



भारत सरकार/ Government of India
विद्युत मंत्रालय/ Ministry of Power
केन्द्रीय विद्युत प्राधिकरण/ Central Electricity Authority
आर. ए. प्रभाग/ Regulatory Affairs Division

No. CEA-EC-15-17/2/2018- RA Division

Dated: 13.08.2020

To,
Secretary,
Central Electricity Regulatory Commission,
3rd & 4th Floor, Chanderlok Building, 36,
Janpath, New Delhi -110 001

विषय Draft Central Electricity Regulatory Commission (Power Market) Regulations,
2020 - regarding.

सन्दर्भ : पत्र संख्या No. L-1/257/2020/CERC दिनांक 18th July, 2020

Reference is invited to Public Notice issued by CERC vide Letter No. L-1/257/2020/CERC dated 18th July, 2020 inviting comments/ suggestions/ objections from the stakeholders and interested persons on the **Draft** Central Electricity Regulatory Commission (Power Market) Regulations, 2020.

Accordingly, please find enclosed detailed comments of Central Electricity Authority (CEA) on the aforesaid Draft Regulation of CERC at **Annexure – I**.

यह पत्र अध्यक्ष, के.वि.प्रा के अनुमोदन से जारी किया गया है।

Encl. As above

[Signature]
13/08/2020
(संजीव मंदिलवार)
मुख्य अभियन्ता (आर.ए.)

PART-WISE COMMENTS OF CEA ON DRAFT CERC (POWER MARKET) REGULATIONS, 2020

PART -1

DEFINITIONS AND INTERPRETATIONS

- i) It appears that the definition of “cartelization” under **Clause 2(1)(i)** of these regulations is based on the Competition Act, 2002 with minor modification. Cartelization herein is defined as an act by Market Participants to limit or control generation, distribution, sale, price or trade of electricity , while it is silent about the transmission. We are of the opinion that transmission plays a very vital role in power market functioning , wherein one entity or a group of entities in the system may create artificial corridor congestion to manipulate the price of electricity. Therefore, transmission should also be added along with generation, distribution, sale, price or trade.
- ii) Market Coupling has been defined in **Clause 2(1)(af)** as a 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.

However , it is opined that before introducing this Market Coupling mechanism in India by replacing the existing explicit auction mechanism, CERC should critically examine and evaluate it from the point of view of its relevance in India. The necessity and relevance of market coupling mechanism in Indian Market vis-a vis European Market needs to be seen in the pursuit of market coupling mechanism initiated in North West Europe , South West Europe and Price Coupling Regions which was initiated by seven European Power Exchanges (APX, Belpex, EPEX SPOT, GME, Nord Pool Spot, OMIE and OTE) . On the contrary, in India , till date , there are only two functional power exchanges and during the years from FY 2008-09 to FY 2019-20, on an average, more than 90% of total volume of Electricity transacted on Power Exchanges in India in Day Ahead Market(DAM) and Term Ahead Market(TAM) together are happening in only one Power Exchange i.e IEX and remaining volume is transacted on PXIL.

- iii) **Clause 2(1) (ah)** of the said regulations defines the “Market Manipulation”. This definition is broad enough to cover many possible ways of market manipulation. However, “pre-arranged trading”, where two parties agree on price and quantum and get it through in the form of “Continuous Transaction” on PX should also be included in its ambit. Similarly, capacity withholding may also be included in the ambit of Market Manipulation

Further, the proposed definition of “Market Manipulation” only covers the transactions taking place on the Power Exchange, while these Regulations shall be applicable for all transactions. It need no emphasis that bilateral transactions (direct or through trading licensee) and PX transactions have mutual impact. Therefore, this clause may be generalized . Similarly, **Clause 2(1)(k)** of these Regulations regarding “Circular Trading” may be relooked. It may be possible, for example, to do circular trading with transactions on OTC platform or a combination of OTC platform and PX.

- iv) **Clause 2(1) (ap)** defines the “Over the Counter (OTC) Platform” as an electronic platform for exchange of information amongst the buyers and sellers of electricity. However, in accordance with Section 63 of the Electricity Act, 2003, Government of India has notified Guidelines for competitive bidding for procurement of power issued by Government, which stipulates competitive bidding to be carried out at DEEP portal or any other portal authorized by Ministry of Power. The definition of OTC Platform and other proposed provisions relating to OTC platform may have to be looked into in this context.
- v) **Clause 2(1)(ax)** defines the “Settlement Guarantee Fund” for settlement of defaults of its members or clients of such members as stipulated in the default remedy mechanism of Power Exchange. However, the creation of any such fund perhaps may require the approval of RBI. This aspect may also be relooked into.
- vi) **Clause 2(1) (be)** defines the “Transaction fee” for the transactions on Power Exchange only. However, no such fee in regard to OTC platform has been defined. In our opinion, the OTC platform may charge some fee for facilitating the parties to come across for meeting their requirements and this fees also need to be regulated.
- vii) **In Clause 2(1)(bf)** of the draft Regulation, the Intraday Contract, Contingency Contract and Term Ahead Contracts have been shown as separate contracts. There is also no mention of daily contracts and weekly contracts in the aforesaid draft Regulation, which were part of Term Ahead Market (TAM) under the repealed Power Market Regulation, 2010. It implies that current 11 days restrictions under Term Ahead Contracts are now proposed to be replaced with long duration future contracts on power exchanges in the principal Power market Regulation, 2020. Therefore, the delivery period of such long duration future contracts on power exchanges needs to be explicitly specified by CERC in the principal Regulation itself.
- viii) Though Min. of Power (MoP) vide their OM dated 10.07.2020 subject to outcome of the judgement of Hon’ble Supreme Court of India has approved trading of electricity through forward contracts, there is no mention of forward contracts in the draft Power Market Regulation, 2020. CERC may therefore, specify and define explicitly the term “forward contracts”,

PART -3

FEATURES OF CONTRACTS

- i) **Clause 5 (1) (iii)** of the draft regulation titled “Day Ahead Contracts and Real-time Contracts” provided that the bidding mechanism shall be double sided closed bid auction on day ahead basis or on real time basis, as the case may be.

In this regard, it is opined that to prevent either the buyer or seller to buy or sell at the Power Exchange at an exorbitant price – which happened in October, 2018, **a proviso may be added as under:**

“Provided that in case of any bid (buy or sell) being more than a certain percentage say (50%) above the average cost of generation (for example Rs. 6 /kWh), then there should be a provision for fixing /capping the price discovery in the market at some specified percentage as may be decided by the Commission say at 130% of the average cost of generation.”

- ii) **Clause 5(3)(b) (iii)** of the draft regulation titled “Scheduling and delivery in Term Ahead Contracts” and **Clause 7(3)** of the draft regulation titled “Settlement Conditions in Contracts transacted in the OTC Market” respectively provided that Term Ahead Contracts and OTC Contracts shall be settled only by physical delivery of electricity without netting.

As this para is appearing only in case of Term Ahead Contract and OTC Contracts, it appears that it is exclusively for Term Ahead Contracts and OTC Contracts, which should not be the case, because, it is opined that all type of contracts should be settled only by physical delivery without netting. Therefore, CERC would need to incorporate similar provision for other types of Contracts as well while finalizing the Power Market Regulation, 2020.

- iii) **Clause 5(3)(b)(iv)** titled “Scheduling and delivery in Term Ahead Contracts”, provided that no circular trading shall be allowed and the rights and liabilities of the parties to the Term Ahead Contract shall not be transferred or rolled over by any other means whatsoever.

As this para is appearing only in case of Term Ahead Contract, it appears that the said provision is exclusively for Term Ahead Contracts, which should not be the case, because, it is opined that the provision of not allowing circular trading should be squarely applicable to other types of contracts as well. As such, CERC would need to relook into it and incorporate similar provisions for other types of contracts as well.

- iv) In the above draft regulation, it is observed that at some places, it is mentioned that scheduling and delivery of transactions shall be in coordination with the National Load Despatch Centre [**Clause 5(1)(b) (i)**] and at some other places [**Clause 5(3)(b) (i)**], it is a System Operator. It is therefore suggested that one Terminology i.e either National Load Despatch Centre or System Operator may be used in the Regulation.
- v) **Clause 7(1)** of the draft Regulation proposes that the price and other terms of contract in the OTC Market shall be determined either through mutual agreement between the buyer and the seller or through competitive bidding process or as determined by the Appropriate Commission. However, Tariff Policy, 2016 states that all future procurement of power by Distribution Companies shall be done through competitive bidding barring some exceptions mentioned in the Policy. Thus, mutual agreement may be offered as option only to buyers other than Distribution companies.
- vi) **In Clause 7 (2)** of the Regulation, the words “Delivery Procedure” may be reworded as “Scheduling and Delivery Procedure”.
- vii) It has been observed that the above draft regulation stipulates scheduling, delivery and transmission charges and losses for the entities of inter-State only. However, it is felt that there may be some entities other than regional entities, who may be participating in the Power Exchange, hence suitable provisions for other than regional entities may also be included in the proposed regulations.

PART -4

POWER EXCHANGE

- i) **Clause 12(2)** of the draft regulation titled “Grant and renewal of registration to Power Exchanges” provided that the registration of a Power Exchange shall be for a period of twenty-five (25) years from the date of grant of registration unless such registration is revoked or cancelled earlier. Whereas, in case of OTC Platform, as mentioned in **Clause 45(3) under Part-6** of above draft Regulation, the period of registration has been kept as 5 years.

In his regard, it is opined that the registration period of 25 years is a very long period considering that Power Market Dynamics might change radically and get totally restructured in next 10 years, particularly when there is provision of renewal. As such, CERC may like to review this period and change it to 10 years.

- ii) **Clause 14** of aforesaid draft Power Market Regulation, 2020 titled “Net worth” provided that a Power Exchange shall have a minimum Net worth of Rs. 50 crores at all times. However, it is opined that the same should be dynamic and moving upward or downward based on the volume of trade, it is catering to so as to match the liabilities that may arise, in case of default of its Members or any other contingency. In this connection, it is also opined that in case of Net worth of Power Exchange at any time reduces to below Rs. 50 Crore, for compliance of the net worth, the Commission may define a specific time period to achieve the Net worth [it may not be on case to case basis to obviate subjectivity].

- iii) **Clause 15(1)(c)** of the draft Regulation titled “Ownership structure of Power Exchange” provided that 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.

In this regard, it is opined that the collective shareholding of Members & clients being allowed up to 49% is very close to the majority mark of 50%+(and thus susceptible to market manipulation as only additional 1+ % shares needs to be garnered for creating a majority in their favor and hence defeating the purpose of restricting it to 49%). Therefore, it should be limited to a much lower figure of say 40% or so, so that market manipulation (if any) by Members /Clients is very unlikely, and hence as a margin of safety, it should be restricted to 40%.

- iv) **Clause 17(9)** of the draft Regulation titled “Governance structure of Power Exchange” provided that the name of persons to be appointed as Shareholder Directors shall be approved by the Board of Directors of the Power Exchange, followed by shareholders’ approval and thereafter shall be submitted to the Commission for information.

In this regard, it is opined that the “approval by the Board of Directors of the Power Exchange” for appointment of Shareholders Directors appears to be restrictive and hence, would need to be done away with as some element of alignment with Board of Directors may crop up. It is proposed that it should be left to the Shareholders to nominate their Directors.

- v) **In Clause 25(2)(iv)** of the draft Regulation, DAM, real-time market, intra-day contingencies or any type of contract may also be included.

- vi) **Clause 31(5)** of Draft Market Power Market Regulation, 2020 titled “Information Dissemination by Power Exchange” provided that the Power Exchange shall provide to the Commission details of all transactions on a monthly basis in the formats (Forms I-XIV) appended to these regulations provided that the Commission may, by order, modify or introduce formats from time to time. In this connection, it may be mentioned that Ministry of Power vide their letter No 25/09/2006 - R&R (Vol-III) dated 25th March, 2019 had desired that a dedicated Market Monitoring Cell be created and operationalized in CEA and accordingly, a dedicated Market Monitoring cell was formulated in CEA and the same is already in operation since April, 2019. In the above backdrop, CERC would need to modify the above para to include CEA also along with CERC, because, it is now a mandatory requirement on the part of the Power Exchanges to provide the details of all transactions on a monthly basis to CEA also.
- Besides the above, there may be need to explicitly include a requirement for submission of trade related information relating to transactions done directly or through OTC platform to both CERC and CEA.
- vii) **Clause 32(3)** under “Market Surveillance by Power Exchange” proposes that the Power Exchange shall constitute a Market Surveillance Committee (MSC) headed by an Independent Director of the Board and having members from the executive team of the Power Exchange. No member of this committee shall be a member of the Power Exchange. In this regard, it may be noted that Government is now seriously contemplating about increasing the volume of trade on Power Exchange. In this background, there may be need to take market surveillance to a higher level. Therefore, now there is a need to introduce an independent market monitor to carry out the functions of market surveillance which shall submit its report to CERC at regular intervals. CERC may draft a framework for transparent selection and other terms and conditions in this regard.
- viii) **Clause 34** under “Exit Scheme” proposes the exit by any power exchange subject to certain conditions. In this regard, it is proposed that if only one power exchange is running in the country and opts for exit option, it may be allowed for doing so only after a certain period, say six months or a year, to avoid any uncertainty in power market till a substituted mechanism to handle such adverse situation is devised.

PART -5

MARKET COUPLING

Clause 38 of the draft Regulation titled “Designation of Market Coupling Operator” provided that CERC shall designate a Market Coupling Operator, who shall be responsible for operation and management of Market Coupling. Further, **Clause 39(2)** of above Regulation stipulated that the algorithm for enabling Market Coupling shall be developed and managed by the Market Coupling Operator and implemented with the approval of the Commission.

From the above provision of the Regulation, it is very clear that designating a Market Coupling Operator will add cost of development of an algorithm and associated costs of management of products for its implementation and the same may be detrimental to the consumer interest. Hence, CERC would need to do a cost-benefit analysis for examining the viability of Market Coupling mechanism before introducing the same in Indian Power Market, because Market coupling mechanism if introduced will add another layer of cost as an intervening medium.

PART -6

OTC PLATFORM

The management , governance structure and rules and byelaws of OTC platform would also need to be defined under this part of the Draft regulation .

PART -7

MARKET OVERSIGHT

- i) **Clause 50 (2) and Clause 51(b)** of the of the draft Regulation titled “Procedure for market oversight” and “Intervention by the Commission” respectively , if read together implies that the reference of Electricity Act ,2003 in regard to imposing penalty **in clause 51(b)** of the draft regulation is only with reference to the directions issued by Appropriate Commission as per Section 142 of Electricity Act , 2003 .

However, since the applicable penalty as per the aforesaid provision of the draft Regulation does not exceed Rs. One lakh , it is opined that CERC can specifically insert appropriate provisions in the regulations itself at this stage to deal with situations arising out of market abuse /gaming etc., because, in case of a power market, the gains can often run into crores of rupees and such low penalty would not be a deterrent for market abuse/gaming.

- ii) The provision for suspension or cancellation of OTC platform may also be included under **Clause 51(e)** - “Intervention by Commission” wherein suspension or cancellation of the registration of the Power Exchange under these regulations has already been proposed.
