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CENTRAL ELECTRICITY REGULATORY COMMISSION
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Coram

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In the matter of

Measures for restricting the prices of electricity in short- term market

The staff of the Commission analysed the reasons for steep increase in the prices of electricity in the short-term market and its impact on Utilities and on the ultimate consumer, and published a Staff Paper titled “Measures for restricting the prices of electricity in short- term sale/trading” (hereinafter referred to as “the Staff Paper”) on September 1, 2008, containing a detailed analysis and suggesting some measures to control the situation. The salient features of the Staff Paper alongwith suggestions of the Commission’s staff, which do not necessarily reflect the views of the Commission, are summarised below.

SALIENT FEATURES OF STAFF PAPER ALONGWITH SUGGESTIONS

Analysis of Sale Price of electricity in Short-Term Market

2. The sale price of electricity in the short-term market transacted through the electricity traders during the year 2007-08 are summarised hereunder:

Sale price and volume of electricity traded by the trading licensees		
	2007-08	
Sale Price (Rs)	Volume Traded (MU)	% to Total Volume
0.00 – 2.00	4729.61	27.30
2.00 – 4.00	2647.71	15.28
4.00 – 6.00	4094.05	23.63
6.00 – 8.00	5292.53	30.55
8.00 – 10.00	556.92	3.21
10.00 – 12.00	4.55	0.03
	17325.37	100.00

3. In Haryana, average purchase price of short-term power had increased from Rs.2.57/kWh in the year 2004-05 to Rs.6.55/kWh in the year 2007-08, causing serious burden on power purchase costs. It has been estimated that the State of Punjab is likely to spend 30 % of power purchase costs on 13% of energy in short-term in the year 2008-09.

4. The major selling entities in the short-term market through the electricity traders in the year 2007-08, along with their share and sources of generation is given below:

Name	Share in total sale	Source of Generation
HP Government	12.00%	Free power from hydro
JSWP	6.9%	Domestic coal
MPPTCL	5.61%	Mostly hydro
KSEB	4.9%	Hydro power
WBSEDCL	4.09%	Mostly domestic coal
TNEB	3.56%	mix of hydro and thermal
GRIDCO	3.29%	mix of thermal and hydro

5. The Staff Paper highlighted that most of the traded power is sourced from coal/hydro power plants for which, the cost of generation is not more than Rs 4 per unit in most of the cases and against this the prices discovered in the Power Exchange (which cannot be much different from the bilaterally traded electricity) have been in the range of Rs 0.90 to Rs 9 per unit. In case of bilaterally traded

electricity in the year 2007-08, 33% of the electricity was traded at price higher than Rs 6 per unit. The deficit States perceive it as profiteering by the surplus States.

6. The Staff Paper analysed that the apparent reasons being given for the rising trend in the sale price of short-term traded electricity are increasing shortages of electricity, increase in maximum rate under Unscheduled Interchange (UI) and increasing fuel costs. The factual quarterly position of weighted average sale price of traded power and the maximum UI rate in the corresponding period are as follows:

	Weighted Average Sale Price (Rs/unit)	Maximum UI Rate (Rs/unit)
April – Jun, 2006	4.08	5.70
July – Sept, 2006	4.45	5.70
Oct – Dec, 2006	4.84	5.70
Jan-Mar, 2007	4.69	5.70
Apr-Jun, 2007	4.64	7.45
Jul-Sept, 2007	3.37	7.45
Oct-Dec, 2007	4.52	7.45
Jan-Mar, 2008	5.61	10.00
Apr-Jun, 2008	7.24	10.00

7. Further, the average UI rate of the grid is also recently showing a rising trend. However, the present UI ceiling rate of Rs.10/- per unit is below the cost of liquid fuel generation (Rs.12-15 per unit) and therefore, available liquid fuel capacity is not being fully scheduled due to the absence of appropriate commercial signals. As regards the increase in fuel cost, the Staff Paper observed that there has not been any significant hike in the price of domestic coal or cost of hydro power to justify the increase seen in the cost of short-term traded power. The share of fuels which have seen increase in the cost recently such as Liquified Natural Gas (LNG), Naphtha, and Diesel, is very small in the short-term traded

power. Further, the current prices of imported coal also do not justify the steep rise in the cost of traded power.

Cap on Tariff for Sale of electricity – Rationale and Legal Basis

8. While underlying the need for new capacity addition, with a view to ensuring availability of electricity at reasonable prices in the short-term and preventing profiteering at the cost of ultimate consumers in the deficit States, the Staff Paper proposed price caps for inter-State short-term sale of electricity. While proposing the price caps, the Staff Paper considered various aspects, viz., investors should have adequate incentive for continued investment in new generating stations through their earnings, and short-term prices are generally higher than the long-term power prices because of inherent uncertainty in returns in the short-term.

9. The Staff Paper, in support of the proposal to fix price caps drew legal sustenance from the proviso to clause (a) of sub-section (1) of Section 62 of the Electricity Act, 2003 (hereinafter referred to as “the Act), reproduced below:

“Provided that the Appropriate Commission may, in case of shortage of supply of electricity, fix the minimum and maximum ceiling of tariff for sale or purchase of electricity in pursuance of an agreement, entered into between a generating company and a licensee or between licensees, for a period not exceeding one year to ensure reasonable prices of electricity.”

Cap on Tariff for Sale of Electricity – Options discussed and Suggested Mechanism

10. The Staff Paper discussed various options for imposing caps on short-term sale of electricity. The first option discussed was the replacement cost of

electricity, which a consumer has to spend in case of non-availability of power and in such case the price cap should be the cost of diesel generation, but a cap at such replacement cost level would not be effective in preventing profiteering by surplus Discoms.

11. Recognising that apart from the practical difficulties, individual price cap for portfolio owners like DISCOMs and State Governments owning free hydro power could become highly controversial, the Staff Paper suggested that uniform price cap would be more feasible to implement and the price cap should take into account the time of day value and differential between short-term and long term trade. The Staff Paper also discussed that while designing a price cap for merchant capacity, one has to take into account that they may not be able to get schedules round the clock and round the year and hence, it would not be appropriate to fix the price cap corresponding to NTPC or Ultra Mega Power Projects, which have assured recovery of capacity charges for 25 years.

12. Considering these aspects, the Staff Paper suggested a uniform price cap for portfolio owners, coal/lignite thermal plants and hydro power plants, while no cap was proposed for power sold by Regassified LNG (RLNG), Diesel, Heavy Fuel Oil (HFO) and naphtha based power plants. The Staff Paper also suggested that as cogeneration and generation from renewable energy is to be encouraged through preferential tariff, there should be no price cap for cogeneration, wind, small hydro, solar, bio gas, etc.

13. The mechanism suggested in the Staff Paper toward ceiling in tariff for sale of power in the short-term for inter-State transactions is as follows:

“i) The sale price for short-term sale(less than one year) by distribution licensee or an intra-State trading licensees responsible for managing its bulk power purchase/sale of the State Discom/State Government (either directly or through inter-State trading licensee) to the distribution licensee of another State or intra state trading licensee of another State should not exceed Rs 5 per kWh.

ii) The same ceiling of Rs 5 per kWh would also apply to the short term sale by IPP/MPP/CPP (directly or through inter-State trader) to distribution licensee/intra-State trading licensee of another State responsible for managing bulk power purchase for the State Discom/State Government and if the power generated is from hydro electric/domestic coal/imported coal/lignite/blended coal.

iii) The proposed ceiling of tariff would be Rs 6/- per unit if the short term sale is during 1800 hours to 2200 hours of the day.

iv) These ceilings of tariff would also apply to sale bids in power exchanges by the entities mentioned at (i) and (ii) above.”

Withdrawal of Trading Margin

14. The Staff Paper stated that the trading margin specified by the Commission by virtue of its powers under clause (j) of sub-section (1) of Section 79 of the Act had not been effective in containing prices in the short-term market. On the other hand, the Staff Paper asserts, it throttled the efforts of the electricity traders in

providing new trading products and bringing more supplies to the market. Therefore, in the Staff Paper, it was suggested that in case the price caps are imposed, the trading margin on inter-State trading of electricity may be withdrawn.

Modification in Open Access Regulations

15. The Staff Paper also took notice of the reduction in availability of supply of electricity in the short-term market. While exploring the reasons thereof, it was noted that lack of flexibility in revising the schedules under the Central Electricity Regulatory Commission (Open Access in inter-State Transmission) Regulations, 2008 (hereinafter referred to as “the Open Access Regulations”) could be one reason for reduction in availability. The un-requisitioned surplus power available at the NTPC’s liquid fuel-fired generating stations is not being scheduled even in the face of adequate demand in the short-term. It has been pointed out that the inflexibility in schedules is causing hardship to captive and cogeneration plants since they are wary of taking the risk of paying heavy UI charges in cases of forced outages of their generating stations. The Staff Paper suggested some immediate measures for improving supply side situation, which includes flexibility for revising bilateral schedules under the Open Access Regulations, and making user-friendly and cost-effective open access for small producers including renewable resources of generation, with SLDC acting in an impartial manner so that un-requisitioned surplus of NTPC’s liquid fuel capacity could be scheduled and captive, cogeneration, small hydro generating stations and other IPPs are also able to participate in the short-term market, without fear of incurring heavy UI liability in cases of forced outages.

Stakeholders' Views

16. The Staff Paper was published to generate a debate and elicit views of the stakeholders on the major issues raised therein. The responses have been received from the stakeholders listed in Annexure 'A'. A public hearing was held on 29.9.2008 wherein about 70 stakeholders participated and about 25 organizations or individuals made oral submissions. The Stakeholders' views on the broad issues are summarized below :

Cap on Tariff for Sale of Electricity – Legal Aspects

17. Several stakeholders, particularly trading licensees, vehemently opposed the proposal of capping the prices in the short-term market. On their behalf, it was stated that the Commission did not have the necessary mandate under the Act to impose the price caps in the manner proposed in the Staff Paper. It was argued that the proviso to clause (a) of sub-section (1) of Section 62 of the Act, which is to take colour from the substantive enactment to which it is the proviso, cannot be invoked for sale of electricity to and by the electricity traders. They submitted that the proviso should be interpreted harmoniously with other provisions of the Act including its preamble, the National Electricity Policy and the Tariff Policy and when so interpreted, there would hardly be any scope for introduction of price caps by the Commission. It was further argued that even when read in isolation, the proviso did not apply to the transactions entered into through the power exchanges, because the power exchanges did not fall within the scope of the term "licensee". It has been reasoned that Section 66 of the Act enjoins upon the Commission to take steps towards market development, and the proviso under Section 62(1)(a) cannot be so invoked as to cripple the nascent market, which

deals with an insignificant volume of 2% to 3% of the total electricity generated. It was urged that under the law, the generating companies could sell electricity directly to an electricity trader by establishing a direct commercial relationship and there is no warrant for interference by the Commission.

18. PTC India Limited submitted that the proposals in the Staff Paper are legally untenable and the Staff's interpretation of Section 62 (1) (a) is wholly incorrect for several reasons, such as :-

(a) The application of the proviso to Section 62 (1) (a) to traded power is not correct. This is because the proviso cannot be read beyond the scope and ambit of Section 62(1)(a) which is confined to determination of *"tariff in accordance with provisions of this Act for supply of electricity by a generating company to a distribution licensee"* Thus, the proviso must be limited to tariff for sale by a generation company to a distribution licensee only. Any wider interpretation or assumption of powers qua markets under Section 62(1)(a) will be unlawful, ultra vires the statute and improper.

(b) The proviso to Section 62(1)(a) apart from being inapplicable to traders is limited to generators(s) or licensee(s). Any attempt to prescribe an "across the industry" price cap shall be completely against the letter and spirit of the Act.

(c) The proviso to Section 62(1)(a) is an extraordinary power to curb electricity prices in times of unforeseen and extraordinary shortages, which would be far beyond the shortages seen when the Bill was drafted and the Act enacted (1998 to 2003). Had the intention been to enact for a general

power scenario, the same would not have been carved into a proviso. Considerable shortages were there even in these years, i.e. from 1998 to 2003, i.e., when the Bill was drafted and the Act was enacted. Hence, the present level of shortages cannot be treated as “extraordinary” or “unforeseen”. The Parliament of India enacted the law with full knowledge of the prevailing conditions, and indeed to overcome the prevailing conditions of deficit and chronic under-investment. The scheme of the Act provides for market signals to be provided for new capacity. These signals have already resulted in a significant commitment and proposed investments in the power sector.

19. Lanco Electric Utility Limited submitted that the Act, recognizes power trading as a distinct activity and the appropriate Commission can fix a “maximum and minimum price” for the generator/licensee. In this case, the references to a generator are those generators for which, the appropriate Commission is determining tariffs and references to licensee are to the Distribution Licensee who is being regulated by ARR mechanism. The Act recognizes the short-term variations for a distribution licensee and hence, the reference to the licensee. In the present case, the Generator is selling to a Trading Licensee who does not have any ARR mechanism for being regulated, and further, a trading licensee supplies to a distribution licensee wherein the purchases are not through the generators. Apart from that, there is no Central Distribution licensee regulated by the Commission nor are all the generators under the regulatory control of the Commission for regulating them. Hence, jurisdiction of Section 62 has to be clarified in this regard, as it creates jurisdiction issues with respect to the Act.

20. The Tata Power Trading Company Limited submitted that the Staff Paper has proposed a ceiling in tariff for short-term sale by distribution licensees and this does not come under the jurisdiction of CERC, either under Section 62 or Section 79 of the Act.

21. It was argued by some of the stakeholders that the proposed caps are also not in consonance with the Commission's Order dated 6.2.2007 in Petition No. 155/2006 laying down guidelines for grant of permission for setting up and operating the power exchanges in the country, according to which the power exchanges are to emerge as a market guided institution with minimal regulation.

22. Some of the opponents of fixation of price caps relied on para 43 of the Commission's Order dated. 5.4.2007 in Petition No. 15/2007 wherein the Commission had expressed a view against capping the price of traded power since it would be a retrograde step, opposed to market development, negating the commercial approach and had the potential to introduce market distortions.

23. It was alleged that introduction of price caps is likely to throttle the power exchanges, where the prices are determined in a transparent manner through competitive bidding, and the buyers willingly quoted prices affordable to them, without any compulsion to buy at higher prices. Several instances of worldwide electricity markets were highlighted where wholesale markets for electricity, as in India, were completely voluntary by design, but were operating without caps on prices.

Cap Rate and Differential Cap Mechanism

24. Several stakeholders supported the proposal made in the Staff Paper and relied on Sections 62 and 66 of the Act. They submitted that the rising prices in the short-term electricity market are causing unprecedented financial burden on the utilities in the deficit States and consequently the consumers. It was pointed out that the price of electricity discovered through the process of competitive bidding had been of the order of Rs.2/kWh to Rs.3/kWh, as compared to the price of Rs.8/kWh to Rs.10/kWh being charged in the short-term market. These stakeholders opined that the proposed price cap of Rs.5/kWh (off-peak) and Rs.6/kWh (peak) as suggested in the Staff Paper would provide sufficient incentive to the surplus utilities to sell their surplus power.

25. Some stakeholders also submitted that the proposed price caps are very liberal and there is a need to be more conservative in fixing price caps. They requested the Commission to intervene in the matter to provide relief to the consumers of the deficit States through implementation of the proposal made in the Staff Paper, and extend the same to other sources of generation such as, co-generation, wind, small hydro and solar generation as well. An indication was also given that a uniform price cap might not bring the desired result and therefore, it was suggested that differential price caps depending on type of fuel, type and age of the generating station and other relevant factors, needs to be specified.

26. It was pointed out by the opponents of the proposal that internationally, where the price caps had been introduced these were of very high order, suggesting thereby fixation of price caps higher than those proposed in the Staff Paper.

27. Several other stakeholders opined that investment by the private sector already in the offing would eventually increase the supply and reduce prices in short-term as well as long-term and, therefore, there is no need to impose price caps. Some of the stakeholders argued that prices being charged in the short-term market did not amount to profiteering in the real sense of the term. According to these stakeholders, the utilities selling power through short-term market were regulated entities, who accounted for the profits so earned in the Annual Revenue Requirements projected to the State Regulatory Commissions; and that their profits were ploughed back for capacity addition. They claimed that the advantage had accrued to them for taking early measures to add or facilitate capacity addition by liberally and promptly utilizing their resources.

28. The proposal to introduce price caps was dubbed by many stakeholders as anti-competitive and detrimental to market development, which could distract the investors, if implemented. A class of stakeholders also favoured reduction of maximum of UI rate. A view was also expressed that price cap of Rs 5/kWh and Rs.6/kWh might give rise to situations of a large number of players seeking and/or vying for the same small surplus. They alleged that the Staff Paper did not disclose how the rationing mechanism would operate under such circumstances, who would regulate the mechanism to be evolved, and the applicable rules of the game.

29. Power Grid Corporation of India Ltd (hereinafter referred to as "Power Grid") on behalf of the NLDC and the RLDCs argued that the core issue for rise in prices in short-term was the huge mismatch between the demand and supply. According to Power Grid, the only long-term solution for bringing down prices is

addition of generation capacity. Power Grid submitted that the consumer is also concerned with reliability of power supply, which comprises two parts, adequacy and security. Any price cap on short-term traded power is likely to send negative signals to the market, jeopardizing fresh investments and would also endanger grid security. Power Grid advocated adoption of an approach of looking at the prices in short-term against the backdrop of the value of lost load (VOLL), which was in the range of Rs 34/kWh to Rs 112/kWh for the country. Since the prices of electricity in the short-term were much below the VOLL, Power Grid pleaded that there is no need to impose price caps.

30. PTC stated that in August 2008, the average purchase bids received (in MU) were about four times the average sale bids received (in MU). Even more interesting is that whatever is on offer by the sellers at perceived high prices are not being accepted by the buyers and less than 50% sales bids have actually been cleared by the market at market clearing price. PTC suggested that the CERC should establish appropriate mechanisms for monitoring market power of participants.

31. It was also highlighted that the proposed ceiling price of Rs. 5/kWh is not realistic considering the increase in spot prices of imported coal to about Rs. 9000/MT, having GCV of 5700 kcal/kWh.

32. Lanco Electric Utility Limited opined that, it would not be in anybody's interest to put a cap for the following reasons, viz., (i) Merchant Generators would not be enthused and expected generation would not come, (ii) it does not give fuel price signal, (iii) deficit States would not plan for generation, as capped priced

power would be available which would not be at the real cost, (iv) Utilities would resort to Load-shedding as power would not be available and (v) this may adversely affect the economic development of the nation and sector.

33. Tata Power opined that it would be more appropriate to link the ceiling price to an index of fuel price. The movement in fuel prices would be captured by such Index. If there is a fall in the fuel price, the ceiling would stand reduced. On the contrary, if there is a rise in the price, the ceiling would be automatically raised. It was also suggested that the ceiling price be applied to following Generating Plants:

- (a) Generating Plants for which tariff is determined by Regulatory Commission, i.e., under Tariff Regulations
- (b) Captive Power Plants
- (c) Competitively bid plants upto the capacity under the PPA.

34. As regards the applicability of ceiling to merchant plants and incremental capacity on merchant basis, the same may be deferred for the time being till adequate data on its off-take is available.

35. Ernst & Young suggested that the price cap may hinder development of market in power trading. It suggested that the Central Commission could recommend to the Central Government under Section 79(2)(i) for imposing Special Cess on the profits made by Utilities through short term trading so as to promote competition, efficiency and economy in activities of electricity industry. The calculation of profits could be done by deducting from the sale price the tariff

determined by the Appropriate Commission for the last generating station/plant scheduled as per the merit order dispatch. As on date, the tariff for most of the generating stations/plants supplying power to the distribution utilities have been determined by the Appropriate Commission as per the respective Tariff Regulations. In case of IPPs, the tariff shall be governed by the long-term PPA signed between the IPPs and the beneficiaries. Hence, the estimation of cost of production for sale of power in the short-term market from the particular generating station is not difficult. In the current scenario of Demand-Supply gap, i.e., 15% approximately, a Special Cess on the profits made can be imposed. The Special Cess could be proportionately reduced as the demand-supply gap reduces.

36. Himachal Pradesh State Electricity Board (HPSEB) stated that the Staff Paper has not come out with the reasons for the rising trend in sale price of traded power. Moreover, it is not factually correct that there has always been a rising trend as is evident from the quoted data. The price of traded power during the period July to Dec. 2007 has been substantially lower than the one for the same period in the preceding year. This substantiates the fact that cost of traded power is risk oriented and further determined by the market forces prevailing in real time operations. Besides, the Staff Paper has not taken into account the overall rising trend in the price of other commodities as well. Average power purchase cost of the Utility reflected in the Staff Paper is reasonable, particularly when the same also includes the cost of short-term traded power for meeting their requirement of power.

37. HPSEB added that the Staff Paper acknowledges the fact that the replacement cost of electricity, which a consumer has to spend in case of non-availability of power should determine the ceiling price cap and has, therefore, to be the cost of diesel generation. The Staff Paper also accepts that opportunity cost to the entity, which has through better management of its water resources and by improving the performance of its generating stations, etc., and by way of efficient management of its electricity supply portfolio, helped the grid in conditions of scarcity cannot be denied. However, on the premise of preventing profiteering, the price cap has been suggested at a price level, which is much below the replacement cost of diesel generation and the opportunity cost. The very premise of relying on the alleged profiteering in absence of the same having been established on the basis of facts and figures is not a correct approach and, therefore, the whole basis for suggesting the capping of price is not justified.

38. All Green Energy India Pvt. Ltd. suggested that short-term trading should continue with price determination on free market principles without any caps on prices. Prices realized beyond a certain benchmark price could be held in a separate "INVESTMENT FUND ACCOUNT" by the seller. Regulators may also appoint auditors who will be authorized to scrutinize the operation of the INVESTMENT FUND ACCOUNT and report to the Regulators.

Withdrawal of Trading Margin

39. Some stakeholders supported the proposal made in the Staff Paper to abolish the trading margin specified by the Commission. However, there were others who expressed an apprehension that scrapping of trading margin would put

the small generators at the mercy of the electricity traders who would extract the maximum possible price of electricity.

40. E&Y submitted that it is of the view that the intent of the Staff Paper is to remove the ceiling imposed on the trading margin and not the trading margin as a whole, because if the Commission withdraws the trading margin, then the entire trading community will move out of the power market.

Modification in Open Access Regulations

41. Power Grid has not favoured revision of bilateral schedules on the day of implementation as recommended in the Staff Paper, stating that this will encourage misuse of open access by unnecessarily blocking the transaction capacity by some entities and allowing the contracting parties to get out of the contractual commitment without having to pay transmission and UI charges. On the other hand, Power Grid recommended reduction of advance notice for revision of schedules from the existing five (5) days specified in the Open Access Regulations to two (2) days. While highlighting its main concern for grid security, Power Grid recommended that an Utility drawing over and above 5% of the schedule at frequency below 49.5 Hz should be held accountable, irrespective of whether or not it has requisitioned its share of liquid fuel generation.

Modification in UI Mechanism

42. Some of the proponents of the price cap argued that in order to make the proposed price caps really effective, there is a need for corresponding reduction of UI ceiling rate. The lowered UI ceiling rates proposed by them vary between Rs.

5/kWh to Rs. 7.45/kWh, with some stakeholders suggesting abolishing of UI altogether. HPSEB while opposing the proposal of price caps, stated that UI, being a disciplinary mechanism and at best a grid balancing mechanism is being used as a trading mechanism in lieu of direct or bilateral trading, which is not desirable. It also suggested examining the issues of UI volumes in the context of grid security and for lowering the prices in short-term market. It was also suggested to create a central pool for all State-owned distribution companies for sale of surplus energy in a regulated environment, based on barter system and also for taking up the matter with the Central Government to reduce the cost of liquid fuel by scrapping import duty on Naphtha.

Commission's Analysis and Rulings

43. Before we analyse the issues raised by the stakeholders in response to the Staff Paper, we consider it appropriate to make some general observations. The Commission, for the present, is not expressing any definitive view on the Staff Paper for its adoption or rejection since it was meant for flagging the issues for an informed debate which has taken place. Firstly it is to be recognized that the State Govt. and State utilities are responsible for the present situation of deficit in power supply. No concrete steps seem to have been taken for capacity addition by many States, nor fruitful efforts made to reduce AT&C losses and improve efficiency. In the past few years, a number of states have initiated reforms in power sector which has been supported by the Central Government under various schemes in addition to external assistance. But the progress in distribution reforms has been much less than what was targeted. If the state utilities feel the high cost of traded power, it is necessary that they put a ceiling rate on the same, beyond which they

will not go for short-term purchases but to go for load shedding. It is to be recognized that high cost of traded power, to a great extent, is the result of what some of the buyers are prepared to pay. It has also come to the notice of the Commission that some of the States do not allow open access on some pretext or other and thereby are not allowing available power to be used by somebody else. Neither they are able to utilize it for the benefit of the consumers of their State nor allow other consumers to be provided power. In a situation of shortages of power, this approach is condemnable.

44. As is well known, a large part of supply of electricity in the country is mainly tied in long-term Power Purchase Agreements (hereinafter referred to as “the PPAs”) between the generating companies and the SEBs or their successor entities, where the SEBs have been reorganised through the reforms process contemplated under the Act. The Appropriate Commission regulates the tariff for bulk supply for generation and sale of electricity, determined usually in two-parts, namely, capacity charge and energy charge, under Section 62 of the Act. Apart from the regulated tariff, the law under Section 63 of the Act provides for tariff discovery through the process of competitive bidding. At the same time, it is to be kept in view that most of the bulk supplies (97% to 98% of the total generation) to the SEBs and their successor entities come through the long-term PPAs at regulated prices, which are cost-based and considered to be reasonable. The price volatility is limited to a meagre volume of about 2% to 3% in the short-term market. Besides, about 4% of the total generation, though internal or included in the long-term PPAs, also gets exchanged between the utilities in the short-term under the UI mechanism, inadvertently or intentionally.

45. The tariff for bulk supply of electricity from the generating stations under the regulatory jurisdiction of this Commission has generally stabilized. In fact, the capacity charge component of tariff of a generating station has progressively reduced over a period of time, on account of repayment of loans. In the terms and conditions of tariff specified by the Commission, the cost of fuel (based on normative standards of efficiency) is made “pass-through”. The variable charge of coal-based and lignite-based generating stations has been steady, with nominal fluctuations. However, frequent and substantial increases in the cost of liquid fuel has resulted in phenomenal increases in the energy charge of the liquid fuel-fired generating stations because of which, some of the installed capacity of these generating stations at times remains un-requisitioned and idle. There is nothing wrong in this. Generation of high variable cost should not be in operation when the system load can be met with generation of a lower variable cost, or when no utility is prepared to pay the high cost of such generation.

46. The SEBs or their successor entities have an obligation to supply electricity to their consumers. They mainly rely on supplies from their own generation and the long-term PPAs. However, it is not always feasible to meet the consumers’ demand based on own generation and the long-term PPAs. For a variety of reasons, in the short-term, they require alternative means to meet the seasonal or peaking demands. Purchase of electricity bilaterally or through the electricity trader is one such source for supply. The SEBs or their successor entities having short-term surpluses sell power bilaterally or through the electricity traders to optimize their cost of procurement. The captive generating plants, co-generation plants and merchant power generating stations, and the States supplied free hydro power, are other participants involved in sale of electricity bilaterally or

through the electricity traders. Two power exchanges have also started operating in India, providing another avenue for trading of surplus power. The Open Access Regulations notified by the Commission have facilitated power trading/sale, through bilateral transactions or through the medium of the power exchanges. The Open Access Regulations have made it possible to convey electricity between any two places in India by advance or day-ahead scheduling. The power exchanges have provided a platform for day-ahead trading on a collective basis in an organized manner through competitive bidding simultaneously by buyers and sellers. Online exchanges are enabled through the UI mechanism. While creating avenues of electricity trading/sale by open access through bilateral agreements or through the power exchanges, the long-term PPAs are not to be re-opened.

47. All inter-State supply agreements are implemented through day-ahead scheduling in accordance with the provisions of the Indian Electricity Grid Code (hereinafter referred to as “the IEGC”). Real time deviations from the schedules (over-drawal, under-drawal, over-generation and under-generation) are commercially settled through UI mechanism. The settlement rate under UI scheme is a function of the grid frequency in a given time block.

48. As the majority of supplies continue to be governed under long-term PPAs at regulated prices, short-term trading, either bilaterally or through the power exchanges, is only a fringe market. While serious concerns have been expressed over the rising prices of short-term traded power along with the suggestions that there is a need for intervention by the Government or by the regulatory bodies, it must be appreciated that this is a part of the much larger problem of the persisting demand-supply gap.

49. Price volatility in short-term market is natural due to various factors including varying load-generation balance, weather, forced outages, non-storability of electricity and increase in fuel prices. Even in developed countries having adequate generating capability to operate with spinning reserves, short-term prices go up during peak-load hours when costly generation has to be bought in to bridge the gap. In our case, load-shedding is available as a cheaper alternative to the hard-pressed utilities. The long-term solution to the problem of increasing prices of round-the-clock electricity in short-term market lies in enhancing the generating capacity to an extent that even peak-hour load may be met from reasonably priced generation. This has also been envisaged in the National Electricity Policy. The distribution licensees need to timely procure adequate capacity and at the same time the States need to facilitate development of power projects. In addition, SERCs have powers, under Section 86(1)(b) of the Act to regulate the purchase price at which electricity is procured by the distribution licensees. However, a rise/spike in price of electricity during peak-load hours, for supplies not covered under round-the-clock contracts, is natural and inevitable.

50. In the recent years, the Commission has created complete infrastructure for orderly functioning of the bulk supply market. The IEGC, Open Access Regulations, day-ahead scheduling procedure, energy accounting system, UI mechanism for financial settlement of real-time deviations together with various institutions like the NLDC, RLDCs, RPCs, SLDCs, and the power exchanges, are part of the infrastructure and have their clearly defined roles. Every day, power scheduled by the buyers from their long-term and short-term contracts or through

the power exchanges, is transmitted over the inter-State transmission system to its desired destination.

51. We are informed that the response to the market windows created by tariff-based competitive bidding for long-term procurement and short-term inter-State open access has been massive. Generating capacity of more than 70,000 MW is being developed through involvement of the private sector spanning various sizes and technologies and in many parts of the country. It has, therefore, to be appreciated that response to any action, which is perceived as 'regulatory uncertainty', should be minimised.

52. Now we analyse the various issues raised by the stakeholders in response to the Staff Paper.

Cap on Tariff for Sale of Electricity – Legal Aspects

53. The Staff proposal for fixation of price caps was based on the proviso to clause (a) of sub-section (1) of Section 62 of the Act, according to which, the Appropriate Commission is empowered to fix minimum and maximum ceiling of tariff for sale or purchase of electricity in pursuance of an agreement, entered into between a generating company and licensee or between licensees, for a period not exceeding one year to ensure reasonable prices of electricity, in case of shortage of supply of electricity. The proposal was based on the understanding that the term "licensee" in the proviso includes the electricity trader in view of the definition in sub-section (39) of Section 2 of the Act, and accordingly proviso should apply in cases of sale to and purchase by an electricity trader. Many of the stakeholders supported the proposal made in the Staff Paper by invoking this

proviso. According to them, the proviso is an independent legislative provision having acquired the tenor and colour of substantive enactment. They also based their submission on Section 66 of the Act, which authorizes the Commission to promote the development of market (including trading). According to them, fixation of lower and/or upper caps for sale of electricity in view of the overall shortage scenario in the country is a market development function.

54. On the contrary, several stakeholders who opposed the proposal, have sought to give a restricted meaning to the term “licensee” so as to apply only to the distribution licensees. Their contention is that the scope of proviso cannot be extended beyond the substantive provision of the statute, namely, sub-section (1) of Section 62 of the Act, which authorizes the Commission to fix tariff for sale of electricity by a generating company to the distribution licensees. According to this view, proviso cannot be invoked to fix price caps for the electricity traded in short-term market. Therefore, an argument was made to shelve the proposal contained in the Staff Paper. The judgments of the Hon’ble Supreme Court reported as *Ram Narain Sons Ltd. Vs Asstt. Commissioner of Sales Tax* (AIR 1955 SC 765) and *Dwarka Prasad Vs Dwarka Das Saraf* (AIR 1975 SC 1758) have been relied upon.

55. In *Ram Narain* (supra), the Hon’ble Supreme Court reiterated the cardinal rule of interpretation that a proviso to a particular provision of a statute only embraces the field, which is covered by the main provision and that the proviso carves out an exception to the main provision to which it has been enacted as a proviso and no other. Similarly, in *Dwarka Prasad* (supra), the Hon’ble Supreme Court took note of the settled rule of construction that a proviso must prima facie be read and considered in relation to the principal matter to which it is a proviso,

and that it is not a separate or independent enactment. Relying upon the above two judgments of the Hon'ble Supreme Court, it was argued by those who are opposed to the concept of fixation of price caps, that the Commission has been empowered to fix minimum and maximum tariff for sale of electricity by a generating company to the distribution licensee. They have, therefore, contested the Staff proposal of fixation of price caps on this legal ground, apart from other grounds.

56. It is, however, not disputed that insertion of a proviso to a Section may wholly or partly be in substance, a fresh enactment adding to and not merely excepting something out of or qualifying the substantive provision. In *State of Orissa Vs Debaki Devi* (AIR 1964 SC 1413), it was held by the Hon'ble Supreme Court that the period of limitation prescribed under proviso to sub-section (6) of Section 12 of the Orissa Sales Tax Act was an independent legislative provision, applicable to original assessment proceedings as well as appeal and revision. The Hon'ble Supreme Court observed that *"if we look at the substance of the matter as we must, it appears clear that the proviso of a period of limitation of 36 months for the passing of an order of assessment of tax is really an independent legislative provision of the Act and though it has been inserted by the draftsman in the form of a proviso in Section 12 (6), it is in substance not a real 'proviso' to the main provision"*. In *Commissioner of Income Tax, Kerala and Coimbatore Vs Krishna Warriar* (AIR 1965 SC 59), the Hon'ble Supreme Court laid down that

"it is not an inflexible rule of construction that a proviso in a statute should always be read as a limitation upon the effect of the main enactment. Generally, the natural presumption is that but for the proviso the enacting part of the section would have included the subject-matter of the proviso; but the clear language of the substantive provision as well as the proviso

may establish that the proviso is not a qualifying clause of the main provisions, but is in itself a substantive provision. In the words of Maxwell, "the true principle is that the sound view of the enacting clause, the saving clause and the proviso taken and construed together is to prevail".

57. In *State of Rajasthan vs. Leela Jain* (AIR 1965 SC 1296), the Hon'ble Supreme Court observed that:

".....The primary purpose of the proviso now under consideration is, it is apparent, to provide a substitute or an alternative remedy to that which is prohibited by the main part of s. 4(1). There is therefore, no question of the proviso carving out any portion out of the area covered by the main part and leaving the other part unaffected. What we have stated earlier should suffice to establish that the proviso now before us is really not a proviso in the accepted sense but an independent legislative provision by which to a remedy which is prohibited by the main part of the section, an alternative is provided. It is, further, obvious to us that the proviso is not co-extensive with but covers a field wider than the main part of s. 4(1)....."

58. In a further case, *Ishverlal Thakorelal Almaula Vs Motibhai Nagjibhai* (AIR 1966 SC 459), the Hon'ble Supreme Court observed that:

"The proper function of a proviso is to except or qualify some thing enacted in the substantive clause, which but for the proviso should be within that clause. It may ordinarily be presumed in construing a proviso that it was intended that the enacting part of the section would have included the subject-matter of the proviso. But the question is one of interpretation of the proviso and there is no rule that the proviso must always be restricted to the ambit of the main enactment. Occasionally in a statute a proviso is unrelated to the subject-matter of the preceding section, or contains matters extraneous to that section, and it may have then to be interpreted as a substantive provision, dealing independently with the matter specified therein, and not as qualifying the main or the preceding section."

59. The observation of the Hon'ble Supreme Court in *Commissioner of Commercial Taxes and Ors Vs R.S. Jhaveri and Ors.* (AIR 1968 SC 59) are also to the same effect, as follows:

".....Generally speaking, it is true that the proviso is an exception to the main part of the section; but it is recognised that in exceptional cases a proviso may be a substantive provision itself. We may in this connection refer to Bhondha Urban District Council v. Taff Vale Railway Co.(L.R. [1909] A.C. 253), where s. 51 of the Act there under consideration was framed as a proviso to preceding sections. The Lord Chancellor however pointed out that "though s. 51 was framed as a proviso upon preceding sections, but it is true that the latter half of it, though in form a proviso, is in substance a fresh enactment, adding to and not merely qualifying that which goes before."

60. The Hon'ble Supreme Court in the case of Motiram Ghelabhai Vs. Jagan Nagar, (1985) 2 SCC 279 has also observed as follows:

"It is therefore, clear that the proviso read with the separate paragraph added thereto will have to be regarded as an independent provision enacting a substantive law of its own by way of providing for special savings and counsel's contention that the same has been added merely with a view to qualify or to create an exception to what is contained in the main provision of Section 50 has to be rejected."

61. Further, in the case of S. Sundaram Pillai and Ors. Vs V.R. Pattabiraman and Ors.[(1985) 1 SCC 591], the position as clearly brought out by the Hon'ble Supreme Court is that at times a proviso in substance can be an independent provision. The relevant extract from the Judgment of the Hon'ble Supreme Court is placed below:

"34. A very apt description and extent of a proviso was given by Lord Oreburn in Rhodda Urban District Council v. Taff Vale Railway Co. (1909) AC 253 where it was pointed out that insertion of a proviso by the draftsman is not always strictly adhered to its legitimate use and at times a section worded as a proviso may wholly or partly be in substance a fresh enactment adding to and not merely excepting something out of or qualifying what goes before....."

62. Based on the analysis of above judgements, it is thus well settled that proviso to an enactment serves many purposes. One such function of proviso is

to qualify or carve out exception to certain main provisions in the substantive enactment. At the same time, depending upon the context, the proviso may be regarded as an independent provision, enacting a substantive law of its own by making special provision. The different purposes that a proviso may serve have been summed up by the Hon'ble Supreme Court in *S. Sundaram Pillai Vs V.R. Pattabiraman* (supra) as under:

“43. We need not multiply authorities after authorities on this point because the legal position seems to be clearly and manifestly well established. To sum up, a proviso may serve four different purposes:

(1) qualifying or excepting certain provisions from the main enactment;

(2) it may entirely change the very concept of the intendment of the enactment by insisting on certain mandatory conditions to be fulfilled in order to make the enactment workable;

(3) it may be so embedded in the Act itself as to become an integral part of the enactment and thus acquire the tenor and colour of the substantive enactment itself; and

(4) it may be used merely to act as an optional addenda to the enactment with the sole object of explaining the real intendment of the statutory provision.”

63. The Commission now examines the scope of proviso to clause (a) of sub-section (1) of Section 62 of the Act, which empowers the Appropriate Commission to fix the minimum and maximum ceiling of tariff for supply of electricity by a generating company to a licensee and by one licensee to another. The proviso confers authority on the Commission to fix minimum and maximum price caps for sale or purchase of electricity in pursuance of an agreement between a generating company and a licensee or between licensees themselves. The term licensee is defined under sub-section (39) of Section 2 of the Act, as a person who has been granted licence under Section 14. Section 14 covers licences of three kinds,

namely, to transmit electricity as a transmission licensee, to distribute electricity as a distribution licensee, and to undertake trading in electricity by an electricity trader. Thus, it clearly follows that the term “licensee” used in the proviso includes a distribution licensee as well as an electricity trader. Therefore, on plain reading of the proviso, it follows without any doubt that maximum and minimum ceiling of tariff can be imposed for purchase and sale of electricity by a distribution licensee and also by an electricity trader whether such sale is by the generating company, a distribution licensee or an electricity trader. It is an established principle that when the words of a statute are clear, plain or unambiguous, that is, they are reasonably susceptible to only one meaning; the courts are bound to give effect to that meaning irrespective of consequences and flows from the judgment of the Hon’ble Supreme Court in *Nathi Devi Vs Radha Devi Gupta* [(2005) 2 SCC 271], in the following words, namely-

“The interpretative function of the Court is to discover the true legislative intent. It is trite that in interpreting a statute the Court must, if the words are clear, plain, unambiguous and reasonably susceptible to only one meaning, give to the words that meaning, irrespective of the consequences. Those words must be expounded in their natural and ordinary sense. When a language is plain and unambiguous and admits of only one meaning no question of construction of statute arises, for the Act speaks for itself. Courts are not concerned with the policy involved or that the results are injurious or otherwise, which may follow from giving effect to the language used. If the words used are capable of one construction only then it would not be open to the Courts to adopt any other hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act.”

64. It was argued before us that since clause (a) of sub-section (1) of Section 62 of the Act deals with determination of tariff or supply of electricity by a generating company to a distribution licensee, scope of proviso should be restricted to sale of electricity by a generating company to a distribution licensee

only in case of shortage of supply of electricity. We do not consider this interpretation to be correct. Firstly, we have already held otherwise on plain reading of the proviso. Further, the tariff for sale of electricity by a generating company to a distribution licensee is determined by the Appropriate Commission. The tariff so determined by the Appropriate Commission is the maximum ceiling, which a generating company can charge, as no generating company can charge tariff in excess of that fixed by the Appropriate Commission. The generating company may charge any amount of tariff, which is less than the tariff fixed by the Commission (without necessarily fixing the minimum ceiling). Thus, fixation of minimum and maximum ceiling is inherent in the tariff fixed by the Appropriate Commission under the substantive provision. The correct interpretation of clause (a) of sub-section (1) of Section 62 of the Act, read with the proviso would be that the proviso applies to the cases for sale of electricity by a generating company to the distribution licensee as also an electricity trader. In case the expression "licensee" used in the proviso under clause (a) of sub-section (1) of Section 62 is to be read by restricting it to a distribution licensee, such an interpretation will further render otiose that part of the proviso, which speaks of the agreement between the licensees themselves, which is impermissible while construing a statute. It is also noted that Part VI of the Act lays down the provisions relating to distribution, that is, retail sale of electricity by the distribution licensee, tariff for which is also determined by the Appropriate Commission under sub-section (1) of Section 62 of the Act. Under ninth proviso to Section 14 of the Act, a distribution licensee does not require licence to undertake trading in electricity. It means that a distribution licensee can act as an electricity trader (without needing a licence) and may sell electricity to another distribution licensee and an electricity trader in

addition to the consumers. Therefore, in our considered view, agreement between licensees referred to in the proviso to clause (a) is in relation to the agreement involving the distribution licensees and the electricity traders. Accordingly, proviso to clause (a) of sub-section (1) of Section 62 has to be construed as an independent provision and not merely qualifying the provisions of clause (a). The proviso carves out an exception from the substantive provision contained in clause (a), and empowers the Commission to fix the minimum and maximum ceiling of tariff for each transaction of sale of electricity in case of shortages which is currently the position. Given that the tariff for supply of electricity by a generating company to a distribution licensee is regulated under Section 62 of the Act making express provision, it is only logical to conclude that the Commission is empowered to fix ceilings or price caps for sale of electricity to an electricity trader and by one licensee to another licensee; whether distribution licensee or an electricity trader. This would also cover the transactions being done through the power exchange, since the power exchange provides a platform for sale by generating companies or licensees and for trading.

65. It was also argued before us that the proviso to Section 62(1)(a) is an extraordinary power to curb electricity prices in times of unforeseen and extraordinary shortages, which would be far beyond the shortages seen now, as there were considerable shortages even when the Bill was drafted and Act was enacted and had the intention been to enact for a general power scenario, the same would not have been carved into a proviso. We are of the view that the need of invoking the proviso to Section 62(1)(a) would depend on overall circumstances and all relevant factors.

66. Another preliminary objection taken by the stakeholders who opposed the proposal of the Staff Paper for fixation of price caps is based on para 43 of the Commission's Order dated 5.4.2007 in Petition No.15/2007, where the Commission had expressed a view against capping the cost of supply by the trader, the relevant extract of which is placed below:

"43. There is no question about the Commission capping the cost of traded power, as has been suggested by some stakeholders. It would be a retrograde step when the country is moving towards "market" and commercial approach, and would introduce avoidable distortions....."

67. It was also argued that the proposed caps are also not in consonance with the Commission's Order dated 6.2.2007 in Petition No. 155/2006 laying down guidelines for grant of permission for setting up and operating the power exchanges in the country, according to which, the power exchanges are to emerge as a market guided institution with minimal regulation.

68. Relying upon the above observations of the Commission, it was argued before us that the Commission, being bound by its earlier view, cannot now decide to cap the prices. We have considered this aspect very carefully. The hallmark of the judicial process is that a quasi judicial body, in the interest of justice, uniformity of decisions and to avoid inconsistency in approach, should follow its earlier decisions. It is said to be preferable that a quasi judicial authority decides the cases raising the same point in the same way, as frequent changes in the opinion would create uncertainty in the mind of public and may erode confidence of public in the quasi judicial body. This is the rule of caution. However, it is equally true that a quasi judicial body may differ from its earlier decision if it thinks proper to do so in the circumstances of the case. In Union of

India Vs Paras Laminates (P) Ltd [(1990) 4 SCC 453], the Hon'ble Supreme Court held “.....it is vital to the administration of justice that those exercising judicial power must have the necessary freedom to doubt the correctness of an earlier decision if and when subsequent proceedings bring to light what is perceived by them as erroneous decision in the earlier case.” Moreover, we may state that the rule of caution referred to above applies when a quasi judicial body is performing a judicial or adjudicatory function. This rule has no application to matters of policy, the issue presently before the Commission. The policy issues cannot be static and have to be reviewed and moderated from time to time, depending upon the prevailing circumstances. It is also to be noted that the Commission functions as a body corporate, since there is no provision under the Act or the Regulations framed there under to provide for constitution of benches. The Commission, as a body corporate, may in the interest of general public, depart from the previous interpretation and applications, where it would be appropriate, fair and just to do so. However, the Commission is not going into the merits of the view expressed by the Commission in the earlier case because decision about imposition of caps at central level is proposed to be taken after addressing the issues as discussed subsequently in this order.

Cap Rate

69. As elaborated in above paragraphs, we feel that the Commission has jurisdiction to fix ceilings of tariffs for inter-state sale under proviso to section 62(1)(a). The Commission has normally not imposed very stringent regulatory mechanism and has provided adequate mechanism for the power market to develop of its own. However, the increasing trend in short-term prices over the

recent past has raised several concerns amongst the stakeholders and to tackle this situation, the Staff Paper has suggested some measures to control the market.

70. The Commission has carefully examined the various options of imposing caps, the mechanisms suggested in the Staff Paper, as well as the stakeholders observations. It is observed that even those who generally favour imposing price caps in the short-term, have raised a plethora of issues, such as the optimum limits of the price caps, whether these should be uniform or time differentiated, whether these should be across-the-board or individual caps, whether the individual caps should be generating station-wise or technology-wise and so on.

71. The other important issue raised is that imposition of price caps may make it necessary to devise some methodology to ration sale of electricity by surplus entities, because there are likely to be more buyers chasing scarce supplies at the lower rates. On the other hand, there is a possibility that the surplus supplies might disappear from the short-term market and the electricity might simply be injected into the grid for being paid through UI route. There is an apprehension that differential price caps on different segments of the market may not work.

72. The Commission also realizes that imposition of price caps without addressing the other crucial aspects such as review of UI mechanism, absence of mechanism to regulate price of sale of free power by State Governments to distribution licensees of other States or to trading licensees, etc., may not serve the purpose. The Commission in the subsequent part of this Order has proposed a review of the UI mechanism and has advised the Central Government for

developing a mechanism to regulate price for selling of free power by State Governments.

73. The Commission is also of the view that it may not be appropriate to impose the caps at central level without detailed examination of issues raised by various stakeholders, i.e., uniform or differential price cap during various time slots, price caps for different technologies and different fuels, rationing of electricity, etc. and how the power exchanges would function with price caps at levels below the present clearing prices. A detailed study will be required to find suitable answers to the issues that have emerged. Therefore, the Commission at this stage, without detailed examination of the issues raised and in absence of proper treatment of other loopholes discussed above, has decided not to impose any caps for short-term prices. Meanwhile, the State Commissions may impose limits on the prices at which their State utilities may procure short-term power, taking into account the relevant factors and implications.

Trading Margin

74. The Staff Paper suggested that in case the price ceilings are imposed, the trading margin on inter-State trading may be withdrawn. Several stakeholders supported the suggestion of withdrawing trading margin. The Staff Paper has also pointed out with the help of market data that the trading margin has not been effective in containing the prices in short-term market.

75. Firstly, it is clarified that the proposal in the Staff Paper was to remove the ceiling of 4 paise/kWh on the trading margin, rather than the trading margin itself. Secondly, the matter of trading margin is sub-judice before the Hon'ble Supreme

Court of India in the matter of PTC vs CERC, 3902 Of 2006 and two others. Hence the Commission may examine the issue of trading margin separately.

Modification of Open Access Regulations

76. Several stakeholders have supported the suggestions made in the Staff Paper for providing reasonable flexibility for revising the bilateral schedules under the Open Access Regulations in order to improve the supply side position. At present, an advance notice of five (5) days has to be given for revising the original schedule indicated in the application for short-term inter-State open access, excluding the date on which the request for revision is made and the day on which the revision is sought to be made effective. We feel that this period can be reduced to two (2) days. We direct the Staff to prepare and place before the Commission for its decision, draft amendments to the Open Access Regulations.

Modification in UI Mechanism

77. A large number of views have been expressed by the stakeholders regarding the UI mechanism and the UI price vector. We feel that a comprehensive examination of various issues involved is necessary. We, therefore, direct the staff to take up a thorough study of the concept of UI, movement of actual UI prices over the last three years and its impact on the prices of electricity being traded/sold in short-term and place the findings of the study along with proposal for modification in UI mechanism, if any, before the Commission for its decision. This study may be completed within a period of two months.

Mechanism to regulate price for trading of free power by State Governments

78. The Staff Paper analysed that during FY 2007-08, the maximum power sold in the short-term was by the State Government, and the source of the same was the free power available to the State Government from hydro generating stations. The Ministry of Power, Government of India, in exercise of its powers under Section 183 of the Act, by its Order called the Electricity [Removal of Difficulty] (Third) Order, 2005, has conferred discretion on the State Governments receiving free electricity from hydro power generating stations to dispose of such electricity in the manner they deem fit according to the provisions of the Act. However, when such electricity is sold by the State Governments to a distribution licensee, the concerned State Commission has been conferred powers to regulate the price of procurement by the distribution licensee.

79. The State Governments receiving free power from the hydro power generating stations, in exercise of their discretion, may sell such electricity to the distribution licensees, the electricity traders, in addition to the consumers. Though the Central Government has specified the regulatory framework for fixation of tariff for sale of such electricity by the State Governments to the distribution licensees, there does not appear to be any mechanism available with the Commission to regulate price for sale of such electricity when sold to the distribution licensees of other states or trading licensees because the state government receiving free power is neither a generating company nor a licensee.. Needless to say, such short term sales by State Governments play a crucial role in the market. In the absence of a regulatory mechanism for this kind of transaction, the desired purpose of regulation of prices of electricity under the Act may not be achieved. In

these circumstances, we would like to advise the Ministry of Power, Govt. of India to devise an appropriate statutory mechanism for regulation by this Commission of price for sale of such electricity by the State Governments to the distribution licensees of other states or trading licensees.

Sd/-	Sd/-	Sd/-	Sd/-	Sd/-
(Rakesh Nath)	(S. Jayaraman)	(R. Krishnamoorthy)	(Bhanu Bhushan)	(Dr. Pramod Deo)
Member (EO)	Member	Member	Member	Chairperson

New Delhi, dated the 17th December 2008

Annexure `A`

1	Adani Enterprizes Ltd.	36.	Lanco Electric Utility Ltd.
2	ALLGREEN Energy India Pvt.Ltd.	37.	Meghalya SEB
3	ASSOCHEM	38	MERC
4	Avantha Power	39	Monnet Ispat & Energy Limited
5.	Shri Ashok Kundu	40.	MPCL
6.	ASEB & MD, L&CAEDCL	41	MP Power Trading Company Ltd.
7.	Bhilwara Energy Ltd.	42	Moser Baer India Ltd.
8.	BSEB	43	Mahavitaran
9	Central Electricity Supply Utility of Orissa	44	NDPL
10	CESC Ltd, Kolkata	45	NTPC Ltd
11.	DPSC Ltd.	46	NTPC VVNL
12	Deepak Khetarpal	47	Shri Nazli Shayin
13.	EMCO Energy Ltd.	48	Power Exchange India Ltd.
14	Ernst & Young	49	POWERGRID
15	ERPC	50.	PSEB
16	Ehasan Ashariff	51.	PSEB
17	Faridabad Industries Association	52.	PTC
18	GMR Energy Trading Ltd.	53	RERC
19	GRIDCO	54	Reliance Energy Trading Ltd.
20.	Gujart Fluorochemicals Ltd.	55	Rajasthan Power Procur. Centre
21	GUVNL	56.	Shri R.B.Sharma, Advocate
22	Haryana Power Purchase Centre	57	Shri Rakesh Goyal
23	Himachal Small Hydro Power Association	58.	Shree Cement Ltd
24	HPSEB	59	Shri Shanti Prasad, Ex-Chairman, RERC
25	Haryana Govt	60	Shri Sidharth Gosh
26.	IDBI	61	Shri Venktesh RP & Shri Tanmay Vyas
27	IEX	62	Shri Vijyender Kumar
28	Indiabulls Power Trading Ltd.	63	Tata Power Trading Company Ltd.
29.	IPPAI	64	Tata Power
30	Jagdamba Power Alloys Ltd.	65.	TNEB
31	Jindal Power Ltd.	66	Torrent Power Ltd.
32	JSW Power Trading Company	67	TSECL
33	KERC	68	UPPCL
34.	Kerala Government	69	WBSEDCL
35	KSEB		