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Date: 14.08.2020

To,

Shri Sanoj Kumar Jha

Secretary

Central Electricity Regulatory Commission
36, Chanderlok Building, Janpath,
New Delhi-110001

Subject: Submission of Comments and Suggestions on the Draft Central Electricity Regulatory Commission (Power Market) Regulations, 2020.

Respected Sir,

The Hon'ble CERC has made the draft Central Electricity Regulatory Commission (Power Market) Regulations, 2020. The Hon'ble Commission has also published a public notice inviting comments/suggestions/objections from the stakeholders and interested persons on the provisions of above draft notification.

We, Manikaran Power Limited, are a Category 1 trading licensee under Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of trading licence and other related matters) Regulations, 2020.

Given the same, we hereby put forward our comments and suggestion on the subject matter.

We request you to kindly consider the same.



Comments and Suggestion

1. Manikaran Power Limited (MPL) is filing the instant comments and suggestions pursuant to this Hon'ble Commission's notification dated 06.08.2020 inviting comments/suggestions/objections on the "Draft Central Electricity Regulatory Commission (Power Market) Regulations, 2020" (hereinafter "Draft PMR 2020"). MPL is a trading member of Indian Energy Exchange and Power Exchange India Limited. It is also a Category-I Inter-State Trading Licensee. MPL has been efficaciously implementing the power trading concept in India since its inception in 2005.

2. The widespread outbreak of COVID-19 across borders and geographies, has harshly impacted the whole world and triggered momentous downside risks to the overall global economic outlook. The power sector is also facing a steep fall in demand of power. The end to this pandemic is nowhere in sight. In the meantime, the economy is slowly sliding into recession, the likes of which is hitherto unseen. India's growth projections also highlight a slowdown in the economy in 2020, which will further impact the demand for electricity. The current economic downturn started prior to the Covid-19 pandemic which will continue for a while. In fact, on April 16, the International Monetary Fund has slashed its projection for India's GDP growth in 2020 from 5.8% to 1.9%.



3. These unprecedented times have presented all stakeholders in the sector with hitherto unforeseen set of obstacles. The need of the hour is to encourage growth and consumption albeit in a responsible manner. It is worth considering that these difficult times call for relaxation of entry barriers to the market in order to increase competition and a soft handed approach to regulation. This will offer greater benefit to the current stakeholders, increase competition, create a level playing field, the benefits of which will be enjoyed by the end-consumers. It is humbly submitted that in the event, the present set of reforms are to play out, it would cause stakeholder's credit ratings to deteriorate, borrowing costs to rise and cash flow to thin out. All of which could have negative long-term impacts on consumer interest. In light of these difficult times, the Hon'ble Commission may be pleased to re-consider the amendments proposed as per our following submissions.

I. ELIGIBILITY CRITERIA

4. Regulation 9 of the Draft PMR 2020, states the eligibility criteria for making application for establishment as a power exchange as follows:

"Eligibility criteria

The applicant for establishing a Power Exchange shall fulfil the following criteria at the time of making application for registration of Power Exchange:

(1) The applicant is a company limited by shares incorporated or deemed to be incorporated under the provisions of the Companies Act, 2013;

(2) The applicant is demutualised;

Explanation: For the purposes of this sub-regulation, the term "demutualised" means that the ownership and management of the applicant is segregated from the trading rights, in terms of these regulations.

(3) The main objects of the applicant company is to establish and operate a Power Exchange.

(4) The applicant has a Net worth of minimum Rs. 50 crores as per the audited special balance sheet as on any date falling within 30 days immediately preceding the date of filing the application for grant of registration.

(5) The Directors of the applicant satisfy the requirements relating to qualifications and are not disqualified for appointment on the Board of Directors as specified in Regulation 18 of these regulations.

(6) The applicant satisfies the requirements relating to the ownership as specified in Regulation 15 and governance structure as specified in Regulation 17 of these regulations.

...."

Comments

5. Regulation 15 of Central Electricity Regulatory Commission (Power Market) Regulation, 2010 (hereinafter "PMR 2010"), specify the eligibility criteria for making application for registration of Power Exchange as follows:

"(i) (a) Any company limited by shares incorporated as a public company within the meaning of the Companies Act, 1956;

(b) A consortium of companies having an agreement amongst themselves to set up a power exchange through a special purpose vehicle ("SPV") incorporated as a public company limited by shares within the meaning of the Companies Act, 1956;

Provided that the process for registration may be commenced in case a consortium applies for registration by submitting a copy of such an agreement entered into amongst the consortium members, but registration shall be granted only when consortium has incorporated the SPV as aforesaid.

(ii) The main objects of the applicant company shall be to primarily set up and operate Power Exchange though the other and incidental objects may be to undertake other businesses related to energy sector and its ancillaries with the prior approval of the Commission.

Provided that such a company shall maintain separate accounts for separate businesses."



6. Regulation 15 (b) provides the option of filing for registration of Power Exchange through consortium route. This provision enabled like-minded companies to pool their financial and technical resources along with bringing in expertise to a common platform and establish a Power Exchange. However, in the PMR, 2020, this Hon'ble Commission has proposed taking away of consortium route. It is respectfully submitted that no rationale has been supplied for disabling consortium companies from applying under Regulation 9 of the Draft PMR 2020. Taking away consortium route would adversely affect the market, leading to a monopoly of already existing Power Exchanges. This situation would be contrary to the letter and spirit of the EA 2003 as it would hamper the development of a truly competitive market in the Country. Currently, only one power controls the maximum volume in the market. Therefore, introduction of new players would be welcome and beneficial to all stakeholders. In the event, this Hon'ble Commission allows the requirement of net worth of INR 50 Crore, in the absence of consortium route, it would render applications for grant of registration of Power Exchange challenging if not impossible. It may well be that the market comprises of a single power exchange. Disallowing consortium route would act as an insurmountable entry barrier to the market. Further, it is pertinent to note that the third exchange which is proposed is also a consortium between PTC, BSE and

ICICI India. Therefore, this Hon'ble Commission may continue allowing consortium route for the future power exchange applicants.

7. Secondly, Regulation 9(4) of Draft PMR 2020 has increased the net worth requirement of an applicant to be a minimum of INR 50 Crore as on any date falling within 30 days immediately preceding the date of filing the application for grant of registration. Regulation 14 of the Draft PMR 2020 mandates even existing power exchanges to achieve the net worth criteria within 6 months of date of notification of these regulations. It is submitted that in comparison, Regulation 18 of PMR 2010, mandates that a Power Exchange shall always have a minimum net worth of INR 25 Crore which seems to be reasonable.
8. Further, currently, PMR 2010 specifies a minimum net worth requirement of INR 25 Crore for a Power Exchange when the clearing function is carried out in-house by a Power Exchange, and INR 5 Crore once the Power Exchange separates its clearing function to a Clearing Corporation. The Draft PMR 2020 proposes to hive of the functions of clearing corporations to another entity. In the event, this Hon'ble Commission may be so pleased to allow for Clearing Corporations (as envisaged under the draft regulations), it will make the criteria of INR 50 Crore net-worth even more difficult to achieve. A move to double the net worth requirements would

act as a barrier for new entrants to enter the power market. This would be contrary to the Section 66 of the Electricity Act 2003 (EA 2003) which deals with development of the market.

9. At this point, this Hon'ble Commission would recall that even the existing power exchanges have had difficulty fulfilling the criteria of INR 25 crores net worth. In fact, this Hon'ble Commission by Order dated 25.5.2010 in Petition No. 134/ 2010, Order dated 27.10.2011 in Petition No. 101/MP/2011, Orders dated 8.6.2013 and 25.7.2013 in Petition No. 52/MP/2013 and Order dated 24.04.2019 in Petition No. 302/MP/2018, allowed PXIL additional time to meet its net worth under Regulation 18 of the PMR 2010. It is not known whether the second power exchange of the country has been able to meet its net worth of INR 25 Crore. Considering the ground realities, it may not be prudent to double the net worth requirement for power exchanges.
10. It is important to understand the rationale behind the net worth requirement. At para 3.4.4.2 of the Explanatory Memorandum, this Hon'ble Commission has sought to link the increase in net-worth to the volume of trade that is being performed by the exchanges. Presumably, to ensure that power exchanges have enough resources to cater the risk associated with the activities carried out by the exchanges including but not limited to clearing activities etc. However, presently, when clearing

function are sought to be removed from the purview of Regulation, minimum net worth of INR 50 Crore, that also for an applicant may be impossible and hence, arbitrary. Further, the maximum volume is only being handled by one exchange. Therefore, it may be incorrect to link net worth requirements to volume of trade. In light of the above submissions, this Hon'ble Commission may retain the net worth requirements as provided in PMR 2010. In the alternative, this Hon'ble Commission may consider specifying different categories of net worth depending upon the volume of trade being handled by the exchange. This would not only encourage competition but also help in attracting infusion of funds to the sector, which is the need of the hour.

11. Regulation 9(6) of the Draft PMR 2020, states that an applicant is required to satisfy the requirement relating to the ownership as specified in Regulation 15. However, Regulation 11(6) (**Procedure for filling application**) of the Draft PMR 2020 states that *"The Commission, after consideration of the application, the objections and suggestions received in response to the public notice published by the applicant and the applicant's reply to objections and suggestions received in response to the public notice, and on being satisfied that the applicant meets the eligibility criteria specified in Regulation 9 of these regulations, **may** propose to grant registration to the applicant for setting up and operation of the Power*

Exchange". Therefore, despite fulfilling all the requirement for grant of registration of power exchange in accordance with Draft PMR 2020, it is not mandatory or obligatory for this Hon'ble Commission to grant registration to the applicant. Since there is no surety of registration despite fulfilling all the requirement and eligibility criteria, a SPV will find it difficult to arrange for funds and meeting net worth criteria. Therefore, this Hon'ble Commission may consider that a newly constituted SPV for establishing Power Exchange cannot be expected to have minimum net worth of INR 50 Crore. In the event, this Hon'ble Commission deems the increased net worth criteria as vital for the health of the sector, it may consider making INR 50 Crore net worth criteria as applicable post grant of registration for power exchange.

Suggestion

12. Its suggested to kindly modify Regulation 9 as under:
 - a. Regulation 9 (1) to extent herein provided: *"(1) The applicant is a company limited by shares incorporated or deemed to be incorporated under the provisions of the Companies Act, 2013; or, A consortium of companies having an agreement amongst themselves to set up a power exchange through a special purpose vehicle ("SPV") incorporated as a public company limited by shares within the meaning of the Companies Act, 1956;"*



- b. Regulation 9 (4) is modified to extent herein provided: "(4) ~~The applicant~~
Power Exchange has a Net worth of minimum Rs. 50- 5 crores as per the audited special balance sheet as on any date falling within 30 days immediately preceding the date of filing the application for grant of registration."
- c. In Regulation 9(6), applicant may be substituted with the word "**Power Exchange**".

II. CAP ON SHAREHOLDING AND RESTRICTIONS ON REPRESENTATION ON THE BOARD

13. Regulation 15 (1) (b) and (c) of the Draft PMR 2020 states that "A member or a client, directly or indirectly, either individually or together with persons acting in concert, shall not acquire or hold more than 5% of shareholding in the Power Exchange.

(c) A Power Exchange can have a maximum of 49% of its total shareholding owned by entities, which are members or clients, directly or indirectly, either individually or together with persons acting in concert."

Comment

14. The PMR 2010 imposed shareholding limit of 5% for members of the Power Exchange in order to ensure adequate ring-fencing, demutualization and a dispersed ownership structure. Para 3.4.5.2 of the Explanatory

Memorandum explains that the reason for capping of shareholding of clients at 5% is to disable Clients from exerting undue influence over the affairs of the Power Exchange that may create potential conflict of interest situation for the Power Exchange.

15. The Draft PMR 2020 already provides a cap of 49% of total shareholding of a power exchange owned by entities, which are member or clients, directly or indirectly, either individually or together with person acting in concert could hold. Maximum share-holding of 5% by entities being member or client prevents sector specific entities to bring in their expertise and experience of power market. Power exchange could be operated in a diligent and sophisticated manner only when sector specific entities own and control its operation whereby power exchange could utilize the relevant experience of field expert entities and could reap out the benefit of its owners. Further a cap of 49% ensures that its ownership is not influenced by the member of power exchange. Therefore, it is humbly submitted that a further cap of 5% may not be required.
16. It is also pertinent to note that the Power Exchanges have been operational from more than 11 years. In this time span there has been no instance or evidence which could have compelled the Hon'ble Commission to conclude that there has been abuse of position of any client having shareholding of

more than 5%. The proposal is, therefore, unwarranted and will have significant impact on investments in power exchanges as it would virtually exclude all industry houses in the country.

Suggestion

17. It is thus suggested that Regulation 15 (1) (b) shall be deleted.
18. Regulation 17 (11) provides that *“No member of Power Exchange or their client shall be on the Board of Directors of any Power Exchange.”*

Comments

19. The PMR 2010 provide that not more than one-fourth of the Board of Directors of Power Exchange shall represent members of Power Exchange. The proposed Draft PMR 2020 takes away the right of being a director as provided under Companies Act, 2013, wherein eligibility and qualification of director is prescribed.
20. At para 3.4.7.1 (d) of the Explanatory Memorandum, it is stated that *presence of member or clients on the board of the Power Exchange may lead to potential conflict of interest situations. Hence the Draft Regulations propose that no member of Power Exchange or their client shall be on the Board of Directors of any Power Exchange.* However, there is no data presented, or incidents quoted which support that in the past having

members on the Board have indeed lead to situations of conflict of interest.

It is submitted that members should be allowed to be on the Board as they know the market reality and expectation. Accordingly, they can bring in innovation, efficiency and better services. Depriving members to be on board of director of a power exchange would ultimately deprive power exchanges to be operated by sector specific experienced experts and would bring in totally new players to operate power exchanges. In consideration of technical expertise and know how, member needs to be allowed on the board of the power exchange with certain reasonable upper limit upon the number of member directors to be permitted on the board of power exchange. Totally depriving member from being in the board of director of the exchange would be arbitrary and in contravention of Companies Act, 2013.

21. Further, the Regulation 17(2) of the Draft PMR 2020 proposes to increase the number of Independent Directors on the Board. Surely, such a measure would allay any fear of conflict of interest. The presence of increased independent directors on the board would effectively promote an unbiased and non -partisan leadership to permeate from the Board. Also, from a commercial perspective, considering there are two exchanges in the sector, fresh investment (including from members), is the need of the hour for development of the market. In the event, members/clients are unable to have representation on the Board, it may act as a disincentive for people

to invest. Therefore, this Hon'ble Commission may consider deleting Regulation 17(11) of the PMR 2020.

Suggestion

22. This Hon'ble Commission may consider capping on the number of shareholders directors who are members or clients.

III. LIMITS ON TRANSACTION FEE

23. Regulation 2 (1) (be) of Draft PMR 2020 defines Transaction Fee as *"the fee payable (in Rs./ kWh) by members or clients, as applicable, for transactions on a Power Exchange"*;

...

Regulation 23 of the Draft PMR 2020 proposes the following:

"No Power Exchange shall charge transaction fee exceeding such fee as approved by the Commission:

Provided that the Power Exchanges which have been granted registration by the Commission prior to the date of notification of these regulations shall be required to obtain approval of the transaction fee to be charged by the Power Exchange within a period of three months of the date of notification of these regulations."



24. The Draft PMR 2020 proposes to insert a regulation with respect to transaction fee charged by the Power Exchanges. Para 3.4.11.2 of the Explanatory Memorandum, states that the transaction fee is being regulated to protect the consumers' interest as it is proposed that no Power Exchange shall charge transaction fee exceeding such fee as approved by the Hon'ble Commission. Further, it is also provided that Power Exchanges, which have been granted registration by the Hon'ble Commission prior to the date of notification of the Draft PMR 2020, shall be required to obtain approval of the transaction fee to be charged by the Power Exchange within a period of three months of the date of notification of the Draft PMR 2020. Ostensibly, the reason to regulate transaction fee is to protect the interest of the consumers.
25. It is submitted that the interest of consumers will truly be served by development of a competitive energy market as envisaged under EA 2003. The competition in the electricity sector is envisaged by way of empowering consumer to choose its source of supply. A standardized and regulated fee may not serve this purpose. The consumer would be truly benefitted if exchanges vie with each other to offer the lowest transaction fee to attract consumers.
26. It is respectfully submitted that the Explanatory Memorandum only states that transaction fee is sought to be regulated to protect consumer interest.

However, there is no finding or study conducted to ascertain if at all, the current transaction fees are disproportionate to the service provided. The Exchange platform has given that choice to more than 4000 consumers who can directly participate at the Exchange and also distribution licensees to reduce their power purchase cost which is ultimately beneficial to the retail consumers. Till date, there is no information on any consumer complaining that the transaction fee charged by exchanges is unreasonable. In fact, the consumers are saving 50 p to INR 1 per unit by participating on the Exchange and the transaction fee constitutes only 2-4% (2 paisa/unit) of the saving accrued by the consumers and 0.6 % of total transaction value (assuming INR 3/Unit MCP). Similar savings are accrued by Distribution licensees also. The exchanges have not increased transaction fee in over a decade. Therefore, regulating transaction fee is unwarranted and pre-mature. Regulation at this stage without any basis will not only impact promotion of competition which is against the spirit of the EA 2003, it will also be contrary to this Hon'ble Commission's own stand at the inception of Power Exchanges. It will also need to be considered whether the EA 2003 contemplated regulation of transaction fee and whether this Hon'ble Commission has the jurisdiction to determine such charges under S. 179 of the EA of 2003. It is humbly submitted that the statute only envisages regulation of trading margin and not transaction fee.

IV. INTRODUCTION OF PAYMENT AND SETTLEMENT SYSTEM

27. Regulation 27 of the Draft PMR 2020 states that *“The Power Exchange shall enter into an agreement in writing for Clearing and Settlement of any transaction of electricity undertaken on the Power Exchange with an entity established in accordance with the provisions of the Payment and Settlement Systems Act, 2007.”*

Comments

28. Currently, under the PMR 2010, the existing Power Exchanges operate the clearing and settlement function in-house. It is now proposed that clearing and settlement of all transactions of electricity undertaken on the Power Exchange shall be undertaken by an entity which is established in accordance with the provisions of Payment and Settlement Systems Act, 2007. As per para 3.4.14.4 of the Explanatory Memorandum, such changes have been proposed to enable these Power Exchanges to comply with the provisions of Payment and Settlement Systems Act, 2007. The Draft PMR 2020 propose to allow a period of one year or such other period as may be approved by the Hon’ble Commission, for the establishment of an entity in accordance with the provisions of Payment and Settlement Systems Act, 2007. Therefore, this Hon’ble Commission is proposing to cede all control over Clearing Corporations.

29. It is submitted that since the Hon'ble Commission, is dealing with every aspect of the power market, it should continue regulating and monitoring Clearing corporation under its regulations. The clearing function by power exchange should be retained by them for exchange related settlements transactions which should ultimately be subject to the jurisdiction of the sector regulator, i.e. this Hon'ble Commission.
30. Further, Regulation 7 of the Draft Petroleum and Natural Gas Regulatory Board (Gas Exchange) Regulation, 2020, states that *"No person shall conduct, organize or assist in organizing any gas exchange or clearing corporation unless he has obtained authorisation from the Board in accordance with these regulations"* wherein PNGRB also permits to set up and operate clearing corporation for the purpose of gas exchange within its purview thereby granting permission and regulating functioning of a clearing corporation. In this context, wherein SEBI and PNGRB could recognize and grant permission for a clearing corporation, this Hon'ble Commission being the sector regulator should keep within its purview setting up and operation of clearing corporation.
31. It is further submitted that the Payment and Settlement System Act, 2007 was enacted in year 2007 when the concept of Power Exchanges was in discussion therefore the Act does not cover the specific requirements in

case of Power Exchanges/Power Sector. The Commodity and its price cannot be treated in isolation. Further, the Power Exchange market handles only 4% of the total electricity market of the country and is still in a nascent stage. Therefore, it requires support and incubation in terms of a conducive framework to develop the market. The hiving-off of clearing function may dent the overall functioning of the Power Exchange market which is still maturing.

32. Further, it is pertinent to note the Ministry of Power's notification dated 10.07.2020 which permits this Hon'ble Commission to exercise its jurisdiction over all contracts entered into by members of the power exchanges, registered under the present PMR 2010. This is subject to the outcome of Civil Appeal Nos. 5292-5295/2011 (CERC v. MCX & Ors.), SLP (C) No. 17300-17303 of 2011 (SEBI v. CERC & Ors.) and CA NO. 5290-5291/2011 (PXIL v. SEBI & Ors.). Therefore, in the event, the Hon'ble Supreme Court upholds this Hon'ble Commission's jurisdiction over forward/derivative market, it would be necessary to have the Clearing Corporation under this Hon'ble Commission's jurisdiction when forward market is introduced. Therefore, hiving off clearing corporations functions should be subject to the final decision of the Hon'ble Supreme Court. A

copy of MoP's notification dated 10.07.2020 is annexed hereto as

Annexure-A.

33. It is also pertinent to mention that delivery of electricity is a super special and technical subject which is governed by the regulations of this Hon'ble Commission and of various State Electricity Regulatory Commissions. As per EA 2003, the inter-state transmission of electricity is governed by CERC and intra-state transmission and distribution of electricity is governed by SERCs. Therefore, delivery of electricity involves multiple entities namely Central Transmission Utility, State Transmission Utility and Distribution Companies. As electricity in general cannot be stored and needs to be consumed immediately the entire electricity system needs coordinated operations. This operation is performed by entities called as System Operators which are regulated by this Hon'ble Commission or the State Commissions. The Power Exchange has to coordinate with all of these statutory entities for delivery of electricity traded on its platform, thereby seeking services of these entities. The Power Exchange operates on Round-the-Clock basis for trading and delivery as intra-day contracts are available at Power Exchange wherein electricity can be traded on round-the-clock basis.



34. It is submitted that the buyers and sellers at Power Exchange include consumers, generators and Distribution Companies all of which are regulated by this Hon'ble Commission along with the State Commissions. Therefore, even in the present system there is a regulatory overlap when a consumer or Distribution Company participates on the Power Exchange. It is submitted that in case there is payment dispute on the Clearing House, adjudication of the same may be difficult in view of the regulatory overlap. In addition to this, in case of any dispute pertaining to the payment of various open access charges to the utilities, both this Hon'ble Commission and the appropriate State Commission may have jurisdiction. Further, the present issue of hiving-off of the clearing and settlement activity deals with only 4% transactions in electricity sector while the rest 96% would still be governed by the regulations framed by the various Electricity Regulatory Commissions.
35. It may further be appreciated that Delivery and Payment with respect to the transaction executed at Power Exchange requires a close coordination for efficient functioning. Also, the regulatory overlap may not be avoided in case of hiving-off of the clearing activity at Power Exchange. Further, unlike other Exchanges, the Power Exchange is a spot market for compulsory delivery of electricity which requires separate treatment to function efficiently. In case of Stock Exchanges, the legislature had

recognized the special needs of Stock market and to avoid dual regulations took stock exchanges and its clearing corporations out of the purview of the Payment and Settlement System Act, 2007.

36. It is also pertinent to mention that the current RBI framework caters to Clearing of Banking Transactions of large volumes with a minimum net-worth of INR 300 Crore. Thus, currently there is not framework for a clearing corporation which dealing spot commodity exchanges which generally have low turn-over. Therefore, it is humbly submitted that there are various regulatory hurdles to making Clearing Corporations subject to RBI's jurisdiction which is yet to be addressed.

Suggestion

37. It is suggested that CERC should keep within its purview grant of permission for setting up of clearing corporation and regulating operations of clearing corporation as provided in PMR 2010 within framework and rules defined under Payment System and Settlement Act, 2007.

V. MARKET COUPLING

38. Regulations 2 (af) and 2(ag) of Draft PMR 2020 define the terms "Market Coupling" and "Market Coupling Operator" as under:

2(af) "Market Coupling" means the process whereby collected bids from all the Power Exchanges are matched, after taking into account all bid types, to discover the uniform market clearing price for the Day Ahead Market or Real-time Market or any other market as notified by the Commission, subject to market splitting;

2 (ag) "Market Coupling Operator" means an entity as notified by the Commission for operation and management of Market Coupling;

Regulations 37 to 40 of the CERC (PMR) 2020 provide for Market Coupling.

Regulations 37 to 40 read as under:

"37. Objectives of Market Coupling

(1) Discovery of uniform market clearing price for the Day Ahead Market or Real-time Market or any other market as notified by the Commission;

(2) Optimal use of transmission infrastructure;

(3) Maximisation of economic surplus, after taking into account all bid types and thereby creating simultaneous buyer-seller surplus.

38. Designation of Market Coupling Operator

Subject to provisions of these regulations, the Commission shall designate a Market Coupling Operator who shall be responsible for operation and management of Market Coupling.

39. Functions of the Market Coupling Operator

(1) The Market Coupling Operator, with the approval of the Commission, shall issue a detailed procedure for implementing Market Coupling including

management of congestion in transmission corridor, the timelines for operating process, information sharing mechanism with the Power Exchanges and any other relevant matters.

(2) The algorithm for enabling Market Coupling shall be developed and managed by the Market Coupling Operator and implemented with the approval of the Commission.

(3) Market Coupling Operator shall create and maintain a document on its website providing detailed description of the algorithm used for price discovery. The description shall include bid types, details of how the algorithm results in maximisation of economic surplus taking into account various bid types and congestion in transmission corridor, which shall be updated with every new version of the price discovery algorithm.

(4) The Market Coupling Operator shall use the algorithm to match the collected bids from all the Power Exchanges, after taking into account all bid types, to discover the uniform market clearing price, subject to market splitting.

(5) The Market Coupling Operator shall communicate the results of the auction to the Power Exchanges in a transparent manner.

40. The Power Exchanges shall inform the participating bidders about the results of the auction as communicated by the Market Coupling Operator.”

39. Part 5 of the Draft PMR 2020 introduces the concept of Market Coupling. As per the Explanatory Memorandum, the concept of Market Coupling is being introduced to discover uniform clearing prices in the Power Exchanges, with the objective of discovering uniform clearing prices in the Day Ahead and Real-time markets, ensuring optimal utilization of resources and maximization of economic surplus. Further, a uniform clearing price in the Day Ahead market discovered by the market coupling process would minimize the scope of any arbitrage between deviation settlement and the market.

Comments:

40. It is respectfully submitted that merging of bids and market coupling is premature in the current power market and regulatory framework. From an international perspective and studying the international power exchanges where market coupling has been implemented, it is seen that merging of bids typically occur across various countries and regions. Generally, Europe is seen as a credible example for Coupling of markets. The European market consists of twenty-four (24) countries and eight (8) different regions, where supply and demand i.e., distribution of power across borders is very complex due to different types of production, varying

demand, and bottlenecks on cross-border cables. Therefore, in Europe, coupling was done across Exchanges in different geographies i.e., different regions were coupled. The primary objective behind Coupling of exchanges in Europe was market integration and optimization of cross border transmission links. In this regard reliance may be placed upon the consultation paper on the 'Governance framework for the European day-ahead market coupling' published by European Commission, Directorate-General for Energy on 28.11.2011.

41. Presently, India is divided into 5 electrical Regions i.e., North, West, South, East and North-East with total 13 Bid Areas for the purpose of trading through Power Exchange. Congestion on transmission network is managed through implicit auction and market splitting mechanism, i.e., when the required flow exceeds transfer capability, Power Exchange determines the Area Clearing Price (ACP) specific to the Bid Areas. In effect, price is reduced in the surplus Bid Area (sale > purchase) and increased in the deficit area (purchase > sale) to manage congestion. Thus, power market in India is already integrated and transmission corridor allocation is managed by the System Operator on a pro-rata basis.
42. In Europe, different regions were coupled together through the PCR model (i.e., Price Coupling Regions) to integrate the market. However, this

Hon'ble Commission by way of PMR 2020 has proposed to couple the price on different Power Exchanges in India (i.e., coupling within region), which is not in line with the objectives sought to be achieved by PMR 2020. Moreover, the Indian power market is already integrated. Therefore, any move to implement market coupling without a deeper study (or a pilot project) and by ignoring the ground realities in India may not be appropriate for deepening of the market.

43. The Hon'ble Commission while dealing with the issue of allocation of transmission corridor among Power Exchanges in Petition No. 158/MP/2016 in its Order dated 04.04.2016 also dealt with the issue of market coupling and observed as under:

"16. As the Expert Group has itself suggested that resolution of various practical issues are required before considering the proposal for introduction of merging of bids / market coupling method. Moreover, the Expert Group has recommended for constitution of a separate committee for long term solution which may look into the market design issues in a holistic manner including the transmission access methodology besides requirement of infrastructure, logistics, settlement etc. for implementation of merging of bids for optimal solution of transmission corridor allocation amongst multiple exchanges. Both the power exchanges have expressed serious reservation about the solution of merging of bids. The Commission is of the view that the concept

of merging of bids is pre-mature at this stage and is not relevant in the context of the present petition. During the hearing of the petition, CEO, POSOCO clarified that congestion on the transmission corridor is not that acute as it was prevailing four years back which was also endorsed by the representatives of both the power exchanges. Therefore, the Commission has not considered this recommendation of the Expert Group for merging of bids of the power exchanges.” (Underline supplied)

It is submitted that there is no change in circumstances as compared to 2016. The observations of the expert committee and Hon’ble Commission, mentioned in aforementioned order, are thus valid in the present context also.

44. It is further submitted that “multiple power exchange” model was a conscious call taken by the Hon’ble Commission, in 2007, at the inception of power exchanges. The Hon’ble Commission in its Order dated 04.04.2016 in Petition No. 158/MP/2016 observed that “The Commission has been advocating multiple power exchanges from the very beginning and therefore, it is essential that both the power exchanges thrive as viable market institution.” The Hon’ble Commission was thus, aware, from the very beginning that the discovered price may vary on different power exchanges. Accordingly, there is no reason to re-look the existing model unless significant benefits are ensured.

45. As per para 3.5 of the Explanatory Memorandum the concept of Market Coupling is being introduced to correct the mediocre allocation of transmission corridor amongst the Power Exchanges owing to skewed market share of various Power Exchanges. It is submitted that had allocation of transmission corridor been the reason for skewed market share then the market share of PXIL would have increased after reservation of 10% of transmission corridor for PXIL. Rather, it is a matter of fact that PXIL was unable to utilize even the 10% corridor reserved for it. Therefore, it is humbly submitted a deeper study may be required to ascertain whether market coupling would at all improve allocation of transmission corridors.
46. Further, the Hon'ble Commission had appointed an expert committee while adjudicating Petition No.158/MP/2013 to deal with the issue of the allocation of transmission corridor between Exchanges. Based on the recommendations of the said Expert Committee, priority allocation of 10% was given to smaller Exchange. The Hon'ble Commission in Para 19 of Order dated 04.04.2016 also observed that "it is difficult to accept that the present methodology of pro rata allocation of corridor has adversely impacted the viability of PXIL". Thus, unless there is any change in the

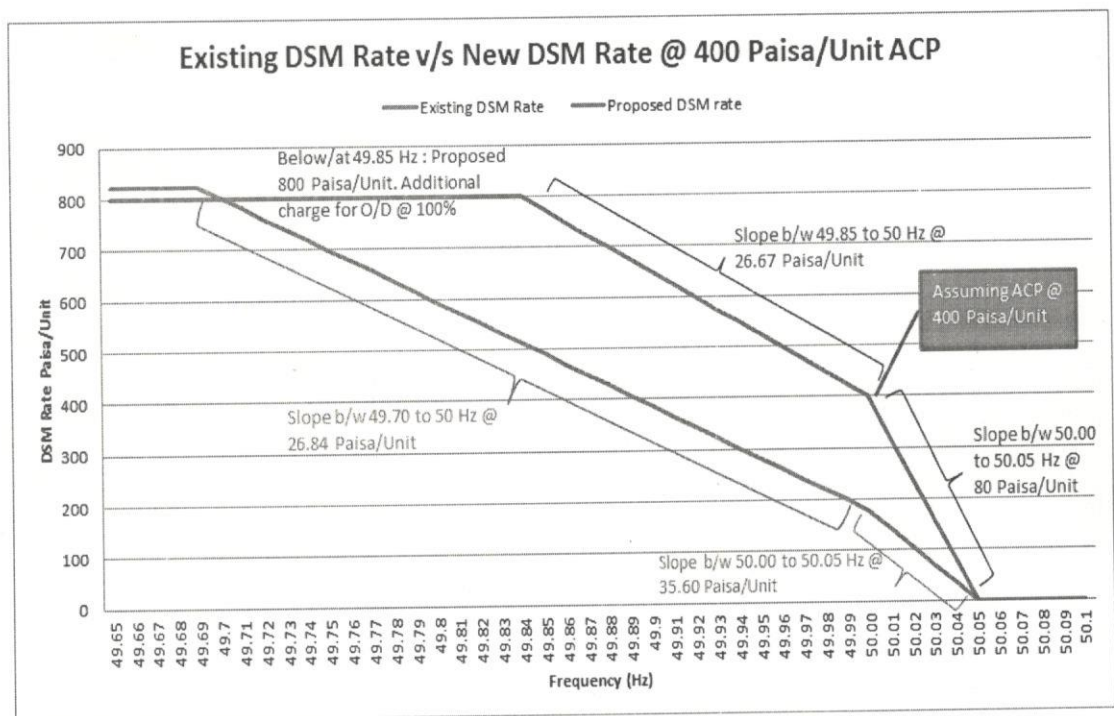
prevailing circumstances it does not make sense to tinker with the existing allocation procedure.

47. The Explanatory Memorandum also states that the overall economic surplus is not maximized since buyers and sellers may be spread out on various Power Exchanges. The statement, however, is not supported by any data. In absence of any study/analysis it may not be correct to state that currently economic surplus is not maximized. Further, it is a matter of fact that in Day Ahead Market (DAM) & Real Time Market (RTM), the volume share is approximately 99:1. In such scenario it is doubtful if market coupling will result in the maximization of economic surplus and there would be no scope of further maximization of economic surplus. On the contrary, market coupling will eradicate the scope for flexibility for innovation and incentive for Power Exchanges to develop market.
48. From the Explanatory Memorandum, it is evident that the Hon'ble Commission expects that financial products in the electricity market would require uniform price discovery in the Day Ahead and Real-time markets. It is submitted that there is no instance demonstrating the need for single price for financial products in electricity market. For example, in Nordic region, all electricity derivatives are settled on the price determined at Nord Pool, the Nominated Electricity Market Operator, without

considering market coupling prices. The Electricity Derivatives can be settled at any reference price which is suitable or which is pre-decided in the contract of the Exchange where such derivatives are traded. Further, as per agreement between SEBI and this Hon'ble Commission a Joint Working Group has to be constituted which will look into this matter. It is; thus, pre-mature to hold that electricity derivatives will require uniform price.

49. In order to address the issues, the Draft PMR 2020 provide an enabling provision to introduce market coupling among the Power Exchanges, with the objective of discovering uniform clearing prices in the Day Ahead and Real-time markets, ensuring optimal utilization of resources and maximization of economic surplus. It is reiterated that the said issues are premature in nature as no study/ analysis has been which show that such issues even exist. There is thus, no need for such enabling provisions which will created unnecessary confusion and doubt in the minds of stakeholders and investors.
50. Further, it is also envisaged that a uniform market clearing price in the Day Ahead market (DAM), discovered by the market coupling process, would minimise the scope for any arbitrage between deviation settlement and the market. It is stated that the deviation settlement mechanism is

not a market but a penalty mechanism to ensure disciplined behavior by the participants in the interest of grid security. A market cannot be designed on the basis of requirement of a penal mechanism. The Hon'ble Commission has over a period of time already introduced lots of changes to the DSM charges and in future also more changes may take place based on the market dynamics. There is, therefore, no reason to modify market design for such mechanism and distort existing market. Further, the DSM charges are applicable as per the Vector, defined by the Hon'ble Commission in its DSM Regulations, which is linked to Daily average Area Clearing Price of DAM. The DSM Vector is as under:



It can be clearly observed that the arbitrage opportunity for a buyer is above the level of 50Hz Frequency and the over-drawl above 50 Hz attracts

additional deviation charges. Therefore, as such there is no arbitrage opportunity available for a buyer in the DSM mechanism. Further, to avoid price shock, the Hon'ble Commission has linked DSM Mechanism with average ACP rather than time block wise ACP. Therefore, even this apprehension is there in the mind of Hon'ble Commission, the DSM may be linked to time block wise ACP of DAM or RTM as already envisaged by the Hon'ble Commission while proposing 4th amendment to DSM Regulations.

51. To conclude, it is submitted that an introduction of market coupling would be difficult to administer. It would in fact stifle competition in the market. There would be no incentives for the power exchanges to bring innovation in the new product or market development – this is more important in the changing market scenario when the RE penetration is increasing and other actors are emerging in the market. The current regulatory framework would not be able to accommodate such complex bid structures. Further, there has been no extensive study carried out on the subject either through an expert committee internally constituted or involving experts having understanding of the market. Before, this country can move towards market coupling, the following questions need to be deliberated and answered:

- Market coupling is premature, the expected benefits have not been spelt out. Surely, Market Coupling is required where there are several exchanges and multiple geographical regions with their own set of rules for market discovery.
- Market coupling cannot be an instrument to benefit underperforming exchange. In the Indian market IEX has 96% of trade while PXIL has 4%. In such scenario, the Commission should consider whether market coupling will benefit consumers at all. It is our humble suggestion that the commission should endeavor to promote multiple exchanges after which, the concept of market coupling can be considered.
- The present draft regulations do not identify the market coupling operator (MCO). It is also not clear whether it will a private entity or the system operator. Nor is it clear as to the regulatory framework under which the MCO will operate, particularly in relation to the algorithm to be used for uniformity in price
- Should the commission decide to have the system operator as the market coupling operator, this could be construed as vesting jurisdiction to a statutory functionary through a regulation which is otherwise not envisaged in the parent act.
- The cost analysis for introducing market coupling particularly on the overall transaction needs to be deliberated. The recovery of cost and its

appropriation over the body of stakeholders involved in the trade needs to be addressed clearly.

- Apart from setting up the obligations and liabilities of the MCO, the manner of settlement between the exchanges including the time-period thereto has to be provided. The engagement of the exchange with the MCO will entail additional cost for the exchange which also needs be addressed. The Commission may consider an appropriate cost analysis/study on this issue. The Commission should also consider the possibility of continuing with the existing market arrangement and/or provide for coupling on a rotational basis as suggested by the Expert Group in in Petition No. 158/MP/2016.
- It is also not clear whether all contracts in the day DAM will be subjected to the market coupling process. If it is done, how it will affect prices also needs to be suggested with the existing data that is available in order to better understand the benefit that this process will provide to consumes.

Suggestion:

52. In view of the above reasons, it is suggested that the Hon'ble Commission may conduct a comprehensive study on market design and such proposal should be widely discussed before taking any appropriate decision. It

would be pre-mature to incorporate such provisions which may distort existing market.

VI. OTC PLATFORM

53. Regulation 2(ap) of the Draft PMR 2020 defines the term OTC Platform as *“an electronic platform for exchange of information amongst the buyers and sellers of electricity”*

Regulations 41 to 48 provide the objectives of the OTC Platform along with its functions and procedure. Regulations 41 to 48 read as under:

“41. OTC Platform shall operate after obtaining registration under these regulations.

42. The objectives of the OTC Platform shall be:

(1) To provide an electronic platform with the information of potential buyers and sellers of electricity;

(2) To maintain a repository of data related to buyers and sellers and provide such historical data to Market Participants;

(3) To provide such services as advanced data analysis tools to Market Participants.

43. Participants on OTC Platform

The following shall be eligible for participation in the OTC Platform:

(1) grid connected entities such as generating companies, distribution licensees, open access consumers or any person acting on their behalf; and

(2) Trading Licensees.

44. Eligibility Criteria for registration of OTC Platform

(1) The eligibility criteria for registration of OTC Platform shall be as follows:

(a) Any company incorporated under the Companies Act, 2013;

(b) The minimum Net worth of the applicant shall be Rs. 50 lakhs as on any date falling within 30 days immediately preceding the date of filing the application for grant of registration.

(2) A Power Exchange or Trading Licensee or any of their Associates or grid connected entities shall not be permitted to set up, operate, or have any shareholding in an OTC Platform.

45. Procedure for filing Application and Grant of Registration

(1) Application for grant of registration to establish and operate OTC Platform shall be filed online on the website of the Commission, in accordance with the guidelines for registration and filing application as may be notified.

(2) The Commission may, after consideration of the proposal, and making such inquiries as may be necessary, either grant registration or reject the application of the applicant.

(3) The registration of an OTC Platform shall continue to be in force for a period of five (5) years from the date of grant of registration unless such registration is revoked or cancelled earlier.



(4) The Commission may, on an application filed by the OTC Platform, and after making such inquiries as may be necessary, renew registration for a further period of 5 years;

(5) Any company granted registration to operate an OTC Platform by the Commission in accordance with these regulations shall pay an annual registration charge in accordance with the timeline and the manner specified in the Payment of Fees Regulations.

46. Documents required to be submitted along with the application

(1) Memorandum and Articles of Association of the company making the application;

(2) The audited special balance sheet as on any date falling within 30 days immediately preceding the date of filing the application for grant of registration showing the Net worth of the applicant;

(3) Copies of the Permanent Account Number (PAN), Tax Deduction and Collection Account Number (TAN) and Income Tax Return (ITR) for the previous year of the company making the application.

47. Obligations of the OTC Platform

1) The OTC Platform shall not engage in the negotiation, execution, clearance or settlement of the contracts.

2) The OTC Platform shall maintain neutrality without influencing the decision making of the Market Participants in any manner.

48. Revocation of registration

The Commission may, for reasons to be recorded in writing and after giving the OTC Platform an opportunity of being heard, revoke the registration accorded to the OTC Platform in case the OTC Platform fails to comply with the terms and conditions of the registration or any direction of the Commission.”

54. As per Para 3.6 of the Explanatory Memorandum the concept of OTC Platform has been introduced to facilitate direct interaction between the sellers and buyers in the OTC market. As per para 3.6.2, the OTC Platform is being introduced on account of growing demand for electricity in the near term; growing requirement for purchase of renewable power to meet renewable purchase obligations and increasing purchase of electricity, through open access, by large consumers. The regulations envisage that the proposed OTC platform will provide detailed information on buyers and sellers at one place with information on quantity, price, fuel, location, etc. being easily accessible.

Comments:

55. Regulation 44 (2) of the Draft PMR 2020, states that “A Power Exchange or Trading Licensee or any of their Associates or grid connected entities shall not be permitted to set up, operate, or have any shareholding in an OTC Platform.” It is submitted that since this is only an advisory platform

wherein advisory services will be provided, therefore, any person passing the eligibility criteria should be permitted to operate the said platform.

56. Further, restricting trader or any of its associates from setting-up, operating or having any shareholding in an OTC platform is arbitrary and unreasonable. It is submitted that traders only provide such services which are advisory and consultancy in nature and as such there is no reason why ownership by traders of an OTC platform would affect the market negatively.
57. It is submitted that the reasons mentioned in para 3.6.2 of the Explanatory Memorandum for introducing OTC Platform are vague and do not provide an explanation as to why the existing system is not adequate to meet such requirements. The Hon'ble Commission is aware that over the years the Short Term Market's share is stagnant at 10-11% while the market share of Power Exchanges is just 4%. The proposed OTC market will also get volume from same 10-11% market share thereby further reducing share of traders and Power Exchanges. The reduced share means reduced volume resulting in low liquidity. The objective of power exchanges is to work towards increasing liquidity in the market. Introduction of OTC Platform will, however, defeat the objectives envisaged in the Draft PMR 2020 and will fragment the existing market.

Suggestion

58. Regulation 44 (2) of Draft PMR 2020, should be deleted.

It is prayed that the above suggestions may be taken into consideration while finalizing the Draft PMR 2020. MPL also craves leave to make oral submissions before the Hon'ble Commission during the public hearing.

Yours Sincerely



Vedant Sonkhiya

Authorized Signatory