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Derivatives In The Electricity Market

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WORKSHOP

AGENDA

Session Details	Speakers	Timings
Opening Remarks	Mr. Harry Dhaul Director General, IPPAI	10:00 – 10:30
Keynote Address: Regulatory and Policy Overview of Electricity Derivatives	Ms. Yogieta S. Mehra Chief (Economics), CERC	10:30 – 11:00
Difference between Electricity Derivatives and Financial Derivatives Role of Energy Exchanges	Mr. Satyajit Ganguly, Former MD, PXIL	11:00 – 11:30
Evolution of Power Markets and Electricity Derivatives in India	Mr Balawant Joshi, Founder & MD, IDAM	11:30 – 12:00
Electricity Futures in India (Product Details)	Ms. Ruchi Shukla, Head- Energy, MCX	12:00 – 12:30
Market Coupling and Electricity Derivatives	Mr. S K Soonee, Former CEO, POSOCO	12:30 – 13:00
Global Perspective on Electricity Derivatives	Mr. Awadhesh Kumar, International Derivatives Trader	13:00 – 13:30
Panel Discussion		13:30 – 14:30

BRIEF NOTE ON ELECTRICITY DERIVATIVES IN INDIA

The enactment of the **Electricity Act, 2003** was a significant reform in India's Power Sector, aiming to introduce competition, ensure efficiency, and promote transparent market mechanisms. Among its provisions, **Section 66** of the Act provides that the **Appropriate Commission** - either the Central or the State Commission - shall endeavor to promote the development of a power market in a manner specified by the Commission and guided by the National Electricity Policy.

In **2006**, the Central Electricity Regulatory Commission (CERC) floated a Staff Paper on 'Developing a Common Platform for Electricity Trading' pursuant to which the CERC passed an order dated 18.01.2007 containing 'Statement of Reasons' for development of a common platform for electricity trading towards the establishment and management of the power exchange. Thereafter, the CERC vide its order dated 06.02.2007 laid down the 'Guidelines for the grant of permission for setting up and operation of Power Exchange'. In pursuance thereof, the **Indian Energy Exchange (IEX)** and **Power Exchange India Limited (PXIL)** were introduced in the year **2008** as licensed trading platforms to facilitate organized transactions in the short-term and day-ahead markets.

In **2009**, the launch and execution of electricity forward contracts viz. 'term ahead delivery based contracts' on power exchanges was enabled by the CERC vide its order dated 31.08.2009. The then Future Market Commission (FMC), now SEBI, communicated its objection with regard to the term ahead delivery contracts to the Commission vide letter dated 23.09.2009 that such contracts could not be launched by power exchanges without having to obtain a certificate of registration from the FMC on the ground that these contracts envisage delivery after a period of more than 11 days and that these are a category of forward contracts. Subsequently, FMC moved to the Bombay High Court challenging the validity of the CERC's order dated 31.08.2009 and also issued show cause notices to the power exchanges.

The Ministry of Power (MoP) vide its letter dated 30.09.2009 requested information from the Commission in the above matter. The MoP had even earlier, vide letter dated 30.08.2009, sought views of the CERC on the letter dated 07.08.2009 written by PXIL wherein PXIL had raised two issues highlighting – (i) the need to revoke the notification of the Ministry of Consumer Affairs dated 09.01.2006 under Section 15 of the FCRA vide which electricity was brought under the purview of FCRA and, (ii) raised a concern that such proposed amendments to FCRA may dilute CERC's

regulatory role over power markets, including trading in electricity forwards, futures and electricity derivatives and consequently, undermine MoP's oversight of the electricity sector's development.

In this context, the **CERC addressed a letter** to the Ministry of Power (MoP) vide letter dated 18.09.2009 with the subject 'Advice of the Commission on issues relating to regulation of electricity forward contracts and electricity derivatives markets' wherein it raised concerns over overlapping jurisdiction between the regulators as dual oversight could confuse power market development and dampen investor confidence which will be contrary to consumer interest. The CERC asserted that the Electricity Act, 2003 being a self-contained legislation entrusts sectoral regulation to the regulatory commissions while the Forward Contracts (Regulation) Act, 1952 governs forward trading in essential commodities. The CERC further mentioned that Section 18 of the FCRA specifically exempts non-transferable specific delivery (NTSD) contracts from regulatory oversight of the Central Government unless a specific notification under Section 18(3) is issued declaring which classes of NTSD contracts are to be regulated. Further, CERC flagged that electricity derivatives, being intrinsically linked to spot markets, require market maturity and regulatory clarity. The CERC had earlier urged de-notification of electricity under the FCRA vide letter dated 26.04.2006 and emphasized that FMC's intervention risks market growth.

Thus, in view of the above, the CERC in its letter of advice addressed to the Central Government recommended – (i) the Central Government to de-notify electricity under Section 15 of the FCRA to enable unified regulation of power markets solely by CERC, (ii) mentioned FMC's objection to 'term ahead delivery based contracts' is not sustainable and expressed the need to issue an appropriate amendment to Section 14A or 18(1) of the FCRA to the effect that **Electricity NTSD Contracts are expressly excluded from FMC registration requirements.**

Thereafter, the CERC notified **Power Market Regulations, 2010** on 20.01.2010 purporting to exercise jurisdiction over forward contracts and futures in electricity. In response, MCX and FMC filed writ petitions before the Bombay High Court challenging the said Regulations on the ground of arbitrariness, malafied intent, violative of Article 14 of the Constitution and that the regulations unjustly bar them from entering forward contracts.

The **High Court of Judicature at Bombay**, vide order dated 07.02.2011 passed in Writ Petition No. 1197 of 2010 & 1604 of 2009, **declared certain parts of the CERC's Power Market Regulations, 2010 to be inoperative to the extent which deals with the aspects of future contracts or forward contracts.** The Court further held that neither the FMC nor the CERC, or the authorities/commissions under their authority had sole or exclusive jurisdiction to regulate and control forward trading or future contracts in electricity.

The Bombay High Court declared¹:

“The regulations of CERC as notified on 20 January 2010, which deal with the aspects of futures contracts or forward contracts, are inoperative to that extent only.”

Further, the Court held that:

‘Neither the Forward Market Commission nor the CERC enjoys sole or exclusive jurisdiction over forward trading/future contracts in electricity.’

Pursuant thereto, separate appeals were filled before the Hon’ble Supreme Court through multiple Special Leave Petitions (SLPs) challenging the order passed by the Bombay HC. These appeals remained pending for nearly a decade.

During the pendency of the appeals, the **Ministry of Power** constituted a **Committee on Efficient Regulation of Electricity Derivatives**. The said Committee issued an **Office Memorandum** dated 10.07.2020 which laid down the settled terms delineating the respective jurisdictions of the Securities and Exchange Board of India (SEBI) and the Central Electricity Regulatory Commission (CERC), as agreed upon by the parties as follows –

“All ready delivery contracts and Non-Transferable Specific Delivery Contracts (NTSDCs) in electricity, wherein the rights and liabilities are not transferable, entered into by members of the power exchanges registered by the CERC shall be regulated by the CERC.”

“All commodity derivatives in electricity other than NTSDCs shall fall under the purview of SEBI.”

These settled terms reinstated the 2009 advisory line, delineating the jurisdictions of the SEBI and the CERC with respect to NTSDCs and commodity derivatives in electricity other than NTSDCs.

The **Hon’ble Supreme Court**, vide its order dated 06.08.2021, disposed of the appeals with the consent of parties and held that the challenge to the impugned order of the Bombay HC no longer survives. The Hon’ble SC further directed the parties to abide by the terms and conditions as recommended by the Committee and the Office Memorandum in its letter and spirit.

The Court held:

“The parties are directed to abide by the terms and conditions as recommended by the Committee on Efficient Regulation of Electricity Derivatives and the Office Memorandum dated 10.07.2020 issued by the Ministry of Power in its letter and spirit.”

As per this framework, **CERC** now regulates **Non-Transferable Specific Delivery Contracts (NTSDCs)** while **SEBI** regulates **all other electricity commodity derivatives other than NTSDCs**.

Following this, MCX and NSE announced the launch of the Electricity Futures Contract with effect from July 10, 2025 – marking the first operationalization of SEBI's regulatory mandate in the electricity derivatives market. These contracts are: Standardized, exchange-traded and Cash-settled - Regulated under SEBI's commodity derivative framework.

This launch represents a watershed moment transitioning India's Electricity sector from pure physical procurement models to hybrid price-risk markets, enabling hedging, transparency, and financial innovation thus, signifying a notable development in India's power markets.

Further, the CERC has also released the **draft CERC (Power Market) (First Amendment) Regulations, 2025** through which CERC is proposing amendment in the form of recognition of Virtual Power Purchase Agreements (VPPAs) in relation to the Indian power market. The said draft regulations are yet to be notified.



JURISDICTIONAL FRAMEWORK OF ELECTRICITY DERIVATIVES

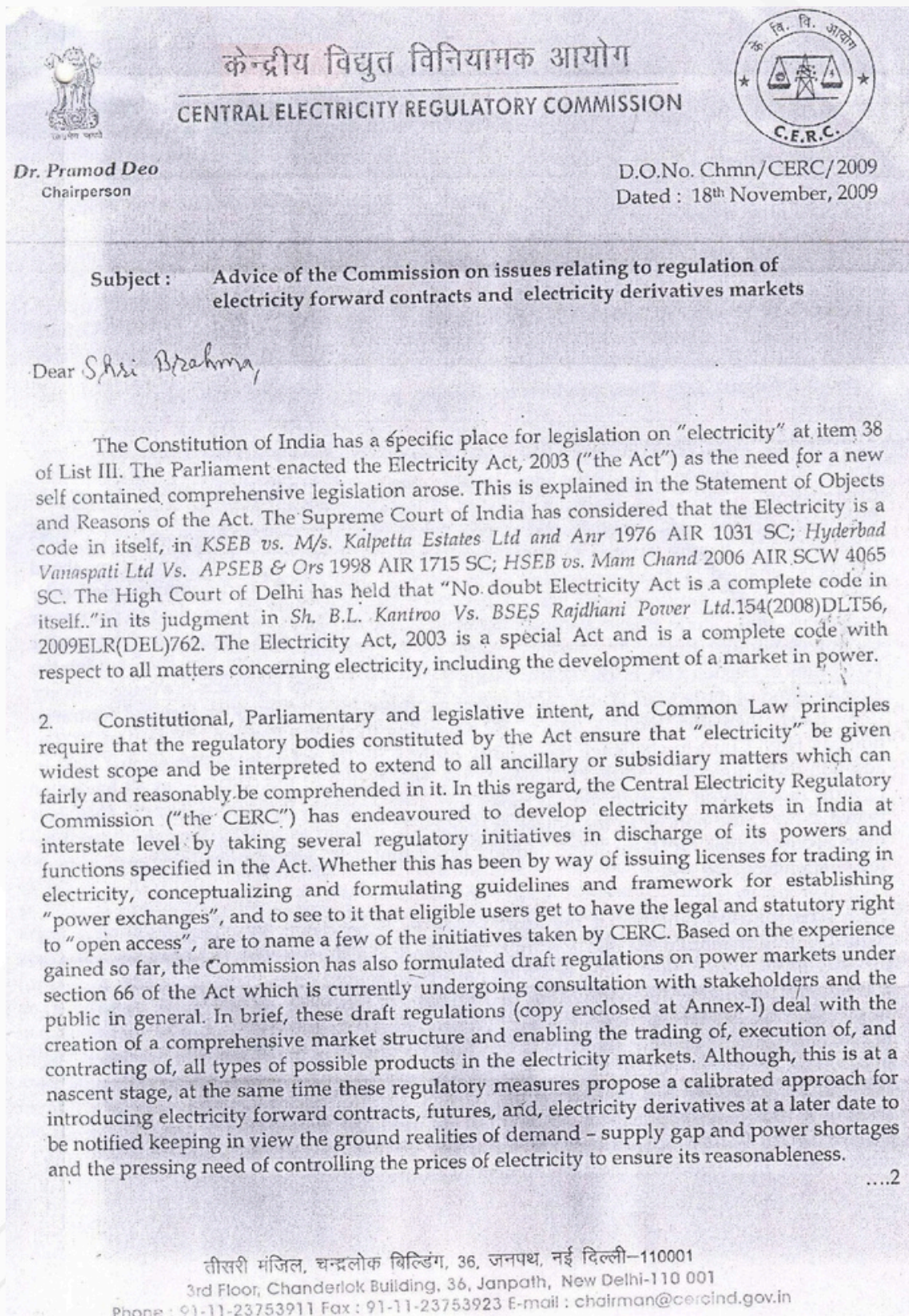
The following table outlines the regulatory framework and legal position with respect to NTSDCs and commodity derivatives other than NTSDCs, highlighting the roles of regulators after delineating the respective jurisdictions of the SEBI and the CERC in light of the Hon'ble SC judgment.

Aspect	Before 2021 (Pre-SC Order)	After 2021 (Post-SC Order & MoP Office Memo 2020)
Regulator for Spot, real-time, and Term-Ahead Markets	CERC through power exchanges (IEX, PXIL)	CERC
Regulator for Forward/Futures	Claimed by CERC; challenged in court	CERC – All ready delivery contracts and Non-Transferable Specific Delivery Contracts (NTSDCs) SEBI – All commodity derivatives other than NTSDCs
Regulatory Status	Potential Regulatory overlap; litigation pending (Bombay HC struck down CERC's regulation in 2011)	Clear jurisdictional delineation between CERC (NTSDCs) and SEBI (commodity derivatives other than NTSDCs)



ANNEXURE-A (1/7)

Advice of the CERC on issues relating to regulation of electricity forward contracts and electricity derivatives markets



ANNEXURE-A (2/7)

Advice of the CERC on issues relating to regulation of electricity forward contracts and electricity derivatives markets

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3. In due discharge of its statutory responsibility, the Commission had floated a Staff Paper on "Developing a Common Platform for Electricity Trading" in July, 2006 inviting comments/suggestions from the stakeholders and the interested parties/persons on the viability, structure, management and operational arrangement of power exchange. Thereafter, the Commission passed an Order dated 18.1.2007 (in Petition No. 155 / 2006) which contained the 'Statement of Reasons' for 'Development of a common platform for electricity trading' towards the establishment and management of the Power Exchange. Thereafter, the Central Commission laid down the 'Guidelines for the grant of permission for setting up and operation of Power Exchange' vide its Order dated 6.2.2007 (in Petition No. 155/2006). The launching and execution of a specie of electricity forward contracts viz., "term ahead delivery based contracts" on power exchanges have also been enabled vide the Commission's order dated 31st August 2009. These products are delivery based.

4. While one considers the foregoing Constitutional, Parliamentary and legislative intent, and Common Law principles as also, the several regulatory measures by the Commission on one hand, issues of collision of jurisdiction raised by the Forward Market Commission ("the FMC") constituted under the Forward Contract (Regulation) Act, 1952 ("the FCRA"), require special consideration. Recently, with regard to the "term ahead contracts" enabled by the Commission as mentioned above, FMC had communicated their objection to the Commission vide letter dated 23rd September, 2009 also marked to the power exchanges, that "term ahead delivery based contracts" could not be launched by power exchanges without having to obtain a certificate of registration from the FMC under the provisions of Section 14A of the FCRA on the ground that these contracts envisage delivery after a period of more than 11 days, and therefore, these are a category of forward contracts. Immediately thereafter, the FMC moved for amending their Writ Petition No. 1604 of 2009 in Bombay High Court to challenge the validity of the CERC's order dated 31st August 2009 in addition to its already pending challenge to the jurisdiction of the CERC to at all have any powers, functions or oversight on electricity forward contracts. It is learnt that the FMC has issued show cause notices to the power exchanges to explain as to why they should not be penalised for launching "term ahead delivery based contracts" without obtaining certificate of registration from the FMC.

5. The Ministry of Power ("the MoP") vide its letter dated 30th September, 2009 has requested information in the above matter. Reference is also necessary to MoP's letter dated 31st August, 2009 in which views of CERC have been sought on the letter dated 7th August, 2009 (copy enclosed at Annex-II) written by PXIL, one of the power exchanges, to the MoP. In this letter, PXIL has raised two issues, viz., (1) need to revoke the notification of the Ministry of Consumer Affairs dated 9th January, 2006 under section 15 of the FCRA bringing electricity under the purview of FCRA; and (2) raising a concern that the proposed amendments to FCRA in the offing would undermine the powers, functions and regulatory role of CERC pertaining to the development of power markets including trading in/of diverse contracts such as electricity forwards, futures and electricity derivatives and consequent undermining of the role of MoP in guiding the development of electricity sector as a whole.

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ANNEXURE-A (3/7)

Advice of the CERC on issues relating to regulation of electricity forward contracts and electricity derivatives markets

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6. Before commenting on the issues involved in the matter, it needs to be highlighted that development of power markets in India has to be a calibrated exercise. We require the power markets for incentivizing new investments but at the same time power market needs to be very carefully regulated to control the volatility of the prices. Multiple regulatory oversight and collision (real or perceived) of jurisdiction of regulators under separate legal regimes and enactments, both will lead to confusion in this exercise and consequently would lead to either dampening the investors' confidence or lead to un-controlled speculation which will go against the interest of the consumers.

7. Certain important points relating to the matter are mentioned briefly in the succeeding paragraphs.

7.1 The Electricity Act has been enacted by the Parliament as a self contained comprehensive legislation and a complete code in itself for power sector. Regulatory Commissions as expert bodies have been created under the Act and empowered to govern all matters related to power sector. The superior position of the Electricity Act over other laws has been recognized by the Supreme Court in its judgement reported as Gujarat Urja Vikas Nigam Ltd., Vs. Essar Power Ltd. [(2008) 4 SCC 755]. The Hon'ble Supreme Court held that-

"57. in our opinion the principle laid down in Section 174 of the Electricity Act, 2003 is the principal or primary whereas the principle laid down in Section 175 is the accessory or subordinate to the principal. Hence Section 174 will prevail over Section 175 in matters where there is any conflict (but no further).

58. In our opinion Section 174 and Section 175 of the Electricity Act, 2003 can be read harmoniously by utilizing the samanasya, badha and gunapradhana principles of Mimamsa. This can be done by holding that when there is any express or implied conflict between the provisions of the Electricity Act, 2003 and any other Act then the provisions of the Electricity Act, 2003 will prevail, but when there is no conflict, express or implied, both the Acts are to be read together." [Emphasis added]

7.2 FCRA was enacted by the Parliament in the year 1952 in the context of the need for controlling speculation in essential commodities such as foodgrains, oil seeds, spices, sugar, raw cotton and controlling forward trading in such commodities. A copy of the Statement of Objects and Reasons (SOR) of FCRA is enclosed at Annex-III which specifically provides that the regulatory provisions of this Act will be extended by notification to different classes of goods and to different areas as and when necessary. It has been further stated that the provisions of this Act will apply to non-transferable special delivery contracts only in certain areas to be notified by the Central Government. Amendments to FCRA enacted in 1960 are also relevant in this matter. This amendment added Chapter III-A to FCRA which provided for registration with FMC to be obtained by all associations concerned with the regulation and control of business relating to forward contracts. The SOR of the amended Act have also been extracted in Annex-III which clarifies that the intention of the amending Act was only to improve the enforcement of the 1952 Act and there is not a whisper in the SOR of the amending Act that the intent of the parent Act that the regulatory provisions will be extended by notification to different classes of goods and to different areas was being altered through the amendment.

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ANNEXURE-A (4/7)

Advice of the CERC on issues relating to regulation of electricity forward contracts and electricity derivatives markets

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7.3 Briefly, by a notification under section 15 of the FCRA (as has been done for electricity), the provisions of FCRA are invoked for forward contracts in that commodity. However, section 18 of the FCRA specifically exempts non-transferable specific delivery (NTSD) contracts from the regulatory oversight or control of the Central Government under the FCRA. If at all non-transferable specific delivery contracts are to be regulated or controlled under the FCRA the Central Government has to, in terms of subsection (3) of Section 18 of the FCRA, issue a notification in the official Gazette declaring that non-transferable specific delivery contracts are to be regulated or controlled under the FCRA and further as to which class or classes of non-transferable specific delivery contracts in specific area in respect of specific goods or class of goods are to be specified in the said notification besides the manner in which and the extent to which such regulatory oversight or control is to apply. Importantly, thus, non-transferable specific delivery contracts cannot be regulated or controlled under the FCRA simply by virtue of a notification issued under section 15 of the FCRA. At this point, it is relevant to state that power purchase agreements including the ones which have been entered into for sale of power from ultra-mega power projects are non-transferable specific delivery contracts, as the rights and obligations are not transferable and they are specific in delivery by way of predetermined price, quantity, seller and buyer.

7.4 As the position goes, that non-transferable specific delivery contracts cannot be regulated or controlled under the FCRA simply by virtue of a notification issued under section 15 of the FCRA, the least that can be said is that FMC's objection to "term ahead delivery based contracts" without obtaining certificate of registration from the FMC, as conveyed vide letter dated 23rd September, 2009, is not sustainable. Noticeably, FMC has not produced any notification in terms of subsection (3) of Section 18 of the FCRA declaring that non-transferable specific delivery contracts in electricity are to be regulated or controlled under the FCRA. To expressly exempt NTSD contracts from regulation and control of the Central Government on one hand under Section 18(1) of the FCRA while at the same time retain the power to regulate and control NTSD by the FMC, does not appear to be the legislative intent. This issue needs special consideration.

7.5 However, the larger issue that remains is the statutory mandate of the CERC to develop power markets. The desirability of introducing derivatives in electricity needs to be determined keeping in view the larger public interest. Derivative contracts as the name suggests *derives* their value from the underlying asset. In case of electricity derivative contracts it derives its value from electricity spot markets (Day ahead market in Indian markets). Hence derivative markets and spot markets are very closely coupled as far as price discovery is considered. If introduced at an appropriate time when the spot markets in the concerned commodity have matured and developed sufficient liquidity, the economic purpose served by derivatives market is that it allows participants to hedge and undertake price risk management. These markets are finally for the benefit of the sector players by

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ANNEXURE-A (5/7)

Advice of the CERC on issues relating to regulation of electricity forward contracts and electricity derivatives markets

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acting as a risk transfer platform. Hedging leads to cash flow certainty and thus reduces the cost of debt for any company as the bankers are assured of debt servicing. These underscore the importance of the derivative contracts for the power sector participants. Looking at spot market and derivative market in isolation (as is intended by FMC) and the attempt to bifurcate the jurisdiction, powers, functions, and regulatory oversight between two different regulators under separate legal regimes and enactments will possibly lead to confusion for the public, collision for the regulatory bodies, and would therefore be detrimental to the development of power markets which are at nascent stage i.e. spot market is still facing serious liquidity problem. A major risk perceived is that presently there is a supply demand deficit in power. Creating a financially settled derivative market may lead to abrupt increase in prices of electricity. The timing of introduction of derivatives should be to lead to a systematic development of power markets which is one of the statutory mandates of CERC.

7.6 This dimension is also supported by the information posted by FMC on its website as FAQ (frequently asked questions). An extract of questions 7 to 10 is at Annex-IV. In the answer to Q.No.10, it has been said that for a commodity to be suitable for futures trading it must, inter alia, have large volume and marketable surplus, should be free from substantial control from government regulations (or other bodies) and should be storable. These three conditions are obviously not met by the electricity at the present juncture. Hence, electricity is not suitable for non delivery based future trading especially in present period of shortages. In reply to Q.No.7 in FAQ, it has been published on the website of FMC that though the Forward Contracts (Regulation) Act, 1952, contains enabling provisions to regulate or prohibit such contract in notified goods, the Government have freed N.T.S.D. contracts from regulation or prohibition by issue of notification No. 369(E) dated 1.4.2003.

7.7 Under FCRA, forward contract means a contract for the **delivery of goods** and which is not a ready delivery contract. The aspect of 'delivery of goods' is relevant here. The whole scheme of FCRA is to permit forward contracts which are to be delivered but the data extracted from the websites of NCDEX and MCX and placed at Annex-V show that most of the future contracts being traded by these exchanges are not being delivered. This shows that the future trading currently in commodities is ultimately largely leading to financial settlement and not delivery of actual commodities. In its aforesaid writ petition filed in the Bombay High Court in which CERC is the main respondent, FMC has in one of the affidavits that has been filed conceded this point and has stated therein that the nature of future contracts is such that it seldom results in delivery. An extract of the relevant para of the writ petition filed by FMC is enclosed at Annex-VI. This ground situation is perhaps not in consonance with the provisions of the FCRA which defines forward contracts as a "contract for delivery". Therefore creating a financially settled derivative market in electricity in the present situation of shortages may lead to abrupt increase in prices.

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ANNEXURE-A (6/7)

Advice of the CERC on issues relating to regulation of electricity forward contracts and electricity derivatives markets

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7.8 Prices in power markets have been a matter of concern from various quarters. Recognizing this important dimension for the power markets, CERC resorted to price cap recently for a period of 45 days.

8. In view of the above, the following points emerge:

- a) The power markets in electricity are in a nascent and evolving stage and they need consistent, unified and clear regulatory approach. Regulatory overlap/confusion would result in consequences inconducive to the electricity sector. Market in electricity needs to be governed by the provisions of the Electricity Act, 2003 which is complete and comprehensive as far as the subject of electricity is concerned. Any avoidable intervention under the provisions of any other law would cause confusion. This is also the legislation intent as expressed by overriding provisions of the section 174 of the Electricity Act.
- b) CERC has been taking various initiatives to shape up the power markets which as aforesaid are at a nascent stage and is also framing comprehensive power market regulations in consultation with all concerned. The National Electricity Policy provides in its para 5.7.1 that development of power market would need to be undertaken by the appropriate commission in consultation with all concerned. It is to be noted that the National Electricity Policy was approved by the Cabinet and notified under the statutory provisions whereas notification dated 9th January 2006 under FCRA regarding electricity was done apparently without any public consultation. Not even the sector regulator was consulted whereas the National Electricity Policy mandates consultation with all concerned. The CERC had raised this issue of this notification in its letter dated 26th April, 2006 (Annex-VII) and requested the Ministry of Power to consider the issue of appropriately taking up the need of de-notification of electricity from the said notification. As already mentioned above, FMC's objection to "term ahead delivery based contracts" is not sustainable. FMC is functioning under FCRA and provisions of FCRA are to be applied to the commodities and areas as notified by the Central Government. Ignoring the provisions of FCRA and going by the mere text of section 14A, the act of issuing notices by FMC to power exchanges regulated by the CERC, needs to be urgently given consideration. This is at the least creating avoidable confusion in this sector which in turn has the potential of dampening the investment climate and creating significant doubt in the minds of the stakeholders about products being offered by the power exchanges thereby creating a major hindrances for a unified and systematic development of power market that is being undertaken by CERC.

9. In view of the above, CERC under the provisions of section 79(2) of the Electricity Act, 2003, advises the Central Government (Ministry of Power) that in the interest of smooth development of power markets in India and for facilitating promotion of investment in electricity sector and also for protecting the interest of the consumers :

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ANNEXURE-A (7/7)

Advice of the CERC on issues relating to regulation of electricity forward contracts and electricity derivatives markets

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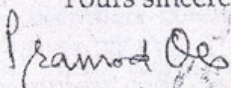
- a) Central Government should de-notify electricity under section 15 of FCRA so that power markets are regulated with a unified and calibrated approach solely by a sector regulator viz. CERC without the risk of having to collide with FMC, in conformity with the provisions of Electricity Act 2003. Electricity derivatives would be launched in the country with the regulatory oversight of the CERC (including the manner in which the same would be exercised).
- b) To take up the need to issue an appropriate amendment to Section 14A or Section 18(1) of FCRA to the effect that Electricity NTSD Contracts are expressly excluded from the requirement to obtain registration of the FMC as in any case, NTSD Contracts under the FCRA are exempted from regulation and control of the Central Government under FCRA. Further, the amendment could exclude electricity all together since it has a peculiar nature of not being storable which is different from the goods generally regulated under the FCRA.

With regards,

Encls : as above

Shri Harishankar Brahma
Secretary (Power)
Ministry of Power
Government of India
Shram Shakti Bhawan
Rafi Marg, New Delhi

Yours sincerely,


(Dr. Pramod Deo)

ANNEXURE-B (1/4)

Order dated 06.10.2021 passed by the Hon'ble Supreme Court in Civil Appeal No(s). 5290-5291/2011

1

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL Nos.5290-5291 OF 2011

POWER EXCHANGE OF INDIA LTD.THROUGH VICE PRESIDENT ... APPELLANT

Versus

SECURITIES AND EXCHANGE BOARD OF INDIA ETC. ... RESPONDENTS

WITH

C.A.Nos.6311-6314 of 2021 @ SLP(C) Nos.17300-17303/2011
C.A. Nos.5292-5295/2011

O R D E R

The Court is convened through Video Conferencing.

Leave granted in SLP (C) Nos.17300-17303 of 2011.

The present appeals pertain to the issue of future contracts/markets in the electricity sector. The question before the High Court of Bombay was whether such contracts would be under the jurisdiction of the Central Electricity Regulatory Commission and the Electricity Act or the Future Markets Commission (now merged with SEBI) under the Forwards Contract Regulation Act.

The High Court in the impugned common judgment declared certain parts of the CERC (Power Markets) Regulations, 2010 relating to future and forward contracts to be inoperative and held that neither the Forward Market Commission (as it then was) nor the Central Electricity Regulatory Commission, or the authorities/commissions under their authority had sole or exclusive jurisdiction to regulate and control forward trading/future contracts in electricity.

Separate appeals were filed challenging the above order before this Court which have been tagged and are being heard together. The present applications have been placed on record in all the appeals which have been listed before this Court seeking the disposal of the appeals based on the settled terms agreed upon

Signature Not Verified
Digitally signed by SATISH KUMAR KADAV
Date: 2021.10.06
13:21:43 GMT
Reason: I am the signatory

ANNEXURE-B (2/4)

Order dated 06.10.2021 passed by the Hon'ble Supreme Court in Civil Appeal No(s). 5290-5291/2011

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by the parties. These terms, delineating the respective jurisdictions of the Securities and Exchange Board of India and the Central Electricity Commission, have been formulated by the Committee on Efficient Regulation of Electricity Derivatives constituted by the Ministry of Power during the pendency of the present appeals before this Court.

Heard the submissions of the learned Solicitor General of India and the learned counsel appearing for the parties.

We have perused the applications and the settled terms placed on record. Without commenting on the proposed terms, we permit the authorities to take the necessary steps in pursuance of the same, in accordance with law.

Consequently, the present challenge to the impugned order of the High Court of Bombay no longer survives. IA No. 45808 of 2020 in C.A. Nos. 5290-91 of 2011, IA No. 179508 of 2019 in CA Nos. 6311-6314 of 2021 (arising out of SLP (C) Nos. 17300-17303/2011) and IA No. 178398 of 2019 in CA Nos. 5292-5295 of 2011 are allowed. The appeals are accordingly disposed of with the consent of the parties.

The parties are directed to abide by the terms and conditions as recommended by the Committee on Efficient Regulation of Electricity Derivatives and the Office Memorandum dated 10.07.2020 issued by the Ministry of Power, Government of India in its letter and spirit.

.....CJI.
(N.V. RAMANA)

.....J.
(SURYA KANT)

.....J.
(HIMA KOHLI)

NEW DELHI;
OCTOBER 06, 2021.

ANNEXURE-B (3/4)

Order dated 06.10.2021 passed by the Hon'ble Supreme Court in Civil Appeal No(s). 5290-5291/2011

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ITEM NO.16

Court 1 (Video Conferencing)

SECTION IX

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No(s).5290-5291/2011

POWER EXCHANGE OF INDIA LTD.THROUGH VICE PRESIDENT

Appellant(s)

VERSUS

SECURITIES AND EXCHANGE BOARD OF INDIA ETC.

Respondent(s)

IA No.45808/2020 - CLARIFICATION/DIRECTION
WITH

SLP(C) Nos. 17300-17303/2011 (IX)

(FOR CLARIFICATION/DIRECTION ON IA 179508/2019

FOR EARLY HEARING APPLICATION ON IA 83033/2021

IA No.179508/2019 - CLARIFICATION/DIRECTION

IA No.83033/2021 - EARLY HEARING APPLICATION)

C.A. Nos.5292-5295/2011 (IX)

(FOR APPROPRIATE ORDERS/DIRECTIONS ON IA 178398/2019

IA No. 178398/2019 - APPROPRIATE ORDERS/DIRECTIONS)

Date : 06-10-2021 These matters were called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SURYA KANT

HON'BLE MS. JUSTICE HIMA KOHLI

For Appellant(s)

Mr. Tushar Mehta, SG
Mr. Chetanya Singh, Adv.
Mr. Ilesh Shukla, Adv.
Ms. Ria Sachthey, Adv.
For M/S. Ars Associates, AOR

Mr. Saurabh Mishra, AOR
Mr. Aditya Mishra, Adv.
Mr. Ravinder Singh, Adv.

Mr. Rahul Baid, Adv.
Mr. Neeraj Srivastava, Adv.
Mr. Ronak Baid, Adv.
Ms. Neetu Rathore, Adv.
Mr. Pranaya Kumar Mohapatra, AOR

For Respondent(s)

Mr. Tushar Mehta, SG
Ms. Swati Ghildiyal, Adv.
Mr. Rajat Nair, Adv.
Mr. Kanu Agrawal, Adv.
Mr. Amrish Kumar, Adv.
Mr. Gurmeet Singh Makker, Adv.

ANNEXURE-B (4/4)

Order dated 06.10.2021 passed by the Hon'ble Supreme Court in Civil Appeal No(s). 5290-5291/2011

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Ms. Shradha Deshmukh, Adv.

Mr. Chetanya Singh, Adv.

Mr. Ilesh Shukla, Adv.

Ms. Ria Sachthey, Adv.

For M/S. Ars Associates, AOR

Mr. Saurabh Mishra, AOR

Mr. Aditya Mishra, Adv.

Mr. Ravinder Singh, Adv.

Mr. Pratap Venugopal, Adv.

Ms. Surekha Raman, Adv.

Mr. Akhil Abraham Roy, Adv.

Mr. Vijay Valsan, Adv.

For M/S. K J John and Co., AOR

Mr. Sakya Singha Chaudhuri, AOR

Mr. K. V. Mohan, AOR

UPON hearing the counsel the Court made the following
O R D E R

The Court is convened through Video Conferencing.

For the reasons recorded in the signed order, the present challenge to the impugned order of the High Court of Bombay no longer survives. IA No. 45808 of 2020 in C.A. Nos. 5290-91 of 2011, IA No. 179508 of 2019 in CA Nos. 6311-6314 of 2021 (arising out of SLP (C) Nos. 17300-17303/2011) and IA No. 178398 of 2019 in CA Nos. 5292-5295 of 2011 are allowed. The appeals are accordingly disposed of with the consent of the parties.

(SATISH KUMAR YADAV)
DEPUTY REGISTRAR

(R.S. NARAYANAN)
COURT MASTER (NSH)

(Signed order is placed on the file)

ANNEXURE-C (1/3)

Press Release by PIB titled "10 years long pending jurisdictional issue related to power market between CERC and SEBI resolved by Hon'ble Supreme Court" dated 07.10.2021

7/28/25, 7:23 PM

Press Release: Press Information Bureau

Ministry of Power



Gate opened for the Power market reforms

10 years Long pending jurisdictional issue related to power market between CERC and SEBI resolved by Honble Supreme Court

Posted On: 07 OCT 2021 1:11PM by PIB Delhi

Power Sector has been waiting for the big reforms in the power market for last more than 10 years which was held up due to the jurisdiction issues between SEBI and CERC.

On 06.10.2021, on the day of MAHALAYA, the long pending matter between SEBI and CERC regarding regulatory jurisdiction of Electricity Derivatives has finally got resolved with the Honble Supreme Court favorably disposing of the matter in terms of the agreement reached upon by SEBI and CERC.

Ministry of power took the initiative of resolving the jurisdictional issue between SEBI and CERC with regard to various forms of contracts in electricity for Efficient Regulation of Electricity Derivatives by constituting a committee on 26th October, 2018, under the Chairmanship of the Additional Secretary, Ministry of Power with representatives from Department of Economic Affairs (Ministry of Finance), Central Electricity Authority, Central Electricity Regulatory Commission (CERC), Power System Operation Corporation Limited (POSOCO), Security Exchange Board of India (SEBI), Indian Energy Exchange, Power Exchange of India Limited and Multi Commodity Exchange to examine the technical, operational and legal framework for electricity derivatives and to give recommendation in this regard. Committee submitted its report on 30.10.2019 with the following recommendations:

1. All Ready Delivery Contracts and Non-Transferable Specific Delivery (NTSD) Contracts as defined in the Securities Contracts (Regulation) Act, 1956 (SCRA) in electricity, entered into by members of the power exchanges, registered under CERC (Power Market) Regulations, 2010, shall be regulated by CERC subject to the following conditions, namely:-

- i. the contracts are settled only by physical delivery without netting;
- ii. the rights and liabilities of parties to the contracts are not transferable;

<https://www.pib.gov.in/PressReleasePage.aspx?PRID=1761701>

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ANNEXURE-C (2/3)

Press Release by PIB titled "10 years long pending jurisdictional issue related to power market between CERC and SEBI resolved by Hon'ble Supreme Court" dated 07.10.2021

7/28/25, 7:23 PM

Press Release: Press Information Bureau

iii. no such contract is performed either wholly or in part by any means whatsoever, as a result of which the actual delivery of electricity covered by the contract or payment of the full price therefor is dispensed with;

iv. no circular trading shall be allowed and the rights and liabilities of parties to the specific delivery contracts shall not be transferred or rolled over by any other means whatsoever;

v. the trading shall be done only by authorised grid connected entities or trading licensees on behalf of grid connected entities, as participants;

vi. the contracts can be annulled or curtailed, without any transfer of positions, due to constraints in the transmission system or any other technical reasons, as per the principles laid down by CERC in this regard. However, once annulled, same contract cannot be reopened or renewed in any manner to carry forward the same transaction.

vii. all information or returns relating to the trade, as and when asked for, shall be provided to CERC, who shall monitor the performance of the contracts entered into on the power exchanges.

2. Commodity Derivatives in electricity other than Non Transferable Specific Delivery (NTSD) Contracts as defined in SCRA shall fall under the regulatory purview of SEBI.

3. The Central Government reserves the right to impose additional conditions from time to time as it may deem necessary.

4. A Joint Working Group between SEBI and CERC shall be constituted with Terms of Reference as agreed in the Report of the Committee.

Based on the recommendations of the Committee both SEBI and CERC have come to an agreement that CERC will regulate all the physical delivery based forward contracts whereas the financial derivatives will be regulated by SEBI. Ministry of power issued suitable order on 10.07.2020.

This has opened the gate for introduction of longer duration delivery-based contracts in the power exchanges which has been currently restricted to only 11 days due to the pendency of the case. This will enable the Discoms and other large consumers to plan their short term power procurement more efficiently. Similarly, the commodity exchanges viz. MCX etc. can now introduce financial products viz. Electricity futures etc. which will enable the Discoms and other large consumers to effectively hedge their risks of power procurement. This is a significant development and has the potential to change the landscape of the power market in the country. This will bring newer products in the power/commodity exchanges and attract increased participation from Genco, Discoms, large consumers etc. which will eventually deepen the power market.

This will further deepen the power market from the present level of approx. 5.5% of the volume to the targeted volume of 25% by 2024-25.

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ANNEXURE-C (3/3)

Press Release by PIB titled “10 years long pending jurisdictional issue related to power market between CERC and SEBI resolved by Hon’ble Supreme Court” dated 07.10.2021

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Independent Power Producers Association of India



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