multiple power exchanges in same geography can enjoy decent market share which proves that the apprehension regarding concentration of liquidity on one exchange due to intrinsic nature of collective transactions is baseless. In

United Kingdom, there are two power exchanges namely Nord pool and EPEX spot. Both Exchanges have voluntary market and separate price discovery and clearing and settlement and the market share of these two exchanges in day ahead market is around 70:30 with volume of 116 BUs and 47 BUs (2022) respectively.

19. The international examples of European Union cited in the Staff Paper are not relevant to Indian market since we are deliberating market coupling of power exchanges in same geography and nowhere in the world, example of such market coupling is available.

F. DISINCENTIVISING THE EFFICIENT POWER EXCHANGE

20. *IEX's significant growth as an exchange compared to its peers*

- a. IEX is an exchange that has grown entirely under the supervision and in compliance with the prescription of the Hon'ble CERC. This is evident from the fact that right from the time it got approval till today, almost all its activities are regulated and/ or approved by the Hon'ble CERC.
- b. The reason why the exchange has been able to become popular with stakeholders, including traders, distribution companies ("Discoms") and industrial consumers is on account of its emphasis on governance, innovation, investment and adherence to the rules as framed by the Hon'ble CERC (as explained in detail below). Accordingly, the growth of the popularity with stakeholders of products traded on the exchange is attributable to the fact that IEX operates in a compliant, transparent and fair manner. Hence, the trade through IEX ensures market-based price-discovery and price-risk management in a regulated manner.
- c. The emphasis on compliance and transparency is evident from the fact that IEX has operated within the four corners of the regulations framed by the Hon'ble CERC. As such, IEX cannot be penalized for the benefit of the other two exchanges who have not seen similar growth as an exchange in the power market despite operating under the same market conditions and regulatory regime. It emerges from the comparison that IEX has always shown agility in product innovation and implementation.
- d. It may be noted that IEX has played by the rules of the game from its inception till date. IEX's rule abiding governance, compliance and emphasis on the ecosystem for market defined price discovery in terms of the Hon'ble CERC's regulations have been fully responsible for IEX's growth.

- e. IEX has made extensive efforts for building power market by regular interaction with the participants, creating awareness about the products, understanding the needs, developing new products to meet market requirements and for capacity building. IEX so far has conducted more than 600 events for disseminating awareness with regard to the market design, products and sharing ways to optimize power procurement cost.
- f. It is pertinent to specifically highlight here that IEX put in the efforts to develop the Day Ahead Market (DAM) and the Real Time Market (RTM) over the years. When the DAM was introduced in 2008, it was a completely new concept for the market participants with lot of skepticism around it. IEX has taken several measures viz. extensive information dissemination through Workshops, Seminars etc. and handholding through training sessions etc. to promote participation from Discoms, Gencos, and Open Access consumers. The Open Access consumers from various industries such as iron, steel, aluminium, copper, zinc, food processing, textile, cement, ceramic, chemicals, automobiles, information technology industries, institutional, housing and real estate and commercial entities, started participating on the exchange platform.
- g. Similar efforts were made by IEX towards implementation of RTM. This Hon'ble Commission issued the framework for RTM and directed the Power Exchanges to implement RTM from 01.06.2020. In order to ensure success (liquidity) of the RTM, IEX conducted extensive market development exercises through conferences, webinars, mock trading sessions etc. to ensure that the stakeholders are aware of the benefits of RTM and know how to gainfully utilize the same. More than 60 stakeholder awareness sessions were conducted all across the country to widely publicize the RTM market. As a result of IEX efforts towards market development, the participation and transaction volume in RTM market reached 10-12% of the DAM within a month's time.
- h. It is further submitted that the IEX trading platform was available through-out the lock-down period during 2020-21 on round the clock basis with almost 100% availability.
- i. IEX has been regularly interacting with the State Electricity Regulatory Commissions (SERCs) for promoting open access, rationalization of open access charges and for promoting use of exchange platform by the distribution companies to manage their demand and supply efficiently and at optimum cost. IEX is a member of State Advisory Committee of 13 SERCs viz. Maharashtra, Gujarat, Madhya Pradesh, Uttar Pradesh, Punjab, Delhi, Himachal Pradesh, Andhra Pradesh, Telangana, Bihar, Punjab,

Meghalaya, JERC for the UTs. During the last four years, IEX has submitted more than 400 representations providing its inputs and suggestions w.r.t deepening of power market, open access regulations, renewable purchase regulations, open access charges across all the SERCs with an aim to enable access of market to all consumers.

- j. IEX has also collaborated with global technology companies to provide Value Added Services in the renewable area to the market participants. IEX has also developed 'Smart Power Procurement' software for optimizing power procurement cost by the distribution companies. We have carried out a number of interactions with the distribution companies for use of this software on free of cost basis for reducing their cost of power. As a result of these initiatives, today most of the states are utilizing exchange platform not only for purchase of power to meet the demand but also for sale and purchase to reduce their overall cost of power.
- k. IEX has also taken initiatives for development of renewable power market in the country by interacting with the policy makers, regulators, generators, discoms and the open access consumers. IEX has also done advocacy for development of RE Capacity addition through Contracts for Difference, Virtual PPAs, Virtual Power Plants, Green energy open access etc.
- l. Further, IEX also took initiative with policy makers and regulators for introducing the Cross Border Trade and also capacity building of the participants in the neighbouring countries.
- f. In light of the above, IEX had an expectation that the rules of the game will not change in a manner that it would benefit its private peers, as it is a part of the doctrine of legal certainty that the rules of the game cannot change once the game has begun [Maharashtra SRTC v. Rajendra Bhimrao Mandve, (2001) 10 SCC 51; Reliance Energy Ltd. v. Maharashtra State Road Development Corpn. Ltd., (2007) 8 SCC 1]. This is especially so since the change has been brought about to redistribute liquidity in the market not for a public purpose but for the benefit of private exchanges.

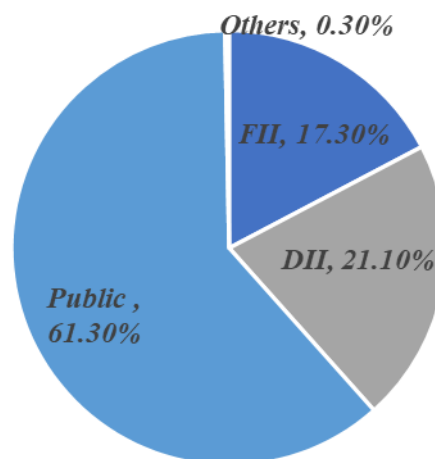
21. IEX functions in accordance with the highest standards of governance.

- a. IEX has shown its commitment to comply with the governance norms viz., compliance with the shareholding norms, appointment of full-time MD and CEO, qualified management professionals, robust algorithm, state of art cyber security framework, robust risk management, risk management committees, market surveillance

committees and state of art IT infrastructure with transparent information discrimination.

- b. The governance standards have inter alia been validated by the fact that it has also been subject to regulatory audit with respect to the market operations, surveillance, and robustness of its algorithm, IT infrastructure and shareholding structure. This makes IEX stand apart amongst its peers which may not be able to boast of such a stellar and consistent track record and reputation.
- c. The emphasis on maintaining the highest standards of corporate governance makes IEX the only exchange to be listed on the stock exchange. This is evident from the fact that it has more than 16 lakh shareholders, a public free float of almost 100 %.
- d. In other words, IEX is not a closely held entity but one which is publicly owned. Further, it is management driven and not promoter driven, as it has appointed KMP such as MD and CEO, who are in-charge of and responsible for the affairs of the company. IEX believes that it is possibly the only power exchange, which has ensured that it operates on the aforementioned ownership and governance structure.
- e. The emphasis on governance is evident from the fact that significant public money has been invested in IEX. The investment is based on the comfort provided to investors including foreign investors by its robust governance, regulatory certainty and consistent track record of performance.

IEX Shareholding as in June-23 (%)



- f. In light of the above, it would be inappropriate and unjust for the Hon'ble CERC to impose market coupling on a compliant exchange for the benefit of the private exchanges i.e., without a public purpose justification.

22. *Non-performance of other exchanges despite the regulatory support*

- a. IEX has been a self-standing exchange which has endeavoured to comply with the terms of the regulatory system without any assistance or favour.
- b. On the other hand, the Hon'ble CERC has supported other exchanges in terms of shareholding compliances or net worth compliances. However, till date, even after 15 years of operation of PXIL, it is still non-compliant with the PMR regulations. The new exchange HPX has also started to seek support of the Hon'ble CERC on similar lines.
- c. Further, the Hon'ble CERC, while dealing with the PXIL's request for revising transmission allocation methodology between PXs in Petition No. 158/MP/2013, observed that:

“18. We have considered the issue of priority allocation of corridor to PXIL. The market shares of both the exchanges since the operation of PXIL in the year 2008-09 are as under:-

<i>Market Share (Day Ahead Market & Term Ahead Market) of IEX and PXIL</i>		
<i>Year</i>	<i>IEX</i>	<i>PXIL</i>
<i>2008-09</i>	<i>95%</i>	<i>5%</i>
<i>2009-10</i>	<i>87%</i>	<i>13%</i>
<i>2010-11</i>	<i>82%</i>	<i>18%</i>
<i>2011-12</i>	<i>93%</i>	<i>7%</i>
<i>2012-13</i>	<i>97%</i>	<i>3%</i>
<i>2013-14</i>	<i>95%</i>	<i>5%</i>
<i>2014-15</i>	<i>96%</i>	<i>4%</i>
<i>2015-16</i>	<i>98%</i>	<i>2%</i>

(Upto Dec 2015)

19. *It may be seen from the above table that even though the present methodology of allocation of transmission corridor on pro rata basis is in force since the year 2008, the share of PXIL increased in the initial years and reached 18% during 2010-11 and in the subsequent years it has ranged from 2% to 7%. Therefore, it is difficult to accept that the present methodology of pro rata allocation of corridor has adversely impacted the viability of PXIL. The Commission has been advocating multiple power exchanges from the very beginning and therefore, it is*

essential that both the power exchanges thrive as viable market institution. Even though priority allocation of transmission corridor in favour of one exchange is against the principle of competition and market philosophy, the Commission feels that PXIL needs some hand holding to enable it to increase its market share. Accordingly, as agreed by IEX, PXIL and POSOCO during the hearing, priority allocation of 10% in the constrained corridor shall be made in favour of PXIL for the next six months beginning from 1.4.2016.”

- d. The said order of the Hon’ble CERC clearly recognises the inefficiencies of the PXIL. However, the Hon’ble CERC has still gone ahead to support PXIL and reserved 10% of corridor allocation for PXIL. IEX supported the proposal for promoting competition.
- e. The Hon’ble CERC vide order dated May 09, 2022 in Suo Motu Petition No. 6/SM/2022 deliberated upon the transmission allocation methodology among power exchanges. It concluded that PXIL has not been able to effectively utilize the facility of priority allocation transmission corridor in the DAM and withdrawn the facility of 10% of reservation on congested corridors to PXIL.
- f. These facts indicate that despite support extended by the Hon’ble CERC to other exchanges, other power exchanges could not garner market share due to their inefficiencies.

G. IMPLICATIONS OF MARKET COUPLING

23. *Disruption through structural changes, rigidity and diminishing the value provided by power exchanges-*

- a. Implementation of market coupling will require significant structural changes, i.e. it will require designation of a MCO, a Centralized Clearing House etc. Further, it will also require co-ordination between the exchanges, MCO and Clearing House. This will unnecessarily create additional layers of administration which will add to the operational costs and rigidities in the market.
- b. Moreover, due to increase in administrative framework, decision making will in turn be at a slower pace since even a small incremental change has to be carried out in concurrence with all the stakeholders. More importantly, this will make the power exchanges meagre bid collection agencies and take away their incentives to work towards improving their product offerings, market development etc. Power exchanges

will become redundant institutions incapacitated from playing any meaningful role in the market.

- c. Considering the above, it is extremely important that that any step towards envisaging such major structural change should be based on sound rationale.

24. *De-facto monopoly by creating MCO will take away consumer choice-*

- a. Promoting competition and thereby enabling choice to the consumers is one of the principal objectives of the Act. Keeping consumer choices alive not only benefits competition among the businesses, but it also keeps a check on market manipulations and quality of service..
- b. Contrary to the objective of competition, market coupling will prevent the power exchanges from discovering the prices by introducing an MCO for price discovery in a centralised manner. Hence, market coupling will lead to a creation of a de-facto monopoly which will create rigidity in the system, stifle innovation and take away the choice of the participants of the power exchange. Historically, creation of monopolies by design such as Coal India, Nationalisation of Banks, BSNL etc. often leads to inefficiencies and market failures and ultimately require course correction by way of breaking them up, bringing in competition, or other liberalisation measures.
- c. In fact, this Hon'ble Commission specifically rejected the recommendation in Staff Paper dated 20.07.2006 to set up single power exchange while noting that: -

“14. The Commission feels that the policy framework should make room for establishment of more than one power exchange at the national level and also have the provision for having second-tier power exchanges at State/regional level commensurate with the market development/perception”.

- d. However, introduction of market coupling will now lead to creation of a Super-exchange which is nothing but a de-facto monopoly, against the spirit of the competition under the Act.

25. *Stifling the innovation*

- a. The Staff Paper erroneously claims that no innovation has taken place in the collective segment among the power exchanges. However, it is submitted that the IEX is continuously improving the DAM/RTM products, whether it is with respect to the innovative products with the approval of the Hon'ble Commission or for providing

features in the trading software to enable ease of trading based on the customer's requests.

- b. It is also relevant to consider that IEX has not only made various innovations which have facilitated trading and market making over the years but also have provided best in-class operations record with minimum downtime. The instances of such developments are as below:
 - i. Deployment of world class technology of NASDAQ-OMX in 2008 for matching engine of DAM at the commencement of operations,
 - ii. Complete overhaul of trading software for adoption of 15 min pricing from hourly pricing,
 - iii. Development and implementation of REC trading
 - iv. Introduction of various bid types such as Minimum Quantity and Profile Block Bid type
 - v. Automation of bidding through Application Programming Interface (API)
 - vi. Utility for creation of bulk upload bids
 - vii. Process Automation to enable fast and on-time Financial Settlement
 - viii. Easy Financial Reconciliation Solution
 - ix. Conceptualisation of NOAR and its seamless integration with IEX system in 2021
 - x. Successful introduction and implementation of RTM, GDAM and HPDAM
 - xi. Features like Order- carry forward from DAM to DAC in 2019 and thereafter in Integrated DAM (GDAM to DAM and DAM to HPDAM)
 - xii. Introduction of web-based trading portal
 - xiii. Best-in-class solutions in all the areas of cyber security such as Firewall, Data Leakage Protection, Monitoring, Threat Protection, Access Control, etc.
 - xiv. Seamless and automated process for the switch over from our Data Center (DC) based in Delhi to our Disaster Recovery (DR) based in Mumbai
 - xv. Mixed Integer Linear Programming (MILP) algorithm implementation from 2021 for price discovery to enable easy and effective implementation of Complex Bid Types
 - xvi. Data Insights through Web-Platform to enable Market Participants get easy access to data for effective Bidding decision making
 - xvii. Seamless member/client enrolment and onboarding

- c. It is further submitted that innovation should not be seen as the introduction of new products, rather it should be seen in light of various improvements in the whole ecosystem to provide best quality uninterrupted services to the customers.

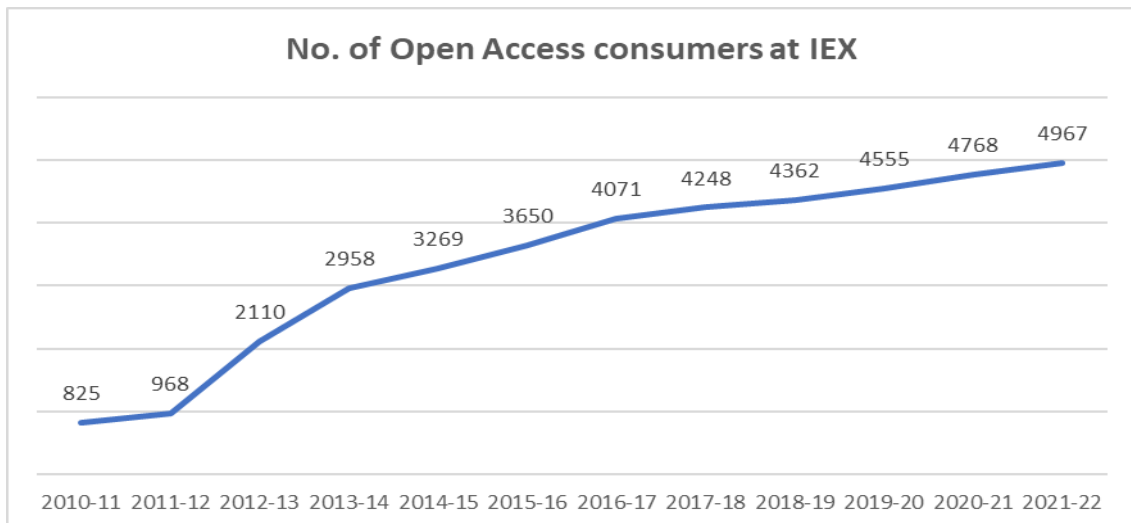
26. *Impact on growth of market*

- a. IEX constantly strives to introduce innovative and new products on its platform from time to time. All the contracts are developed, customized and offered solely on account of IEX spending significant time, cost and effort towards market development. An indicative list of products introduced by IEX is as under-

S.N.	Products	Introduced by IEX
1	Day Ahead Market (DAM)	27-06-2008
2	Term Ahead Market (TAM)- Weekly contracts, Day Ahead Contingency (DAC)	15-09-2009
3	Term Ahead Market (TAM)- Daily contract, Intraday (ITD) contract	15-09-2009
4	Renewable Energy Certificate (REC) Market	23-02-2011
5	15 minutes pricing in DAM	31-03-2012
6	Round the Clock trading in DAC/ITD contracts	18-07-2015
7	Energy Saving Certificates (ESCerts) Market	26-09-2017
8	“Minimum Quantity Block Bid” and “Profile Block Bid” in DAM	05-03-2020
9	Real Time Market (RTM)	31-05-2020
10	Green Term Ahead Market (G-TAM)	21-08-2020
11	Green Day Ahead Market (GDAM)	26-10-2021
12	Hydropower Contracts in ITD/DAC under G-TAM	02-05-2022
13	Any-day(s) Single Sided Reverse Auction Based Contract and additional Weekly contract in TAM	28-06-2022
14	Monthly Contract in TAM	20-07-2022
15	Additional Weekly Contracts under TAM / GTAM segment	07-09-2022
16	Additional Daily Contracts under TAM/GTAM	09-09-2022
17	Green Any-Day Single Sided Reverse Auction and Green Monthly Contracts	21-02-2023
18	Hydro (HPO) in GDAM	01-03-2023
19	High Price Day Ahead Market (HP-DAM) in I-DAM	10-03-2023

S.N.	Products	Introduced by IEX
20	DAM-AS and RTM-AS in Tertiary Reserve Ancillary Services (TRAS) Market	01-06-2023

- b. In most of these contracts, IEX had launched the contracts much ahead of the competing exchanges and therefore achieved higher market share.
- c. Resultantly, on account of extensive measures towards market development and innovation, more than 7900+ participants are registered on IEX from 29 states, 5 union territories. These include 60 Discoms, over 742 electricity generators and over 4,860 open access consumers. A growth trajectory of the open access consumers participation at the IEX platform out of extensive market development efforts of IEX is shown below-



Source: CERC Annual Market Monitoring Report, FY 2021-22

- d. As a result of such elaborate and intense market development efforts, the participation and the transaction volume has increased over the years which is one of the key objectives of the government and the Hon'ble CERC.

27. System operator becoming MCO will be violative of the Act.

- a. The Act has specifically barred NLDC from being associated with trading. Read purposively, the NLDC must not do anything that remotely involves a role in the trading eco-system.
- b. Section 26 of the Act provides for constitution of NLDC for optimum scheduling and dispatch of electricity among the Regional Load Dispatch Centres. However, the *proviso* to section 26(2) specifically bars NLDC for engaging in power trading.

“Section 26. (National Load Despatch Centre) : --- (1)

(2) The constitution and functions of the National Load Despatch Centre shall be such as may be prescribed by the Central Government:

Provided that the National Load Despatch Centre shall not engage in the business of trading in electricity.”

- c. Similarly, proviso to Section 38 explicitly provides that a Central Transmission Utility “shall not engage in the business of generating of electricity or trading in electricity”.
- d. The NLDC can exercise only such functions as are conferred to it by the Act. From the perusal of the aforesaid legislations, it is evident that there are no functions emanated which allow NLDC to act as a MCO and if NLDC is asked to exercise any power or perform any functions which are not there in the Act, the same would be *ultra vires*. Therefore, delegating the powers of MCO upon the NLDC would be untenable in law.

28. Concentration of liquidity in the exchange is not a permanent phenomena

- a. The phenomena of concentration of liquidity can be observed in any business. However, innovation may disrupt such concentration of liquidity.
- b. For instance, NSE today has a dominant position in the market as it is a market leader in the country to provide a modern, fully automated screen-based electronic trading system that offered easy trading facilities to investors spread across the length and breadth of the country. Due to better technology, NSE dominated the Indian market beating its rival BSE Limited, even after BSE being Asia’s oldest exchange. NSE began operations in 1994 only and today enjoys leading market shares by total turnover of 91.12% in equity cash trading and 99.99% in equity derivatives trading. NSE continues to enjoy a market share of over 90% in the clearing member (CM) segment and almost 100% market share in the equity derivatives segment although BSE came long back in 1875. Despite such a scenario, SEBI is not considering such an idea of coupling of exchanges.
- c. It is pertinent to mention that international experience of UK market post-Brexit also suggests that the multiple power exchanges in same geography can enjoy decent market share which proves that the apprehension regarding concentration of liquidity on one exchange due to intrinsic nature of collective transactions is baseless. In UK, there are two power exchanges namely Nord pool and EPEX spot. Both Exchanges have voluntary market and separate price discovery and clearing and settlement and

the market share of these two exchanges in day ahead market is around 70:30 with volume of 116 BUs and 47 BUs (2022) respectively.

H. SUGGESTIONS TO IMPROVE LIQUIDITY ON THE EXCHANGES

29. At present, transactions through the power exchanges is only about 7% of the total generation in the country, whereas in most of the countries where exchanges are operating, exchange market share is in the range of 30-70%. In India also, it is necessary to bring more liquidity in the power market. This will also lead to efficient integration of renewable with the grid. The government in its various studies/reports has also recognized the need of higher liquidity in the exchange market.
30. The Ministry of Power has recently released a Report on “Development of Electricity Market in India” in May 2023 which provides for increasing volume in the exchange market by introducing new products/initiatives.
31. Increase in liquidity in the exchange market will also help other exchanges to increase their market share. In the last three years, many new products have been introduced, as a result of which volume in the exchange market has increased and all exchanges have been able to get reasonable share from these new products.
32. Bringing bilateral transactions on organised PX market
 - i. The power exchanges have introduced long duration contracts for trade upto 90 days in June 2022, since then volume in all power exchanges, specifically PXIL and HPX, through these contracts has increased multi-fold.
 - ii. The exchange-based contracts provide comfort to sellers by way of counter party guarantee and the buyer has to confirm the trade within the stipulated timeline.
 - iii. With the introduction of these contracts, now there is an organised neutral platform available for long duration bilateral transactions which obliterates the need of the DEEP platform which does not fall under the regulatory supervision of the Hon’ble CERC.
 - iv. DEEP was introduced in 2015 to facilitate competitive power procurement by the discoms. At that time the exchanges were not allowed to introduce contracts for delivery beyond 11 days due to jurisdiction issue. Now, with the resolution of the issue, the exchanges have been allowed long duration contracts from June- 2022 and

there is a large participation of discoms in these contracts. Since Exchange contracts are regulated by the Hon'ble CERC, the Hon'ble CERC may consider ceasing of the DEEP platform which will eventually promote volumes on all Power Exchanges.

33. Introduction of Capacity Markets

- i. The Hon'ble CERC, in the new CERC (Indian Electricity Grid Code) Regulations, 2023, provided framework for the resource adequacy and the Ministry of Power in its report on 'Development of Electricity Market in India' also emphasises on the need for the resource adequacy.
- ii. One of the tools to support resource adequacy is the exchange based capacity market. The Hon'ble CERC may provide a framework for the capacity market.

I. VIEWS ON THE SPECIFIC QUESTIONS ASKED IN THE STAFF PAPER

34. Summarily, the Staff Paper invites comments on the following broad issues: -

- a. Does the current Indian Power Market scenario form a compelling case for market coupling?

IEX views - As discussed above, there is no case for implementing market coupling in the current Indian Power Market scenario since all the stated objectives as per the PMR 2021 are already being met.

- b. Effect of coupling on technological innovation and competition

IEX views- As discussed above, innovation and competition will be dented by implementation of market coupling and may potentially make the power exchanges redundant institutions.

- c. Who shall be the Market Coupling Operator?

IEX views- The case of Market Coupling Operator has not been made out as Market Coupling itself in the current scenario is of no relevance.

- d. Which algorithm should be adopted for a coupled market?

IEX views- Not relevant as the basic case of market coupling has not been made out. Choosing an algorithm in the scenario of market coupling will be a contentious issue since it requires consensus among the exchanges.

e. How will the clearing & settlement be carried out?

IEX views- Presently as per the PMR 2021, the power exchanges are performing the Clearing & Settlement (C&S) function inhouse. In case of market coupling, the C&S will required to be performed by a separate clearing corporation which will be regulated by the Reserve Bank of India (RBI) under the Payment & Settlement Systems Act, 2007.

f. Changes in the settlement process?

IEX views- As addressed in point (e) above.

g. In which market segment should the coupling be introduced first?

IEX views- Given the need for liquidity in the exchange market, introduction of coupling in any segment may not result in measurable benefits for the sector as a whole.

J. CONCLUSION

35. In view of the above submissions, we humbly submit that it is neither legally tenable nor desirable to introduce Market Coupling.

36. The objective of Market Coupling specified in the PMR 2021 i.e. Discovery of Uniform Price, Optimal Use of transmission infrastructure and Maximisation of economic surplus as explained in the above submissions are already being achieved in the present scenario and hence the requirement of market coupling does not arise.

37. Introduction of market coupling for achieving any other objective, i.e. for dividing market share in DAM/RTM among the other Power Exchanges, is ultra vires to the ambit of PMR 2021 and the same is also violative of Article 14 of the Constitution of India.

38. Market Coupling is against the well established principal of doctrine of legitimate expectation and it will amount to 'cancelling of approval' granted to Power Exchanges. IEX had been granted approval to operate Power Exchange for 25 years which includes carrying out Price discovery function. Notably, this Hon'ble Commission in its various policy documents has clearly stipulated that price discovery is an essential function of a power exchange. Based on such approval, IEX has put in its best efforts and invested in

the business & has become a market leader by ensuring robust price discovery. However, on account of such change in the policy, the entire effort and investment made by IEX over the years would be rendered nugatory and will have serious financial loss for over 16 lakh shareholders of IEX. This is also against the principle of promissory estoppel.

39. The redistribution of volume in favour of other privately owned exchanges cannot be considered to be of public interest. Hence, the action of introducing market coupling tantamounts to expropriation and a intrusion into IEX's right to do business and equality under law. Furthermore, the proposal to enforce market coupling is unreasonable and falls short of the Wednesbury principles of reasonableness and is also violative of Article 19(1)(g) of the Constitution of India.
40. Introduction of market coupling would be against the Electricity Act, 2003 as there is no evidence that it would amount to development of power market as mandated under section 66 of the Electricity Act and NEP.
41. Hon'ble CERC should consider the compliance track record and governance standards followed by the different Exchanges and examine the market coupling proposal from the lens of reasonableness and fairness. The proposal changes the rules to benefit the other private exchanges, who are not complying with the regulations whereas IEX has for the last 15 years operated within the four corners of the regulations framed by the Hon'ble CERC.
42. The Hon'ble CERC's proposal to introduce market coupling would be contrary to the principles of regulatory certainty. It would erode the legitimate expectations of the investors as well as of IEX to be dealt with regularity, predictability and certainty. IEX emphasis on standard of governance is evident from the fact that significant public money has been invested in IEX. The investment is based on the comfort provided to investors including foreign investors by its robust governance, regulatory certainty and consistent track record of performance. IEX is a listed, professionally managed company having shareholder base of more than 16 Lacs including foreign investors. Implementation of market coupling by CERC to share IEX trading volume with other exchanges will send a wrong signal to the investors and will adversely impact investment in the sector.

43. There are many implications of Market Coupling. It will distort market structure, bring rigidity, stifle innovation and competition and diminish the value provided by power exchanges. It would create De-facto monopoly in terms of MCO which will take away consumer choice. In fact, MCO function can not be performed by the System Operator as per the Act.
44. Further, the international experience of market coupling is not relevant in the Indian Context as Market Coupling in Europe was considered for integration of markets of different geography/countries to take advantage of diversity in demand and supply. In India all Exchanges are operating in same geography therefore there is no case of market coupling in India.
45. The market is still in the nascent stage. In fact, approximately 7% of the total power generation in the country is traded through the exchanges. Thus, over 93% of the power is sold through other methods such as bilaterals, long-term power purchase agreements etc. It is important that the growth in power market transactions is encouraged by a conducive regulatory and policy ecosystem. Accordingly, there is a telling need to allow for the innovation journey to continue and to incentivize the same to deepen the power market.
46. In view of the foregoing, we request Hon'ble CERC to consider the aforementioned suggestions and not implement Market Coupling.
47. We are grateful for providing an opportunity to IEX to present its comments on the Staff Paper. We will also be happy to present our views to the Hon'ble Commission in any meeting/ hearing that may be conducted in respect of the same.