

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 11 /SM/2022

Coram:

Shri I. S. Jha, Member

Shri Arun Goyal, Member

Shri P. K. Singh, Member

Date of Order: 12th August, 2022

IN THE MATTER OF:

Directions by the Commission to the Power Exchanges in accordance with the Regulation 27(1) of the Power Market Regulations, 2021.

ORDER

In 2008, the Commission, under the ‘Guidelines for the grant of permission for setting up and operation of Power Exchange, 2007’ granted permission to Indian Energy Exchange Limited (IEX) and Power Exchange India Limited (PXIL) to set up, operate and commence Power Exchange operations. Later, the Commission approved draft rules, bye-laws and business rules of both the Exchanges providing inter-alia clearing and settlement procedure for the transactions taking place on the respective Exchanges.

2. In 2010, the Commission notified ‘CERC (Power Market) Regulations 2010 (henceforth ‘the PMR 2010’). Regulation 29 of the PMR 2010 made it optional for the Power Exchanges to hive off the clearing and settlement function to a separate Clearing Corporation. Relevant extract of Regulation 29 of the PMR 2010 has been provided as below:

“29. Power Exchanges may hive off the clearing and settlement function to a separate Clearing Corporation in case deemed fit.

.....”

3. The Commission notified the CERC (Power Market) Regulations 2021 (henceforth ‘the PMR 2021’) on 15.08.2021 repealing the PMR 2010. Regulation 12(5) of the PMR 2021 provided that the Power Exchanges granted registration before the date of notification of these regulations are required to realign their Bye laws, Rules and Business Rules in

accordance with the PMR 2021 and to seek approval of the same within six months of enforcement of these regulations. As required, all the registered Exchanges, viz., IEX, PXIL and PSL realigned their draft Bye-laws, Rules and Business Rules as per the provisions of PMR 2021 and submitted for the approval of Commission. The Commission approved these documents which had a provision for in-house clearing and settlement procedure in the Power Exchanges for the transactions taking place at the respective Exchanges.

4. PMR 2021 also provided that the Power Exchanges which have been granted registration by the Commission prior to the date of coming into force of these regulations shall be required to carry out the Clearing and Settlement in accordance with the Payment and Settlement Systems Act, 2007 (PSSA 2007) within a period of one year from the date of coming into force of these regulations (i.e. 15.08.2021) or such other period as may be approved by the Commission. The relevant provision of Regulation 27 of PMR 2021 has been extracted below:

“27. Clearing and Settlement

(1)The Power Exchange shall carry out the Clearing and Settlement of any transaction of electricity undertaken on the Power Exchange in accordance with the provisions of the Payment and Settlement Systems Act, 2007:

Provided that Power Exchanges which have been granted registration by the Commission prior to the date of coming into force of these regulations shall be required to carry out the Clearing and Settlement of any transaction of electricity undertaken on the Power Exchange in accordance with the provisions of the Payment and Settlement Systems Act, 2007, within a period of one year from the date of coming into force of these regulations or such other period as may be approved by the Commission”

5. PSSA 2007, *inter-alia*, provides that the payment and settlement related activities of Exchanges (excluding stock exchanges) would be under the purview of the Reserve Bank of India (RBI). The relevant extract from the PSSA 2007 is quoted below:

*“3. Designated **authority** (1) The Reserve Bank shall be the designated authority for the regulation and supervision of payment systems under this Act.*

.....

34. Act not to apply to stock exchanges or clearing corporations of stock exchanges. – Nothing contained in this Act shall apply to stock exchanges or the clearing corporations of the stock exchanges.”

6. In this regard, all the three Power Exchanges have raised some concerns on the applicability of PSSA 2007 mainly due to the possible regulatory overlap which may increase their transaction costs.

7. In its letter dated 10.06.2022, PXIL submitted that the procedure for settlement of transactions arising out of transaction on Power Exchange platform are similar to that of settlement of transaction on Stock Exchanges and Commodity Exchanges which are excluded from the applicability of PSSA 2007. The Power Exchanges have distinct nature of Contracts, including their Clearing and Settlement. Ambiguities and avoidable delays in regulatory directives may also lead to increase in transaction cost. Moreover, RBI is yet to evolve any guideline/framework for regulating the Clearing and Settlement function of electricity transaction. PXIL further submitted that PMR 2021 provides detailed mechanism for governing power transactions on the Power Exchange platform as well as managing the risks associated with delivery, clearing and settlement of transactions. In such a scenario, and given the existence of a robust regulatory framework, the requirement to carry out the Clearing and Settlement of any transaction under provision of PSS Act 2007 may be dispensed with.

8. In its letter dated 01.08.2022, IEX submitted that keeping in view of the overlapping of regulations, Power Exchanges are required to be exempted from the applicability of PSSA 2007. IEX requested that the Commission may allow it to continue to carry on the Clearing and Settlement function as per the existing arrangement till clarity is achieved with respect to the PSSA 2007.

9. In its letter dated 03.08.2022, Hindustan Power Exchange (HPX)-formerly PSL, submitted that the RBI is yet to issue any framework or guidelines regulating clearing and settlement functions of Power Exchanges under the PSSA 2007. As such, in the absence of such a framework, it is not possible to ensure compliance with Regulation 27(1) at this stage. HPX requested extension in the deadline to comply with Regulation 27(1) and submitted that the grant of such an extension is essential for smooth functioning of power markets.

10. The Commission has noted the submissions of the Power Exchanges and also taken cognizance of the fact that some of the operational issues in carrying out the Clearing and Settlement by the Power Exchanges in accordance with the PSSA 2007 require clarity.

Accordingly, in terms of Regulation 27(1) of the PMR 2021, the Commission accords approval to extension of time for the Power Exchanges to align their Clearing and Settlement system to the provisions of the PSSA 2007, for one more year w.e.f 15.08.2022. We also direct the staff to the Commission to examine the issues involved in carrying out the Clearing and Settlement in accordance with the PSSA 2007, in consultation with the Ministry of Finance and RBI, and draw a roadmap for implementation of the same in accordance with Regulation 27 of PMR 2021.

11. The Petition No. 11/SM/2022 (suo-motu) is disposed of in terms of the above direction.

Sd/
(P.K. Singh)
Member

Sd/
(Arun Goyal)
Member

Sd/
(I. S. Jha)
Member