

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**Coram: Dr. Pramod Deo, Chairperson
Shri V.S. Verma, Member
Shri M. Deena Dayalan, Member**

In the matter of

The Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of Trading licence and related matters)(First Amendment) Regulations, 2012

Statement of Reasons

Introduction

1. The Central Electricity Regulatory Commission (hereinafter “Central Commission”) has been entrusted with the function to grant licence for inter-State trading under section 79(1)(e) of the Electricity Act, 2003 (hereinafter “the Act”). Part IV of the Act deals with the licensing provisions. Section 52 of the Act which relates to electricity traders provides that the Appropriate Commission may specify the technical requirements, capital adequacy requirement and credit worthiness for being an electricity trader. The said section further provides that the electricity trader shall discharge such duties, in relation to supply and trading in electricity as may be specified by the Appropriate Commission. In exercise of the power under section 178 of the Act read with all relevant provisions of the Act, the Central Commission has notified the Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of trading license and other related matters) Regulations, 2009 (hereinafter “2009 Trading Licence Regulations”) which came into effect from 2.6.2009. Subsequently two amendments were issued in the year 2009 in order to keep pace with the development

in electricity sector. On the basis of the experience gained since 2009, it was considered necessary to amend the 2009 Trading Licence Regulations in the light of the following factors:-

- (a) to update the regulation and make it relevant in dynamic market conditions;
- (b) to address certain gaps and discrepancies in the regulations.
- (c) to look at traders' risk holistically and improve risk monitoring of traders; and
- (d) to enumerate various possible violations of the Electricity Act, 2003, regulations or orders of Commission and provide for the regulatory mechanism to deal with these violations.

2. The Commission posted the draft regulations on its website on 7.5.2012 inviting comments/objections/suggestions from the stakeholders. Comments were received from following:

- a) Prayas Energy Group(NGO)
- b) GMR Energy Trading Limited
- c) Power Exchange of India Limited
- d) TATA Power Trading Company Limited
- e) RPG Power Trading Company Limited
- f) JSW Power Trading Company Limited
- g) Reliance Energy Trading Limited
- h) PTC India Limited
- i) Mittal Processors (P) Ltd.
- j) Indian Energy Exchange Limited

The Commission also held a public hearing on 26.6.2012 to elicit the views of the stakeholders and other interested persons. After consideration of the comments/objections/suggestions, the Commission has finalized the amendment to the 2009 Trading Licence Regulations and notified the same in the Gazette of India. The proposed amendment, the comments/objections/suggestions received and the decision of the Commission thereon are discussed in the succeeding paragraphs.

A. Definition

Economic offence and intra-State trading {Regulation 2(1)(g) and 2(1)(ki)}

3. The following amendments were proposed in the definition of economic offence and intra-State trading:

“(g) **economic offence**” means an offence under any of the statutes listed in the Schedule to the Economic Offences (Inapplicability of Limitation) Act, 1974 (12 of 1974);”

“(ki) **‘intra-state trading’** means purchase of electricity for re-sale within the territory of the same State;”

4. No comments have been received on the terms “intra-State trading” and “economic offence”. Hence these amendments have been accepted without any changes.

Inter-State Trading {Regulation 2(1)(k)}

5. The following amendment was proposed to the definition of “inter-State trading”.

“(k) **‘inter-State trading’** means purchase of electricity from one State for re-sale in another State and includes electricity imported from any other country for re-sale within India;”

6. The following comments have been received on “inter-State trading”:
- (a) RPG has commented that the provisions “including the export of power to other country” should be added in the definition.
 - (b) PXIL has submitted that the term should be defined as “purchase of electricity from one State or union territory for resale in another State or union territory and includes electricity imported from any other country for resale within India.”

Analysis and Decision

7. We have considered the comments. Now-a-days, power is also being exported outside the country. Therefore, it will be appropriate to include export of power in the definition of inter-State trading. However, this will be subject to the applicable laws for export and the guidelines of Ministry of External Affairs/Ministry of Commerce as may be applicable. As regards the suggestion of PXIL to include “or Union Territory” after the word “State”, we are of the view that the State would also include Union Territory and there is no requirement to separately provide for Union Territory. In Section 2(36) of the Act, the term “inter-State Transmission System” has been defined in which only the word ‘State’ has been used even though the power may flow from the territory of a State to the territory of a Union Territory. Accordingly, Regulation 2(1)(k) has been modified as under:

“(k) ‘inter-State trading’ means purchase of electricity from one State for re-sale in another State and includes electricity imported from any other country for re-sale within India or exported to any other country subject to compliance with applicable laws and clearance by appropriate authorities.”

Licensee {Regulation 2(1)(m)}

8. The following amendment was proposed in the definition of “licensee”:

“(m) ‘licensee’ means a person who has been granted licence for inter-State trading under section 14 of the Act:

Provided that if any licensee undertakes intra-State trading based on the licence for inter-State trading granted by the Commission, the licensee shall be regulated under these regulations for the purposes as specified which shall be in addition to and not in derogation of any regulations specified by the State Commission on intra-State trading;”

9. On the definition of the word ‘licensee’, RPG has commented that in case of any conflict in understanding of provisions of inter-State vs. intra-State trading regulations, process should be in detail for settlement of applicability. The licensee for the purpose of the Trading Licensee Regulations essentially refers to the inter-State trading licensee as this Commission is authorized under the Act only to issue inter-State trading licence and regulate such licensees. Rule 9 of the Electricity Rules, 2005 provides as under:

“9. Inter-State trading licence.- A licence issued by the Central Commission under section 14 read with clause (e) of sub-section (1) of section 79 of the Act to an electricity trader for inter-State operation shall also entitle such electricity trader to undertake purchase of electricity from a seller in a State and resell electricity to a buyer within the same State, without the need to take a separate licence for intra-State trading from the State Commission of such State.”

It is clear from the above provision that an inter-State trading licensee is not required to take a separate licence from the State Commissions for carrying out intra-State trade. However, it remains an undenyng fact that the basis for such intra-State trade is the licence issued by the Central Commission and therefore, the licensee is also subject to the terms and conditions of the licence issued by the Central Commission for such intra-State trade. In so far as operational aspects are concerned, such licensee shall be governed by the regulations of the concerned State Commission. For example, if any trading margin has been specified by the State Commission, the licensee shall have to comply with the said regulations for charging trading margin for intra-State trade within

the State. However, if the licensee fails to comply with the trading margin of the concerned State Commission and if the concerned State Commission is of the view that the licensee shall be debarred from trading within the State, the State Commission will issue such order and refer the matter to the Central Commission to take appropriate action against the licensee since the Central Commission is the Appropriate Commission in respect of the said licensee and debarring the licensee from carrying out intra-State trade within a State would amount to change in the terms and conditions of the licence. Considering all the aspects, the definition of licensee has been modified as under:

“(m) ‘licensee’ means a person who has been granted licence for inter-State trading under section 14 of the Act:

Provided that if any licensee undertakes intra-State trading based on the licence for inter-State trading granted by the Commission, the licensee shall be regulated under these regulations for the purposes as specified which shall be in addition to and not in derogation of any regulations on intra-State trading specified by the concerned State Commission;”

B. Trading in Electricity as main object of the Company {Proviso under Regulation 3}

10. It was proposed in the draft amendment that the applicant for trading licence should have electricity trading as one of the Main Objects in the Memorandum of Association. The proposed amendment was as under:

“Provided that the applicant should have been authorized to undertake trading in electricity in accordance with its constitutional/organizational documents such as the Main Objects in the Memorandum of Association (in case of a company incorporated under the Companies Act, 1956) or the Partnership Deed (in case of a partnership firm registered under the Indian Partnership Act, 1932)”.

11. In response to the proposed amendment, PTC has submitted that making trading in electricity mandatory as the main objects in the Memorandum of Association or the Partnership Deed is not called for and would perhaps be against the intent of the Act

also. It is desirable to avoid entry barriers and facilitate more market players to enhance competition. However, if the intention of the amendment is to involve only serious players, this regulatory provision could at best be applicable to category-I traders. TPTCL has submitted that as per the regulations only the entities having valid trading licence are allowed to undertake power trading in electricity. Hence, any entity which is undertaking electricity trading without a valid trading licence should not be allowed to participate in any manner whatsoever either on bilateral basis or on power exchange. PXIL has submitted that the words “or the constitutional document of Limited Liability Partnerships (LLP)” should be added at the end of the proviso.

Analysis and decision

12. We have considered the above objections of the stakeholders. The purpose of prescribing that trading in power should be included as one of the Main Objects in the Memorandum of Association of the company seeking licence is not to create any entry barrier but to encourage serious players to enter the field of power trading. Moreover, a company is legally authorized to carry out the business which it has been authorized under its Memorandum of Association. It has been held by the Supreme Court in *Dr. A. Laxmanswami Mudaliar and Ors vs. Life Insurance Corporation of India Ltd* {AIR 1963 SC 1185} that “a company is competent to carry out its objects specified in the Memorandum of Association and cannot travel beyond the objects”. We are of the view that the provision regarding power trading as one of the main objects of the company should be retained. We have also accepted the suggestion of PXIL and added Limited

Partnership firms. Accordingly, the Proviso under Regulation 3(1) of the Trading Licence Regulations has been modified as under:

“Provided that the applicant should have been authorized to undertake trading in electricity in accordance with its constitutional/organizational documents such as the Main Objects in the Memorandum of Association (in case of a company incorporated under the Companies Act, 1956) or the Partnership Deed (in case of a partnership firm registered under the Indian Partnership Act, 1932) or the constitutional documents of Limited Liability Partnerships under Limited Liability Partnership Act, 2008”.

C. Networth {Regulation 3(3)}

13. It was provided in 2009 Trading Licence Regulations that in case of the existing companies, they will be required to possess the required networth for the relevant category for a period of three years preceding the date of application whereas a new company was required to possess the networth since the date of its incorporation. This created a dichotomy under which a one year old company would be required to possess the networth for one year whereas an existing company will be disqualified even though it has the networth for two years. The Commission proposed to do away with the requirement of possession of networth for three years in case of existing company to provide a level playing field to both old and new companies.

14. Prudent credit risk management necessitates that capital adequacy requirement of the applicant for trading licence should be ascertained while granting licence for inter-State trading. Since an inter-State trading licensee is also permitted to undertake intra-State trading in terms of Rule 9 of the Electricity Rules, 2005 without having to take a licence for intra-State trading, it is essential to look at a traders' risk in a holistic manner. The additional credit risk to an inter-State trader emanating out of intra-State trading also needs to be covered by the capital deployed (net worth in this case) by the trader.

A default in any segment of the trader's business, whether inter-State or intra-State would erode his capital base and negatively impact his risk profile. Hence, the total transaction volume of inter-State and intra-State trading needs to be considered while stipulating the networth requirement of the trading licensee. The purpose of Rule 9 is to save a person from the requirement of obtaining multiple licences from the Central and State Commissions. There is a need to harmonise the jurisdictions of Central Commission and State Commissions when intra-State trade is being carried out on the basis of the inter-State trading licence. While the operational aspects of intra-State trading including trading margin of an inter-State trading licensee will be governed by the regulations of the concerned State Commission, other aspects like the net-worth and creditworthiness, terms and conditions of the licensee shall be governed by the regulations of the Central Commission.

15. The Combined Volume of inter-State and intra-State Transactions for networth requirement may necessitate certain traders to enhance their networth which may result in change of category of existing licence. It was proposed to allow the existing trading licensees time upto 31st October 2012 to submit the information about the "Volume of electricity proposed to be traded in 2012- 13" along with the special balance sheet as on 31st August 2012 for the said purpose.

16. Keeping the above in view, the following amendment was proposed to Regulation 3 of the Trading Licence Regulations:

"(3) Capital Adequacy and Liquidity Requirements:

(a) Considering the volume of inter-State and intra-State trading proposed to be undertaken by the applicant on the basis of the inter-State trading licence, the minimum

net worth of the applicant on the date of application, as per audited special balance sheet accompanying the application, shall not be less than the amounts specified hereunder:

Category of the Trading Licence	Volume of electricity proposed to be traded in a year including intra-State trading, where applicable	Minimum Net Worth (Rs. In crore)
Category I	No Limit	50.00
Category II	Not more than 1500 MUs	15.00
Category III	Not more than 500 MUs	5.00
Category IV	Not more than 100 MUs	1.00

(b) An applicant shall be required to maintain the network as specified in this clause at all times:

Provided that if an existing licensee is required to possess the network requirement of any particular category based on the volume of inter-State and intra-State trading proposed to be undertaken during 2012-13 on the basis of the inter-State trading licence, the licensee shall furnish by 31st of July 2012, the information about the volume of electricity proposed to be traded during 2012-13 supported by special balance sheet as on 31st March 2012.

(c) The applicant shall have minimum current ratio of 1:1 and liquidity ratio of 1:1 on the date of audited special balance sheet accompanying the application.

Note: The net worth and the current and liquidity ratios specified in this regulation shall be computed on the basis of the audited balance sheet prepared in accordance with the financial reporting framework prescribed under the Companies Act 1956.”

17. The following comments/suggestions have been received to the proposed amendment:

(a) RPG has submitted that as there is an additional cost and time for preparing twice the same balance sheet, the requirement of special balance sheet should be restricted to only those applicants who are seeking change in licence category. For others, a normal, fully prepared balance sheet be allowed to be submitted as was being done earlier.

- (b) TPTCL has expressed its agreement with the proposed amendment and has submitted that a trader should be required to comply with these regulations, including capital adequacy, beforehand if traded volume of power is going to exceed the eligibility. Else it may be treated as default.
- (c) GMR has submitted that since there is no limit on the volume of transaction for Category I inter-State trading licensee, the combined networth for both intra and inter-State trading should not exceed the networth stipulated for Category-I trading licensee.
- (d) JSWPTCL has submitted that the volume of inter-State and intra-State trade should be considered for determination of percentage share of a trader in the market which will give the true picture of the volume traded by a trader and networth required for such trading volume such inclusion of intra-State traded volume/ power transactions by the Commission is appreciable and it will reflect actual supplier power vs buyers in the market.
- (e) Prayas Energy Group, a consumer association, has submitted that up-gradation and down-gradation of license is currently based on networth and licence categories are based on an upper limit on volume transacted. Prayas has submitted that for each category, a lower limit of traded volume could also be specified and change in license category based on traded volume and networth.
- (f) Anonymous - The networth in clause 3 of Regulation 3 has been stipulated based on the “volume of electricity proposed to be traded in a year including

intra-State trading” but the explanatory memorandum provides that “3.1...the networth declared while applying for inter-State trading licence should be exclusively for the purpose of inter-State licence. This should not be used again while applying for intra-State licence”.

(g) PXIL has submitted that ‘special balance sheet’ has not been defined and it needs some clarification.

(h) Mittal Processor has submitted that the power quantum restriction should be applicable only for inter-State trading of electricity and should not be applied to intra-State trading as the same is carried out within the State and governed by intra-State regulations.

Analysis and Decision

18. We have considered the comments and suggestions of the stakeholders. With regard to RPG’s submission on special balance sheet, it is clarified that the purpose of special balance sheet is to ascertain the present financial status of the Company for the purpose of carrying out prudence check into the capital adequacy requirements before issuing licence. Since the financial position of the applicant is required as on the date of the application, a special balance sheet has been prescribed as a year old balance sheet may not give true picture of the networth and capital adequacy of the company. Similarly, if an existing trader is seeking upgradation of its category, it shall be required to submit a special balance sheet alongwith the application unless the licensee is filing the application within a reasonable period of preparation of normal balance sheet, say

one month. In response to PXIL suggestion, it is clarified that Regulation 6(b) provides for "special balance sheet as on the date falling within 30 days immediately preceding the date of making the application". Therefore, the special balance sheet accompanying the application is required to be prepared within one month prior to making of the application. As regards the TPTCL's suggestion that the licensee should possess the capital adequacy before the quantum of its traded power exceeds specified limits in its licence, it is clarified that Regulation 7(b) of the Trading Licence Regulations permits the licensee to trade upto 120% of the volume of electricity authorized under the licence granted to it. Trading upto 120 % of declared volume is allowed since a situation can arise when there is an unforeseen higher business for a trader in a year. However, where the trader intends to trade more than 120% of the authorized volume in a year and on a consistent basis, it is required to upgrade its category of licence by filing a Regulatory Compliance Application accompanied by a special balance sheet. We agree with the suggestion of GMR that the combined network for both intra and inter-State trading should not exceed the network stipulated for Category-I trading licensee. Since a Category I licensee has no limit on the volume of trade to be undertaken by it, the combined network for intra-State and inter-State trading shall be ₹50 crore as specified for Category I licensee. However, for other categories such as Category II, III and IV, both inter-State and intra-State volumes would be taken into consideration for deciding the network. As regards the submission of Mittal Processor that intra-State trading should not be used for quantum restriction, it is clarified that wherever a licensee is carrying out intra-State transactions on the basis of the Inter-State trading licence, its transactions both intra-State and inter-State shall be considered from the point of view

of risk management since trading of higher volume of electricity without corresponding networth would be detrimental to trading and market development. Both JSWPTCL and Prayas have appreciated the Commission's initiative to consider the intra-State and inter-State transactions. It will give a clear picture about the market share of the particular trader in electricity market. As regards the submission of Prayas to prescribe a lower trading volume for each category, we are of the view that the purpose of prescribing an upper limit of the trading volume for networth is that trading beyond the limit without having commensurate networth would have adverse credit risk implication. Prescribing a lower limit does not meet this purpose. Moreover, in the current market scenario, many traders do not get enough business and therefore, prescribing a lower limit would mean that those not meeting the minimum quantum of trade would have to go out of trading business. Till the market matures further, it is not advisable to prescribe a lower limit on the volume of trade.

19. In the draft it was proposed that the existing licensees should submit their special balance sheet as on 31.8.2012 by 31.10.2012 alongwith the details of the intra-State and inter-State trades that they proposed to carry out during 2012-13 for the purpose of assessing the networth of these licensees viv-a-vis the volume of inter-State and intra-State trade (carried out on the basis of inter-State trading licence) taken together. Since the regulations were notified on 11.10.2012, the date of submission of the information has been changed to 15.11.2012. This is a one-time exercise to assess the networth of the existing licensees. However, for the year 2013-14 and afterwards, the licensees shall furnish the details of inter-State and intra-State trades alongwith their balance

sheet which will be taken into account to assess their networth and trade volumes vis-a-vis the category of licence held by them.

20. Taking into account the above, Regulation 3(3) of the Trading Licence Regulations has been amended as under:

“(3) Capital Adequacy and Liquidity Requirements:

(a) Considering the volume of inter-State and intra-State trading proposed to be undertaken by the applicant on the basis of the inter-State trading licence, the minimum net worth of the applicant on the date of application, as per audited special balance sheet accompanying the application, shall not be less than the amounts specified hereunder:

Category of the Trading Licence	Volume of electricity proposed to be traded in a year including intra-State trading, where applicable	Minimum Net Worth (Rs. In crore)
Category I	No Limit	50.00
Category II	Not more than 1500 MUs	15.00
Category III	Not more than 500 MUs	5.00
Category IV	Not more than 100 MUs	1.00

(b) An applicant shall be required to maintain the networth as specified in this clause at all times:

Provided that if an existing licensee is required to possess the networth requirement of any particular category based on the volume of inter-State and intra-State trading proposed to be undertaken during 2012-13 on the basis of the inter-State trading licence, the licensee shall furnish by 15th of November 2012, the information about the volume of electricity proposed to be traded during 2012-13 supported by special balance sheet as on 31st August 2012.

(c) The applicant shall have minimum current ratio of 1:1 and liquidity ratio of 1:1 on the date of audited special balance sheet accompanying the application.

Note: The net worth and the current and liquidity ratios specified in this regulation shall be computed on the basis of the audited balance sheet prepared in accordance with the financial reporting framework prescribed under the Companies Act, 1956.”

D. Disqualification (Regulation 4)

21. Regulation 4(c) provided that an order cancelling the licence of the applicant or any of its promoter or director etc. shall be a disqualification for the purpose of applying for trading licence. It was felt that the disqualification for cancellation of licence should

operate for a limited period and not indefinitely. Accordingly, Regulation 4(c) was proposed to be amended as under:

“(c) An order revoking the licence reasons of the applicant, or any of his associates, or partners, or promoters, or Directors, has been passed by the Commission for the reasons mentioned in sub-section (1) of section 19 of the Act and a period of three years has not passed from the date of such revocation ; or”

No comment has been received on the proposed amendment. The proposed amendment has been accepted with the modification that the word ‘period’ has been qualified with the word ‘minimum’.

22. One of the grounds for disqualification for grant of trading licence in provided in Regulation 4(e) was when the applicant or any of its associates or partners or directors etc. were refused licence on the grounds which remained valid or any of them were found guilty in any of the proceedings for non-compliance of the provisions of the Act or rules or regulations during the year of making the application or five years preceding the year. It was proposed to reduce the disqualification to a period of three years with the further condition that the Commission may commute the period depending upon the gravity of such non-compliance. Accordingly, the following amendment was proposed:

“(e) Where an applicant or any of his associates or partners or promoters or Directors has in the past been found guilty in any proceedings for non-compliance of any of the provisions of the Act or the rules or the regulations made thereunder or an order made by the Commission, the applicant shall be debarred from applying for trading licence for a period of three years from the date such non-compliance was established by an order of the Appropriate Commission:

Provided further that the period of disqualification specified under this clause may be commuted by the Commission depending on the gravity of such non-compliance; or”

23. Responses to the proposed amendment have been received from PTC and TPTCL. PTC has submitted that the period of debarment may be kept upto three years depending upon the seriousness of the offence. TPTCL has commented that any

person found guilty in the past should not only be debarred from inter-State trading but also should not be allowed to take part in any of the power exchange transactions.

24. We have considered the submission. We find merit in the submission of PTC. Nature and gravity of offence may vary and therefore, it is not prudent to keep an inflexible period of three years. Therefore, the period of disqualification has been kept “for a maximum period of three years”. Accordingly, the clause has been modified as under:

“(e) Where an applicant or any of his associates or partners or promoters or Directors has in the past been found guilty in any proceedings for non-compliance of any of the provisions of the Act or the rules or the regulations made thereunder or an order made by the Commission, the applicant shall be debarred from applying for trading licence for a maximum period of three years from the date such non-compliance was established by an order of the Appropriate Commission:

Provided further that the period of disqualification specified under this clause may be commuted by the Commission depending on the gravity of such non-compliance; or”

25. The Trading Licence Regulations were silent on the action that should be taken in case where any proceeding has already been initiated against an applicant for trading licence on the date of application or is initiated after the application is made, for non-compliance of the provisions of the Act or Rules or Regulations. In order to take care of the eventuality, clause (f) was proposed under Regulation 4 of Trading Licence Regulations as under:

“(f) On the date of application or thereafter, if any proceeding for non-compliance of any provision of the Act, or the Rules or the Regulations framed thereunder or for non-compliance of the order of the Commission is initiated against the applicant, the application shall be considered after the final disposal of the proceedings:

Provided that where the applicant is found guilty of non-compliance in the proceeding, its application shall be dealt with in accordance with Clause (e) of this regulation.”

26. No comment has been received on the proposed amendment. Accordingly, the amendment as proposed has been retained.

E. Procedure for grant of Licence (Regulation 6)

27. It was provided in Regulation 6(1)(a) that the fees alongwith the application for trading licence shall be paid through Bank Draft drawn in favour of Assistant Secretary, Central Electricity Regulatory Commission, New Delhi. As the payment of fees is being received through RTGS/NEFT as per the Payment of Fees Regulations, the mode of payment was proposed to be changed through the amendment as under:

“(a) such fee as may be prescribed by the Central Government from time to time and payable through NEFT/ RTGS only as per the procedure specified in Central Electricity Regulatory Commission (Payment of Fees) Regulations, 2012 or any subsequent enactment thereof.”

RPG has suggested that a system of acknowledgement for such fees payment by a trading licensee may be introduced which shall be helpful for reconciliation in future period. We have considered the suggestion. As per the normal accounting procedure followed by the Commission, receipt is issued for every payment received. Therefore, there is no requirement to provide for the same in the regulations. The Commission has directed the staff to issue receipt for every payment of fee received. Accordingly, Fee receipts under Proforma GAR 6 are being issued. No comment has been received on the proposed amendment regarding the mode of payment. Accordingly, the proposed amendment has been retained.

28. Under sub-clause (b) of clause (1) of Regulation 6 of the Trading Licence Regulations, an applicant is required to submit the balance sheet for preceding three

years, annual report and special balance sheet. Since the requirement of network for three years was proposed to be removed, it was proposed to require the applicant to file the balance sheet for one year only. Accordingly, sub-clause (b) was proposed to be substituted as under:

“(b) Copies of the annual reports in case of the persons incorporated under the Companies Act, 1956 (1 of 1956) and audited accounts along with the Directors’ Report, Auditors’ Report, the Schedules and notes on accounts for one year immediately preceding the year in which the application has been made and the special balance sheet as on any date falling within 30 days immediately preceding the date of making the application.”

No comment on the proposed amendment has been received. The amendment as proposed has been retained.

29. In Regulation 6(4)(i) of the Trading Licence Regulations, it was provided that the applicant shall publish notice of its application in the newspaper and the notice should contain the details of Networth, current ratio and liquidity ratio of the applicant as on 31st March of three consecutive years immediately preceding the year of making of the application or for such lesser period as may be applicable and on the date of the special balance sheet accompanying the application. As requirement of possession of network for preceding three years was proposed to be dispensed with, it was proposed that the applicant shall publish “Networth, current ratio and liquidity ratio of the applicant as on the date of the audited special balance sheet accompanying the application.” No comment on the proposed amendment has been received. Accordingly, the proposed amendment has been retained.

30. As the Commission proposed to assess the risk profile of the applicants for trading licence on the basis of network, it was considered necessary to know whether any

applicant is already in possession of intra-State trading licence and if so, the volume of trading allowed on the said licence. Accordingly, a new sub-clause was added under clause (4) of Regulation 6 of Trading Licence Regulations as under:

“(t) A statement on affidavit in case the applicant is in possession of any intra-State trading licence and the details of the volume of trading allowed (in Million Units) as per the said licence.”

No objection has been received from anybody to the proposed amendment. Accordingly, the proposed amendment has been retained.

F. Obligation of the Licensees (Regulation 7)

31. A licensee can trade, as per Clause (b) of Regulation 7 upto 120% of the volume authorized under the licence in exceptional cases subject to the payment of licence fee for the next higher category. This was provided to save the licensees to approach the Commission for permission if their trade marginally exceeds the volume authorized under the licence during a particular year. This did not require possession of networth for higher category. However, second proviso to clause(b) provided that the licensee can trade beyond 120% with the approval of the Commission. It was felt that if the licensee is proposing to trade beyond 120%, it should seek licence for the higher category. Moreover, a licensee having a licence for higher category may seek a licence of lower category due to lack of business or some other reason. It was therefore proposed that a licensee can seek upgradation or downgradation of the category of licence through an application, without having to go through the procedure for grant of new licence. Accordingly, it was proposed to substitute second proviso to clause (b) as under:

“Provided also that a licensee may make an appropriate Application accompanied by required fees for upgradation of its licence to a higher category or downgradation of its

licence to a lower category if it fulfills the conditions of these regulations for grant of such licence but it shall not be required to follow the procedure specified in Regulation 6 of these regulations.”

32. No suggestion/objection has been received with regard to the proposed amendment. However, PXIL has submitted that clarification should be given regarding refund of fee if downgradation is allowed. It is clarified that if downgradation is obtained prior to the beginning of the financial year, then the licence fee shall be paid for the downgraded category. However, if downgradation is sought and permitted during the financial year, it will be a case where the licensee shall be holding licence for the higher category for part of the year and licence for the lower category for remaining part of the year. Similar is the case with upgradation of category. It is clarified that the licensee shall be charged the fee of the higher category if it is held for a part of the year. The amendment as proposed has been retained. Further, one more proviso (fourth proviso) to clause (b) of Regulation 7 of the 2009 Trading Licence Regulations has been added, which provides an opportunity of hearing to the licensees in the interest of natural justice before any decision is taken by the Commission on the application filed under the third proviso.

Disgorge unjust profits {Regulation 7(c)}

33. It was proposed in draft Regulation 17(e) that unjust profits made by the licensee by charging trading margin higher than what is specified in the Trading Margin Regulations should be disgorged as a measure of penalty. In response, it has been commented that no power has been given to the Commission in the Electricity Act 2003 to disgorge unjust profits of a trading licensee. It has been argued that since the Commission has

not disgorged unjust profits of Generation, Transmission and Distribution segments, it should not be done for the traders. We have considered the submission.

34. We have considered the objections. Under section 62(6) of the Act, the any licensee or a generating company which recovers a price or charge exceeding the tariff determined by the Commission under section 62 shall be required to refund the excess amount charged alongwith interest equivalent to the bank rate without prejudice to any other liability. Thus the Act provides for restoring the price or charge recovered by a generating company or a licensee to the rightful owner. In the same manner, the Commission has specified the trading margin which shall be charged by an inter-State trader in the course of inter-State transaction and if the trader charges any amount in excess of what is specified in the regulations, he is liable to refund the excess amount. Disgorgement of unjust profit is an equitable remedy and flows from the obligations of an inter-State trading licence to comply with the Trading Margin Regulations which means that at no point of time, the trader can charge more than what is permissible under the regulations. Though earlier, disgorgement of unjust profit was proposed under penalty, we have considered it appropriate list under the provisions 'Obligation of the licensee'. Accordingly, a new proviso has been added under Regulation 7 (c) as under:

"Provided that where it is established on the basis of regulatory audit carried out in accordance with clause (3) of Regulation 8 of these regulations that the licensee has charged trading margin above the ceiling specified in the Central Electricity Regulatory Commission (Fixation of Trading Margin) Regulations, 2010, the Commission may direct disgorgement of excess margin along with interest, at the rate as may be specified by the Commission, after giving an opportunity of hearing to the licensee."

Dealing with defaulting entities {Regulation 7(I)}

35. In clause (I) of Regulation 7 of the 2009 Trading Licence Regulations, it was provided that the licensee would not purchase electricity from the entities and the associates of such entities, defaulting in payment of Unscheduled Interchange charges, transmission charges, reactive energy charges, congestion charge and fee and charges for National Load Despatch Centre or Regional load Despatch Centre or the Unified Load Despatch and Communication Scheme or any other payment levied by the Commission or any of the State Commissions under the provisions of the Act or any regulation made thereunder, when so advised by the Commission. This provision was made to discourage the entities to make default in payment of the transmission charges, UI charges, RLDC charges etc. In order dated 25.1.2013 in Petition No.213/2011 filed by Powergrid Corporation of India Ltd. (PGCIL), the Commission had directed the staff to examine the suggestion of PGCIL to include the word 'sell' in Regulation 7(a) of 2009 Trading Regulations to make provide an effective deterrent against the defaulting entities. The matter was examined and it was proposed to include the word “sell” in Regulation 7(a) in the proposed amendment.

36. In response to the proposed amendment, comments from the following have been received:

(a) RPG has submitted that due to complex business relationship, determining the associate relationship of a defaulting entity may be difficult at the appropriate time.

(b) PTC has submitted that restricting trading licensees to purchase/sell electricity from/to entities defaulting in payment of various charges levied by load dispatch centre (LDCs) or regulatory Commissions etc will be contrary to the spirit of Electricity Act 2003 which was passed to promote measures conducive to development of power market, promoting competition, supply of electricity to all areas, rationalization of tariff etc. Moreover, traders have no option but to deal with discoms having poor financial health and take risks to survive in this competitive environment. The proposed amendment will have a very negative impact and virtually close the power trading business for no fault on licensee's part. Singling out trading licensees will be discriminatory. PTC has suggested that if at all such provisions are brought, then other players such as central generating companies, central transmission utility and power exchanges should also be asked not to provide services to defaulting entities.

(c) TPTCL has submitted that preventing traders from purchasing/selling electricity from/to defaulting entities would single out traders in dealing with these entities and would be discriminatory. If at all such provisions are brought, then other players such as central generating stations, CTU and PXs should also be asked not to provide services to defaulting entities.

(d) JSWPTCL has submitted that since most of the discoms have poor financial health and are defaulting in various types of payments such as transmission charges, LDC charges, UI charges etc., not allowing sale and purchase of power by traders from such entities will hamper the growth of market and revenue of the traders. Further, by not

allowing sale and purchase of power from traders only is discriminatory since these defaulting entities still can sell and purchase through Power Exchanges.

37. We have considered the suggestion/objections as noted above. The largest buyers of electricity from the trading licensees are the distribution companies. On account of default of payment of various charges by the distribution companies, it was proposed to deny them access to trade so that these distribution companies are forced to make payment of transmission and other charges in order to avail the facility of buying or selling power from trading licensees. We have reconsidered our views in the light of the responses received. For the default of the distribution companies, the traders should not be made to suffer, particularly when the traders are prepared to take the risk of delay or default in payment. For recovery of transmission charges and other charges, the Commission has specified the Central Electricity Regulatory Commission (Regulation of Power Supply) Regulations, 2010 and recourse should be taken by the transmission licensees including PGCIL for recovery of various charges. We have decided to drop the proposed amendment to clause (l) of Regulation 7 of the 2009 Trading Licence Regulations.

Payment of licence fee by stipulated date {Regulation 7(m)}

38. Clause (m) of Regulation 7 provided that the licensee shall pay the licence fee specified by the Commission from time to time. It was proposed in the draft amendment to insert the word “by stipulated date” as the Payment of Fee Regulations provide that the licence fees shall be paid by 30th April of the year. No comment on the proposed

amendment has been received. Therefore, the amendment as proposed has been retained.

Maintenance of records {Regulation 7(p)}

39. Clause (p) of Regulation 7 provided that the licensee shall maintain up-to-date record of all the trading transactions undertaken by him, separately for bilateral transactions, inter-State and those through the power exchange. Since the Commission proposed to consider the intra-State transactions undertaken by a licensee on the strength of the inter-State trading licence for the purpose of determining networth, it was proposed to amend clause (p) as under:

“(p) The licensee shall maintain up to date record of all trading transactions undertaken by him, separately for OTC inter-State transactions, OTC intra-State transactions, if any, made on the basis of inter-State trading licence and transactions through the power exchange.”

40. RPG has submitted that the Commission may consider standardisation of practices for maintaining the records by licensees as per the provisions of the Companies Act, 1956. However, no suggestion or objection has been received with regard to the maintenance of the record for intra-State transactions by the inter-State trading licensees. We have considered the suggestion of RPG. The Commission has prescribed the formats for maintenance of record and submission of information in respect of various transactions which shall be complied with by the licensees. The amendment as proposed has been retained.

Assignment of licence {Regulation 7(s)&(t)}

41. In the Trading Licence Regulations, there was no obligation on the part of the trading licensee to intimate the Commission about the change in networth which makes

it ineligible to continue in the category for which licence was issued to him. Further, there was no procedure for assignment of licence which was permitted under section 17 of the Act. Accordingly, the following clauses were proposed to be added:

“(s) The licensee shall immediately but not later than one month report to the Commission any change in the networth which makes it ineligible to continue in the category for which the licence has been granted.

(t) The licensee shall not at any time transfer or assign its license in any manner without the prior approval of the Commission:

Provided that the licensee can transfer or assign its licence only to such person who fulfills the conditions of Regulations 3 and 4 of these regulations:

Provided further that the licensee shall make an appropriate application before the Commission containing the details of the person to whom the licence is proposed to be transferred or assigned, its eligibility to hold the licence under these regulations and an affidavit from the proposed transferee or assignee that it will abide by the terms and conditions of licence and comply with the provisions of the Act, Rules and regulations made thereunder and the orders of the Commission as may be issued from time to time:

Provided also that the licensee shall be required to publish in brief in two daily newspapers having circulation in the area of operation for which licence has been granted about its application for transfer or assignment of its licence and invite suggestions/objections within 30 days and submit the copies of the publication along with its response to the suggestions/objections, if any, within 45 days from the date of publication.”

42. No comments on the above clauses have been received except a suggestion from PXIL to publish the notice in the newspaper published in English and one of the Indian languages. We have considered the suggestion of PXIL. In our view, similar procedure for publication of notice as given in Regulation 6(4) will serve the purpose. The amendment as proposed has been retained except the last proviso to clause (t) which has been modified as under:

“Provided also that the licensee shall be required to publish in brief in two daily newspapers having circulation in each of the five regions in addition to those published from Delhi, including one economic daily newspaper about its application for transfer or assignment of its licence and invite suggestions/objections within 30 days and submit the copies of the publication along with its response to the suggestions/objections, if any, within 45 days from the date of publication.”

Designation of Compliance Officer {Regulation 7(u)}

43. It was proposed under the Chapter “Code of Conduct” that “the licensee shall vest adequate freedom and powers in its Compliance Officers for the effective discharge of his duties under these regulations”. It was proposed for the purpose of creating a single point inter-action with the trading licensee by the Commission for ensuring compliance of the regulations and the terms and conditions of the licence. No suggestion/objection has been received to the proposed amendment. However, this has been retained under the provisions of “obligations of licensee” as under:

“(u) The licensee shall designate one of its officers as Compliance Officer who shall be the nodal officer for communication with the Commission and shall be responsible for compliance with all matters pertaining to the terms and conditions of the licence, the provisions of the Act and the regulations of the Commission. The licensee shall vest adequate freedom and powers in its Compliance Officer for the effective discharge of his duties under these regulations.”

G. Accounts of the Licensee (Regulation 8)

44. In sub-clause (e) of clause (1) of Regulation 8, it has been provided that the licensee shall submit the accounting statement and auditor report. As the companies are required to maintain annual financial statement as per the Companies Act, 1956, the requirement was proposed to be changed from “accounting statement” to “audited annual financial statement”. There is no objection to the proposed amendment. Hence, the proposed amendment has been retained.

45. There was no provision for regulatory audit of the accounts of the trading licensees. Accordingly, it was proposed to introduce a provision for regulatory audit by inserting clause (3) under Regulation 8 as under:

“(3) The Commission may, if considered necessary, appoint experts to carry out regulatory audit of the affairs of the licensee on such terms and conditions as the Commission may deem fit and in such cases, the cost of audit shall be borne by the licensee.”

46. Comments on the proposed amendment have been received from the following:

(a) RPG has submitted that ceiling of expenses of audit should be based on category of licensees (similar to license fees based on net worth & volumes) as different categories will have different level of income and trading volume data handling.

(b) PTC has submitted that a listed company like PTC has the statutory obligation to get the accounts and procedures/systems audited by internal and statutory auditors. The Commission has been seeking information and reports which are being complied with by the trading licensees. PTC has submitted that there is no apparent need for regulatory audit and if at all, the Commission requires further audit, the costs of such audit should be borne by the Commission.

(c) TPTCL has submitted that all the companies or the companies to which trading licensees belong have been audited regularly as per Companies Act, 1956 by the statutory auditors. Therefore, there is no additional benefit from the exercise. TPTCL has submitted that if the Commission feels the necessity of regulatory audit, the cost of such audit should be entirely borne by the Commission and trading licenses should not be saddled with this additional burden from the small profit they may earn with cap on the trading margin.

(d) GMRETL has submitted that the cost of regulatory audit should be to the account of the entity ordering/seeking such audit. As trading market subsists on revenues earned

by the traders through trading margin, any such extra unplanned expense would be difficult to be provisioned for.

(e) JSWPTCL has submitted that since the traders are filing the regulatory compliance as per regulations, additional regulatory audit is not required. It has been submitted that if regulatory audit of the traders is still considered necessary, then fee of such audit should not be to the account of the traders since they are already under other statutory payment obligations of high license fee etc. It has been submitted that in the clause, experts have not been defined.

(f) PXIL has submitted that the terms 'Expert' and 'Regulatory audit' may require clarification as to the qualification of the expert and the area of the audit.

47. We have considered the submissions as noted above. The trading licensees are submitting the reports regarding volumes traded, trading margin charged, their audited balance sheet and annual reports etc. However, there may be occasions where the Commission may be required to look into the affairs of the trading licensees particularly with regard to the compliance with the provisions of the Act or Regulations. The Commission has been empowered under section 128 of the Act to get the affairs of the licensee investigated by an Investigating Authority if the Commission is satisfied that the licensee has failed to comply with the provision of the Act or Rules or Regulations made thereunder. The Investigating Authority may appoint any auditor to assist him in the investigation. The said section further provides that all expenses of the investigation shall be defrayed by the licensee. Therefore, necessary provision has been made in the regulations for regulatory audit of the licensees in very rare cases if the licensee fails to

comply with the provisions of the Act or Rules or Regulations. However, it has been decided that the Commission will make payment to the Investigating Authority, which will be recovered from the licensee. This will ensure that there is no conflict of interest between the Investing Authority and the licensee whose affairs are being audited.

Regulation 8(3) has been modified accordingly as under:

“(3) The Commission may, if considered necessary, appoint auditors and/or experts to carry out regulatory audit to investigate into the compliance of the terms and conditions of the licence by the licensee in accordance with Section 128 of the Act and in such cases, the cost of audit shall be paid by the Commission and recovered from the licensee.”

H. Submission of Information (Regulation 9)

48. Regulation 9 of Trading Licence Regulations deal with submission of information by trading licensees. Clause (b) of the said regulations provided for reporting of monthly transaction of inter-State trade and trade through Power Exchanges. It is however seen that intra-State transactions carried out on the basis of inter-State trading licensees are not reported to the Commission. In fact, reporting of intra-State transactions was deleted through the amendment notified on 16.10.2009. However, the rationale to reintroduce intra-State transaction reporting has arisen from transaction volume vis a vis networth compliance perspective. As a general principle, higher transaction volume entails higher risk and hence a higher networth requirement to cover the risk. However, this Commission does not intend to monitor buyers or sellers, selling or buying price or trading margin of intra-State trades undertaken by an inter-State trading licensee on the basis of the licence issued by this Commission since operational aspects including intra-State trading margin fall under the purview of the concerned State Commission.

49. In the draft amendment, additional formats to report intra-State trade, REC trade, Power Exchange trade, open position were proposed. The weekly contract reporting was proposed to be consolidated with these formats. In the draft regulations, it was clarified that information regarding Open Position Reporting by traders would not be published in public domain because of its commercially sensitive nature. It was also expected that the monthly reporting would be automated, easier and user friendly after the implementation of Regulatory Information Management System by this Commission.

50. Accordingly, clause (b) of Regulation 9 was proposed to be substituted as under:

“(b) furnish monthly information in Forms ST1, ST2, ST3, ST4, ST5, ST6, ST7 and ST8 DAM, TAM, and Forms OST1, OST2, OST3, OST4, OST5, OST6, OST7 and OST8, appended to these regulations, separately in respect of inter-State trading, intra-State trading, trading through power exchange and long term trading, cross border trading and banking transactions so as to reach the Commission before 10th of the succeeding month.

Provided that the information sent to the Commission shall be posted on the website of the licensee by 10th of the succeeding month, and such report shall be available on the website for not less than two years.”

51. Traders including discoms are required to submit annual return of inter-State transaction detailing volume transacted (in MU and Rupees), total trading margin earned (in case of licensed traders), complete list of Buyers and Sellers (as applicable) and total volume transacted in intra-State transaction (in MU and Rupees), certified by Chartered Accountant, by 30th April every year, starting from, the year 2013. Two new clauses have been proposed with regard to the open position and submission of annual return by the licensees as under:

“(c) Submit open position report and tenure of all trades on a quarterly basis as per Form OPN for risk monitoring purpose.

(d) Submit the annual return of inter-State transaction detailing volume transacted (in MU and Rupees) total margin earned as applicable and total volume transacted in intra-State transactions (in MU; and Rupees), certified by Chartered Accountant by 30th April every year.”

52. In clause (c) of Regulation 9, a licensee is required to submit to the Commission copies of the Annual Reports including Directors' report, Auditors' report, Balance Sheet and Profit and Loss Account pertaining to inter-State trading segment of the business alongwith all the schedules and notes to the accounts, not later than nine months after the close of the year to which they relate and shall keep them posted in its website or in any authorized website for a period of at least two years thereafter. As intra-State segment of the trading is being considered for the purpose of networth, it was proposed to insert "intra-State trading" in this clause.

53. Distribution Companies are deemed trading licensees in accordance with provisions of section 14 of the Act. Therefore, the Distribution Companies are expected to report their monthly inter-State transactions to the Commission in the same formats for the purpose of monitoring of inter-State trading transactions. The following clause was proposed under Regulation 9:

"(f) The information as required under clauses (b) to (e) of this regulation shall also be furnished by the deemed trading licensees as section 14 of the Act for the purpose of monitoring inter-State trading transactions;"

54. Comments on the proposed amendments to Regulation 9 are as under:

(a) RPG has sought a clarification whether after introduction of these formats, the monthly reports on sworn-in affidavits being submitted in accordance with order dated 21.4.2012 in Suo Motu Petition No. 115/2011 would still continue to be submitted. It has been further submitted that many of the formats may not be applicable during the point of submission and have to be submitted with nil report. RPG has suggested that monthly reporting of only applicable formats be allowed to be submitted by trading

licensees with a declaration through sworn in affidavit that balance formats are with nil report and are thus, not applicable. This will reduce paper work substantially on both the sides. Alternatively, a covering format of the report submission may be approved by the Commission, where all the format details including the formats with nil details are mentioned. This will substantially reduce the data handling. Secondly, it has been suggested that a gross volume of total traded sheet format by a trading licensee should be finalized by the Commission which will show the summary of the enclosed monthly formats in category of inter-State, intra-State and Power Exchange. Thirdly, it has been suggested that delivery point should be mentioned in the format in a separate column and price at a common point of reference (e.g. seller boundary, regional boundary or buyer's boundary) be mentioned which will help in standardizing the price signals in the market monitoring report issued by the Commission at a common reference point which can be prudently used by stakeholders. Fourthly, in case of banking/ swapping contract though there is no monetary transaction except trading margin, a standard price is mentioned in the contract for taking care of the case when the energy is not returned by the first buyer (buyers default). The Commission may call for the information regarding the price level for such settlement and also the payment security mechanism in place to know the exposure levels of the trading licensee.

(b) PTC has submitted that to have additional information or segregation and for the sake of simplicity, one format each may be used for Short-term and Long-term transactions and a separate column in the existing formats itself may be added to identify the type of power (banking, cross-border, inter-State, intra-State etc.). It has been submitted that number of formats has been increased from 3 to 19, which will

require exhaustive data entry and validation. While trading margins remain regulated/capped, transaction costs of traders will increase. Instead of concentrating on main business, the trading licensees would have to be struggling to meet the onerous compliance requirements, which at best should be avoided for larger sectoral benefits/growth. Also, huge data volume will increase the chances of error. It has been pleaded that the Commission's staff may also have to deal with voluminous data/forms and have to spend considerable time to analyze, store, retrieve etc. As regards intra-State trading, it has been suggested that the draft format requires reporting of only total volume and the name of the State without other details. As regards the last date of submission, it has been stated that many a times, meter reading data from the States are not available by 10th of respective month. NERPC publishes REA data generally after 10th. Hence, last date for submission of monthly reports should be at least 15th of the next month. As regards filing of annual return, it has been submitted that as per statutory requirement, the company has to get its accounts audited and approved by the Board of Directors within 60 days from the end of the financial year. Therefore, all the details required for annual return can be submitted to the Commission in about 15 days thereafter so as to make last date for filing of annual return as 15th June of each year.

(c) TPTCL has submitted that there are 18 number of monthly forms proposed to be furnished to the Commission. As per existing format of monthly Form-IV, all necessary transaction related information on intra-State trading, banking and power exchange except cross border trading and details about intra-State trading are already being captured. It has been suggested that Long term buy and Long term sale, through traders, need not be part of this report. For intra-State power, draft format requires

reporting of only total volume and the State. It has been suggested that it should be made mandatory for the inter-State traders doing intra-State business on the basis of the licence issued by this Commission to declare name of the buyer, seller, the volume of each transaction and trading margin. It has been requested to allow the existing format for monthly reporting to continue with minor addendum in Form-IV, if required. As regards the Open Position reporting, TPTCL has submitted that these contracts already give information about forward contracts since physical settlement takes place a one month/year ahead. Further, monthly MMC report gives information about the short term trades actually transacted. The information gap between forward contract and settled executed contract may be due to the reasons such as corridor congestion, contract termination, force majeure events, section-11/37 imposition etc. Consequence of these events may lead to the open position for a trader. This gap can easily be monitored and tracked based on data already available with the Commission. Further, open position information is commercially sensitive information for any trader and hence should remain confidential till actual execution of the contract. The traders should not be asked to share this information which is against their commercial interest. As regards the annual information, TPTCL has suggested for deletion of the clause as it would unnecessarily burden the traders for the additional information which is already being submitted and available with the Commission.

(d) GMRETL has submitted that the timeline for submitting the CA certified data by 30th April every year should be extended to 30th June. In case the data is required to be submitted before 30th June, submission of provisional data should be permitted, as submission of data requires reconciliation at various functional levels (commercial,

operations, finance & accounts) and with the State and regional energy accounts which is normally completed by 30th June.

(e) RETL has suggested that annual return along with the desired data in accordance with clause 9(d) of the draft regulation should be permitted to be submitted by 30 April every year if it has to be certified by authorized signatory of the company and by 31st May every year if it has to be certified by a Chartered Accountant. RETL has further submitted that proposed Form DAM will be too voluminous, running into hundreds of pages and has suggested a modified form DAM for consideration of the Commission.

(f) PRAYAS has submitted that in forms ST1-6 and OST1-6, categories of buyers/sellers could be indicated as generator, captive power plant, distribution licensee, Government, consumer. While the other categories provide useful insight, there might be a need to specify the type of consumer for each category. With open access gaining prominence, there will be many buyers in each consumer category. For better understanding of the mix of open access consumers, making a distinction between industrial and commercial consumers will be useful. Prayas has suggested that there should be six categories for buyers and sellers for reporting, namely, the generator, captive power plant, distribution licensee, Government, industrial consumer and commercial consumer. It would be useful if information especially as specified according to data formats is also available as downloadable excel sheets which will ensure ease of access and analysis. It has been suggested that Form OPN- containing information on open contracts could be improved. It has been further suggested that data could be furnished on monthly basis rather than quarterly to help in tracking short term contracts

better. Secondly, the format could be changed to have the key details like Contract date, Contract tenure, type of power transacted (RTC, Peak, Off Peak), contracted volume, buyer name, seller name, purchase price, sell price, volume transacted so far, Remarks (if any), for all contracts by the licensee. Form REC could include State of REC client which would help identify dynamics/ areas of concentration in this nascent market. Client type can be broken down to many categories instead of renewable generator, obligated entity. It could specify the obligated entity i.e. discoms, captive power plant or OA customers as this will provide insight into the agents in the market. RECs are sold as solar and non solar certificates. It would be helpful to have a separate column in the data formats asking for type of technology (solar, wind, biomass etc) for the certificate being traded. As regards intra-State trading, the proposed data formats would provide broad idea of intra-State trading by licensees. Prayas has suggested that in order to get better clarity about intra-State trading, CERC/FOR could recommend similar data formats (used by inter-State traders to report inter-State transactions) which the SERCs could adopt for reporting by intra-State traders.

(g) JSWPTCL has submitted that the format for annual information is duplication of work since the same information is being submitted as monthly information and this clause may be deleted. As regards Form DAM, it has been stated that submission of data in 96 time blocks for each day for each client for a month is very cumbersome process, apart from the problems associated with handling of such data. It has been suggested that the current format for submission of monthly information for power exchange data may be continued.

55. **Analysis and decision**

(a) Keeping in view the responses of the stakeholders regarding the number of formats, the number of reporting formats has been reduced from 19 to 10 as per the details given below:

- 1) Form IV-A: Short Term Inter-State Transactions of Electricity – RTC
- 2) Form IV-B: Short Term Inter-State Transactions of Electricity – Peak
- 3) Form IV-C: Short Term Inter-State Transactions of Electricity – Other than peak and RTC
- 4) Form IV-D: Long Term Inter-State Transaction of Electricity
- 5) Form IV -E :Intra state Transactions of Electricity
- 6) Form IV-F: Day Ahead Power Exchange Transactions of Electricity by Trading Licensee
- 7) Form IV-G:Term Ahead Power Exchange Transactions of Electricity by Trading Licensee
- 8) Form IV-H: Renewable Energy Certificates Trading on Power Exchange by Trading Licensee
- 9) Form IV-I: Open Position of Electricity contracts by Trader
- 10)Form IV-J: Over the counter contracts executed by Electricity Trader in inter-State market. (This is as per Commission's order dated 14.5.2010 in Suo-Motu Petition No. 155/ 2010).

(b) Reply to PTC comments - The formats have been combined using this suggestion. Monthly aggregated intra-State volume of all States undertaken by the trader shall be reported. The price of traded power, the trading margin, names of buyers and sellers are not intended to be monitored by the Commission. However, date of submission of monthly information has been extended to 15th of the month as Regional Energy Accounting reporting is completed on 10th of the month.

(c) Reply to TPTCL, RETL, GMRRETL, JSWPTL comments- Certified Annual information submission is required as the aggregated volume and the total average trading margin information is required for market monitoring purpose. Presently, the submission of annual report can be done upto 9 months after the end of financial year, which is late in a dynamic market condition. The date for submission of certified annual return shall be 31st May of the next year. On the point related to reporting of margin for 96 time blocks, in view of the large volume of data for reporting trading margin of 96 time blocks daily for all clients, it has been decided that the daily aggregate margin for a particular client shall be reported. However, the traders shall be charging trading margin on individual block of each 15 minute contract. Instead of reporting trading margin for each 15 minute contract transaction on Power Exchange, the margin charged by the traders for each client for contract with price above ₹3/ Kwh and for contract with price below ₹3/ Kwh shall be separately reported as per the format in the regulation. As far as the issue of commercially sensitive information raised by TPTCL, there is no obligation under section 8(1)(d) of the Right to Information Act to disclose information relating to commercial confidence. The said section is extracted as under:-

“8. Exemption from disclosure of information – (1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen—

(a) xxxxxx

(b) xxxxxx

(c) xxxxxx

(d) Information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information.”

The person who submits the information should clearly indicate which of the information is commercially sensitive and should not be disclosed. Regulation 66 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999

provides that the Commission for reasons specified by it may not allow disclosure of any information to any person on the ground of confidential or privileged nature of the information. In our view there is sufficient safeguard against disclosure of commercially sensitive information to third parties. However, the Commission has kept its option to revisit the provision after gaining some experience with regard to the actual working of the open position.

(d) Reply to PRAYAS comment- The different categories of buyers and seller shall be useful and has been incorporated in the reporting formats. The break up REC information will be useful for analysis of REC market. However, this information will be taken from Power Exchanges as REC trades are undertaken on power exchange platform and the full picture shall be clear form this information.

56. In view of the above discussion, Clause (b) of Regulation 9 of Principal Regulations has been substituted as under:

“(b) furnish monthly information in Forms IV-A, IV-B, IV-C, IV-D, IV-E, IV-F, IV-G and IV-H in respect of inter-State trading, intra-State trading, trading through power exchanges and long term trading, cross border trading and banking transactions so as to reach the Commission before 15th of the succeeding month:
Provided that the information sent to the Commission shall be posted on the website of the licensee by 15th of the succeeding month, and such report shall be available on the website for not less than two years.”

57. Three new clauses, numbered as (ba), (bb) and (bc) have been added after clause (b) of Regulation 9 of Principal Regulations as under:

“(ba) Submit open position report on a monthly basis as per Form IV-I for risk monitoring purpose:
Provided that information involving commercial confidence shall not be accessible to the members of the public.
(bb) Submit information regarding OTC Contracts on weekly basis as per Form IV-J by Tuesday of the following week.

(bc) Submit annual return of inter-State transactions detailing total volume transacted (in MU and Rupees) and the total trading margin charged thereon, total volume transacted in intra-State transactions (in MU and Rupees), total volume transacted on Power Exchange and the total trading margin charged thereon, total volumes of Renewable Energy Certificates transacted and margin charged thereon and complete list of Buyers and Sellers in the above categories, certified by Chartered Accountant or Cost Accountant by 31st May every year:

Provided that the above information shall be submitted by the licensee without prejudice to the submission of transaction wise information as per Forms IV-A, IV-B, IV-C, IV-F, IV-G and IV-H for compliance of Central Electricity Regulatory Commission (Fixation of Trading Margin) Regulations, 2010."

58. The existing clause (c) of Regulation 9 of the 2009 Trading Licence Regulations was proposed to be re-numbered as clause (e) and words "and intra-State" were proposed to be added after the word "inter-State" in the said regulation.

59. No comments or suggestions were received to the proposed amendment to clause (c) of Regulation 9 of the 2009 Trading Licence Regulations and accordingly the proposed amendment has been accepted. It has been decided not to re-number clause (c) to clause (e) as proposed because the new clauses proposed to be introduced have been numbered as (ba), (bb) and (bc). Accordingly, the existing number has been retained and clause (c) of Regulation 9 would be as under:

"(c) submit to the Commission copies of the Annual Reports including Directors' report, Auditors' report, Balance Sheet and Profit and Loss Account pertaining to inter-State and intra-State trading segment of the business alongwith all the schedules and notes to the accounts, not later than nine months after the close of the year to which they relate and shall keep them posted in its website or in any authorized website for a period of at least two years thereafter."

60. A clause was proposed to be added after the re-numbered clause (e) of Regulation 9 of the 2009 Trading Licence Regulations as under:

"(f) The information as required under clauses (b) to (e) of this regulation shall also be furnished by the deemed trading licensees as section 14 of the Act for the purpose of monitoring inter-State trading transactions;"

61. **Comments and suggestions received**

- (i) PXIL: Words “defined in” may be inserted after the words “deemed trading licensees as”.

62. **Analysis and Rationale**

- (i) PXIL’s suggestion has been accepted.

63. Accordingly, the proposed clause has been amended. However, the numbering of the clause has been changed (as mentioned above) to maintain the sequence and this clause has been numbered as “(ca)” and added after the clause (c) of Regulation 9 of Principal Regulations as under:

“(ca) The information as required under clauses (b) to (bc) of this regulation shall also be furnished by the deemed trading licensees as defined in section 14 of the Act for the purpose of monitoring inter-State trading transactions;”

64. A new sub-clause (v) has been proposed to be added after sub-clause (iv) of clause (d) of Regulation 9 of the 2009 Trading Licence Regulations which makes it mandatory for the licensee to report to the Central Commission about any proceedings before any court of law against the licensee for violation of any law or by Appropriate Commission for contravention of the Act, Rules or Regulations or directions of the Appropriate Commission. This was not provided for in the 2009 Trading Licence Regulations and we feel it necessary to fill in this gap and accordingly the said provision has been made. No comments have been received in this regard from any of the stakeholders and hence the proposed amendment has been retained.

I. Standards of performance (Regulation 10)

Mandatory disclosure by trading licensee

65. To increase transparency in trading activities and to help the clients to take well informed decisions, it was proposed to make it mandatory for the traders to disclose the monthly inter-State and intra-State trading, petitions if any filed by it and orders of the Commission related to it for the information of its clients and prospective clients. Accordingly, a new clause (3) was proposed to be added after clause (2) of Regulation 10 of the Principal Regulations as under:

“(3) The licensee shall display on its website (i) the volume of inter-State and intra-State trading, if any, on monthly basis; (ii) trading licences held by it; (iii) petitions filed before the Commission and the order including interim orders, if any, issued by the Commission to ensure dissemination of information to its clients.”

66. No comments were received on the proposed clause and as such the proposed clause has been retained.

J. Revocation of Licence (Regulation 14)

67. The provisos to sub-clause (g) of clause (1) of Regulation 14 of the 2009 Trading Licence Regulations were proposed to be deleted. The first proviso to Regulation 14(1)(g) provides for an enquiry by the Commission before the trading licence is revoked and the second proviso provides for continuation of the trading licence with certain terms and conditions instead of revoking the licence. These provisos were deleted and clause (2) was added after clause (1) of Regulation 14 in order to align the regulations with the provisions of section 19 of the Act dealing with revocation of

licence. No comments have been received and the proposed amendment has been retained.

68. A new sub-clause (h) shall be added after sub-clause (g) of clause (1) of Regulation 14 of the 2009 Trading Licence Regulations as to make non-payment of licence fee in time as one of the circumstances for revocation licence. No suggestion/objection has been received to the proposed amendment. Accordingly, proposed clause (h) has been retained with some modification as under:

“(h) Where the licensee has failed to pay the fees by the due date as per the Central Electricity Regulatory Commission (Payment of Fee) Regulations, 2012 or other charges required by its licence or any penalty imposed by the Commission;”

69. The 2009 Regulation did not provide for the procedure to be adopted for revocation of licence. Keeping in view the provisions of section 19 of the Act, comprehensive procedure for revocation of licence was proposed in clauses (2) to (5) of Regulation 14 of the draft regulations in place of provisos to sub-clause (g) of clause (1) and clauses (2) & (3) of Regulation 14 of 2009 Trading Regulations. No suggestions/objections have been received to the proposed amendment. Accordingly, proposed clauses (2) to (5) of Regulation 14 of Principal Regulations have been included as under, namely:

“(2) If the Commission, after making an enquiry, is satisfied that any of the grounds for revocation as mentioned in clause (1) exists and public interest so requires, the Commission may revoke the licence subject to such terms and conditions as may be deemed appropriate:

Provided that the Commission has given a notice of not less than three months to the licensee stating the grounds on which it is proposed to revoke the licence and has considered the cause shown by the licensee within the period of notice against the proposed revocation:

Provided further that the Commission may, instead of revoking the licence, permit the licence to remain in force subject to such further terms and conditions as the

Commission may consider appropriate to impose, and any further terms and conditions so imposed shall be deemed to be terms and conditions of the licence and shall be binding on the licensee.

(3) Where the licensee makes an application for revocation of licence, the application shall contain the following information and documents:

- (a) reasons for seeking revocation;
- (b) an affidavit to the effect that the licensee has deposited the licence fee for the year in which revocation is sought; that there are no un-discharged liabilities against the licensee; that there are no operative contracts for trading of electricity to which the applicant is a party at the time of filing the said application;
- (c) an affidavit to the effect that the applicant has posted the complete application on its website and shall keep the application uploaded on its website till its disposal by the Commission;
- (d) documents showing that the licensee has published the notice about its application for revocation in two daily newspapers having circulation in each of the five regions in addition to those published from Delhi including one economic newspaper;

(4) Where the Commission, after considering the application made in accordance with clause (3), is satisfied that public interest so requires, the Commission shall revoke the licence, as to the whole or any part of the area of trading upon such terms and conditions as the Commission may consider appropriate;

(5) Where the licence is revoked under clauses (2) and (4) of this regulation, the Commission shall serve a notice of revocation on the licensee and fix a date from which revocation shall take effect.”

K. Violation of the provisions of the Act, Rules, Regulations or Orders of the Commission by licensed traders

70. In order to ensure that the amount of penalty for violation of the provisions of the Act, or Rules or Regulations or any other law or orders of the Commission by a licensed trader is commensurate with the gravity of violations, certain penal provisions have been proposed in the light of Section 19(4) and Section 142 of the Electricity Act 2003. Violations by licensed traders have been graded into serious and non-serious category of offences depending upon the gravity of the violation. Any willful, repeated and persistent violations of non-serious nature shall be considered to be as serious offence.

These will help the Commission to fairly and effectively handle the violations by licensed traders.

71. A new chapter titled “Contravention & Penalties” numbered as “Chapter-6” was proposed to be inserted after Chapter-5, containing three regulations which deal contraventions by the licensees, the procedure for taking cognizance of the contraventions and penalties for contraventions and non-compliance as under:

**“CHAPTER-6
CONTRAVENTION AND PENALTIES**

15. Contravention by Licensee

(1) Contraventions of the provisions of the Act, Rules and Regulations framed thereunder and non-compliance of the orders of the Commission by a licensee shall be grouped under two categories such as serious contraventions and non-serious contraventions.

(2) Serious contraventions shall cover the following:

(a) Violations and non-compliance of the provisions of the Act, Rules and the Regulations specified by the Commission, particularly, Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of trading licence and other related matters) Regulations, 2009, Central Electricity Regulatory Commission (Fixation of Trading Margin) Regulations, 2010, Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2010, Central Electricity Regulatory Commission (Grant of Connectivity, Long-term Access and Medium-term Open Access in inter-State Transmission and related matters) Regulations, 2009, Central Electricity Regulatory Commission (Open Access in inter-State Transmission) Regulations, 2008, Central Electricity Regulatory Commission (Payment of Fees) Regulations, 2012, Central Electricity Regulatory Commission (Power Market) Regulations, 2010 and as mended from time to time or any subsequent amendment thereof;

(b) Deliberate under-reporting of transaction volume in monthly reporting;

(c) Non-compliance of the orders of the Commission including the orders issued for contravention of any regulation of the Commission;

(d) any willful, repeated and persistent violation of non-serious contraventions committed by the licensee.

(e) Non-payment of the licence fees within the stipulated date as specified in Central Electricity Regulatory Commission (Payment of Fees) Regulations, 2012.

(3) The following contraventions by a licensee for the first time shall be treated as non-serious contravention:

- (a) non-submission or delay in submission of any report required to be submitted by the licensee under any of the regulations mentioned in sub-clause (a) of clause (2) of this regulation;
- (b) delay in submission of monthly transaction information sought under clause (b) of Regulation;
- (c) delay in submission of any other information sought by the Commission;
- (d) failure to adhere to the Code of Conduct as specified in these regulations;
- (e) failure to make mandatory disclosures or reporting in accordance with the proviso to clause (b) of Regulation 9 of these regulation on licensee's website ;
- (f) Any other form of violation of the provisions of the Act or the Rules or the Regulations framed thereunder or an order passed by the Commission.

16. Procedure for taking cognizance of the contraventions

(1) The Commission, on being satisfied on the basis of the information in its possession or on the basis of the information submitted by any person that a prima facie case exists against any licensee under any of the provisions of Regulation 15, shall initiate suo motu proceedings against the licensee and shall direct the licensee to submit such information and explanation as may be considered necessary for the purpose of the proceeding;

Provided that where the proceeding has been initiated for non-payment of fees, the licence of the licensee shall remain suspended till the payment is made or any direction for revocation of suspension is issued in the proceeding.

(2) No penalty shall be imposed on the licensee without giving an opportunity of hearing.

(3) The penalties if any shall be imposed in accordance with Regulation 17 of these regulations.

17. Penalties for Contravention and non-compliance

(1) Where the charge of serious contraventions is established against the licensee, the Commission may:

- (a) direct that the licensee shall pay, by way of penalty, a sum which shall not exceed rupees one lakh for each contravention; and /or
- (b) debar the licensee, from trading in short term market or medium term market or through power exchanges for a period upto 6 months; or
- (c) suspend the licence for trading in electricity for a period upto 6 months; or
- (d) revoke the licence of the licensee; or
- (e) disgorge unjust profits; or
- (f) issue such other directions or impose such other condition as the Commission may deem appropriate.

- (2) Where the charge of non-serious contravention has been established against the licensee, the Commission may:
- (a) give warning to the licensee subject to such conditions as may be deemed fit in the facts and circumstances of the case; or
 - (b) direct that such person shall pay, by way of penalty, a sum which shall not exceed rupees one lakh; or
 - (c) direct that in case of non-payment of fees, the licence shall remain suspended till the contravention persists; or
 - (d) issue such other directions or impose such other condition as the Commission may deem appropriate”

72. In response to the proposed amendment, comments and suggestions have been received from the following:

- (a) RPG has submitted that this clause may be misused by any person with vested interest or by a competitor. Though the Commission may retain the power for initiating proceedings, the Commission may exercise this power only after due screening to weed out the complaints preferred with mala fide intent. RPG has further submitted that a contravention like delay in submission of any monthly report, which is to be submitted by 10th of next month, due to delayed issue of REA/SEA, would be too severe to be categorized under serious contravention if done for more than once in 25 years. RPG has suggested that in view of 25 years long license validity period, non-serious contraventions done once in a year time frame may be condoned by the Commission.
- (b) PXIL has submitted that the penalty for both serious and non-serious contravention is provided as ₹1 lakh. PXIL has suggested that the penalty for charge of non-serious contravention may be reduced suitably.

73. We have considered the objections. It is clarified that investigation will be initiated by the Commission only after the Commission is satisfied that there is prima facie some merit in the complaint. Only willful, repeated and persistent non-serious offences will be considered as serious offences. The word "first time" has been removed from the provision regarding non-serious contravention. As regards the possibility of lesser penalty for non-serious offence, it is clarified that ₹ 1 lakh is the ceiling limit for penalty for each contravention and the Commission would take a view regarding the actual penalty to be imposed depending upon the gravity of the offence.

74. The Chapter was included in the draft regulations as "Chapter 6: CONTRAVENTION & PENALTIES". This chapter has been renumbered as "Chapter 5 A: CONTRAVENTION & PENALTIES". The regulations under the chapter have also been renumbered as Regulations 14 A, 14 B and 14 C. The new chapter would read as under:

"CHAPTER-5 A

CONTRAVENTION AND PENALTIES

14 A. Contravention by Licensee

(1) Contraventions of the provisions of the Act, Rules and Regulations framed thereunder and non-compliance of the orders of the Commission by a licensee shall be grouped under two categories such as serious contraventions and non-serious contraventions.

(2) Serious contraventions shall cover the following:

(a) Violations and non-compliance of the provisions of the Act, Rules and the Regulations specified by the Commission, particularly, Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of trading licence and other related matters) Regulations, 2009, Central Electricity Regulatory Commission (Fixation of Trading Margin) Regulations, 2010, Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2010, Central Electricity Regulatory Commission (Grant of Connectivity, Long-term Access and Medium-term Open Access in inter-State Transmission and related matters) Regulations, 2009, Central Electricity Regulatory Commission (Open Access in inter-State Transmission) Regulations, 2008, Central Electricity

Regulatory Commission(Payment of Fees) Regulations, 2012, Central Electricity Regulatory Commission (Power Market) Regulations, 2010 and as amended from time to time or any subsequent amendment thereof;

- (b) Deliberate under-reporting of transaction volume in monthly reporting;
- (c) Non-compliance of the orders of the Commission including the orders issued for contravention of any regulation of the Commission;
- (d) any willful, repeated and persistent violation of non-serious contraventions committed by the licensee.
- (e) Non-payment of the licence fees and surcharge if applicable within the due date as specified in Central Electricity Regulatory Commission (Payment of Fees) Regulations, 2012.

(3) The following contraventions by a licensee shall be treated as non-serious contravention:

- (a) non-submission or delay in submission of any report required to be submitted by the licensee under any of the regulations mentioned in sub-clause (a) of clause (2) of this regulation;
- (b) delay in submission of monthly transaction information sought under clause (b) of Regulation 9;
- (c) delay in submission of any other information sought by the Commission ;
- (d) failure to make mandatory disclosures or reporting in accordance with the proviso to clause (b) of Regulation 9 of these regulation on licensee's website ;

14 B. Procedure for taking cognizance of the contraventions

(1) The Commission, on being satisfied on the basis of the information in its possession or on the basis of the information submitted by any person that a prima facie case exists against any licensee under any of the provisions of Regulation 14A, shall initiate suo-motu proceedings against the licensee and shall direct the licensee to submit such information and explanation as may be considered necessary for the purpose of the proceeding;

Provided that proceedings for non-payment of fee shall be initiated if the licensee fails to deposit the fees and surcharge, if any, within seven days of the expiry of due date of payment as per the Central Electricity Regulatory Commission (Payment of Fee) Regulations, 2012 and the seven days period shall be deemed to be a notice under this regulation:

Provided further that the licence shall be deemed to be suspended after expiry of seven days from the due date of payment and shall remain suspended till the payment of fees and surcharge, if any, is made or suspension is withdrawn.

(2) No penalty shall be imposed on the licensee without giving an opportunity of hearing.

(3) The penalties if any shall be imposed in accordance with Regulation 14C of these regulations.

14 C. Penalties for Contravention and non-compliance

(1) Where the charge of serious contraventions is established against the licensee, the Commission may:

- (a) direct that the licensee shall pay, by way of penalty, a sum which shall not exceed rupees one lakh for each contravention;
and /or
- (b) debar the licensee, from trading in short term market or medium term market or through power exchanges for a period not exceeding one year; or
- (c) suspend the licence for trading in electricity for a period not exceeding one year; or
- (d) revoke the licence of the licensee; or
- (e) issue such other directions or impose such other condition as the Commission may deem appropriate.

Provided that in case of debarment or suspension, NLDC or concerned RLDC or SLDC, as the case may be, shall take appropriate action with regard to scheduling and despatch of electricity in respect of the transactions of the licensee.

- (2) Where the charge of non-serious contravention has been established against the licensee, the Commission may:
 - (a) give warning to the licensee subject to such conditions as may be deemed fit in the facts and circumstances of the case; or
 - (b) direct that such person shall pay, by way of penalty, a sum which shall not exceed rupees one lakh; or
 - (c) issue such other directions or impose such other conditions as the Commission may deem appropriate”

M. Chapter titled "Code of Conduct"

75. A new Chapter-7, titled "Code of Conduct" was proposed to be introduced after the existing Chapter-VI (now amended as "Chapter 6") as under:

“18. The licensee shall at all times strictly adhere to the codes of conduct as specified hereunder:

- (a) The licensee shall make all efforts to protect the interests of his clients;
- (b) The licensee shall maintain high standards of integrity, dignity and fairness in the conduct of its trading business;
- (c) The licensee shall endeavour to ensure that-
 - (i) inquiries from clients are adequately dealt with and adequate disclosures are made to the client in a timely manner in accordance with the applicable regulations and guidelines so as to enable them to make a balanced and informed decision;
 - (ii) grievances of client are redressed in a timely and appropriate manner;
 - (iii) where a complaint is not remedied promptly, the customer is advised of any further steps which may be available to the customer.
- (d) The licensee shall not divulge to anybody either orally or in writing, directly or indirectly, any confidential information about its clients which has come to its knowledge, without taking prior permission of its clients, except where such disclosures are required to be made in compliance with any law for the time being in force;

- (e) The licensee shall ensure that any change in category of license or any material change in the licensee's financial status is promptly informed to the clients;
- (f) The licensee shall have internal control procedures and financial and operational capabilities which can be reasonably expected to protect its operations, its clients from financial loss arising from theft, fraud, and other dishonest acts, professional misconduct or omissions;
- (g) The licensee shall maintain an appropriate level of knowledge and competence which may be applicable and relevant to the activities carried on by it;
- (h) The licensee shall vest adequate freedom and powers in its Compliance Officer for the effective discharge of his duties under these regulations."

76. In response, comments and suggestions have been received from RPG, GMRETL and PXIL. Since there is a chapter on obligations of licensees, there is no requirement to specify a separate chapter on "Code of Conduct". Accordingly, the proposed chapter has not been included.

Chapter VI: Miscellaneous

77. The table under clause (1) of Regulation 15 was proposed to be substituted with the table given below to bring in more clarity in the category of licence that a trader is placed due to change in the nomenclature of the categories of licence from time to time.

Category of Licence (As per Notification dated 6.2.2004)	Category of Licence (As per Notification dated 24.2.2009)	Category of Licence (As per Notification dated 7.6.2010)
F (Above 1000 MUs)	I (No limit)	I (No limit)
E (between 700 and 1000MUs)		II (Not more than 1500 MUs)
D (between 500 and 700MUs)		
C (between 200 and 500MUs)	II (Not more than 500 MUs)	III (Not more than 500 MUs)
B (between 100 and 200MUs)		
A (Upto 100 MUs)	III (Upto 100 MUs)	IV (Not more than 100 MUs)

No suggestion/objections have been received. The categorization of traders has been retained as proposed.

78. The amendment regulations have been finalized in the light of the decisions on various points as above.

Sd/-
(M. Deena Dayalan)
Member

sd/-
(V. S. Verma)
Member

sd/-
(Dr. Pramod Deo)
Chairperson