

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**IA No. 25/2010
In
Petition No. 26/2010 (Suo-motu)**

**Coram: Dr. Pramod Deo, Chairperson
Shri V. S. Verma, Member**

Date of hearing: 8.7.2010

Date of Order: 28.7.2010

In the matter of

Application for extension of time under Regulation 116 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999.

And in the matter of

Indian Energy Exchange Ltd., New Delhi

..... **Applicant**

The following were present:

1. Shri M G Ramachandran, Advocate
2. Sh. R. K. Mediratta, IEX
3. Sh. Bikram Singh, IEX
4. Sh. Akhilesh Awasthy, IEX

ORDER

The applicant Indian Energy Exchange Ltd., had filed an IA No. 25/2010 under regulation 116 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999, seeking extension of time for implementing the directions of the Commission contained in its order dated 3.6.2010 in Petition No. 26/2010. The request of the applicant was considered in the light of the documents placed on record, the oral

submissions made during the hearing on 8.7.2010 and subsequent affidavit dated 12.7.2010 indicating short-term and long-term solution envisaged by the applicant for implementation of our order dated 3.6.2010. An interim order dated 15.7.2010 was passed by the Commission on the aforesaid IA, wherein, based on the documents furnished by Indian Energy Exchange Ltd in relation to the fourth member i.e. the member with a large client base, it was observed by the Commission that "it cannot be conclusively ascertained that this facilitator member does provide credit facilities, working capital or financing to its clients under any circumstance". It was furthermore observed in the said order dated 15.7.2010 that "there still remains some room for such facilities to be carried on by the facilitator member". Accordingly, the applicant was given an opportunity to take necessary steps to demonstrate within 3 working days on the basis of the documentary evidence that our order dated 3.6.2010 has been complied with in letter and spirit in relation to the working of the fourth member. IA No. 25/2010 for extension of time was kept pending till the applicant submitted the necessary documents/information as directed in our order dated 15.7.2010.

2. Since the applicant has not submitted any documentary evidence to establish and demonstrate as to how it has complied with the said order dated 3.6.2010 within three working days of issue of order dated 15.7.2010, we propose to dispose of the IA No. 25.2010 through the present order.

3. The applicant has approached the Commission for extension of time under regulation 116 of the Central Electricity Regulatory Commission(Conduct of Business) Regulations,1999(hereinafter "conduct of business regulations) which is extracted as under:

"Subject to the provisions of the Act, the time prescribed by these Regulations or by order of the Commission for doing any act may be extended (whether it has already expired or not) or abridged for sufficient reason by order of the Commission."

4. It is clear from the above regulation that the time prescribed by order of the Commission for doing any act can be extended "for sufficient reasons" by order of the Commission. Therefore, it needs to be considered whether there are sufficient reasons for the Commission to consider extending the time for the present applicant to comply with the order dated 3.6.2010.

5. The genesis of the order dated 3.6.2010 can be traced to the Petition No. 117/2009 filed by Tata Power Trading Company Ltd., an inter-State trading licensee, alleging that the members of the power exchange who are not grid connected members nor electricity traders are undertaking obligations and risks akin to it those assigned to the traders under the Electricity Act, 2003 (the Act). After hearing all concerned parties including the applicant, the Commission in order dated 24.12.2009 had clarified that the role of members other than the trading licensees and the grid connected entities, being that of a "facilitator" would be only to provide the following services:(a) IT infrastructure for bidding on electronic

exchange platform; (b) Advisory services related to power prices and the follow on bidding strategy (e.g. weather related information, demand supply position etc); (c) Facilitation of procedures on behalf of his client for delivery of power (e.g. SLDC standing clearances, coordination with NLDC etc). The said order dated 24.12.2009 contained the following directions in express terms which were binding on the present applicant:-

"17. We direct that the members of power exchange who are not trading licensee shall not provide any credit or financing or working capital facility to their clients."

18. We further direct that the Power Exchanges shall incorporate the role of the members as stated in para 16 and 17 above by amending their bye-laws, business rules and other related documents immediately and submit compliance within a period of one month. Till the time the above directions are complied with, the Respondent power exchanges shall not permit members other than the trading licensees and those connected to the grid to transact on their exchanges in any manner other than as directed above."

6. The directions contained in the said order dated 24.12.2009 were to be complied with by the present applicant with immediate effect. The applicant Indian Energy Exchange was obligated to not permit any of its members other than the trading licensees and those connected to the grid to transact on their exchanges in any manner other than as directed in the said order dated 24.12.2009.

7. Subsequently the Commission notified the Central Electricity Regulatory Commission (Power Market) Regulations, 2010 (hereinafter referred to as 'power market regulations') on 21.1.2010. Clause (ii) of Regulation 26 of Power Market Regulations expressly specifies the nature of

services to be provided by members of the power exchange who are not electricity traders or distribution licensees or grid connected entities. Clause (ii) of Regulation 26 is extracted below:

“(ii) Member who is neither an Electricity Trader nor distribution licensee including deemed distribution licensee nor a grid connected entity can only provide the following services to its clients:-

- (a) IT infrastructure for bidding on electronic Exchange platform or skilled personnel*
- (b) Advisory services related to power prices and the follow on bidding strategy (e.g. weather related information, demand supply position etc)*
- (c) Facilitation of procedures on behalf of his client for delivery of power (e.g. State Load Despatch Centre standing clearances, coordination with National Load Despatch Centre etc)*

In no case, such a member shall provide any credit or financing or working capital facility to their clients.”

The above regulations were notified after previous publication and a transparent process of consultation with stake holders including the present applicant. The Power Market Regulations also casts a statutory obligation on the applicant to ensure that its Facilitator Members provide only the three services to its clients as specified in the said regulations to the complete exclusion of any other service and that “In no case, such a member shall provide any credit or financing or working capital facility to their clients” as expressly stated in the said regulations.

8. These regulations clearly provide that the Facilitator Members are permitted only to provide three specified services and the power exchanges were obligated to ensure compliance of our order and Power Market Regulations in letter and spirit. Since, we are not aware of any

challenge to our order dated 24.12.2009 in Petition No. 117/2009, we take the view that the said order has attained finality and is binding on all concerned including the present applicant. Moreover, the applicant is duty bound to ensure compliance with the Power Market Regulations.

9. Since both the Power Exchanges including the present applicant had not filed their report of compliance, the Commission in its order dated 15.2.2010 directed them to file compliance by 23.2.2010. The applicant in its affidavit dated 9.3.2010 submitted a list of Facilitator Members and the transactions carried out by them from 25.12.2009 to 5.2.2010. After analyzing the affidavit, we had come to the following conclusion in respect of the applicant in our order dated 30.3.2010:

"In case of First Respondent, clients have deposited money in the settlement bank account of the Facilitator who in return have transferred this money to the bank account of the exchange. This is in contravention of our order which does not permit the Facilitators to handle money on behalf of their clients."

10. Since a clear contravention of our order was established, the applicant was given a show cause notice under Section 142 of the Act. After considering the reply to the show cause notice, we had held in our order dated 3.6.2010 as under -

"The Commission is of the view that the following practices are contrary to the Commission's Order dated 24.12.2009 :- (i) banking transaction services provided by members other than trading licensees and grid connected entities to their clients, (ii) depositing of money by clients in the settlement bank account of such members and (iii) transfer of such money by such members to the bank account of the exchange. Since these practices are contrary to the Order dated 24.12.2009 but at the same time it is the first instance of non-compliance by the Respondents, we do not intend to impose any penalty under Section 142 of the Act."

We had directed the applicant in our order dated 3.6.2010 to stop the practice of clients depositing the money in the settlement account funds of the Members Facilitators with immediate effect being in contravention of the Power Market Regulations. The applicant has made the present application for extension of time for compliance of our directions in respect of one Facilitator Member citing practical difficulties to implement the order on account of software problems.

11. It is apparent from the sequence of events stated in para 9 and 10 above that the applicant has failed to comply with our directions contained in the order dated 24.12.2009 in Petition No. 117/2009 and Regulation 26(ii) of Power Market Regulations. The act of accepting money of clients by Facilitator Members in the settlement fund accounts of such member is not included in the functions to be discharged by the Facilitator Member in terms of our order dated 24.12.2009 or the Power Market Regulations. It is a serious lapse as not only directions and statutory regulations have been violated but also because several months have elapsed since the passage of the said directions and notification of the regulations and still compliance has not been made by the present applicant. There is absolutely no ground to believe that the directions contained in the order dated 24.12.2009 or in Regulation 26(ii) of Power Market Regulations were not clear. In fact, the applicant's stand is that there are practical difficulties to implement the order without modifying the software. Whereas a duty is cast on the Commission to ensure

implementation of the Power Market Regulations at the earliest, the Commission cannot and ought not to make accommodation solely for the present applicant especially when a lot of time has already elapsed from the passage of the aforesaid directions. This will also cause delay in implementation of the aforesaid statutory Regulations. In the circumstances, we have come to the conclusion that the applicant has not exhibited the required bonafide to implement our order dated 24.12.2009, the Power Market Regulations and subsequent orders dated 30.3.2010 and 15.7.2010.

12. The learned counsel for the applicant during the hearing on 8.7.2010 had submitted that the directions to deposit the money by the client directly with exchange were issued for the first time in the Commission's order dated 3.6.2010 and hence, extension of time is required for the implementation of our order. We do not sustain this argument for the reason that our order dated 24.12.2009 contained the restriction in express terms that "the members of power exchange who are not trading licensees shall not provide any credit or financing or working capital facility to their clients". The order dated 24.12.2009 and Regulation 26(ii) of Power Market Regulations, prohibited members other than the electricity traders and grid connected members from providing more than three specified services as mentioned therein. In our order dated 30.3.2010, we had come to the conclusion that the applicant in contravention of our order dated 24.12.2009 permitted its Facilitator Members to handle money on

behalf of their clients. Further, in our order dated 3.6.2010 we directed the applicant to stop the practice of clients depositing the money in the settlement funds accounts of the Facilitators Members in violation of the Power Market Regulations. Therefore, the applicant had sufficient time to comply with our order dated 24.12.2009 and Regulation 26(ii) of the Power Market Regulations but chose not to comply.

13. In view of the above, we do not find sufficient reasons to allow the IA of the applicant. Therefore, the said IA is hereby rejected.

14. The applicant is hereby directed to ensure compliance forthwith of our order dated 24.12.2009 in Petition No. 117/2009 and Regulation 26(ii) of Power Market Regulations read with our orders dated 30.3.2010 and 3.6.2010 in Petition No. 26/2010 (suo-motu). The Commission has already ordered special audit of the accounts of the applicant and its Facilitator-Members in the order dated 3.6.2009. We further direct that the audit shall also go into the aspect of compliance of this order.

Sd/-
(V. S. VERMA)
MEMBER

sd/-
(DR. PRAMOD DEO)
CHAIRPERSON