

**APP COMMENTS ON DRAFT CERC (Procedure, Terms and Conditions for grant of trading license and other related matters) Regulations, 2019**

<u>Regulation No.</u>	<u>Draft Regulation</u>	<u>Existing Regulation</u>	<u>Proposed Amendment</u>	<u>Explanation</u>
<b>Regulation No. 2(1)(e): 'Banking of electricity'</b>	(e) 'Banking of electricity' shall mean and include exchange of electricity for electricity between two grid connected entities directly on mutually agreed terms;	Not provided	(e) 'Banking of electricity' shall mean and include exchange of electricity for electricity between two grid connected entities directly or <b>indirectly</b> on mutually agreed terms;	<p>The definition should be revised and the term "indirectly" should also be inserted.</p> <p>There is no specific logic of barring traders from participating in Banking transaction.</p> <p>Traders facilitate transaction by acting as aggregator of buyers and sellers. They have the expertise to operate any transaction as per its terms &amp; conditions and handle any contingencies during the operation of the contract by bringing multiple options in-order to bring the contract to a successful closure. This is the specific reason that currently more than 80% of Banking transactions are happening through Traders.</p>
<b>Regulation No. 3(3)(b): 'Financial Qualifications- Capital Adequacy and Liquidity Requirements'</b>	(b) An Applicant shall be required to maintain the <u>Net Worth</u> as per clause (a) above and ensure a <u>minimum Current Ratio of 1:1 and a minimum Liquidity Ratio of 1:1 at all times:</u>	<p>Regulation 3(3)(b):</p> <p>An applicant shall be required to maintain the net worth as specified in this clause at all times.</p> <p>Regulation 3(3)(c):</p> <p>An applicant shall have minimum current ratio of 1:1 and Liquidity Ratio of 1:1 on the date of audited special balance sheet accompanying the application.</p>	<p>(b) An Applicant shall be required to maintain the Net Worth as per clause (a) above and ensure a minimum Current Ratio of 1:1 and a minimum Liquidity Ratio of 1:1 at all times:</p> <p>Provided that the Net Worth, Current Ratio and Liquidity Ratio specified in this regulation shall be computed on the basis of the audited special balance sheet prepared in accordance with the financial reporting framework prescribed under the Companies Act, 2013.</p> <p><u>Provide that if the current ratio and liquidity ratio at any time is less than 1:1, then the licensee shall maintain additional Net Worth of 100% of the Net Worth stipulated for the respective category of trading license.</u></p>	<p>Any entity during the course of its business comes across different business scenarios due to which the assets and liabilities position varies. At times sundry creditors and other liabilities (current liabilities) becomes higher than the cash or cash equivalent, accounts receivables, inventory etc. (current assets) leading to lower current ratio which doesn't mean that the company will have problem in meeting its short term obligations. Further, when the current assets is more than current liabilities it doesn't mean that the company is not efficiently using its current assets or short term financing capabilities. The short term fluctuation in current ratio and liquidity ratio will always be there considering the business volatility and therefore the ratios may not be 1:1 at all the times.</p> <p><b>However, in order to strengthen the financial qualification and liquidity requirements for a trading licensee, the licensee shall be required to maintain additional 100% of the required Net worth as per the respective category of trading license, in case of current ratio and liquidity ratio are less than 1:1.</b></p> <p>Also, Section 52(1) of the Electricity Act, 2003 ("Act") provides that the Appropriate Commission may, specify the technical requirement, <b>capital adequacy requirement</b> and credit worthiness for being an electricity trader.</p> <p>As per ninth proviso to Section 14 of the Act a distribution licensee is deemed trading licensee.</p> <p>As per sixth proviso to Section 14 of the Act read with Section 176(2)(b) of the Act provides that Central Government may, by notification, make rules for</p>

Regulation No.	Draft Regulation	Existing Regulation	Proposed Amendment	Explanation
				<p>carrying out the provisions of this Act as regards to requirement of Capital Adequacy and Credit worthiness.</p> <p>Accordingly, Ministry of Power vide notification dated 23.03.2005 has issued Distribution of Electricity Licence (additional requirements of Capital Adequacy, Creditworthiness and Code of Conduct) Rules, 2005, wherein it says that Distribution Licensee shall make available resources for 30% equity on the basis of Net Worth and generation of internal resources of his business including of promoters <b>in the preceding three years</b> after excluding his other committed investments.</p> <p>As, Distribution licensee is also deemed Trading Licensee in terms of Section 14 last proviso of the Act, the above condition as specified in said Rules shall also be applicable to Distribution Licensee undertaking trading of electricity.</p> <p>Hence, the requirement of capital adequacy and credit worthiness should be in line with the notification dated 23.03.2005 issued by Ministry of Power.</p>
<b>Regulation No. 7(b): 'Applicability of Trading Margin'</b>	(b) Long term contracts and medium term contracts (where period of the contract of the Trading Licensee <b>with both the seller and the buyer is more than one year</b> );	In Form IV-D & E, Long Term transaction is defined as: (a) where period of contract of the licensee with the <b>seller is more than 1 year and with the buyer is up to 1 year</b> (b) where period of contract of the licensee with <b>both the seller and the buyer is more than 1 year</b> (c) where period of the contract of the licensee with the <b>seller is up to 1 year and with the buyer is more than 1 year</b>	(b) Long term contracts and medium term contracts means: <ul style="list-style-type: none"> <li>• where period of contract of the licensee with the <u>seller is more than 1 year and with the buyer is up to 1 year</u></li> <li>• where period of contract of the licensee with <u>both the seller and the buyer is more than 1 year</u></li> <li>• where period of the contract of the licensee with the <u>seller is up to 1 year and with the buyer is more than 1 year</u></li> </ul>	<p>A buyer or a seller, may choose to insulate itself from the risk of market price variations by entering into long / medium term contract with the trader, for a period of more than one year. In this way the buyer or the seller is able to hedge its risk by agreeing to a price with the trader for a period of more than one year.</p> <p>The trader should be at liberty to decide that whether it wants to transact the contracted power in short, medium or long term contracts. The Traders are taking a risk by entering into long term contract with the seller therefore it should be on the discretion of the trader to choose its buyer and not necessary that trader should enter into contract with both the seller and the buyer for more than 1 year. It might happen that Trader has signed a long term contract with seller and is not able to sign any contract which is more than a year but the buyers are available which wants to enter into contract for few months i.e. upto one year.</p>
<b>Regulation No. 9(10), 'Obligations of the Trading Licensee'</b>	The Trading Licensee shall make payment of dues upon the agreed due date to the seller for purchase of the agreed quantum of electricity <b>through an escrow arrangement or irrevocable, unconditional and revolving letter of credit in favour of seller</b> . Such escrow arrangement or irrevocable, unconditional and revolving letter of credit in favour of seller shall be equivalent to:	Provided at Regulation 7(h)  "(h) The licensee shall carry out trading in accordance with the agreed terms and conditions, <b>and may take such safeguards as he may consider necessary with regard to payment security mechanism from the buyers</b> , but shall always ensure timely	The Trading Licensee shall make payment of dues upon the agreed due date to the seller for purchase of the agreed quantum of electricity through <u>the payment mode as mutually agreed upon and mentioned in the contract</u> .	The duration of short-term transactions varies from 3 hours ahead to one year ahead. In-case of very short duration contracts it is practically not possible to establish payment modes or security mechanisms like escrow arrangement or letter of credit. This should be left upon the Trading Licensee & seller to mutually agree and accordingly frame the contract.

Regulation No.	Draft Regulation	Existing Regulation	Proposed Amendment	Explanation
	<p>(a) two point one (2.1) times the average monthly bill amount (estimated average of monthly billing amounts for three months or actual monthly billing amount for preceding three months as the case may be) with a validity of one year for long term contracts;</p> <p>(b) one point zero five (1.05) times of contract value for short term contracts.</p>	<p>payment of dues to the seller for purchase of the agreed quantum of electricity either through a letter of credit or any other appropriate instrument or as may be mutually agreed between the seller and the licensee.”</p>	<p><u>In order to secure the dues, the seller shall demand a payment security mechanism from the Trading Licensee and upon mutual agreement the same shall be mentioned in the contract. <del>an escrow arrangement or irrevocable, unconditional and revolving letter of credit in favour of seller. Such escrow arrangement or irrevocable, unconditional and revolving letter of credit in favour of seller shall be equivalent to:</del></u></p> <p><del>(a) two point one (2.1) times the average monthly bill amount (estimated average of monthly billing amounts for three months or actual monthly billing amount for preceding three months as the case may be) with a validity of one year for long term contracts;</del></p> <p><del>(b) one point zero five (1.05) times of contract value for short term contracts.</del></p>	
<p><b>Regulation No. 9(13) &amp; 9(14): ‘Obligations of the Trading Licensee’</b></p>	<p>(13) The Trading Licensee shall ensure that the buyer and the seller are, either grid connected entities or represent such entities, with special energy meters on their periphery and that the mechanism for Deviation Settlement accounting by the appropriate authority is in place.</p> <p>(14) The Trading Licensee shall not purchase electricity from the entities and the Associates of such entities, defaulting in payment of Charge for Deviations as per the Central Electricity Regulatory Commission (Deviation Settlement Mechanism and related matters) Regulations, transmission charges, reactive energy charges, congestion charge and fee and charges for National Load Despatch Centre or Regional load Despatch Centre or the Unified Load</p>	<p>Provided at Regulation 7(k) &amp; 7(l)</p> <p>(k) The licensee shall ensure that the buyer and the seller are, either grid connected entities or represent such entities, with special energy meters on their periphery and that the mechanism for Unscheduled Interchange accounting by the appropriate authority is in place.</p> <p>(l) The licensee shall not purchase electricity from the entities and the associates of such entities, defaulting in payment of Unscheduled Interchange charges, transmission charges, reactive energy charges, congestion charge and fee and charges for National Load Despatch Centre or Regional load Despatch Centre or the Unified Load Despatch and Communication Scheme or any other payment levied by the</p>	<p><b>Commission may review this Regulation.</b></p>	<p>We believe that it is practically not possible for a Trading Licensee to ensure the correctness of all conditions mentioned in these regulations as the same are the obligations of other party (buyer / seller).</p> <p>In our view, these checks &amp; balances are to with the open access consenting / approving agency i.e. either RLDC or SLDC for the implementation of this Regulation as they can reject the open access application if the conditions are not fulfilled.</p>

<u>Regulation No.</u>	<u>Draft Regulation</u>	<u>Existing Regulation</u>	<u>Proposed Amendment</u>	<u>Explanation</u>
	Despatch and Communication Scheme or any other payment levied by the Commission or any of the State Electricity Regulatory Commissions under the provisions of the Act or any regulation made thereunder, when so advised by the Commission.	Commission or any of the State Commissions under the provisions of the Act or any regulation made thereunder, when so advised by the Commission.		
<b>Regulation 21</b> <b>'Additional provisions in respect of Existing Licensees'</b>	(1) The Existing Licensees shall meet the Net Worth, Current Ratio and Liquidity Ratio criteria specified in the Regulation 3 and submit an audited special balance sheet within a period of three months from the date of commencement of these regulations to support the compliance of Net Worth requirement:	<b>Regulation 15: Existing Licensees</b>  (2) The existing licensees shall meet the net worth, current ratio and liquidity ratio criteria specified in these regulations within a period up to 31.3.2010.	(1) The Existing Licensees shall meet the Net Worth, <del>Current Ratio and Liquidity Ratio</del> criteria specified in the Regulation 3 and submit an audited special balance sheet within a period of three months from the date of commencement of these regulations to support the compliance of Net Worth requirement:	In order to support the compliance of Net Worth requirement as provided under the draft Regulation, the existing licensee can do so by meeting only the Net Worth criteria as specified in Regulation 3 of the Draft Regulation.