

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Coram:

1. Dr. Pramod Deo, Chairperson
2. Shri R.Krishnamoorthy, Member
3. Shri S.Jayaraman, Member
4. Shri V.S.Verma, Member

**I.A.No. 28/2009 in
Petition No. 120/2008**

In the matter of

Petition for seeking permission to introduce additional contracts by Indian Energy Exchange (IEX).

And in the matter of

Tata Power Trading Company Limited, Mumbai	Applicant
Vs		
Indian Energy Exchange, New Delhi	...	Respondent

**I.A.No. 29/2009 in
Petition No. 166/2008**

In the matter of

Petition for seeking permission to week ahead contracts, etc. by Power Exchange of India (PXIL)

And in the matter of

Tata Power Trading Company Limited, Mumbai	Applicant
Vs		
Power Exchange of India, Mumbai	..	Respondent

The following were present:

1. Shri Sitiesh Mukherjee, Advocate, TPTCL
2. Shri Vishal Anand, Advocate, TPTCL
3. Shri Sakya Singha Chaudhuri, TPTCL
4. Shri M.G.Ramachandran, Advocate, IEX
5. Shri Rajesh Mendiratta, IEXL
6. Shri Jayant Deo, IEXL
7. Shri Bikram Singh, IEXL
8. Shri Ashish, Advocate, PXIL
9. Shri P.K.Sarkar, PXIL

ORDER
(DATE OF HEARING: 6.8.2009)

Through these I.As, the applicant, Tata Power Trading Company Limited (TPTCL) has sought permission to intervene in proceedings in Petition Nos. 120/2008 and 166/2008. The petitions filed by Indian Energy Exchange Limited, and Power Exchange of India Limited, for the Commission's approval for additional contracts were finally heard on 16.6.2009 and orders were reserved. The power exchanges have been established with the approval of the Commission and are presently authorized to trade electricity on day-ahead basis on their platforms.

2. Learned counsel for the applicant highlighted that clause (y) of sub-section (2) of Section 178 of the Electricity Act, 2003 (the Act) empowered the Commission to make regulations for development of market in electricity, consistent with the Act. Learned counsel stated that the bye-laws formulated by the power exchange, for conduct of their operations are without any legal sanction as they did not possess such power under the Act. He pointed out that though the bye-laws were approved by the Commission, such approval was not valid since the operations of the power exchanges could be carried out through the regulations to be specified by the Commission under Section 178 of the Act. Therefore, it was contended that it was within the exclusive domain of the Commission to lay down the statutory regulations for conduct of operations by the power exchanges. He submitted that the regulations on power exchanges should be specified by the Commission by following the process stipulated by law, which includes:-

- (i) Publication of draft regulations;
- (ii) Public hearing objections received from all stakeholders; and
- (iii) Final the regulation.

3. Learned counsel for the applicant submitted that the power exchanges were the counterparty to all transactions taking place at their platforms. So in essence, it was contended, they act as electricity traders but without any licence. Hence, the regulations applicable to licensed traders should be applicable to the power exchanges and this had to be provided under the regulations specified by the Commission. Learned counsel argued the market structure should be developed in consultation with all stakeholders, in accordance with Section 66 of the Act before the power exchanges are permitted to trade any additional contract, the petitions for which are pending before the Commission.

4. Learned counsel for the applicant submitted that nowhere in the world term-ahead contracts on the markets run on a power exchange, were permitted. He further mentioned that with UI regulations putting a limitation on overdrawal, the term-ahead contracts would not get settled for failure on the part of generator to inject the contracted power into the grid. He pointed out that the power exchanges had not put in place any mechanism to handle such defaults.

5. Learned counsel for the applicant stated that the applicant received a letter from IEX, for its views on the term-ahead contracts proposed to be introduced on its platform after approval by the Commission. He argued that this was not good enough. According to him, all stakeholders including the licensed traders should be

consulted and their point of view be heard in a public hearing before the exchanges were given go-ahead for the term-ahead contracts.

6. Learned counsel for the applicant invited attention of the Commission to the Securities Contract (Regulation) Act, 1956 and its various provisions under which the stock exchanges had been recognized and were functioning. He submitted that similar provisions were needed for the power exchanges to make bye-laws and regulate their functioning.

7. Learned counsel for the applicant further stated that under the open access regulations, open access is granted only to the distribution companies, generating companies and licensed traders, but there does not exist any provision for open access being provided to the power exchanges. Therefore, operation of the power exchanges was *de hors* these regulations, learned counsel submitted.

8. Learned counsel for the Indian Energy Exchange Ltd. and Power Exchange of India Ltd. made the following points, namely :-

- (i) Power exchanges were only facilitating the buying and selling of electricity by providing a common platform.
- (ii) Section 66 of the Act was an enabling provision for promotion of market.
- (iii) Licensed traders could not monopolise the market and exchanges had the right to function to facilitate market development.

- (iv) The applicant could not stop the natural development of markets.
- (iv) The participation in the power exchanges was voluntary and not being forced upon any buyer and seller.
- (v) The power exchanges were started after a public hearing by the Commission, whereat all the stakeholders had participated or at best had the opportunity to air their views.
- (vi) Guidelines were published by the Commission and only thereafter the power exchanges commenced operations.
- (viii) Ample opportunity had been provided to the applicant to raise objections earlier; but the point was being raised at the fag end, when an order was about to be issued by the Commission. This was being done with an intention only to delay the process.
- (ix) Recently in meeting of Central Advisory Committee (CAC) held in July 2009, term-ahead contracts on power exchanges were discussed. In that meeting, the applicant did not raise any objection.

9. In response, learned counsel for the applicant stated that its participation in the CAC was for a different purpose and that CAC was not the appropriate forum to decide on these issues.

10. IEX and PXI exchanges had filed petitions for Term ahead markets on 13.10.2008 and 24.12.2008 respectively. The hearing on these petitions was conducted on 16.06.2009. The orders were reserved since the Commission had sought some data and clarifications by 15 .07.2009.

11. IA by TPTCL was filed on 28.7.2009. These IAs have been filed after the orders had already been reserved in the main petitions. Therefore we are not inclined to entertain the IAs at this stage.

12. Therefore we do not see *locus standi* of the applicant to intervene in the present proceedings, which are in the advanced stage of finalization.

13. The orders in Petition No. 120/2008 and Petition No. 166/2008 were already reserved at the time when the present IAs were filed. As such, the Commission is not inclined to entertain the IAs since the orders are already reserved. The IAs are therefore rejected as not maintainable

Sd/=
(V.S.VERMA)
MEMBER

Sd/=
(S.JAYARAMAN)
MEMBER

Sd/=
(R.KRISHNAMOORTHY)
MEMBER

Sd/=
(DR.PRAMOD DEO)
CHAIRPERSON

New Delhi dated the 31st August 2009