

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Coram**

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

**Petition No. 91/2007**

**In the matter of**

Application for grant of permission for setting up and operation of Power Exchange.

**And in the matter of**

National Power Exchange Limited, New Delhi

**... Applicant**

**The following were present**

Shri K K Agarwal, NPEX  
Dhri D. K. Gupta, NPEX  
Shri V. K. Padha, NPEX  
Shri V. N. Tripathi, NHPC  
Shir M. K. Jha, NHPC  
Shri. Mediratta, IEX

**ORDER  
(Date of Hearing 26.3.2009)**

The petition was initially filed by NTPC Ltd. seeking permission to set up and operate power exchange through a separate company to be promoted jointly by NTPC, NHPC and NCDEX. Subsequently, based on the Commission's direction vide its order dated 6.11.2007 National Power Exchange Ltd, the present applicant, was formed under the Companies Act, 1956 and registered on

11.11.2008. National Power Exchange Ltd has been substituted as the applicant vide the Commission's order dated 23.1.2009.

2. The applicant has, vide its affidavit dated 5.2.2009, placed on record the original copies of the newspapers wherein the notices were published by it. No objection has been received in response to the same. Accordingly, we proceed to consider the request for grant of in-principle approval, based on the material available on record.

3. The Commission had, vide its order dated 6.2.2007 in suo motu proceedings in Petition No. 155/2006, prescribed comprehensive guidelines for grant of permission for setting up Power exchange. Para 6.5 of the guidelines prescribes that a company registered under the Companies Act, 1956 is eligible for making the application. It is seen that the applicant company has been promoted as a public company, primarily by NTPC Limited, NHPC Limited, Power Finance Corporation Limited, Tata Consultancy Services Limited and three service nominees of NTPC Limited and incorporated under the Companies Act, 1956 on 11.12.2008. One of the main objects of the applicant company is as under:

“1. To carry on the business of Power Exchange and to facilitate, promote, assist, regulate and manage in the public interest, dealings in electrical power and in all types of contracts for buying and selling of all forms of electrical power, ancillary services, transmission rights, as may be permissible under applicable laws and regulations and their derivatives such as Futures, options and other kinds of derivatives, permitted and to be permitted in future clearing and settlement thereof, and to ensure buying selling and trading in a transparent fair and open manner with access to all

players in the electrical power markets including producers, suppliers, retailers, traders, consumers, exporters and importers and foreign funds, corporates and banks engaged in financing electrical power transactions from areas in or outside India.”

4. Accordingly, the applicant is eligible to make the application seeking permission for setting up power exchange.

5. The salient features of the power exchanges as laid down in the guidelines prescribed vide the Commission’s order dated 6.2.2007 are as under:

- (a) de-mutualized form of organization;
- (b) reliable, effective and impartial management;
- (c) ring-fencing between ownership, management and participation;
- (d) investment support from the investors including institutional investors;
- (e) transparency in operation and decision-making;
- (f) computerized trading and clearing system;
- (g) efficient clearing settlement and guarantee system;
- (h) effective trade information dissemination system.

6. As per the Memorandum of Association, authorised share capital of the applicant company is Rs. fifty crore out of which the initial paid up share capital is Rs. five crore. This has been contributed by the above mentioned promoters at the rate of 16.67% by the first three and 50% by the Tata Consultancy Services Limited. It has been provided that 50 % of the paid up share capital of the company shall be held by the Government entities including parties to the

agreement viz. NTPC, NHPC and PFC and the remaining 50% of the paid up share capital shall be held by non-government/ private company including TCS. Article 8 of the Articles of Association provides that subject to the subscription of the initial paid-up share capital provided under Article 2, no party or other shareholder at any point of time along with its respective Affiliates/Associates shall hold more than 25% of the paid-up share capital of the applicant company.

7. In order to conform to the demutualised form of management and ensure transparency in decision making and management, we direct that at least fifty one percent of the equity share capital of the applicant as a power exchange should be held by the public other than the shareholders having the trading rights in the exchange. Besides, the Commission also considers it desirable that participation within the trading and non-trading groups should be diversified in order to discourage monopoly and to facilitate emergence of professionally managed organization in the interest of power sector.

8. The applicant company has stated that the Board of Directors shall have shareholders representative and other professional /independent Directors which shall provide over-all superintendence and control and policy framework. It has been proposed that day-to-day operation shall be handled by a team of experienced professionals. As regards ring fencing and de-mutualisation, the applicant has stated that the shareholding of any individual party along with its affiliates shall be restricted to 25% of the paid up share capital. Besides, it has been stated that no special rights shall be available to any trading member

holding the shares of the applicant company. We are of the view that the Governing Board of the Power Exchange should have representative of the trading members but their strength should not exceed one-fourth of the total strength of the Governing Board.

9. It has been proposed to constitute a representative body of stakeholders and market participants which may be called Market Advisory Council to provide for their participation in operations of the Power Exchange. There may be other committees as required from time to time to make the exchange truly responsive to the needs of the market participants. The structure shall ensure adequate ring fencing between ownership, management and participation; reliable effective; impartial management and transparency in operation and decision making.

10. It is seen from the documents placed on records by the applicant that the proposed power exchange shall be equipped with computerized trading and clearing system.

11. Based on the above, we are broadly satisfied that the applicant is qualified for grant of in-principle approval. However, while concretizing the design of power exchange, the applicant is advised to comply with the following:

(a) In order to ensure ring fencing between day-to-day operation and participation in trading and to bolster and preserve confidence of entities trading in the power exchange, we direct that the following provision be made in the rules:

“The Managing Director, the Chief Executive or the Director in charge of day-to-day operations, any employee, any consultant or any advisor of the power exchange shall not be directly or indirectly associated with any trading member or client or participant of the power exchange or with a holding or subsidiary company thereof.”

(b) In the preamble of the rules, it may be mentioned that any change in the rules and bye-laws shall be made only with the prior approval of the Commission and the Commission reserves the right to specify any condition or modify any of the present stipulation in the light of the experience gained and to meet the needs of the future.

(c) It has been stated in para 1.1.4 of the rules that the rules be read together with the Act and relevant regulations whenever and wherever the context requires. We direct that a specific provision be made to the effect that the rules and bye-laws shall be subject to the provisions of the Act, Rules and Regulations framed there under and any special or general directions or orders made by the Commission.

(d) A specific provision shall be included in the rules and bye-laws of the power exchange that the power exchange, including its buyers and sellers, shall keep each of the National Load Despatch Centre, Regional Load Despatch Centres and State Load Despatch Centres indemnified and shall undertake to indemnify, defend and save against any claim for

damages, losses and actions, including those relating to injury to or death of any person or damage to property demands, suits, recoveries, costs and expenses, attorney fees against the third parties arising out of or resulting from or attributable to the transactions at the power exchange. The bye-laws should also provide that the power exchange, including its buyers and sellers, shall keep each of the National Load Despatch Centre, Regional Load Despatch Centres and State Load Despatch Centres indemnified and shall undertake to indemnify, defend and save harmless from any and all damages, losses, claims and actions arising out of disputes among buyers and sellers as well as with power exchange inclusive of confidentiality issues. The bye-laws should further provide that the clearance advice issued by National Load Despatch centre at 1400 hours shall be on good faith basis. The bye-laws should also provide that the clearance/curtailment advice by the National Load Despatch Centre shall not be binding and the Central Transmission Utility, National Load Despatch Centre, Regional Load Despatch Centres and State Load Despatch Centres shall not have any financial liability on account of inability, for any reason whatsoever, to achieve the complete matching between the advice of the National Load Despatch Centre issued at 1400 hours and the final schedules issued at 18.00 hours.

(e) A provision should necessarily be made in the bye-laws that any entity or the principal or subsidiary or sister concern of an entity defaulting

in payment of the transmission charges, UI charges and the fees and charges for the Regional Load Despatch Centres and ULDC scheme may be barred by the Commission from participating in the power exchange.

(f) At least fifty one percent of the equity share capital of the applicant as a power exchange should be held by the public other than the shareholders having the trading rights in the exchange.

(g) Explicit provision may be made in the rules that notwithstanding anything in the rules, bye-laws and business rules of the power exchange all the provisions therein shall be subject to approval of the Commission.

(h) It may be explicitly stated in the Rules and Bye-laws of the power exchange that all the actions of the power exchange shall be subject to the directions of the Commission through its regulations, guidelines and general or special orders.

(i) The day-ahead power transaction platform to be developed by the applicant shall facilitate scheduled trading of electricity, subject to transmission constraints, if any, in accordance with the Central Electricity Regulatory Commission (Open Access in Inter-State Transmission) Regulations, 2008 and the detailed procedure issued by the Central Transmission Utility under the above regulations for scheduling of collective transactions.



(j) While the proposal to open the power exchange for day-ahead trading between 1000 hours to 1200 hours is agreeable, the applicant shall ensure that the timeline of exchange activities has to be in line with the one specified in the procedures for scheduling of collective transaction prescribed by NLDC/RLDCs.

(k) The applicant will finalise the details of interface design and procedures for co-ordination with NLDC/RLDC so as to arrive at a mutually acceptable and reasonable arrangement.

(l) Methodology for handling transmission congestion shall be further developed and evolved in co-ordination with NLDC/RLDC and submitted to the Commission for approval.

(m) The applicant shall endeavour to expand the electricity market by facilitating trading by all the entities that are entitled to buy/sell electricity including intra-State entities.

(n) The transmission charges, operating charges and transmission losses shall be applied to the power exchange schedules as per the Commission's regulations and orders as applicable from time to time. Power exchange shall be responsible for making payment to the NLDC/RLDC for the transmission charges and operating charges, whereas the transmission losses shall be applied in kind on the drawal schedules.

(o) While finalising the design, rules and byelaws, it shall be ensured that price rigging, price manipulation and other market abuses are not possible. A surveillance unit shall be created in the power exchange and would independently monitor this aspect. In order to ensure market integrity and to avoid market abuses, the Exchange shall use various online and off-line surveillance tools.

(p) With regard to management and disposal of congestion revenue which is being generated because of market splitting mechanism for handling congestion, the matter has already been deliberated by the Commission, the treatment would be as per the direction of the Commission.

12. The applicant is also directed to place the rules and bye-laws in the home page of its website.

13. The applicant may revise its business model, bye-laws, rules and Business Rules in accordance with the directions contained in this order and re-submit the revised documents for approval by the Commission.

Sd/= **(V.S. Verma)**  
Member

Sd/= **(S. Jayaraman)**  
Member

Sd/= **(R. Krishnamoorthy)**  
Member

Sd/= **(Dr. Pramod Deo)**  
Chairperson

**New Delhi, dated the 01 July 2009**