CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI

Coram:

1. **Shri Ashok Basu, Chairman**
2. **Shri K.N. Sinha, Member**

Petition No. 56/2003
(Suo motu)

In the matter of

Inter-state trading in electricity

ORDER

Under Section 178 of the Electricity Act, 2003 (hereinafter referred to as "the Act"), the Commission is empowered to make regulations in regard to the form and the manner of making application for grant of licence for trading, to specify the manner of publication of notice by the person applying for grant of licence, the terms and conditions of licence and other related matters, after previous publication. A consultation paper covering different aspects of inter-state trading was circulated among the stakeholders during September, 2003. Based on the comments and suggestions received, the Commission had published the draft regulations under the nomenclature of "Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of trading licence and other related matters) Regulations, 2003" (hereinafter referred to as "the regulations") on 9.12.2003, and objections/suggestions/comments on the draft regulations were invited. The views on the draft regulations have been received from the following:

(a) Prayas,

(b) Andhra Pradesh Electricity Regulatory Commission (APERC),

(c) The Tata Power Company Ltd (Tata Power),

(d) Power Trading Corporation of India (PTC),

(e) Rajasthan Rajya Vidyut Prasaran Nigam Ltd (RRVPNL),

(f) BSES Ltd (BSES),

(g) Prof. S.L. Rao, Ex-Chairman, CERC,

(h) Amalgamated Transpower (I) Ltd., (ATL),

(i) Shri R.K. Kapoor, Senior Consultant (Energy & Infrastructure), Dhir and Dhir Associates and

(j) Koyela Energy Resources Pvt. Ltd (KERPL).

2. The comments and suggestions received and the Commission's decisions thereon are discussed in the succeeding paragraphs.

DEFINITIONS AND INTERPRETATION

"Agreement"

3. Sub-clause (c) of Clause (1) of Regulation 2 of the draft regulations defines the "agreement" as "the agreement entered into between the electricity trader and seller of electricity on the one hand and the electricity trader and the buyer of electricity on the other". ATL has suggested that the word "lawful" should be added to the definition so as to read that "agreement" means "the lawful agreement……."

4. We do not consider it necessary to amend the definition based on the suggestion received since it is only the "lawful" agreement which is contemplated by the definition. An agreement which is not lawful, is not an agreement at all in the eyes of law.

"Inter-state trading"

5. Sub-clause (g) of Clause (1) of Regulation 2 of the draft regulations defines the "inter-state trading" as to mean transfer of electricity from the territory of one State to the territory of another State by an electricity trader. BSES in its

comments has submitted that the definition needs to be further elaborated so that it becomes clear that inter-state trading necessarily encompasses intra-state trading also. KERPL has pointed out that in the context of inter-state trading, the jurisdictional aspect of applicability of these regulations to the State of Jammu & Kashmir should get clarified.

6. We have considered the submissions. In our opinion, no further elaboration on the definition of “inter-state trading” is necessary, to specifically provide that intra-state trading will be included in the definition. Also, the question of applicability of the regulations to the State of Jammu & Kashmir or otherwise needs to be considered in the specific context. In our opinion these issues need not be gone into at the stage of formulation of the regulations.

Applicability of Regulations

7. Clause (4) of Regulation 2 of the draft regulations proposes that the regulations shall be applicable to trading carried out bilaterally between the generators and traders on the one hand and the traders and licensees on the other. A number of stakeholders have commented upon this particular provision. APERC has pointed out that a trader could be reselling to a retail consumer and this possibility should be catered to in the regulations, by reformulating Clause (4). PTC has pointed out that a trader can purchase electricity from sources other than the generators, such as captive generating plants or other traders, and sell to the entities such as industries, cooperative societies or other traders or entities. PTC has emphasised on the need to widen the scope of the provisions of Clause (4) of Regulation 2 ibid. Similar submissions have been made by RRVPNL, BSES and KERPL. ATL has also suggested that Clause (4) should be reformulated so as to be made applicable to an Electricity Trader only.

8. We have considered the views of the stakeholders. We agree that the provisions made in Clause (4) are restrictive. However, till such time as the regulations for open access in the distribution system are finalised by the State

Commissions, it may not be possible to bring the sale of power by an electricity trader to the retail consumer or industry or cooperative society within the scope of the regulations being finalised by the Commission. In order to widen the scope in consonance with the intention of the Parliament of encouraging trading, we direct that Clause (4) shall be substituted as under:

"These regulations shall be applicable to trading carried out bilaterally between the generating company, including captive generating plant, distribution licensee and the electricity trader on one hand and between electricity trader and the distribution licensee on the other.

Provided that scope and applicability of these regulations may be reviewed from time to time to keep pace with the developments of formulation of regulations for open access in distribution by the State Electricity Regulatory Commissions or introduction of power exchange market by the Commission."

PROCEDURE FOR GRANT OF LICENCE

9. Clause (1) of Regulation 4 of the draft regulations, inter alia, lays down that the application for grant of licence shall be accompanied by such fee as may be prescribed by the Central Government, and till such time as the fee is so prescribed, the application shall be accompanied by a fee of Rs.1 lakh which shall be subject to adjustment as and when the fee is prescribed by the Central Government. By referring to Section 15 (1) of the Act, KERPL has stated that the fee need not be prescribed by the Central Government and the fee decided by the Commission should be final and not subject to any adjustment.

10. As laid down in sub-section (1) of Section 15 of the Act, an application for grant of licence shall be accompanied by such fee as may be "prescribed". The term "prescribed" is defined in sub-section (52) of Section 2 of the Act to mean as "prescribed by rules made by the Appropriate Government……". Thus, the Act confers power on the Central Government to prescribe fee that may accompany an application for grant of licence made before the Central

Commission. Accordingly, the provision referred to in the draft regulations is in order and no modification is considered necessary.

11. Clause (3) of Regulation 4 of the draft regulation envisages that the applicant shall post complete application along with the annexures and enclosures on his website so as to facilitate access by any other person through internet. KERPL has suggested that the application can be posted on any commercial website rather than the applicant creating his own website. A similar suggestion has been received from Tata Power.

12. We have considered the submission. The purpose of making the provision is to bring the fact of such application for grant of licence before the Commission to the notice of general public to create public awareness. In case an applicant does not have his own website, the application can be posted on any other commercial website as it will serve the same purpose as of posting the application on his own website by the applicant. We, therefore, direct that Clause (3) of Regulation 4 ibid shall be suitably amended to provide that the application be posted on applicant's own website or any other authorised website. In view of this decision, a corresponding amendment to sub-clause (i) of Clause (4) of Regulation 4 of the draft regulations shall also be carried out.

13. Clause (4) Regulation 4 of the draft regulations lays down the procedure for publication of notice of the application made by an applicant for grant of licence and, inter alia, provides that the notice shall be published within 7 days of making the application in at least two national English daily newspapers, including one economic paper and two local newspapers falling within the area or areas of trading, one of which shall be in vernacular. Tata Power has suggested that the requirement of publication of notice should be simplified and limited to publication of notice in two national dailies, one each in English and Hindi and this will obviate the need for translation in vernacular languages. Tata Power has pointed out that the requirement of publishing notice be made applicable after the

application has been admitted for further hearing, since the admissibility of the application could be decided by the Commission based on the criteria specified in the regulations, and the public comments could thereafter be invited and considered at further hearing to consider grant of the licence.

14. We have considered the suggestions. We feel it necessary that the notice be published in vernacular newspapers also since these newspapers are easily accessible to the people in the States.

15. We do not consider it necessary to modify the regulations to accommodate the other suggestion made by Tata Power for the reason that sub-section (2) of Section 15 of the Act itself lays down that the notice of the application for grant of licence is to be published within 7 days after making such application. We are satisfied that the provisions made in the Act which have been followed in the draft regulations have a definite purpose since, as far as practicable, the licence is to be granted or an order to reject the application is to be passed within a period of 90 days after receipt of the application.

16. In accordance with sub-clause (a) of Clause (4) of Regulation 4 of draft regulations, the applicant is required to publish information as to whether the applicant is an individual, a partnership firm, private limited company or a public limited company incorporated under the Companies Act, 1956 along with other details in regard to its registration. BSES has sought to be clarified whether the licences under the Act can be granted to foreign entities also.

17. We have applied our mind to the issue raised by BSES. Grant of licence to foreign entities may create difficulties in exercise of regulatory jurisdiction by the Commission under the Act and the regulations notified by the Commission. We, therefore, direct that the application for grant of licence shall be entertained if filed by an individual resident in India, a partnership firm registered under the Indian Partnership Act, a company incorporated under the Companies Act, 1956 or any

other body corporate or association or body of individuals whether incorporated or not or artificial juridical person subject to Indian laws. The companies or partnership firms and other organisations subject to foreign laws shall not be granted licence. We direct that the provision be properly incorporated in the regulations to be finalised. For this purpose, we direct that the definition of the term "applicant" in sub-clause (b) of Clause (1) of Regulation 2 of the draft regulations shall be amended as under:

> "(b) "Applicant" means a person who has made an application to the Commission for grant of licence for inter-state trading;
>
> Provided that such person is a resident in India, or a partnership firm registered under the Indian Partnership Act, 1932 or a company incorporated under the Companies Act, 1956 or any other body corporate or association or body of individuals whether incorporated or not, or artificial juridical person subject to Indian laws."

18. Under Clause (4) of Regulation 4, while publishing public notice, the applicant is required to submit details of shareholding pattern, financial and technical strength, management profile, volume of power intended to be traded and details of past experience, etc. BSES in its submissions has stated that inclusion of all these details will make the notice too large and should be omitted, particularly when these details are included in the application which is also available for inspection and downloading from the internet. KERPL has suggested that these clauses may be replaced by requiring the applicant to publish its brief profile, detailed experience and plans.

19. We have considered the above submissions. In our opinion, the information required to be published in the notice by the applicant is necessary for knowledge of the public at large before any person decides to file his comments or objections to the application made for grant of licence. Therefore, the suggestion of BSES

cannot be acted upon. The suggestion made by KERPL, if incorporated, is liable to be interpreted in different ways by different persons. It is necessary that the information to be published shall be precise and in the standard format. We accordingly direct that the provisions in this regard are to be retained.

20. The second proviso to Clause (7) of Regulation 4 of the draft regulations lays down that before granting the licence, the Commission shall publish a notice of its proposal to grant the licence in two daily newspapers, as the Commission may consider necessary, stating the name and address of the person to whom it proposes to issue the licence, along with such other details as the Commission considers appropriate. Paryas has suggested that the time of 15 days should be given for public to comment on the proposal and the Commission should also list the objections it receives on its website. KERPL has submitted that the publication of notice in the newspapers by the Commission for its proposal to grant licence may not be necessary in view of publication of notice of application by the applicant himself. It has suggested that the publication of this notice on the Commission's website should be sufficient.

21. We have considered the submission made by Prayas. The second proviso to clause (7) of Regulation 4 of the draft regulations corresponds to the statutory provision of Section 15(5) of the Act. We have not laid any specific timeframe for submission of comments or suggestions in response to the notice to be published by the Commission since this can be specified depending upon facts of each case. In all such cases a reasonable time shall be granted for filing of comments/suggestions. It may be neither practicable nor desirable to list the comments received on the Commission's website, since no further steps are contemplated on the part of any person to respond further to the comments received in reply to the notice published by the Commission. These comments will, however, be taken into account and dealt with appropriately by the Commission while passing an order to grant the licence or to reject the application. In the context of the observations made by KERPL, we only point out

that the requirement of publishing notice by the Commission is in keeping with the provisions of sub-section (5) of Section 15 of the Act, according to which, before granting a licence, the Commission is required to publish notice in two daily newspapers as the Commission may consider necessary. Therefore, the suggestion made by KERPL cannot be accepted and no modification of the provision is considered necessary.

TECHNICAL REQUIREMENT

22. Regulation 5 of the draft regulations describes the technical requirement to be complied with by the trading licensee. The regulation specifies that atleast one full time professional each having experience in (i) Power System Operation and (ii) Finance, Commerce and Accounts shall be engaged in the activities of trading. Tata Power has expressed a view that this provision ignores the availability of market and system knowledge within the promoter organisation. It has also raised the issue of ensuring availability of trained and skilled manpower at the time of filing of application for trading licence and not necessarily ensuring the availability of the same personnel during the actual trading. PTC has argued in favour of enhancing the minimum technical requirements for higher categories of the trading licensee. It is also of the opinion that the nature and number of supporting staff to be engaged by various categories of trading licensees on full-time basis be specified by the Commission. BSES in its comments has suggested that the technical requirements can be met by outsourcing the specific functional requirements from competent professional agencies, consultants, etc. KERPL has also suggested that the trader can outsource the technical requirement from the agency/professionals who are experienced in these areas.

23. We have examined the above suggestions made by different agencies. The Commission has only specified the minimum requirements of one full-time professional each having experience in Power System Operation and Finance, Commerce and Accounts. As the volume of trading may vary, it is for the traders to precisely assess the requirements of technical, commercial and supporting staff and accordingly avail the services of different categories of staff. In view of the prescription of only the minimum requirement, we are not inclined to make any modifications to the provisions in the draft

regulations. We, however, order that in the light of the comments received, the categorisation of the full-time professionals shall be modified as follows;

"(i) Power System Operation and commercial aspects of power transfers, and

(ii) Finance, commerce and accounts."

CAPITAL ADEQUACY REQUIREMENT AND CREDITWORTHINESS

24. Regulation 6 of the draft regulations deals with the categorisation of the trading licensee having regard to volume of electricity to be traded and also specifies the net worth for each category. We have received comments from various agencies with regard to the capital adequacy and creditworthiness. APERC has suggested that the time period for volume of electricity to be traded needs to be specified. It has also suggested to specify the formulae for volume of trade beyond 1000 million units. Tata Power has suggested that in view of variance in the cost of generation across locations, fuel sources, age of plant, etc. licensees in different locations are likely to face different financial exposures with the same level of electricity traded and, therefore, has suggested prescribing the capital adequacy requirement based on billing rather than electricity traded. PTC has suggested linking of capital adequacy to the turn over instead of trading volume. It has also suggested only three categories of traders namely; small, medium and large. The minimum net worth has also been suggested to be increased to Rs. 10 crore or higher for inter-state traders. PTC have also raised the issue of occurrence of any event of default exceeding 50% of net worth of the trader in any of the trade contracts, and has further suggested that a scheme of penal provision should be incorporated in the regulations. BSES has suggested to link the capital adequacy requirement to the credit rating of the traders and has alternatively suggested that the capital adequacy may be specified by the way of bank guarantees of equivalent amount. KERPL has suggested that trading activity does not require large capital employment or net worth and therefore, the trader should only have adequate capability to provide financial security or guarantees. It has further stated that the requirement of financial security in the initial stages should not be very rigid. It is suggested that the trader should have financial capability to provide letters of credit/bank guarantees/other securities equivalent to the trade transactions. KERPL has further suggested that the trader may, if he so desires, tie up these financial arrangements with an outside entity. Tata Power has suggested specifying the form of capital that needs to be maintained to meet the capital

adequacy norms. It has proposed that the following be considered as part of capital for this purpose:

(i) Share capital (equity, preference or any other convertible instrument),
(ii) Retained earnings,
(i) Revaluation reserves,
(ii) Subordinate debts,
(iii) Credit support,
(iv) Guarantees available from the promoters.

25. We have examined the submissions of the stakeholders with regard to capital adequacy and credit worthiness. Our views on the issues are discussed below:

(a) The volume of electricity proposed to be traded is over a period of one year.
(b) The category of licensee has been split into six categories in the draft regulations primarily to encourage trading as envisaged in the Act.
(c) We also recognise that the trading volume of a single licensee may exceed 1000 million unit per annum. Nevertheless, to bring in competition in trading activities, there is a need to have more players. In view of this, no change in the number of categories specified in the draft regulations is being made at this stage. Further, the requirement of creditworthiness as well as license fee has been specified in a telescopic manner so that it does not cause any hardship when trading volume increases. We do not subscribe to the view that an inter-state trader should have minimum net worth of Rs.10 crore or higher as it is not necessary that an inter-state trader will certainly trade in high volumes at all times.
(d) The suggestion for relying on the credit rating of the trading licensee or alternatively equivalent bank guarantee is not considered desirable at the initial stages of development of trade activities. This could be considered after the development of trading activities as well as the credit rating facilities for evaluation of traders.
(e) The items which are to be considered for arriving at the net worth of a person have also been considered and we direct that the following methodology shall be adopted for this purpose:

Net worth is defined as (i) total assets minus total liabilities, or

(ii) the share holders funds plus retained earnings.

26. In view of the above, the revaluation of the reserves cannot be considered for the purpose of net worth. The capital adequacy requirements are to be met as prescribed in the regulations in the form of net worth. As regards creditworthiness, depending on the market requirements, the trader may enhance the same by providing additional supports from various sources to enhance his creditworthiness in the market place. In view of this, we are not specifying the parameters for creditworthiness at this juncture. The same may be reviewed and provided for after gaining some experience in this regard.

27. The issue regarding purchase price being different for different traders also cannot be the basis for prescribing the capital adequacy or creditworthiness and stipulation in the regulations made by the Commission are based on the assumption of the average price of electricity and the monthly maximum transactions of each category of trader. In our opinion, for the time being this stipulation should suffice.

OBLIGATIONS OF THE LICENSEE

28. Clause (b) of Regulation 7 of the draft regulations enjoin upon the licensee to increase his net worth if the volume of trade moves from a lower category to a higher category, to be decided based on the volume of electricity traded as on 31st March of each year, and a responsibility has been cast upon the licensee to keep the Commission informed of his moving from a lower category to a higher category and consequential changes brought about in his net worth. KERPL, while commenting upon Clause (b) has stated that the trader should be permitted to increase the trade volume more than his entitlement of licence, since any restrictive clause will go against the objective of the Act.

29. In our opinion, Clause (b) of Regulation 7 does not in any manner restrict the trader from increasing the trade volume. It only casts a duty upon the licensee to increase his net worth in case, by increase in volume of trade, the licensee moves from a lower category to a higher category and has to intimate the Commission of the resultant changes.

30. Clause (c) of Regulation 7 of the draft regulations stipulates that trading margin for inter-state trading fixed by the Commission from time to time shall be applicable to the licensee. Tata Power, PTC, BSES and KERPL have submitted their comments on this specific provision. Tata Power has submitted that the trading margins need to be left to the market forces and has requested that the Commission could specify the principles used to determine the trading margins, otherwise the trading business would be exposed to high degree of open-ended regulatory risk. PTC has pointed out that under Clause (f) of sub-section (1) of Section 79 of the Act, the Commission may fix trading margins, if considered necessary. Therefore, in the opinion of PTC, the word "fixed" in Clause (c) of Regulation 7 should be preceded by "if". BSES has commented that the Commission should lay down the specific circumstances in which it would step into the trading market to fix trading margins. KERPL has submitted that the Commission should not fix any trading margins at this stage and this should be left to be decided between the parties. According to KERPL, the Commission could intervene in case the transactions are not in the interest of ultimate consumer and monopoly tendencies develop.

31. In our opinion, the provisions made in Clause (c) of Regulation 7 ibid should not be a cause of concern for any of the stakeholders since, for the present, the Commission is not fixing any trading margins. After carrying out study of functioning of the trading margins at a later stage, the Commission may decide to fix the trading margins, if considered necessary. The principles that will govern fixation of trading margins will be considered in a transparent manner and after ascertaining the views of the stakeholders at an appropriate time since an exercise in that direction at this stage is pre-mature.

32. APERC has suggested that it should be an obligation of the licensee to maintain up-to-date record of his customers as well as the transactions he undertakes without different parties.

33. We accept the suggestion. The provision should be incorporated appropriately.

PROHIBITED ACTIVITIES

34. It has been laid down in Regulation 8 of the draft regulations that the licensee shall not without prior approval of the Commission acquire by purchase or take over or otherwise, the utility of any other licensees, or merge his utility with the utility of any in other licensee, or assign or transfer his licence to any person by sale, lease or exchange or otherwise. Further, Clause (b) of Regulation 8 prohibits the licensee from engaging in the business of transmission of electricity. According to Prayas, whenever there is substantial change in the ownership pattern of the licensee or change in management control, the licensee should obtain prior approval of the Commission, and the change in management due to change in ownership of major shareholders should be intimated by the trader to the Commission. Prayas has further stated that the provision prohibiting the licensee to undertake business of transmission in electricity is a very limited provision. BSES has requested that the time limit for obtaining prior approval of the Commission should be laid down.

35. So far as the points raised by Prayas are concerned, we may observe that in accordance with Clause (c) of Regulation 13 of the draft regulations, any major changes in shareholding pattern, ownership or management of the licensee are to be reported to the Commission. We do not feel it necessary to provide for prior approval of the Commission for any change in ownership, etc. since such a change will be governed by other laws in operation. In regard to the provision prohibiting a trader not to undertake the business of transmission in electricity, it is in accordance with the provisions of the Act. So far as laying down of time limit for obtaining prior approval is concerned, the application needs to be made sufficiently in advance of the likely date of occurrence of the events specified in Regulation 8 ibid. It may not be necessary or practicable to lay down any specific time period for this purpose.

PAYMENT OF LICENCE FEE

36. Regulation 9 of the draft regulations prescribes the licence fee payable by different categories of licensees. PTC has submitted that the licence fee prescribed is too high. RRVPNL has stated that the licence fee payable should be subject to approval of the Central Government. It has further suggested that while calculating pro rata licence fee, it should be rounded off to nearest hundred rupees. KERPL has submitted that there should not be any annual fees to be paid to the Commission and the Commission may charge a suitable fee as and when the trader approaches the Commission with any petition.

37. The annual licence fee has been laid down by the Commission by virtue of powers under Clause (g) of sub-section (1) of Section 79 of the Act. The licence to be granted will be valid for a period of 25 years. It is desirable that the licensee should pay the licence fee every year, as is the practice currently. The annual licence fee prescribed is very nominal ranging from Rs.1 lakh to Rs.15 lakh, depending upon the volume of electricity traded. We agree with the suggestion of rounding off of the licence fee calculated on pro rata basis for part of the year to the nearest hundred rupees and direct that the relevant provisions should be suitably amended.

ACCOUNTS OF THE LICENSEE

38. According to sub-clause (f) of Clause (1) of Regulation 10 of the draft regulations, the licensee is to submit to the Commission, copies of the accounting statement and auditors' report not later than six months after the close of the financial year to which they relate. According to BSES, the Companies Act requires that the accounts pertaining to a financial year be finalised and put up for approval of shareholders in an Annual General Meeting (AGM) within six months of the end of that financial year, which period can be further relaxed by three months under certain circumstances. BSES has suggested that instead of linking

to a six-month period in the regulations, it should be stipulated that the trader shall submit its accounts within two weeks after obtaining approval in AGM.

39. In view of the legal provisions for relaxation of time period contained in the Companies Act, we direct that provisions of sub-clause (f) of Clause (1) of Regulation 10 shall be suitably amended so that the report is filed not later than 9 months of the close of the financial year, since by that time the accounts will be finalised even if the relaxation in time for this purpose is availed of by a company.

SUBMISSION OF INFORMATION

40. Clause (b) of Regulation 11 of the draft regulations lays down that the information in the prescribed form shall be furnished to the Regional Load Despatch Centre (RLDC) and Regional Electricity Board (REB) or Regional Power Committee (RPC), as the case may be. Prayas has suggested that the reports submitted by the trader should be put up on the websites of RLDC or REB or RPC so that any person is able to access the information and purchase copies of the reports.

41. We do not consider it necessary to make the provisions in the regulations for putting up the reports submitted by the traders on the websites of RLDC or REB or RPC since the purpose of these reports is to monitor the performance of the traders by the Commission. We, however, direct that the reports sent to RLDC and REB or RPC, as the case may be, shall be posted by the electricity trader on his own website or any other authorised website. We further direct that the reports submitted to the RLDC and REB or RPL by the trader shall simultaneously be sent to the Commission. The regulations shall be suitably modified.

STANDARDS OF PERFORMANCE

42. As provided in Clause (2) of Regulation 12 of the draft regulations, the licensee is required to furnish the performance details on monthly basis to the Commission in the prescribed format appended to the regulations. According to BSES, such information should be furnished on half-yearly basis.

43. In our opinion, the periodicity of report laid down in the draft regulations is too short. We direct that Clause (2) of Regulation 12 ibid shall be suitably amended so that the reports are furnished by the trader on quarterly basis.

PRUDENTIAL REPORTING

44. Regulation 13 of the draft regulations provides for submission of certain reports by the trader. APERC has submitted that any changes in the status of employees should also be reported to the Commission by the trader.

45. In our opinion, asking for too many details from the trader unless needed for any specific purpose, may amount to micro-managing his affairs. At this stage, it may not be necessary to call for the reports regarding changes in status of the employees of the trader.

AMENDMENT AND REVOCATION

46. In accordance with Regulation 14 of the draft regulations, the terms and conditions of the licence may be modified by the Commission in public interest or on an application made in this behalf by the licensee. Regulation 15 lays down the circumstances under which the licence could be revoked. BSES has submitted that the amendment and revocation of the licence should be in line with the provisions of Section 18 and Section 19 of the Act.

47. This aspect has already been taken into consideration while drafting the Regulations 14 and 15 ibid. BSES has not pointed out any deviation from the provisions of Section 18 or Section 19 of the Act.

48. It has been proposed in proviso to Clause (1) of Regulation 14 of the draft regulations that the licence shall be revoked only after an enquiry by the Adjudicating Officer appointed under Section 143 Act in the manner prescribed by

the Central Government. Prayas has observed whether it amounts to abdicating powers of revocation conferred under Section 19 of the Act.

49. We have considered the point raised by Prayas. In our opinion, it does not involve abdication of power by the Commission while exercising authority of revocation of licence. The proviso only refers to the procedure to be followed before framing an opinion on the default committed by trader for facilitating further action for revocation of licence. The findings of the Adjudicating Officer who is to be appointed by the Commission will be considered by the Commission in a transparent manner before ordering revocation of licence. So, in essence the power of revocation will be exercised by the Commission as laid down in Section 19 of the Act.

50. As pointed out by APERC, sub-clause 3 (b) of Clause (1) of Regulation 15 is redundant. We direct that this provision should be omitted and sub-clause (3) be suitably modified.

MISCELLANEOUS

51. Shri R.K. Kapoor, Senior Consultant (Energy and Infrastructure), Dhir and Dhir Associates, has pointed out that the role of broker/match trader has not been captured in the draft regulations. It is sufficient to observe that the Act does not envisage the role of brokers or match traders in the process of trading of electricity, when it defines the term “trading” as “purchase of electricity for resale thereof”. Therefore, the brokers and match traders are outside the scope of trading licence.

52. Some of the stakeholders have pointed out that the penalties for violation of the regulations have not been provided for in the draft regulations. In our opinion, it is not necessary to provide for the penalties separately. Any breach of terms and conditions of the licence will make the trader liable for revocation of licence. Besides, the Act takes care of any wilful breach or disobedience of the

regulations and provides for suitable penalties that can be imposed for any breach by any person, which evidently includes the trader.

53. Prayas has opined that in accordance with ninth proviso to Section 14 of the Act, a distribution licensee appears to have been authorised to carry out trading in his licensed area, in the State and also across the State and has sought a clarification on the issue.

54. The clarification sought is outside the scope of the regulations, as it involves interpretation of the provisions of the Act. However, *prima facie*, it appears that a distribution licensee can undertake trading within his area of licence and not beyond.

55. Prayas has further submitted that in case a trader fails to carry out any trading activity for four consecutive quarters, its licence should be suspended by the Commission.

56. The Act does not contain any provisions for suspension of licence of an electricity trader, though it lays down the terms for suspension of licence of a distribution licensee. Therefore, it is not possible to make provisions for suspension of licence of an electricity trader. We, however, direct the failure of the electricity to undertake trading activity for four consecutive quarters should be a ground for revocation of licence and the provision should be appropriately incorporated in the regulations.

57. Suggestions have been received from certain quarters on modifications/changes in the formats designed for obtaining detailed information from the traders. The suggestions shall be accommodated by suitably revising the formats so that adequate information for analysis and decision making becomes available to the Commission.

58. Prof. S.L. Rao has not made any specific comments on the draft regulations, but has generally observed that the regulations on trading should be directed towards promotion of competitive market. These views of Prof. Rao have been duly taken note of in the context of the regulations on trading.

59. We direct that based on the decisions contained in this order, the regulations be finalised and notified in the official gazette in accordance with the prescribed procedure.

Sd/-	Sd/-
(K.N. SINHA)	**(ASHOK BASU)**
MEMBER	**CHAIRMAN**

New Delhi dated the 30th January, 2004.