

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Coram:

1. **Shri Ashok Basu, Chairman**
2. **Shri K.N. Sinha, Member**

Petition No. 75/2003

In the matter of

Approval for grant of Trading License to M/s. Koyela Energy Resources Private Ltd. and interim approval for trading.

And in the matter of

M/s. Koyela Energy Resources Pvt. Ltd.

.. **Applicant**

The following were present:

1. Shri Gagan Sanghi, Advocate, KERPL
2. Shri Andaleeb Sehgal, Director, KERPL

**ORDER
(DATE OF HEARING: 30.10.2003)**

This application has been filed under Section 15 of the Electricity Act, 2003 (the Act) with the following prayers:

- (a) To permit the applicant to go ahead with the transfer of power against the tender issued by Maharashtra State Electricity Board (MSEB) for supply of power from North-Eastern/Eastern Regions with effect from 1.11.2003 for a period of 9 months,

- (b) To permit the applicant for undertaking 100 MW power from Eastern Region to MSEB on receipt of its clearance,
- (c) To grant the applicant on interim basis, permission for undertaking trading activities for a period six months for other transactions,
- (d) To register the application as an application for grant of regular trade license under Section 14(c) of the Act.

2. The applicant is a company incorporated under the Companies Act. It is stated that under its Memorandum of Association, the applicant is authorised to buy, sell and trade in electricity. Accordingly, the applicant is stated to be in the business of trading in electricity and has contracted for sale/purchase of electricity. The applicant has stated that it has participated in the tender process issued by MSEB for supply of power from North-Eastern Region/Eastern Region and its tender is likely to be accepted. In that case, the applicant will be required to supply power from 1.11.2003 for a period of 6-9 months. Another offer made by the applicant to MSEB for supply of 100 MW power was also reportedly accepted by MSEB and Government of Maharashtra. The matter is stated to be under consideration of Maharashtra Electricity Regulatory Commission for its approval. The applicant has further submitted that it had applied to Ministry of Power, Government of India for permitting sale and transfer of GRIDCO's power in the

Northern Region. Ministry of Power by letter dated 29.5.2002 reportedly advised the applicant to plan sale and transfer of GRIDCO's power to the extent of 200 MW.

3. The applicant had earlier filed Petition No. 106/2002 under Section 13 (c) and 13 (d) of the Electricity Regulatory Commissions Act, 1998, praying for approval/clearance to undertake power marketing and trading activities involving sale and purchase of inter-state energy. That petition was disposed of by the Commission vide its order dated 26.11.2002 with the following observations:

“5. The terms and conditions for inter-state transmission (i.e. trading) have not been notified by the Commission so far. Pending this, the Commission vide its notification No. 7/2(5)/99-CERC dated 24.11.1999 had ordered that till such time, the regulatory framework for sale and purchase transactions involving inter-state transmission of energy is notified by the Commission, no specific approval from the Commission would be required for such transactions, subject to the condition that provisions of Indian Electricity Act, 1910, Electricity (Supply) Act, 1948 or any other laws or government order in force shall be complied with before such transactions involving inter-state transmission of energy are entered into.”

4. The applicant has submitted that in terms of the Commission's order dated 26.11.2002 read with provisions of Section 172(b) of the Act, it should be a deemed licensee for undertaking trading in electricity. The applicant has also relied upon first proviso to Section 14 of the Act to buttress its claim of a “deemed license” in the light of Ministry of Power letter dated 29.5.2002 and the Commission's order dated 26.11.2002.

5. The prayers made by the applicant are to be considered in the light of above noted facts.

6. The Act has come into force with effect from 10.6.2003. Section 15 of the Act, inter alia, lays down that the application for grant of license for inter-state trading is to be made in such form and in such manner as may be specified by the Central Commission and the application is to be accompanied by such fee as may be prescribed by the Central Government. Under Section 16 of the Act, the Commission is to lay down any general or specific conditions applicable to a licensee or class of licensees. Section 52 of the Act further empowers the Central Commission to specify the technical requirements, capital adequacy requirement and credit worthiness for being an electricity trader.

7. The Commission is in the process of finalising the form and manner for making an application for grant of licence, the conditions applicable to electricity traders and the technical, financial and other requirements. The regulations in this regard are likely to be finalised by the end of the current year.

8. Section 172 (b) of the Act legislates that notwithstanding anything to the contrary contained in the Act, all licenses, authorisations, approvals, clearances and permissions granted under the provisions of the repealed laws (which includes Electricity Regulatory Commissions Act, 1998) shall continue to operate for a period of one year or such earlier period as may be notified by the

appropriate Government, as if, the repealed laws were in force in respect to such licenses, authorisations, approvals, clearances and permission, as the case may be.

9. In terms of the Commission's order *ibid* read with the Commission's notification dated 24.11.1999, the applicant could undertake transactions involving sale and purchase of inter-state energy without obtaining specific approval of the Commission till the regulatory framework is notified by the Commission. As we have noted in paragraph 6 above, the necessary regulations are yet to be notified by the Commission. In the absence of these regulations and in view of the provisions of Section 172 (b) of the Act, the applicant may, if so advised, undertake sale and purchase transactions involving inter-state transmission of energy in terms of the notification dated 24.11.1999 for a period up to 31.3.2004 for the present at its own risk. The applicant shall file a fresh application for grant of license under Section 14 (c) of the Act by 31.12.2003 or till such time the terms and conditions, etc. are notified by the Commission, whichever is earlier, in accordance with such terms and conditions. In view of this, we do not consider it necessary to examine the claim of the applicant under first proviso to Section 14 of the Act.

10. We have not considered the request of the applicant in the context of technical and financial requirement, capital adequacy requirement and creditworthiness as parameters to achieve these parameters have not been

notified. Therefore, we leave it to the parties entering into arrangements for sale and purchase of electricity with the applicant to satisfy themselves of these requirements. However, we make it clear that the interim arrangement allowed shall not ipso facto confer on the applicant any right for grant of license in trading in electricity. As and when a fresh application is filed by the applicant, the matter will be considered on its own merits in the light of the provisions of the Act, the Rules and the Regulations to be notified by the Commission.

11. As the application has not been processed for grant of license for trading under of the Act, at this stage we have not gone into the question of issue of public notice by applicant under sub-section (2) of Section 15 of the Act.

12. With this order, Petition No. 75/2003 stands disposed of.

(K.N. SINHA)
MEMBER

(ASHOK BASU)
CHAIRMAN

New Delhi dated the 7th November, 2003