CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI

Petition No. 143/MP/2022

Subject : 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.

Petitioner : Indian Energy Exchange Limited (IEX)

Petition No. 178/MP/2022

Subject : 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 fees to be charged from transacting parties for trading on Power Exchange India Limited.

Petitioner : Power Exchange India Limited (PXIL)

Petition No. 88/MP/2022

Subject : Petition under Regulation 23 of the Central Electricity Regulatory Commission (Power Market) Regulations, 2021 for approval of Transaction Fees.

Petitioner : Hindustan Power Exchange Limited (HPEL)

Date of Hearing : 5.7.2022

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

Parties Present : Shri M.G. Ramachandran, Sr. Advocate, IEX
Shri Shubham Arya, Advocate, IEX
Ms. Poorva Saigal, Advocate, IEX
Ms. Reeha Singh, Advocate, IEX
Shri Sakya Singha Chaudhuri, Advocate, PXIL
Ms. Nithya Balaji, Advocate, PXIL
Shri Ravi Kishore, Advocate, HPEL
Shri Aman Dixit, Advocate, APP
Shri Jogendra Behera, IEX
Shri Gaurav Maheshwari, IEX
Shri Prabhajit Kumar Sarkar, PXIL
Shri Shekhar Roa, PXIL
Shri Anil V Kale, PXIL
Shri Ambrish Kumar, PXIL
Shri Mukti Marchino, PXIL
Shri Sunil Hingwani, PXIL
Shri Akhilesh Awasthy, HPEL

Shri Anurag Agarwal, JSW Energy

Record of Proceedings

Cases were called out for virtual hearing.

2. Learned senior counsel for the Petitioner, IEX submitted that Petition No. 143/MP/2022 has been filed by the Petitioner for approval of transaction fees in terms of Regulation 23 of the Central Electricity Regulatory Commission (Power Market) Regulations, 2021 ('PMR 2021'). Learned senior counsel submitted that the power exchanges have immensely contributed to the growth and development of the short-term power market in the country. The distribution companies have also reduced their power purchase costs by procuring power through the exchanges. Based on the information published in the Market Monitoring Reports of the Commission from financial years 2009-10 to 2020-21, it can be seen that procuring power through exchanges has provided an overall cost savings of Rs. 32,268 crore to the buyers during their period which translates to around 74 paise/unit which is much higher than the transaction fees charges by the exchanges. Learned senior counsel submitted that all these years the Petitioner has ensured that payments due to the seller are released in a timely manner without any default or reconciliation issues regardless of size of payments. The Petitioner has provided an irrevocable, unconditional and revolving letter of credit to the seller to provide additional payment security comfort to the seller and to ensure a fool proof payment security mechanism and as a result of such prudent practices, there has not been a single payment default in the last 14 years.

3. Learned senior counsel for IEX further submitted that by Regulation 23 of PMR, 2021, the Commission has specified the cap of transaction fees of 2 paise/kWh from either party to the transaction and as such there is no further requirement of specifying the transaction fees within this cap. Learned senior counsel submitted that it will be prudent to provide the flexibility to the exchanges to charge their actual transaction fees within this cap as per their respective market assessment and business strategy. Accordingly, the Petitioner, IEX has prayed for approval to a transaction fee of upto 2 paise/kWh to be charged to either party to the transaction across the contracts covered under clause (1) to (3) of the Regulation 5 of the PMR, 2021. Learned senior counsel added that in the event the Commission is of the view that the transaction fees has to be based on type, quantum or duration of the contracts, IEX has also proposed the alternative structure of transaction fees based on the duration of the contract in the Petition.

4. Learned counsel for the Petitioner, PXIL in Petition No. 178/MP/2022 further added that the power exchanges are not a mandated market and involve voluntary participation from buyers/ sellers/ traders and as a result there is no assured volume guaranteed to the exchanges. Learned counsel submitted that in absence of any basis on which the exchange can carry out computation of volumes to be transacted on the platform, any rationing of transaction fees with volumes might be difficult. Learned counsel also submitted that PXIL has been charging a transaction fees of 2 paise/kWh from buyers and sellers cleared in a transaction across all contracts that operate under clause (1) to (3) of the Regulation 5 and have retained the said transaction fee till date. Learned counsel further submitted that PXIL is already operating with thin margins and any reduction in transaction fees may be financially challenging for the exchange.

5. Learned counsel for HPEL in Petition No. 88/MP/2022 adopted the submissions made by learned senior counsel for IEX and learned counsel for PXIL. Learned counsel further submitted that HPEL is a new exchange, which is about to start its operations and accordingly, transaction fees of 2 paise/unit proposed by the HPEL in the Petition may be approved.

6. Learned counsel appearing on behalf of the Association of Power Producers ('APP') submitted that APP has certain suggestions/submissions in the present matters and accordingly, it may be permitted to be impleaded as party to these matters. Learned counsel also submitted that prayers made by the Petitioner, IEX also involves an element of interpretation of Regulation 23 of PMR, 2021 and therefore, it is imperative that APP being an association of power producers, which represents the sellers' body on these exchanges, be heard in these matters.

7. Learned senior counsel and learned counsel for the Petitioners opposed the request of APP for impleadment in the matters. Learned senior counsel for IEX submitted that the present Petitions have been filed in terms of Regulation 23 of the PMR, 2021 for approval of transaction fees and there is no requirement of any impleadment. Learned senior counsel submitted while framing the PMR, 2021, the Commission has already conducted the detailed stakeholder's consultation. In any case, if the APP intends to implead itself then it has to approach the Commission with proper application justifying the ground for such impleadment and no oral request can be entertained. Learned counsel for PXIL also opposed the request of APP and submitted that it is for the exchange to determine their transaction fees within the cap specified by the Commission in the PMR, 2021 and impleadment of any third party is not required in the present proceedings. Learned counsel submitted that the approval process for the transaction fees is not akin to tariff determination or adoption process under Section 62 and Section 63 rather in this particular case the Commission is required to take a view regarding development of market as provided under Section 66 of the Act and hence, the impleadment of APP may not be required in this particular matter. Learned counsel for HPEL submitted that in the matters relating to the regulatory approvals under PMR, 2021, no party ought to be impleaded and in the matters requiring the public consultations, the PMR, 2021 specifically provides so.

8. After considering the submission made by the learned senior counsel and learned counsels for the Petitioners and APP, the Commission admitted the Petition Nos. 143/MP/2022 and Petition No. 178/MP/2022.

9. As to the request of APP for impleadment in these Petitions, the Commission observed that the APP is neither necessary nor proper party in these Petitions and therefore, its impleadment in these matters is not required. However, the Commission deemed it appropriate to permit APP to furnish its suggestions/ comments on these Petitions by way of written submissions within two weeks with copy to the Petitioners, who may file their response thereon, if any, within two weeks thereafter. In order to enable APP to file its written submissions, the Petitioners will provide copy of their respective Petitions to APP within two days of issuance of this ROP.

10. The Petitions shall be listed for hearing in due course for which separate notice will be issued.

By order of the Commission

SD/-
(T.D. Pant)
Joint Chief (Law)