

● PRAYAS

Initiatives in Health, Energy,
Learning and Parenthood



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Date: 31st December 2003

To,
Secretary,
CERC,
New Delhi.

Subject: Comments on Draft regulations on grant of license for Inter-state Trading

Sir,

I wish to submit our comments on the trading license from the consumer and public interest point of view. I request CERC to consider these while finalizing draft regulations.

1. **Reporting formats to be mandatory for all entities carrying out trading:** Irrespective of whether Distribution licensee, government or trading licensee does trading, they all should be mandated to disclose similar information regarding the sale quantity, price and trading margin. The reporting format may have to be varied a little for distribution licensees and governments. For example in case of distribution licensees purchase price has to be replaced by the short-run marginal cost of generation. Seeking such data is essential considering that section 79 (j) of E Act mandates CERC to specify and regulate the trading margins (for all trading activity and not only for licensees).
2. **Clarity about Distribution licensee's trading area:** It appears that the E Act 2003 allows Distribution licensee to carry out trading in its license area, in the state, and also across the state. Clarity on this would be beneficial.
3. **Information reporting, public disclosure, and reporting format:** Information asymmetry is a major anti-competitive force. The mandate of encouraging competition and transparency implies that CERC should do its best to remove / reduce the information asymmetry. To achieve this, it is essential that a well laid out public disclosure policy is inbuilt in the trading licenses. Information disclosure format should be mandated for all trading activity (as mentioned in the point 1).

In this context the FERC order dated 25th April 2002, is worth studying. This order by FERC is significant due to several reasons (a) the USA has witnessed serious imperfections in the power market, California being the most talked about crisis. These imperfections were not envisaged at the time of designing the market. The FERC order is an attempt to put in place a system to avoid such malfunctioning. (2) FERC has given due consideration to various issues, such as, request for confidentiality, business interest, national security, request to treat traders differently than distribution licensees. A summary of this order is attached for your easy reference. I request the CERC to also go through the reasoned order given by FERC. I wish to draw your attention to the detailed reporting format mandated by FERC (see Annex B and C of the order attached herewith). It is important to note that most of this information is also made available to public on the FERC web site. The FERC also requires all licensees to submit the standard terms of contract and actual contracts if they are in deviation from the standard terms. Hence, trading contracts have to be submitted by the traders. For more information please see <http://www.ferc.gov/docs-filing/eqr.asp>.

The E Act mandates CERC to set (and hence also monitor compliance of) the trading margin. Hence, CERC would need additional data / information compared to what is sought and made public by the FERC, USA.

The draft regulations need to be substantially improved on this count. Present draft regulations require (only) trading licensees to submit limited information (form II), that relates to price of purchase and sale. It appears that the information contained in form III will not be easily available to public, and CERC does not intend to study this. Rather, an improved version of form III should be submitted by all traders to CERC and should be made available on CERC web site in a format suitable for analysis (i.e. database or worksheet format).

Market monitoring through analysis of such data is essential if CERC has to monitor 'trading margin', or do an early detection of misuse of 'market domination' or 'market power'.

4. **Improvements in form III:** The form III needs following additions
 - a. **Contract ID and other details:** All trading contracts should have a unique ID. This would avoid confusion. Details such as (i) contract execution date, (ii) contract start date, (iii) contract end date, (iv) date of actual termination of contract should be asked for. If the contract is terminated earlier than due date, then the reason thereof should be specified by the trader.
 - b. **Category of Seller and Buyer:** Each buyer and seller should be categorized as (i) distribution licensee, (ii) independent generator, (iii) captive plant, (iv) government, (v) trader, or (vi) direct consumer (when applicable).
 - c. **Contract ID for Transmission Open Access Contract:** Most trading transactions would need to be supported by (inter-state) Transmission Open Access. The unique ID of the applicable Open Access Contract should be specified.
 - d. **Type of Sale / purchase:** The sale / purchase can be either a round a clock, on-demand, or for a specific period of the day (or a combination of these). The classification could be 'round the clock', 'on demand' or "from XX Hrs to YY hours". The MW quantity for each should be specified separately – implying that a contract may require more than one line in the form III.
 - e. **Point of sale / Purchase:** Better description of point of transaction is required. State, district and name of Interstate sub-station (on interstate transmission line) should be mentioned.
5. **Inactive Licensee:** In case, some trader fails to carry out any trading activity for four consecutive quarters, its license should be suspended by the CERC.
6. **Change of Ownership:** Substantial change in ownership pattern of licensee or change in management control should not be allowed without prior consent of CERC. This should be added in Sub-section 8 (1) as point (iv). The change in management due to change in ownership of major shareholders should be intimated by trader to the CERC.
7. **RLDC, Regional Electricity Boards to make public their report:** The report of RLDC / REB / Regional Power committee to CERC (verifying the form III information) should be put up by them on their websites. Any person should be able to purchase copies of these reports. This will be necessary for legal purposes too.
8. **Adjudicating officer:** Section 15, (iii) requires that the CERC would revoke the license only after an enquiry of adjudicating officer. We wonder why CERC is reducing its power below what is given in the E Act.

9. Annual Reporting: In addition to financial reporting at the end of the year, the CERC may want to consider mandating licensees to submit some information related to manpower, investments made in areas such as communication facilities, etc. The format for this may be designed by CERC at a later date.

10. Other specific points:

Section 4 (7): When the CERC is planning to give trading license and gives a public notice; it should seek comments from public. Time of 15 days should be given for public to comment. The CERC should also list the objections it receives on its site.

Section 7 (i): CERC need not have to wait until a trader actually enters into a contract that abuses its dominant position but CERC should be able to intervene in case a trader is 'likely' to enter into such contract.

Section 8 (ii): We wonder if the 'licensee' word is to be interpreted as a 'trading licensee'? and if so is it very limited a provision.

Point 14 (g) in Form I: CERC should seek copies of supporting documents and contracts related to tie-ups.

I request the CERC to give us a personal hearing.

Thanking you,

Sincerely,

Girish Sant

Prayas Energy Group, Pune
Member CAC, CERC

Enclosures:

1. Summary of FERC order dated 25th April 2002
2. Attachment B and C to the FERC order summarizing the data requirement