

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**Petition No. 143/MP/2022
Petition No. 178/MP/2022
and
Petition No. 88/MP/2022**

**Coram:
Shri I. S. Jha, Member
Shri Arun Goyal, Member
Shri P. K. Singh, Member**

Date of Order: 5th April 2023

Petition No. 143/MP/2022

In the matter of

Petition for approval of the Transaction Fee of the Indian Energy Exchange in compliance with the provisions of Central Electricity Regulatory Commission (Power Market) Regulations, 2021.

And in the matter of

Indian Energy Exchange Limited,
Plot No. C-001/A/1, 9th Floor,
Max Towers, Sector 16 B,
Noida, Gautam Buddha Nagar,
Uttar Pradesh – 201301

... **Petitioner**

Petition No. 178/MP/2022

In the matter of

Petition under Section 66 of The Electricity Act, 2003 read with the Regulation 23 of the Central Electricity Regulatory Commission (Power Market) Regulations, 2021 for approval of transaction fee to be charged from transacting parties for trading on Power Exchange India Limited.

And in the matter of

Power Exchange India Limited,
9th Floor, 901, Sumer Plaza,
Marol Maroshi Road, Marol Andheri (East),
Mumbai 400059, India

... **Petitioner**



Petition No. 88/MP/2022

In the matter of

Petition under Regulation 23 of the Central Electricity Regulatory Commission (Power Market) Regulations 2021, for approval of transaction fee. The Petition is being filed in accordance with the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999.

And in the matter of

Hindustan Power Exchange Limited,
(Formerly Pranurja Solution Ltd)
25th Floor, P J Towers
Dalal Street, Mumbai – 400001

... **Petitioner**

Parties present:

1. Shri C. S. Vaidyanathan, Senior Advocate, IEX
2. Shri M.G. Ramachandran, Senior Advocate, IEX
3. Shri Shubham Arya, Advocate, IEX
4. Ms. Poorva Saigal, Advocate, IEX
5. Ms. Reeha Singh, Advocate, IEX
6. Shri. Ravi Nair, Advocate, IEX
7. Ms. Shikha Sood, Advocate, IEX
8. Shri Ravi Kishore, Advocate, HPX
9. Shri Keshav Singh, Advocate, HPX
10. Shri Sakya Singha Chaudhuri, Advocate, PXIL
11. Ms. Nithya Balaji, Advocate, PXIL
12. Shri Akhilesh Awasthy, HPX
13. Shri Anil V. Kale, PXIL
14. Shri Jogendra Behera, IEX
15. Shri Gaurav Maheshwari, IEX

ORDER

The Petitioners, Indian Energy Exchange Limited (IEX), Power Exchange India Limited (PXIL) and Hindustan Power Exchange Limited (HPX) are the power exchanges operating in India and have filed the present petitions seeking approval of the Commission for the transaction fee to be charged by the Petitioners in accordance with Regulation 23 of the Central Electricity Regulatory Commission (Power Market) Regulations, 2021 (hereinafter referred to as “Power Market Regulations”).

2. The Petitioners have made the following prayers:



In Petition No. 143/MP/2022

- 1) *Accord approval to a transaction fee of up to 2 paisa/kWh to be charged to either party to the transactions across contracts covered under Clauses (1) to (3) of Regulation 5 of PMR 2021.*
- 2) *Alternately, accord approval to the transaction fee proposed in para 26 based on the duration of the contract.*
- 3) *Pass such further orders or orders as may be considered necessary.*

In Petition No. 178/MP/2022

- 1) *To accord approval of the proposed transaction fee to be charged from transacting parties for trading on Power Exchange India Limited.*
- 2) *Pass such other relief(s)/order(s) that this Hon'ble Commission may deem fit.*

In Petition No. 88/MP/2022

- 1) *allow the present petition;*
- 2) *approve the transaction fees as proposed;*
- 3) *allow the Petitioner to formulate an incentive scheme from time to time;*
- 4) *in the interim, allow the Petitioner to charge transaction fees up to 2 Paisa/kWh till such time this Hon'ble Commission approves the proposed transaction fees; and*
- 5) *pass such other and further order(s) as this Hon'ble Commission may deem fit and proper under the facts and circumstances of the present case and in the interest of justice.*

Submissions of the Petitioner:

In Petition No. 143/MP/2022

3. In pursuance of Regulations 23 of Power Market Regulations, the Petitioner IEX has filed a Petition No. 46/MP/2022 on 21.01.2022 wherein, the Petitioner, inter-alia, submitted before the Commission to approve a transaction fee up to 2 paise/kWh from either party to the transactions for the contracts covered under Clause (1) to (3)



of Regulation 5 of PMR 2021. However, vide Order dated 26.04.2022, this Commission held that the Petitioner's proposal does not fulfill all the conditions of Regulation 23 as it required to obtain approval for the transaction fee to be charged by the Exchange based on the types of contract or quantum of transaction or duration of transaction, etc. and directed the Petitioner to file a separate Petition on the transaction fee within two weeks of issuance of the Order. Accordingly, the Petitioner has filed the present petition on the aspect of the transaction fees.

4. The Petitioner has submitted that the Power Exchanges have been charging a transaction fee of 2 paise/kWh from both buyers and sellers for more than ten years which was never objected by the participants. The transaction fees charged as such has enabled the Power Exchanges to carry out their operations, bring improvement in product and service offerings, strive towards market development, comply with regulatory requirements, etc. which have increased participation and enhanced competition and efficiency in the market. Further it carries out various functions, viz., price discovery, scheduling, clearing & settlement, payment security, counterparty risk management, etc., in the manner as provided in Power Market Regulations and Business Rules & Byelaws approved by the Hon'ble Commission and has significantly contributed towards the development of the overall short-term market.

5. Due to competition, the price discovered in the Exchange platform has remained consistently lower than other avenues available in the market and is acting as a reference price for all the stakeholders. During the last five years, the Exchange has, on an average generated an economic surplus of Rs. 20,000 Crores per year benefiting both buyers and sellers and has provided an overall cost savings of Rs. 32,268 crores to the buyers which on a per unit basis translates to around 74 paise/unit and is much higher than the transaction fees charged by the Power Exchanges.

6. The Exchange has introduced new products, developed sophisticated algorithms & technology platforms, adopted industry best practices, and promoted market development to attract participation in the exchange platform which has increased liquidity and competition in the market and resulted into competitive price



discovery. In future the market is going to be much more dynamic and challenging with increasing RE penetration and the changes taking place on the technology front. To play the role effectively, the Exchange has to carry out the R&D activities and continuously innovate & invest in technology and business processes, etc. to be able to offer suitable products and services and continue attracting participation and promote competition and efficiency in the market.

7. The Exchange is taking all the measures to ensure that there are no defaults and there is payment security for all the transactions taking place through its platform. Despite making regular and timely payments to the sellers since inception, the Exchange has also provided an irrevocable, unconditional, and revolving Letter of Credit to provide additional payment security comfort and a full proof Payment Security Mechanism for the Sellers. It is based on such prudent practices that there has not been a single payment default in last 14 years. Besides, the Exchange has also to comply with stringent regulatory requirements stipulated under the Power Market Regulations. Given this, a transaction fee of 7 paise i.e., 3.5 paise/kWh from either party to the transaction should be appropriate for the Exchange in line with the Trading Margin Regulations. However, as it has already been specified in PMR 2021, the Commission may approve transaction fees of up to 2 paise/kWh on either party to the transactions.

8. The Petitioner has further submitted that the Commission may consider it prudent to provide flexibility to the Power Exchanges to charge within this cap as per their respective market assessment and business strategy. A Power Exchange may decide to concentrate on a particular customer segment, product or volume, etc., depending upon prevailing market conditions and offer suitable incentives within the specified cap. A transaction fee with a cap of 2 paise/kWh from either party to the transactions will provide adequate headroom to the Power Exchanges to meet their business risk and will incentivize them to innovate and compete amongst themselves eventually benefiting the market participants and the end-users. On the contrary, if the transaction fee is too low, it may create entry barriers for new Power Exchanges and discourage competition in the sector. The Commission may consider adopting same principles as in case of trading margin of Trading Licensees the Hon'ble



Commission has specified a cap of 7 paisa/kWh and has left to the trading licensees to charge trading margin within the cap.

9. The Commission has consistently allowed freedom to the Power Exchanges to charge the transaction fee. It was envisaged that competition amongst the multiple Power Exchanges will automatically regulate the transaction fees charged by the exchanges. Internationally also it is observed that where the power market is voluntary in nature the transaction fees are not regulated. SEBI has also not specified any transaction fee to be charged by the Stock & Commodity Exchanges neither it has specified any specific structure in which the transaction fee is to be charged. Having now specified the ceiling in the PMR 2021 there is no need to further determine the transaction fee as the multiple power exchanges functioning in a voluntary market will address the situation.

10. The Petitioner has also submitted that in accordance with the directions of the Commission vide order dated 26.04.2022 in Petition No. 46/MP/2022, if the transaction fee were to be based on the type, quantum, or duration of the contract then the transaction fee for the longer-duration contracts may be reduced as it requires a lesser number of activities compared to shorter-duration contracts. The Petitioner has proposed an alternate structure of the transaction fees based on the duration of the contract. The Petitioner has proposed a transaction fee of up to 2 paise/kWh, 1.75 paise/kWh, and 1.5 paise/kWh on either side of the transactions for the contract with duration 0 to 1 month, 1 to 6 months, and beyond 6 months respectively.

In Petition No. 178/MP/2022

11. The Petitioner, PXIL had filed the petition 285/MP/2021 pursuant to Regulation 12 (5) of PMR 2021 seeking approval for changes in the Rules, Bye Laws, Business Rules, Energy Saving Certificates (Escert) Business Rules and Renewable Energy Certificate (REC) Business Rules of the Petitioner to bring them in alignment with PMR 2021. Through the same petition, the Petitioner also sought Commission's approval on transaction fee. However, the Commission vide Order dated 26.04.2022 in Petition No. 285/MP/2021, directed the Petitioner to file a separate petition for approval of



transaction fee while providing the rationale of its proposed transaction fee based on types of contract or quantum of the transaction, or duration of the transaction or such other factor(s) in accordance with Regulation 23 of PMR 2021. In compliance of the Commission's directions, the Petitioner has filed the present Petition on the transaction fee.

12. The Petitioner submitted that the Commission required it to provide a detailed rationale justifying proposed transaction fee. However, any inquiry on the justification of transaction fee is in the nature of tariff regulation, which is not within the scope of section 66 of the Act. An exercise in the nature of tariff regulation / determination under Section 62 /63 of the Act cannot be undertaken in relation to a Power Exchange which is neither a generating company nor licensee.

13. The Petitioner stated that trading on a Power Exchange being a voluntary market, there is no assured volume guaranteed to Power Exchange(s) as opposed to generators/ transmission licensees/ distribution licensees whose tariff is determined on the basis of some benchmark volume generated/ transmitted/ distributed, respectively. Therefore, no fixed approach or formula can be prescribed to estimate revenues based on volume of transaction or the nature of transaction.

14. With regard to the rationale based on type of contract, the Petitioner submitted that the Commission has approved different types of contracts to meet the power trading requirements of market participants. Every contract has distinct features with regard to scheduling and delivery of power and the type of power envisaged to be transacted, i.e. Conventional/ Solar /Non-Solar/ Hydro and irrespective of type of Contract, i.e., IDAM, RTM, Contingency and Term Ahead Contracts opted by participant, the transaction fee charged from parties to the Contract would be 2 paise /kWh both from buyer and seller.

15. The Petitioner further submitted that there is no basis on which Power Exchange(s) can carry out computation of volumes to be transacted on their platform. Cleared volume across all contracts vary across any duration i.e. between 15-minute time blocks, hourly, daily, weekly or monthly. Distribution licensees, having larger

portfolios, have multiple choices to meet their power requirements. They can choose to trade on a Power Exchange platform or on the Over the Counter (“OTC”) market or choose to trade directly with other Distribution licensees. Power Exchange(s) have to compete with other modes of transactions available to the market participants.

16. Even though the contracts offer different duration, the minimum duration post matching of Order and/or receipt of transmission allocation from NLDC / RLDC could be of ‘15-minute duration’ in any Contract. The Petitioner submitted that the market participants have access to and have availed other transacting modes to meet their power trading requirements for similar duration, i.e., through traders, bilaterally between two entities, e-auction platforms, other competing Power exchange. Further, it cannot envisage duration of contracts that any participant may transact in future as the same are dependent on demand-supply assessment made by participants.

17. The Exchange provides a variety of services to the market participants that are essential for ensuring that transactions on its platform are executed in a smooth and efficient manner. The Petitioner provides services related to access to trading system and furnish reports for contracts where a Member/Client has submitted Orders, etc. Petitioner needs to provide all necessary services in all market segments and in all types of contracts, to market participants irrespective of whether orders are fully cleared/ partially cleared/ remain uncleared. It is further submitted that the trading platform of the Petitioner along with multiple other software systems are required to be up and running uninterruptedly and continuously. That the trading system is also required to undergo regular IT system audit as per prescribed regulations irrespective of whether any transaction have resulted in contracts operating on that trading system. Petitioner also caters to clearing and settlement service requirement by facilitating pay-in and pay-out services for market participants. The Petitioner additionally facilitates settlement of GST between Buyers and Sellers in REC and ESCert contracts enabling participants to comply with statutory requirements.

18. The Petitioner submitted that it has been charging a transaction fee of 2 paise/kWh from buyers and sellers cleared in a transaction across all contracts that operate under provisions of Regulation 5(1), 5(2) and 5(3) and have retained this



transaction fee till date. The Petitioner has adopted a uniform approach for its charges irrespective of the nature, duration or volume of contracts as ultimately, all contracts result in ultimate delivery of power. The transaction fee charged by the Petitioner is comparatively lower than the trading margins permitted to the trading licensees, even though the services provided by the power exchange platform are unique, i.e., provision of fair, transparent and neutral platform for executing transactions, efficient price discovery mechanism, quick dissemination of information, robust payment security mechanism, provision of customized transaction reports to Member/Client, etc.

19. Petitioner submitted that the transaction fee proposed by it on per unit basis for different types of Contracts, is in line with the requirements of Regulation 23 to seek approval for the transaction fees on the basis of type of Contract, or quantum of transaction, or duration of transaction and the same is within the cap provided thereunder. Irrespective of type of Contract, volumes and duration i.e. IDAM, RTM, Contingency and TAM Contracts opted by participant, the transaction fee charged from parties to the Contract would be 2 paise /kWh both from Buyer and Seller as under:

S. No.	Type of Contract	Transaction Fee
A.	Contracts under provision of Regulation 5 (1) of PMR 2021	
	1. Day Ahead Contracts (including Green Day Ahead Contracts)	2 paise / kWh
	2. Real Time Contracts	2 paise / kWh
B.	Contracts under provision of Regulation 5 (2) of PMR 2021	
	1. Contingency Contracts	2 paise / kWh
	2. Intra Day Contracts	2 paise / kWh
C.	Contracts under provision of Regulation 5 (3) of PMR 2021	2 paise / kWh

In Petition No. 88/MP/2022

20. The Petitioner Hindustan Power Exchange Ltd (HPX) was granted registration by the Commission to establish and operate a power exchange vide order dated 12.05.2021 in the matter of Petition 287/MP/2018. Through Order dated 16.02.2022 in the matter of Petition 160/MP/2021, the Commission approved the draft bye laws, rules, and business rules of the Petitioner along with the contracts to be launched at

its exchange platform and directed the Petitioner to file a separate Petition seeking approval of the Commission on transaction fee to be charged by it for various contracts.

21. In compliance of the above directions of the Commission, the Petitioner filed the present Petition proposing contract wise transaction fee as under:

S. No.	Market Segment	Proposed transaction fee
1	Integrated Day Ahead Market (DAM & GDAM)	2 paise /kWh
2	Day Ahead Contingency & Intra Day Contracts	2 paise /kWh
3	Term Ahead Market	2 paise /kWh
4	Real Time Market	2 paise /kWh
5	Green Day Ahead Contingency & Green Intra Day Contracts	2 paise /kWh
6	Green Term Ahead Market	2 paise /kWh
7	Renewable Energy Certificate	Rs. 20/REC
8	Energy Savings Certificate	Rs. 20/ESCert

22. The Petitioner submitted that it has invested substantial amount in technology and manpower to provide a state of art trading platform for the exchange and provide world class services to its customers. Being a new entity, the Petitioner will need sufficient cashflow to provide the services to its customer.

23. On the Commission's directions to furnish the details of the proposed incentives to be given in the transaction fee, the Petitioner proposed that the Petitioner may offer incentives to its Members based on certain parameters which shall be decided by the Petitioner from time to time. Incentive structure will be formulated and implemented based on extensive internal analysis, data and/or assumptions for attracting and retaining customers for a longer duration. The Petitioner also submitted that disclosing the incentive structure on a public platform may prove detrimental to its business.

24. The Petitioner submitted that the transaction fee of the exchange including the incentives shall not be more than 2 paise/kWh as mandated under Regulation 23 of PMR 2021 and therefore, requested to provide it flexibility to devise and implement a cogent incentive structure based on the market dynamics/ conditions.

Hearing Dated 05.07.2022:

25. The case was called out for virtual hearing on 05.07.2022. After hearing the learned Senior Counsel and learned Counsel for the Petitioners, the Commission admitted the three Petitions. One, M/s Association of Power Producers (APP) requested to be impleaded in the Petition on which the Petitioners objected. Considering submissions of both the parties, the Commission held that since APP is neither a necessary nor a proper party therefore impleadment of APP is not required; however, the Commission allowed APP to submit its written suggestions/ comments on the Petition and directed the Petitioners to file their response on the APP's suggestions/comments.

Submission by APP:

26. APP submitted that given the growth in volume of transactions held on the power exchanges, it is necessary that the current level of transaction fee be revised downwardly in order to protect the interest of consumers and avoid additional burden on the cost of power. APP further suggested that the transaction fee charged for contracts operating under Regulation 5 (1), (2) and (3) be rationalized by linking the total volume of energy traded on the power exchanges, in a fair and transparent manner. APP also suggested to make an enquiry and approve the transaction fee at a reasonable level having some correlation to the cost of services being provided by the Exchanges. This will promote the development of the power market. APP also proposed a graded transaction fee based on the volume. APP further submitted that as the volumes transacted through Power Exchanges have increased over the years, the transaction fee should be charged as per the below matrix:

Total Volume to be Traded on the Power Exchange (BU)	Transaction Fee (Paisa/KWh)
Upto 100 BU	1.00 P/kWh
100 BU to 200 BU	0.75 P/kWh
Above 200 BU	0.50 P/kWh



Reply by IEX:

27. The Petitioner submitted that considering the value proposition of power exchanges, viz., automated trading platforms, efficient price discovery, cost savings to buyers, flexibility to market participants, payment security & risk management, etc., and the various investments, technology and market related risks assumed by the power exchanges, including the development of competition amongst the three power exchanges namely IEX, PXIL and HPX, the transaction fee determination be left to the market forces within the ceiling limit of 2 paise/kWh for each side of transaction as provided under the Power Market Regulations, 2021.

28. The Petitioner submitted that the IEX is a voluntary platform, and the participant only participates in the Exchange if it is drawing some value out of the transaction duly considering the charges levied by the Exchange. Therefore, the increase in volume signifies that the participants are deriving value against the charges paid by them. The profits only commensurate with such participation. Further, the profits earned by an entity cannot be a parameter for deciding the transaction fee, but it is the services, the reasonableness and the value which determines the fee specifically in case of service-related businesses exposed to higher business-risks.

29. As regards the suggestion of APP to assess cost of service for the transaction fees, the Petitioner submitted that it is now an established fact that cost of service regulation is an inefficient way of regulation as compared to the market or price cap regulation. Cost of service approach always promote inefficiency and gold plating of the costs. The Commission has appropriately taken the view to have multiple power exchanges in the country and the competition amongst the exchanges to drive efficiency and regulation of the transaction fees. It would be highly regressive to look at the transaction fees in relation with the cost of the exchange as the entire risks including the volume transacted in the exchange platform is borne by the exchange. Also, the cost of service may significantly vary across the power exchanges depending upon their use of technology, other cost structures and the volume at which the exchanges are operating. The petitioner also denied the proposal of APP for graded transaction fee based on the volume.



Reply by PXIL:

30. The Petitioner submitted that the Petitioner's reasons for fixing the transaction fee are independent of and are not dictated by the actions. The Petitioner, by virtue of operating in a voluntary market where entities that intend to participate in the power exchange decide the type of market segment and the type of contract on their own volition, cannot be expected to foresee the volumes traded in different segments and accordingly fix a transaction fee on the basis of the same.

31. Regulation 23 of PMR 2021 prescribes a cap of 2 paise/kWh and states that a power exchange shall seek approval from the Commission on the transaction fee to be charged based on the types of contract or quantum of transaction or duration of transaction or such other factor(s) as may be proposed by the Commission. Accordingly, the Petitioner has proposed the transaction fee of 2 paise/kWh and bifurcated the proposed transaction fee as per types of contracts. Regulation 23 of PMR 2021 does not prescribe parameters related to "costs of service".

32. It was reiterated that the Petitioner is not in a position to determine the volumes of transactions that may be executed at any given time in a power exchange as it is a purely voluntary market and the market participants not only choose the market segment and type of contract to participate in but also the power exchange wherein they may choose to operate.

33. The Petitioner only seeks to point out that the Commission, under the provisions of PMR 2021, has defined its role to only approve the transaction fee as sought by power exchanges and not to fix/ determine the transaction fee to be charged by the power exchange(s) in view of their jurisdiction under the Act.

34. The Petitioner is a relatively smaller platform, in comparison with IEX, and limiting the transaction fee to any level below 2 paise/kWh would cause further harm to its already thin margins. That in light of the above, the Commission may enable market coupling which would facilitate equitable distribution of business volume across power exchange platforms and avoid such skewed volumes on any one power exchange. The Petitioner further submitted that any unilateral reduction in transaction

fee may in relative terms affect the operation of the Petitioner's smaller exchange far more adversely, which till now has anyway faced the hardship of compliance to prescribed net worth norms due to the significantly skewed collective transactions segment in the absence of Market Coupling. The constrained financial position would also affect the ability of the power exchange to make future investments for introduction of any new contract since the introduction of any type of contract requires significant efforts by the power exchange in terms of time, expertise, developments of systems and processes and investment in hardware and software.

Reply by HPX:

35. The Petitioner submitted that from the plain reading of Regulation 23, it is evident that the Commission desired to give flexibility to the Power Exchanges with respect to charging of the transaction fees and accordingly the regulation was formulated wherein a ceiling of 2 paisa/kWh was provided.

36. The Petitioner has commenced its operations w.e.f. 06.07.2022 after obtaining appropriate approvals/ orders of this Commission which was based on a detailed and rigorous scrutiny, wherein the Petitioner was able to comply and satisfy all the provisions of the PMR 2021.

37. The contention of the APP is totally dichotomous, as while comparing the transaction with that of a trader, it has been contended that as the trading margin is capped at 2 paise/kWh and accordingly the transaction fees to be charged by Power Exchanges should be 1 paise/kWh. The capping of 2 paise as trading margin is only for a particular type of transaction. The Petitioner submitted that the business model of a trader and that of a power exchange are totally different. The Power Exchange is driven, to a large extent, on the technology platform and a lot of investment goes into development of a robust and reliable technology platform and maintaining the same. It is true that in case of a trader there is a capping of trading margin in certain cases, and the trader is free to charge trading margin within the maximum limit.

38. The Petitioner submitted that the contention of APP that transaction fees should be dependent on the volume of energy traded on the Power Exchange is totally

misconceived and against the present market dynamics. Presently one of the Power Exchanges is in a dominant position having almost 90% of the market share. Thus, in case the transaction fee is made dependent on the volume to be traded on the Power Exchange, the other Exchanges, including the Petitioner herein, will be put in a disadvantageous position.

39. The competition among power exchanges has worked well in most segments like Contingency, Term Ahead Market (TAM), Renewable Energy Certificates (REC) etc. This is reflected in the way the customers in these segments have benefitted. However, there is no competition in two market segments – Integrated Day Ahead Market (IDAM) and Real Time Market (RTM). This is because the design of these segments is such that volume tends to move towards dominant exchange because of concept of benchmark price as perceived by the market and higher liquidity. This has resulted in a market scenario, wherein one of the exchanges enjoys a dominant rather a monopolistic position to the exclusion and detriment of other exchanges.

40. The Petitioner submitted that to encourage competition there is a need to change the market design and introduce “Market Coupling” where price discovery is uniform across the exchanges and the exchanges compete amongst themselves to provide better services and innovative products, resulting in benefit to the customers/stake-holders.

41. The Petitioner further suggested that till the introduction of market coupling, extraordinary profits (above a threshold as decided by the Commission) by a power exchange may be controlled by mandating certain percentage of profits to be contributed to Power System Development Fund (PSDF). Similar mechanism was followed by Securities and Exchange Board of India (SEBI) through Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations 2012 (SECC Regulations). Regulations 33 of the said regulations mandated that every recognized stock exchange shall credit 25% of its profits every year to the Fund of its recognized clearing corporation (core SGF – Settlement Guarantee Fund).

42. The Petitioner has only recently started its operations. Its finances should not be compared with an established exchange having near monopoly from last 14-15 years. Reduction of transaction fee of all exchanges might hurt competition rather than encouraging it. Smaller and new exchanges might not be able to survive at a low transaction fee. Thus, instead of reducing transaction fee, a similar mandatory requirement (as in SECC regulations) of contribution of certain percentage of profits to PSDF may be made for the exchanges in power sector to control extraordinary profits of one exchange. The Commission may leave it open to the Power Exchanges to charge transaction fees within the ceiling of 2 paise per/kWh. This will give flexibility to the Power Exchanges in its operations and encourage healthy competition amongst the players in the market leading to the benefit of the consumers.

Hearing Dated 13.12.2022:

43. Learned senior counsel for the Petitioner, IEX, submitted that Power Market Regulations, 2021 dealing with Power Exchanges is with reference to Section 66 of the Electricity Act, 2003 (Act) which endeavors to promote the development of power market and as such not intended to be extensively regulated. The objective of the opening part of Regulation 23 is to put an upper limit of 2 paise/kWh from each party to a transaction and leave the flexibility to the Power Exchanges to decide on the terms and conditions of the transaction fee to be charged for each type of transaction, so long the transaction fees do not exceed 2 paise/kWh from each party to the transaction.

44. Further the intent of the second proviso of Regulation 23 wherein the Power Exchanges are required to obtain approval of the Commission for the transaction fee to be charged by it based on types of contracts or quantum of transaction or duration of transaction or such other factor(s), is to encourage the Power Exchanges to transparently propose transaction fee within the ceiling of 2 paise/kWh based on various factors as specified to generate healthy competition between the Power Exchanges. In a similar situation involving a trading licensee where the transaction fee is capped at 7 paise/kWh for short term transactions and there is no cap for long term

transactions, flexibility has been allowed to the trading licensee to decide on the trading margin.

45. The proviso cannot be used to determine transaction fee for each Power Exchange based on its revenue and expenditure as it would affect the competition between the Power Exchanges and will be in contravention to the main provision of Regulation 23 wherein ceiling of 2 paise has been specified and the provisions of Section 66 of the Act which binds the Commission to promote competition in the market. The second proviso empowers the Commission to approve the transaction charge depending upon the type of transaction as proposed by the Power Exchange within the ceiling of 2 paise/kWh. If the proviso is to be read in a manner to reduce the ceiling limit provided under the opening part, the opening part is rendered redundant which is against the well settled principle of statutory interpretation that no part is can be considered as redundant. Reference in this regard was made to the following decisions:

i. **Sankar Ram & Co. v. Kasi Naicker, (2003) 11 SCC 699:**

“7. It is a cardinal rule of construction that normally no word or provision should be considered redundant or superfluous in interpreting the provisions of a statute. In the field of interpretation of statutes, the courts always presume that the legislature inserted every part thereof with a purpose and the legislative intention is that every part of the statute should have effect. It may not be correct to say that a word or words used in a statute are either unnecessary or without any purpose to serve, unless there are compelling reasons to say so looking to the scheme of the statute and having regard to the object and purpose sought to be achieved by it. A Constitution Bench of this Court in Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. v. Ram Gopal Sharma [(2002) 2 SCC 244 : 2002 SCC (L&S) 279 : JT (2002) 1 SC 182] while interpreting and considering the effect of the proviso to Section 33(2)(b) of the Industrial Disputes Act, 1947 in para 13 observed: (SCC pp. 252-53)

“13. The proviso to Section 33(2)(b), as can be seen from its very unambiguous and clear language, is mandatory. ... Taking a contrary view that an order of discharge or dismissal passed by an employer in contravention of the mandatory conditions contained in the proviso does not render such an order inoperative or void, defeats the very purpose of the proviso and it becomes meaningless. It is a well-settled rule of interpretation that no part of statute shall be construed as unnecessary or superfluous. The proviso cannot be diluted or disobeyed by an employer. ... The interpretation

of statute must be such that it should advance the legislative intent and serve the purpose for which it is made rather than to frustrate it.”

Once the requirements of Section 55 of the Act are satisfied, the appellant is entitled to the protection of the said section as a bona fide transferee. Taking a contrary view takes away the very protective umbrella specifically made available to a bona fide transferee covered by Section 55. Protection provided for bona fide transfer in Section 55 is in a way an exception to Section 28(7).”
[Emphasis Supplied]

The above position was also reiterated in **State of Punjab v. Gurbaran Singh, (2019) 4 SCC 805**

ii. **Union of India v. Braj Nandan Singh, (2005) 8 SCC 325:**

*“5. The effect of Rule 26 sub-rules (1) and (2) cannot be lost sight of while deciding the question of entitlement to pension. The High Court was not justified in its conclusion that the rule was being torn out of context. After the past service is forfeited the same has to be excluded from the period of qualifying service. The language of Rule 26 sub-rules (1) and (2) is very clear and unambiguous. **It is trite law that all the provisions of a statute have to be read together and no particular provision should be treated as superfluous.** That being the position after the acceptance of resignation, in terms of Rule 26 sub-rule (1) the past service stands forfeited. That being so, it has to be held that for the purpose of deciding question of entitlement to pension the respondent did not have the qualifying period of service. There is no substance in the plea of the learned counsel for the respondent that Rule 26 sub-rules (1) and (2) has limited operation and does not wipe out entitlement to pension as quantified in Rule 49. The said rule deals with amount of pension and not with entitlement.”*

[Emphasis Supplied]

46. Further, the 2nd proviso cannot be used as a plenary power under the Regulation to redetermine the ceiling limit of 2 Paise/kWh and fix a lower ceiling limit. If otherwise, there will be an anomalous situation of the basic Statutory Regulation of fixing the ceiling limit of 2 Paise/kwh which necessarily means that the Regulation 23 does not wish to go into the determination of the actual transaction fee so long it does not exceed 2 Paise per transaction per party, but by an Order approving the transaction fee. Under the 2nd proviso, the Commission cannot fix that the transaction fee shall not exceed a different amount as the Order will be then ultra-vires the Regulations which are also binding on the Commission. Reference was made to the decision made in the case of PTC India Ltd. v. CERC [(2010)4 SCC 603]:



“37. On the above analysis of various sections of the 2003 Act, we find that the decision-making and regulation-making functions are both assigned to CERC. Law comes into existence not only through legislation but also by regulation and litigation. Laws from all three sources are binding. According to Professor Wade, “between legislative and administrative functions we have regulatory functions”. A statutory instrument, such as a rule or regulation, emanates from the exercise of delegated legislative power which is a part of administrative process resembling enactment of law by the legislature whereas a quasi-judicial order comes from adjudication which is also a part of administrative process resembling a judicial decision by a court of law. (See Shri Sitaram Sugar Co. Ltd. v. Union of India [(1990) 3 SCC 223])”

[Emphasis Supplied]

Additional Submission by IEX:

47. The additional submissions were mostly containing the submissions which have already been made by the Petitioners. The Petitioner submitted that micro managing the transaction fee is against the spirit of competition; transaction fee should not be regulated in a voluntary market; transaction fee is critical to the value creation by the power exchanges; transaction fee has not acted as a hindrance to the market development and any further reduction in the cap will create entry barriers and stifle the competition in the market. The Petitioners submitted that the Commission has allowed a trading margin of 7 paise/unit to the Trading licensee whereas the power exchanges are providing higher value including payment security to the market participants. The Petitioners also highlighted that the market is still in its early stages and recently significant changes have been brought by the Commission and Ministry of Power, the implications of which on the market are required to be assessed before any further reduction on transaction fee is considered.

Analysis and Decision

48. Regulation 23 of the PMR 2021 provides a ceiling of 2 paise/kWh on the transaction fees to be charged by the Power Exchange on either party to the transactions and further provides that the Power Exchanges shall be required to obtain approval of the Commission for the transaction fees to be charged by the Power Exchanges within a period of six months from the date of coming into force of these Regulations. Regulation 23 of the PMR 2021 has been reproduced below:



“23. Power Exchange transaction fee

No Power Exchange shall charge transaction fee exceeding 2 (two) paise/kWh from either party to the transactions covered under Clauses (1) to (3) of Regulation 5 of these regulations:

Provided that transaction fee shall not include the charges for scheduled energy, open access (transmission charge, operating charge and the application fee) and transmission losses:

Provided further that the Power Exchanges shall be required to obtain approval of the Commission for the transaction fee to be charged by the Power Exchanges based on types of contract or quantum of transaction or duration of transaction or such other factor(s) as may be proposed by the Power Exchanges within a period of six months of the date of coming into force of these regulations or six months from the date of registration of the Power Exchange, whichever is later.”

49. As required under Regulation 23 of PMR 2021 and in accordance with the direction given vide orders dated 26.04.2022 in Petition No. 46/MP/2022 and Petition No. 285/MP/2021, the Petitioners have filed the petitions for approval of the transaction fees. The Petitioners have proposed to continue to charge a transaction fee of up to 2 paise/kWh on either party to the transactions for the contracts specified under Clauses (1) to (3) of Regulation 5. The Petitioner, IEX has alternately proposed to charge transaction fees based on the duration of the contract, that is, up to 2 paise/kWh, 1.75 paise/kWh, and 1.5 paise/kWh on either side of the transactions for the contracts with duration of 0 to 1 month, 1 to 6 months, and beyond 6 months respectively.

50. We have considered the submissions made by the Petitioners and assessed the proposal of all the three Petitioners. We have analyzed the different aspects relating to transaction fees, as submitted by the Petitioners, in the subsequent paragraphs.

Comparison with Trading Margin

51. The Petitioners have submitted that the transaction fee charged by them is lower than the trading margins permitted to the trading licensees, even though the services provided by the Power Exchange platform are unique, i.e., provision of fair,

transparent and neutral platform for executing transactions, efficient price discovery mechanism, quick dissemination of information, robust payment security mechanism, provision of customized transaction reports to Member/Client, etc. In this context the Commission notes based on the report of the Market Monitoring Cell that average trading margin charged by the traders has been between 3 to 4 paisa/kWh which is much lower than the ceiling of 7 paisa/kWh allowed by the Commission. This is due to the presence of, and competition among the large number of trading licensees (48 as on January 2023) in the sector. Therefore, the comparison drawn by the Petitioners with the trading margin is misplaced.

Effect on Competition

52. The Petitioners have submitted that allowing the Power Exchanges to charge a transaction fee up to 2 paise/kWh on either side of the transactions will provide flexibility to the Exchanges and promote competition and efficiency in the market. In this regard, we note that the underlying idea of having multiple Power Exchanges in India was to promote competition among the Exchanges. The Commission has always endeavored to increase innovation and efficiency in the marketplace by increasing competition among the power exchanges. However, we observe that even after the completion of more than 14 years since the two Power Exchanges (IEX and PXIL) started their operations, one Power Exchange has the predominant market share. We have also observed that the new Exchange, namely HPX is still in the process of introducing new contracts and stabilizing its operations. The Power Exchanges have been charging the same transaction fees even before the PMR 2021 came into force. Accordingly, all the three Power Exchanges have proposed that the same level of transaction fees be continued.

53. We are of the view that, at this stage, any change in the transaction fee might hurt competition rather than promoting it. The smaller Exchanges may find it difficult to sustain with the reduction in transaction fees, which will negatively affect competition in the market. At the same time, it may not be prudent to keep a differential transaction fee for different Power Exchanges on the basis of volume traded as this

may distort the participation across the Exchanges and may also provide perverse incentives to the Exchanges.

Recent Developments and Challenges

54. We have noted that in the recent past, due to supply shortages, high imported fuel prices due to geo-political tensions, and an increase in electricity demand, the prices discovered in the spot market witnessed a significant increase. Consequent to this the Commission imposed a price cap across all the market segments in the Power Exchanges, in the consumer interest. Besides, the Commission is in the process of implementing various regulations, viz., Indian Electricity Grid Code, General Network Access, Sharing of Transmission Charges, Ancillary Services, Deviation Settlement Mechanism, etc., having a significant bearing on the market. The impact of all of these developments on the market can only be assessed over a period of time.

55. Regulation 23 of the PMR 2021 provides that no Power Exchange shall charge transaction fee exceeding 2 (two) paise/kWh from either party to the transactions covered under Clauses (1) to (3) of Regulation 5 of these regulations. Based on the reasons discussed above, the Commission hereby accords approval to the Power Exchanges to charge a transaction fee up to the ceiling of 2 paise/kWh on either side of the transactions. We also direct the staff of the Commission to examine all the factors that have a bearing on transaction fees, including the risks involved in Power Exchange operations, international best practices, etc., and prepare a discussion paper on the same. The Commission shall accordingly, and as and when deemed necessary, take a view regarding transaction fees to be charged by the Power Exchanges.

56. Further, with regard to the submissions made by the Petitioners PXIL and HPX, regarding the introduction of Market Coupling and use of Settlement Guarantee Fund, the Commission is of the view that these are beyond scope of the present petitions and shall be dealt separately in due course of time.



57. Petition No. 143/MP/2022, Petition No. 178/MP/2022 and Petition No. 88/MP/2022 are disposed of in terms of the above.

**Sd/
P. K. Singh
(Member)**

**Sd/
Arun Goyal
(Member)**

**Sd/
I. S. Jha
(Member)**

