CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI

Petition No. 26/2010

Present: Dr. Pramod Deo, Chairperson
Shri S.Jayaraman, Member
Shri V. S. Verma, Member
Shri M. Deena Dayalan, Member

Date of hearing: 20.5.2010 **Date of Order: 3.6.2010**

In the matter of

Compliance of the order dated 24.12.2009 in Petition No. 117/2009

And in the matter of

1. Indian Energy Exchange Ltd., New Delhi
2. Power Exchange of India Limited, Mumbai **....Respondents**

The following were present:

1. Sh. M. G. Ramchandran, Advocate, IEX
2. Sh. Hemant Sahai, Advocate, PXIL
3. Ms. Payal Chawla, Advocate, PXIL
4. Sh. Jayant Deo, IEX
5. Sh. Akhilesh Awasthy, IEX
6. Sh. Bikram Singh, IEX
7. Sh. R. K. Mediratta, IEX
8. Sh. S. Ganguly, VP-PXIL
9. Sh. S. S. Barpanda, NLDC
10. Sh. S. C. Saxena, NLDC
11. Ms. Jyoti Prasad, NRLDC

ORDER

The Commission in its order dated 24.12.2009 in Petition No.117/2009 had directed Indian Energy Exchange and Power Exchange of India Limited, Respondent Nos. 1 and 2 herein respectively, as under:

"16. Having heard the parties, and after considering the materials placed on record, we are of the view that, though professional members transacting on the power exchange do not own the title of the electricity being transacted in the platform of the power exchange making them different from the traders who by virtue of purchase of electricity own the title of the electricity purchased before selling it, there may be scope for ambiguity. By undertaking obligations of risk of delivery/off-take of underlying units of electricity related to transactions, there could be an element of mischief as members of power exchange not only function as brokers but also provide credit facility as well as indemnify the exchange by taking the financial risks/ claims arising out of non delivery of electricity by clients of such members. Although, in the current regulatory framework, the members are not "Electricity Traders" within the meaning of Section 2(26) of the Act, in view of the apprehensions raised in the present application and in order to arrest the possibility of any mischief it is necessary to clarify the role of the members. Accordingly, the role of members other than the trading licensees and the grid connected entities, being that of a "facilitator" would be only to provide the following services:

(a) IT infrastructure for bidding on electronic exchange platform;
(b) Advisory services related to power prices and the follow on bidding strategy (e.g. weather related information, demand supply position etc);
(c) Facilitation of procedures on behalf of his client for delivery of power (e.g. SLDC standing clearances, coordination with NLDC etc)

17. We direct that the members of power exchange who are not trading licensee shall not provide any credit or financing or working capital facility to their clients.

18. We further direct that the Power Exchanges shall incorporate the role of the members as stated in para 16 and 17 above by amending their bye-laws, business rules and other related documents immediately and submit compliance within a period of one month. Till the time the above directions are complied with, the Respondent power exchanges shall not permit members other than the trading licensees and those connected to the grid to transact on their exchanges in any manner other than as directed above."

2. Subsequently, the Commission in its order dated 15.2.2010 had further directed the Respondents to confirm on affidavit about the compliance of

the directions contained in the aforesaid order dated 24.12.2009 in Petition No.117/2009 and to submit a complete list of members who were acting as facilitators and all transactions carried out by these members for their clients from 25.12.2009 till 15.2.2010, supported by documentary evidence that no credit, financing or working capital facility was provided by such members for transactions of their clients.

3. Respondent No.1, in its affidavit dated 9.3.2010 and Respondent No.2 in its affidavit dated 22.2.2010 submitted their replies and pleaded that they had not contravened the order dated 24.12.2009 in Petition No.117/2009 . While submitting a list of its members, Indian Energy Exchange submitted details of all transactions carried out by active members from 25.12.2009 till 15.2.2010. The submissions of Indian Energy Exchange show that these members have ensured that their clients maintain adequate arrangements with them to discharge the financial obligations arising out of transactions that may be contracted on behalf of the clients and that financial settlements have been done through money of the clients although a Chartered Accountants certificate was annexed stating that no credit has been provided by these members to their clients during the aforesaid period. From the submission of Power Exchange of India Limited it is observed that PFC has made payment of Rs. 49,134,820 as credit in discharge of the obligations of JVVNL to the exchange.

4. The Commission after considering the replies of the Respondents issued a show cause notice vide its order dated 30.3.2010 as under:

> "5. From the data furnished by the both respondents, it is observed that our directions in order dated 24.12.2009 appear to not have been complied with in letter and spirit. The members other than trading licensees and grid connected entities who are required to act as facilitators only and provide limited services as mentioned in para 16 of our order as extracted above appear to continue to provide banking transaction services to their clients. In case of First Respondent, clients have deposited money in the Settlement Bank Account of the facilitators who in turn have transferred this money to the bank account of the exchange. This is in contravention of our order which does not permit the facilitators to handle money on behalf of their clients. In case of the Second Respondent, there appears to be a violation of para 17 of our order dated 24.12.2009 as the professional clearing member has been allowed to extend the credit facility to its client from 24.12.2009 till 21.1.2010."
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> 6. In view of the above, we direct both the Respondents to show cause by 5.4.2010 as to whether contravention of our directions contained in para 16 and 17 of the order dated 24.12.2009 in Petition No.117/2009 have been made out against them and consequently, why penalty under Section 142 of the Electricity Act, 2003, without prejudice to any other penalty which may be imposed under the Act, should not be imposed on them for contravention of the directions of the Commission."

5. The Commission directed both the respondents to show cause as to why they should not be held responsible for contravention of the directions contained in paras 16 and 17 of the order dated 24.12.2009 in Petition No. 117/2009 and as to why penalty under Section 142 of the Act should not be imposed on them.

6. Both the respondents have filed their replies to the show cause notice. We have also heard the learned counsel appearing on behalf of the respondents.

Reply of Indian Energy Exchange

7. Respondent No.1 in its reply dated 5.4.2010 has submitted that the following alleged incidences of non-compliance of the Commission's Order dated 24.12.2009 and as contained in the show cause notice dated 30.3.2010, are in fact not any contravention:-

(i) banking transaction services provided by members other than trading licensees and grid connected entities to their clients,

(ii) depositing of money by clients in the settlement bank account of such members and

(iii) transfer of such money by such members to the bank account of the exchange, Such members have allowed deposit of money in the Settlement Bank Account of the Member (these are other than Trading Licensee and Grid connected entities) (hereinafter referred to as "Member-Facilitators") by the clients which money has been used by the Member-Facilitator to remit the amount to the exchange which is not permitted in terms of the order dated 24.12.2009 in Petition No.117/2009. Such deposit of money by the clients in the Settlement Bank Account of the Member-Facilitator has been stated to be construed as a banking transaction service provided by the Members to their clients. Respondent No.1 has submitted that Para 17 of the order dated 24.12.2009 clearly and unambiguously provides that Member-Facilitators shall not provide any credit or financing or working capital facility to their clients. The argument of Respondent No. 1 is that this direction means that at no point in time the professional members

should have any outstanding recoverable from the client namely any outstanding amount or debt owed to him by the client for transactions undertaken on behalf of the clients on the power exchange. In other words, there can be a contravention only if funds of the Member-Facilitator are used for settlement of the transactions on behalf of the clients. The Respondent No.1 has submitted that on the basis of the documents including copies of the certificates from the Chartered Accountants of Member-Facilitators filed alongwith its affidavit dated 22.2.2010, it is established that Member-Facilitators have not provided any credit or financing or working capital facilities to their clients and such Member-Facilitators have ensured that their clients maintain adequate arrangements to discharge the financial obligations arising out of the transaction that may be contracted on behalf of the clients. Respondent No.1 has further submitted that when the clients have deposited money with the Member-Facilitator, the same is in compliance with the directions contained in order dated 24.12.2009 namely, to ensure that no credit or finance or working capital facility is provided to the clients. Facilitator-members insist on such deposit of money by their clients with them to enable the Members to transfer the money to the bank accounts of the exchanges. This, according to Respondent No. 1, is a most appropriate and definitive manner of ensuring that the Facilitator-member does not provide any credit or finance or working capital and uses only the money of the clients for transactions. It has been argued that the Facilitator-members do not

provide banking service to the clients and only act as the agents or representatives of the clients to handle the money. The order dated 24.12.2009 prohibits money of the Member-Facilitators being used for the transactions and does not prohibit the Member-Facilitators to enable the settlement of the transaction. The Member-Facilitators are required to insist on the funds being available from the clients to meet the financial liability arising out of the transactions without any recourse to the funds of the Member-Facilitators. It has been submitted that the prohibition contained in the order dated 24.12.2009 does not extend to transaction services that the professional members may provide to the clients using the amounts deposited by the clients and not using any part of the amount of the members. These transaction services, according to Respondent No.1, include the banking transaction services where the clients pre deposit the entire amount in a designated account under the control of the members. It has been submitted that if the funds are provided in total by the client in regard to transactions and no part of the funds of the professional member is used directly or indirectly, the professional member cannot be construed to be providing credit, financing or funding facilities to the client. According to Respondent No.1 what distinguishes the allegation made against it in the show cause notice is the element of financial exposure. It has been stated that the deposit of money is by the clients with the members and not vice versa and the entire financial exposure that may arise in the transaction is secured by such deposit. It has been

submitted that the nature of the activities adopted by the Member-Facilitators is in furtherance of the order dated 24.12.2009 and Respondent No.1 has not violated the said order of the Commission. It has also been submitted that the very scheme of professional members as facilitators has been evolved to enable the interested persons to undertake transactions on power exchanges without the need to know about the nuances of dealing, handling the infrastructure and acquiring expertise. It has been submitted that the directions contained in para 17 of the order dated 24.12.2009 should not be interpreted to mean that such members should not handle the money of the clients. According to Respondent No. 1 there is no rationale to say that members cannot receive the funds of the clients in the settlement bank account. It has also been submitted that there is no rationale in allowing an Electricity Trader in the Power Market Regulations, 2010 to provide credit or financing or working capital facility to their clients, even in transactions where he acts only as a facilitator and not as a purchaser or re-seller of electricity.

Reply of PXIL

8. Respondent No.2 in its reply dated 20.4.2010 has submitted that the charge against it is that the Power Finance Corporation as the Professional Clearing Member (PCM) had extended credit facility to the clients. The only function of the PCM is to provide loan facility to the trading members who are otherwise authorized to undertake trading functions. The Trading Members are free to obtain financing facilities from their own bankers outside

the exchange and they have an option to deal with the PCM. The PCM does not get involved in and/or engage in any activity beyond providing the loan facility. The PCM did not at any stage undertake any liabilities to the exchange and/or to the counter parties to the contracts. PCM merely provided a loan limit to other trading members and the primary liability and obligation to exchanges continued with such trading members. PFC as the PCM did not indemnify the exchange, nor took any financial risks/claims arising out of non-delivery of electricity by the clients nor undertook any trading transaction over the exchange. The bye laws of PXIL do not entitle PCM to trade. The margins payable by a Member on behalf of its constituents refers to Trading Members and to PFC as the PCM. Respondent No.2 bonafidely believed that the role played by PFC as the PCM was not in contravention of the order dated 24.12.2009. Respondent No.2 had written a letter dated 29.12.2009 to the Commission with such bonafide belief. Therefore, there is no default or disobedience or contravention of the order by PFC as the PCM and in any event, there is no willful default or disobedience or contravention on the part of Respondent No. 2. Respondent No.2 has submitted that it has complied with the Power Market Regulations, 2010 in regard to banks/finance institutions providing any credit or financing facility to the Members of PXIL. Once the comprehensive Power Market Regulations were published the Professional Clearing member (PCM) activity was stopped immediately. PXIL has complied with the regulation even at the cost of significant business loss and adverse impact on traded volume. It has been prayed that the Commission may conclude that no contravention has

been committed by PXIL of the order dated 24.12.2009 in Petition No.117/2009 and the notice under Section 142 be discharged. The apprehension under the order dated 24.12.2009 of the potential mischief that a financier could play by undertaking surrogate trading and / or taking delivery risks which it was otherwise not permitted to undertake under the Electricity Act, 2003, is not the case with PFC. In the event, the Commission believes that there is technical contravention by PXIL, such contraventions may be condoned without penalty since there is no willful contravention or disobedience of the order of the Commission.

9. During the hearing of the matter on 20.5.2010, learned counsel for Respondent No. 1 submitted that the directions contained in para 16 of the order dated 24.12.2009 in Petition No. 117/2009 dealing with the role of professional member (other than the trading licensees and grid connected entities) as a facilitator need to be understood in the context in which the order was issued. The role of professional member as a facilitator has been recognized as distinct from an electricity trader. The main allegation of the Tata Trading Power Company Ltd. in Petition No. 117/2009 was that "the category of professional members being allowed to trade on the Power Exchange amounts to allowing unlicensed electricity traders and therefore, should be abolished" was rejected by the Commission. Thereafter the Commission proceeded to deal with ambiguity and possible mischief which could be there in case of professional members facilitating the transaction of the clients namely, whether the professional members could camouflage his

activities by making his own transaction as client's transaction by giving credit facility, assuming de facto title through de jure keeping the title in the name of the client. In other words, the Commission was concerned whether the professional members are acting more than as facilitators and having financial exposure and stake in the transactions. In case of an electricity trader, there is a purchase and resale, resulting in the title of the electricity being transacted getting vested in the electricity trader, whereas in case of professional members, no such title passes to the members. If the title passes to a member which is an electricity trader, there is an element of risk of delivery/off-take of units of electricity being assumed by the electricity trader in the very nature of transactions i.e. the transaction of electricity trader being of his own and not on behalf of a third party. The professional member other than the electricity trader could not have similar assumption of risk of delivery or off-take of the underlying units transacted on the power exchange akin to an electricity trader, though legally title to electricity does not pass. While the professional members can function as brokers they should not provide credit facility, indemnity, assume financial risk/claims arising out of non delivery of electricity by clients. The Commission was concerned with the non-vesting of the title to the electricity in the professional members, non-assumption of risk of delivery/off-take, not providing credit facility, indemnity, non-assumption of financial risks/claims. In the above premise, the Commission clarified the role of the professional members as facilitators and the services to be provided by the professional members in para 16 of the order dated 24.12.2009. In the subsequent para 17, the Commission had

directed the members of the power exchange who are not professional members as facilitator and specifically what they are prohibited from doing namely, providing any or financial or working capital facilities to their clients which expressions are clear, unambiguous and certain.

10. The learned counsel argued that the basic feature of the prohibition is the use of the financial resources of the professional members for the benefit of the clients. The term 'credit' would mean providing a debt to the clients i.e. allowing the clients to have an outstanding amount due from the client to the professional members for transactions undertaken by the professional members on behalf of the clients. This would mean the existence of a debt obligation by the clients to the professional members. It means that at no point of time, the professional members should have any outstanding recoverable from the clients, namely any outstanding amount or debt owed to him by the client for transactions undertaken on behalf of the clients on the power exchange. The term 'financing' would similarly mean functioning as a financier or funding the client, providing funds by the professional members to the clients. Similarly, 'working capital facility' would again imply providing funds of the clients to meet the working capital requirements. The learned counsel submitted that the above prohibition does not extend to transaction services that the professional members may provide to the clients using the amounts deposited by the clients and not using any part of the amount of the members. These include the banking transaction services where the client pre-deposits the entire amount in a designated account

under the control of the members. The first respondent has submitted that the Commission has recognized the functioning of a professional member other than an electricity trader and a grid connected entity and has rejected the contention of the petitioner in Petition No. 117/2009 that a professional member is nothing but an unlicensed electricity trader. The Commission has rightly differentiated the two categories on grounds of the vesting of the title to the electricity purchased or sold. A professional member who does not purchase the units of electricity in his own name or resell the same in his own name will not be an electricity trader within the meaning of Section 2(71) of the Electricity Act, 2003. However, in view of the possible mischief of professional members taking financial risk on behalf of the client or funding and financing the transaction in the name of the client, certain restrictions were imposed in the order dated 24.12.2009. Such restrictions have now been incorporated in Regulation 26 of the Power Market Regulations, 2010. This Regulation 26 reads as under:

> *"26. Membership in Power Exchange*
> *(i) Membership in Power Exchange shall be of the following three categories :-*
> *(a) Member who is an Electricity Trader or*
> *(b) Member who is a distribution licensee including deemed distribution licensee or a grid connected entity or*
> *(c) Member who is neither an Electricity Trader nor distribution licensee including deemed distribution licensee nor a grid connected entity*
> *(ii) Member who is neither an Electricity Trader nor distribution licensee including deemed distribution licensee nor a grid connected entity can only provide the following services to its clients:-*
> *(a) IT infrastructure for bidding on electronic Exchange platform or skilled*
> *personnel*
> *(b) Advisory services related to power prices and the follow on bidding strategy (e.g. weather related information, demand supply position etc) (c) Facilitation of procedures on behalf of his client for delivery of*

power (e.g. State Load Despatch Centre standing clearances, coordination with National Load Despatch Centre etc)
In no case, such a member shall provide any credit or financing or working capital facility to their clients."

11. At the same time, other Regulations in the Power Market Regulations, 2010 deal with aspects such as Default Remedy Mechanism (Regulation 30) and Information Technology Infrastructure (Regulation 31). All these envisage the members acting on behalf of the clients but without extending any credit or financing or funding facility to the client. So long as no such credit, financing or funding facility is given, namely that professional members do not fund the client, and there cannot be any issue of the professional members providing the infrastructure facility and facilitation of the transactions.

12. The leaned counsel has submitted that if the funds are provided in total by the client in regard to transaction and no part of the funds of the professional members is used directly or indirectly there cannot be any question of the professional member providing any credit, financing or funding facilities to the client. The professional member acts as a facilitator as a representative an agent or trustee of the client, a role which has been duly recognized by the Commission. The learned counsel also explained the position with the help of an example to show that the underlying element of financial exposure is the ingredient for the allegation of non-compliance of para 16 and 17 of the order dated 24.12.2009 or Regulation 26 of the Power Market Regulations, 2010. The deposited money is by the client with the

members and not vice-versa and the entire financial exposure that may arise in the transaction is secured by such deposit. It has been further submitted that the act of the client in depositing the money in the settlement bank account of the professional member in fact ensures the best and complete compliance of the order dated 24.12.2009 as it excludes all and every possibility of a member giving credit or financing or working capital facility to the client. The learned counsel submitted that there cannot be any better compliance of the order of the Commission than the process adopted by the first respondent of requiring the clients to deposit the money with the members. The leaned counsel has further submitted that while the Commission has rightly insisted that no credit or financial or working capital facilities provided by the members other than the electricity traders or grid connected entities, the same should not be interpreted to mean that such members should not handle the money of the clients. The counsel has submitted that there is no violation by Respondent No. 1 as referred to in the show cause notice and the proceedings against it should be discharged. Citing Regulation 26(iii) of the Power Market Regulations, the learned counsel has submitted that this regulation permits a member who is an electricity trader to provide any credit or financial or working credit facility to their clients. In this regulation an electricity trader who acts on behalf of a client has been permitted subsequently to provide credit or financing or working capital facility to the clients. There seems to be no such rationale in allowing an electricity trader to provide such funding facility to the clients even in

transactions where he acts only as a facilitator or not as a purchaser or reseller of electricity.

13. Learned counsel appearing on behalf of Respondent No.2 reiterated that Respondent no. 2 has acted in a *bona fide* manner and had sought a clarification vide its letter dated 29.12.2009 as to whether the order dated 24.12.2009 prohibits PCM to extend credit facilities. However, after the issue of the Power Market Regulations, it has stopped the PCM from extending credit facilities even at the cost of loss of its business. Learned counsel relying on the judgement in Kapildeo Prasad Sah and others v. State of Bihar {AIR 1999 Supreme Court 3215} submitted that the Hon'ble Supreme Court has held that since notice of contempt and punishment for contempt are of far reaching consequence, these powers should be invoked only when clear case of willful disobedience of court's order has been made out. Since the Respondent has complied with the order of the Commission after the issue of the Power Market Regulations, the Commission may consider to discharge the notice against Respondent No. 2 issued under section 142 of the Act.

Analysis of the case and our decision

14. The main charge against Respondent No.1 is that the clients of the Members-facilitator have deposited the money in the Settlement Bank Account of these members who have in turn transferred the same to the account of the Exchange. This was held to be in contravention of the order dated 30.3.2010 which does not permit these Members-facilitators to handle

the money of the clients. Respondent No.1 has strenuously argued to drive home the point that directions in para 16 of our order needs to be read in the context of para 17 of the order dated 24.12.2009 which prohibits the Member-facilitators to provide any credit or financing or working capital facility to their clients. Since banking facility has not been prohibited, the Member-Facilitators can extend such facilities unless it results in providing credit or financing or working capital. It is the contention of the first respondent that the Members-facilitators have always ensured that the clients maintain sufficient funds to discharge the liability of clients to the exchange and at no point of time these members have funded the liabilities of the clients from their own sources.

15. The Commission does not agree with the contentions of Respondent No. 1 that funds could be provided to the professional members in total by the client in regard to transaction. The Commission also does not agree that as it would be to ensure that no part of the funds of the professional members is used directly or indirectly there cannot be any question of the professional member providing any credit, financing or funding facilities to the client. The Commission's direction in its Order dated 24.12.2009 was effectively to minimize the scope for ambiguity and mischief and requires that funds should not be provided to the professional members. According to Respondent No.1 what distinguishes the allegation made against it in the show cause notice is the element of financial exposure. It has been stated that the deposit of money is by the clients with the members and not vice versa and the entire

financial exposure that may arise in the transaction is secured by such deposit. However, the Commission's view is that the Order dated 24.12.2009 was passed to put in place such restrictions and mechanisms that would impair such members (who are unlicensed electricity traders) from having access to funds that would empower them to undertake the business of trading in electricity while circumventing the requirement of obtaining licence for the same under the Electricity Act, 2003. The conditionalities in Order dated 24.12.2009 requiring that funds should not be provided to the professional members would ensure that professional members cannot undertake obligations of risk of delivery / off-take of underlying units of electricity related to transactions thereby eliminating any instance of conduct of licensed trading activities at the hands of unlicensed professional members. In view of the aforegoing, the Commission does not agree that the process adopted by the first respondent of requiring the clients to deposit the money with the members is a better way of compliance of the order of the Commission. According to Respondent No. 1 there should not be restriction on members to handle the money of the clients. These arguments hit at the very root of the matter and are contentions put forth requiring a review of the Commission's direction in its Order dated 24.12.2009 although put forth in a reply to show cause notice. A reply to a show cause notice cannot be an application seeking review in disguise. Due to these reasons, the above contentions are dismissed. It has also been submitted that there is no rationale in allowing an Electricity Trader in the Power Market Regulations, 2010 to provide credit or financing or working capital facility to their clients,

even in transactions where he acts only as a facilitator and not as a purchaser or re-seller of electricity. Since, these present proceedings have a limited purpose namely to check compliance of the Commission's Order dated 24.12.2009, objections on Regulations made by the Commission on their being rational or not, cannot be entertained in the present proceedings.

16. The Commission has not been able to appreciate the submission made by Respondent No. 1 that the very scheme of professional members as facilitators has been evolved to enable the interested persons to undertake transactions on power exchanges without the need to know about the nuances of dealing, handling the infrastructure and acquiring expertise. In fact on the contrary, the Order dated 24.12.2009 requires that such members should have the abovesaid level of knowledge to provide the following services:

(a) IT infrastructure for bidding on electronic exchange platform
(b) Advisory services related to power prices and the follow on bidding strategy (e.g. weather related information, demand supply position etc)
(c) Facilitation of procedures on behalf of his client for delivery of power (e.g. SLDC standing clearances, coordination with NLDC etc)

17. We are also not inclined to agree with the interpretation of our order supplied by the Respondent No.1. Our directions in the order dated 24.12.2009 had two parts. The first part which is contained in para 16 of our order clearly and expressly defines the services which the Member-Facilitators are permitted to provide to their clients. These services do not include accepting the money of the clients in the Settlement Bank Account of the

facilitator-members and transferring the same to the accounts of the exchange. There is no ambiguity in the language of Para 16 of our order. Our directions in para 16 of our order does not contain any provision for the Member-Facilitators to allow their clients to deposit the money in settlement account funds. The second part of our order is contained in para 17 which specifically prohibits these members not to extend credit or financing or working capital facility. Provision of banking facility would be contrary to para 16 and para 17 of the Order dated 24.12.2009.

18. In the case of Respondent No.2, it was conscious that the Professional Clearing Member which is not an electricity trader nor a grid connected member is prohibited from extending credit facility in terms of para 17 of our order dated 24.12.2009 in Petition No.117/2009. The Respondent sought to distinguish the PCM from the facilitator-member and sought a clarification from the Commission in its letter dated 29.12.2009 while allowing the PCM to continue to extend the credit facility. The bona fide of Respondent No.2 would have been established had it stopped the credit facility by the PCM during the period it sought clarification from the Commission. As the Commission does not enter into correspondence with the parties in respect of its quasi-judicial function, Respondent No.2 could have moved an appropriate application in that regard. Respondent No.2 stopped the credit facility by the PCM after the Power Market Regulations were notified containing the very provisions as in para 16 and 17 of our order dated 24.12.2009 in Petition No.117/2009. However, the Respondent No.2 has

tendered unqualified apology for continuing with the credit facility by the PCM from 25.12.2009 till 21.1.2010.

19. The submissions of Indian Energy Exchange show that these members have ensured that their clients maintain adequate arrangements with them to discharge the financial obligations arising out of transactions that may be contracted on behalf of the clients and that financial settlements have been done through money of the clients although a Chartered Accountant's certificate was annexed stating that no credit has been provided by these members to their clients during the aforesaid period. From the submission of Power Exchange of India Limited it is observed that PFC has made payment of Rs. 49,134,820 as credit in discharge of the obligations of JVVNL to the exchange. The Commission is of the view that the following practices are contrary to the Commission's Order dated 24.12.2009 :- (i) banking transaction services provided by members other than trading licensees and grid connected entities to their clients, (ii) depositing of money by clients in the settlement bank account of such members and (iii) transfer of such money by such members to the bank account of the exchange. Since these practices are contrary to the Order dated 24.12.2009 but at the same time it is the first instance of non-compliance by the Respondents, we do not intend to impose any penalty under Section 142 of the Act. In case of PXIL, it has been stated that once the Power Market Regulations 2010 were notified the Professional Clearing member (PCM) activity was stopped immediately. We, accordingly, discharge the notice against both the Respondents under

Section 142 of the Act with a warning that the respondents shall faithfully comply with the provisions of Power Market Regulations, 2010 and our directions in letter and spirit and any contravention in future will be dealt with sternly in accordance with law.

20. We direct the Respondent No.1 to stop the practice of the clients depositing the money in the Settlement Funds Accounts of the Members-Facilitators with immediate effect as this is in the violation of Power Market Regulations, 2010. As regards the practice followed from 25.12.2010 till date, the First Respondent has submitted that the Members-Facilitators have not exceeded the limit of the deposits made by the clients and under no circumstances these members have extended any credit facility to any of the clients. We direct that the Secretary of the Commission shall arrange to get a special audit carried out into the accounts of Respondent No.1 within a period of one month by a firm of Chartered Accountants. Respondent No.1 is directed to provide the relevant record and cause the Members-Facilitators to allow access to their records for audit. Any instance of non-cooperation by Respondent No.1 or any of its facilitator-members will be construed as contravention of the directions of the Commission by Respondent No.1 and will be dealt with sternly.

Sd/-	**sd/-**	**sd/-**	**sd/-**
[M. Deena Dayalan]	**[V. S. Verma]**	**[S. Jayaraman]**	**[Dr. Pramod Deo]**
Member	**Member**	**Member**	**Chairperson**