CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI

Petition No. 134/2010

Coram: Dr. Pramod Deo, Chairperson
Shri S.Jayaraman, Member
Shri V.S. Verma, Member
Shri M. Deena Dayalan, Member

Date of Hearing: 18.5.2010 **Date of order: 25.5.2010**

In the matter of

Request by Petitioner for extension of time to fulfill compliance with certain provisions of the Power Market Regulations dated 21st January 2010.

And in the matter of

Power Exchange of India Limited , Mumbai ……**Petitioner**

The following were present

1. Sh. Ritesh Sharma, Advocate, PXIL
2. Sh. Dharmesh Misra, Advocate, PXIL
3. Ms. Payal Chawla, Advocate, PXIL
4. Sh. Vinay Prakash, Advocate, PXIL
5. Ms. Rupa Devi Singh, PXIL
6. Sh. Satyajit Ganguly, PXIL

ORDER

The Petitioner, Power Exchange of India Limited, has filed this petition with the following prayers:

(a) Grant additional time to the Petitioner to raise additional equity share capital to achieve the net worth prescribed in Regulation 18(i), such additional time being 3 years from the notification of the said Regulations, as envisaged in Regulation 20;

(b) Grant additional time to the Petitioner to appoint an independent director to head the Risk Management as Committee envisaged in Regulation 25(ii), such additional time being 1 year from the notification of the said Regulations, as envisaged in Regulation 22 (ix);

(c) Grant additional time to the Petitioner to appoint an independent director to head the Market Surveillance Committee as envisaged in Regulation 25(iii), such additional time being 1 year from the notification of the said Regulations, as envisaged in Regulation 22(ix);

(d) Pass such other and further orders, as this Hon'ble Commission deems fit and proper in the facts and circumstances of the case.

2. The Petitioner has submitted that the Commission in exercise of power under Section 66 read with Section 178 of the Electricity Act, 2003 (hereinafter "the Act") has notified the Central Electricity Regulatory Commission (Power Market) Regulations, 2010 (Power Market Regulations) which came into effect from 21.1.2010. As per the provisions of the Power Market Regulations, the Petitioner is required to meet the following requirements:

(a) maintain a networth of Rs.25 crore in terms of Regulation 18(i) of Power Market Regulations;

(b) constitute a Risk Management Committee (RMC) headed by an Independent Director of the Board, in terms of Regulation 25(ii) of Power Market Regulations;

(c) constitute a Market Surveillance Committee(MSC) headed by an Independent Director of the Board, in terms of Regulation 25(iii) of the Power Market Regulations.

3. The Petitioner has submitted that despite its best efforts and for reasons wholly beyond its control, the Petitioner has not been able to complete compliance with the above conditions. The Petitioner has explained the current status of each of the conditions including the steps taken to achieve compliance of the statutory requirement.

Net-worth

4. As regards the networth, the Petitioner has submitted that the Petitioner has been operating with a Paid up capital of Rs.5 crore and Authorised Capital of Rs, 25 crores as approved by the Commission. The Petitioner has been making efforts to increase its equity keeping in view the needs of the business as also need for the investment in technology. Even prior to the notification of the Power Market Regulations, the Board of the Petitioner in its meeting held on 18.12.2009 passed a resolution approving the increase in the authorized equity share capital to Rs.50 crore and paid up equity share

capital to Rs.40 crore. The resolution of the Board was also approved by the shareholders in the Extraordinary General Meeting of the shareholders held on 17.2.2010. Subsequent to notification of Power Market Regulations, it was found that the said authorized and paid-up capital was not sufficient to maintain a networth of Rs. 25 crore. Therefore, another board meeting on 02.03.2010 and 2nd EGM was convened on 05.03.2010 to take up increase of the paid-up capital to Rs. 50 crore through issue of shares to existing and new shareholders. Thereafter the Board offered equity shares to its existing and potential shareholders. In response, additional equity share capital of Rs.29.29 crore was subscribed by various investors during 2009-10 out of which Rs.13.84 crore has been subscribed by way of Equity Capital after the notification of the Power Market Regulations. The Petitioner has submitted that even though the current paid up equity share capital is Rs.34.34 crore, the networth of the Petitioner as per the latest provisional accounts is around Rs.17 crores on account of accumulated losses.

5. The Petitioner has further submitted that it has received further commitment for subscription of Rs. 7 Crore from the shareholders such as NCDEX, MPPTCL and PFC etc. However, the amounts have not been received as these investors/shareholders are either Government entities or regulated entities and therefore the process of their obtaining their respective internal and/or regulatory approvals, requires time. The Power Market Regulation came into force on 21.1.2010 and the date of compliance for networth was 31.03.2010. The petitioner was not able to complete the process for attracting additional equity shares in two months time. The Petitioner has submitted that

it was in partial and/or substantial compliance with the requirement of the networth and the shortfall is not on account of any negligence or laches or inaction on the part of the Petitioner. The Petitioner has submitted that in the circumstances, it would be just, fair and in the interest of justice that the current networth already achieved by the Petitioner be treated as compliance with the conditions under Regulation 18(i) of the Power markt Regulations and the Petitioner be allowed additional time to increase its networth to Rs. 25 crore.

6. The Petitioner has further submitted that Regulation 20 of the Power Market Regulations allows a period of three years from the date of notification of the regulations to realign the existing shareholding pattern specified in Regulation 19. As per the petitioner, part of the constraint being faced by it in raising additional equity share capital is that the existing shareholders themselves cannot bring in all of the additional equity capital required. For this certain new shareholders are required to be inducted to comply with Regulation 19. The Petitioner has prayed for a time frame of three years as specified in Regulation 20 in order to comply with the requirement of Regulation 19 with regard to shareholding pattern and the requirement of Regulation 18(i) with regard to networth.

Risk Management Committee

7. As regards the Risk Management Committee, the Petitioner has submitted that though the RMC has been constituted, it is not yet headed by an Independent Director as required under Regulation 25(ii) of Power Market Regulations. Presently the RMC is

being headed by the Managing Director of the Petitioner. The Board has only one Independent Director, Shri Kirit Parikh, eminent economist and former member of the Planning Commission. However, Shri Parikh being pre-occupied in other engagements may not be in a position to act as the Chairman of the RMC. The Petitioner has taken consent from two eminent personalities and has sought approval of the Commission for appointment as Independent Directors. The Petitioner is in the process of obtaining consent from some more persons of repute and will submit the same for approval of the Commission. The Petitioner expects that one of the Independent Directors approved by the Commission would be in a position to assume the role of Chairman of RMC.

8. The Petitioner has further submitted that Regulation 22(ix) of the Power Market Regulations allows a period of one year from the date of notification of the Regulations to achieve the re-constitution of its Board. Till such time additional Directors are appointed on its Board, the Petitioner would be unable to comply fully with the requirement of Regulation 25(ii) to appoint an Independent Director to head the RMC. It has been prayed that the Petitioner be allowed the time frame specified in Regulation 22(ix) to comply fully with the provisions of Regulation 25(ii).

Market Surveillance Committee

9. The Petitioner has submitted that it is required to constitute a Market Surveillance Committee (MSC) headed by an Independent Director in terms of Regulation 25(iii) of Power Market Regulations. Though the Petitioner has constituted a MSC, it is headed in the interim by the Managing Director of the Petitioner as no Independent Director is

available in the current Board to head MSC for the same reasons as explained in case of RMC. The Petitioner has prayed that the time frame of one year envisaged in Regulation 22(ix) may be allowed to comply with the provisions of Regulations 25(iii).

10. We have heard the learned counsel for the Petitioner and the representative of the Petitioner. It has been submitted that extension of time is required by the Petitioner to achieve the required networth and constitute the RMC and MSC in compliance with the Power Market Regulations. The counsel for the Petitioner submitted that the Commission may consider to grant extension of time of two years to comply with the statutory requirement of net-worth and one year to constitute RMC and MSC with Independent Directors by excercising the power to remove difficulties under Regulation 64 of the Power Market Regulations.

11. We have considered the submission of the Petitioner. Regulation 64 of Power Market Regulations provides as under:

> **“***64. Power to remove difficulties*
> *If any difficulty arises in giving effect to the provisions of these Regulations, the Commission may, by order, make such provisions not inconsistent with the provisions of the Act, as may appear to be necessary for removing the difficulty.”*

Thus the power under Regulation 64 can be excercised by the Commission for removing any difficulties encountered for giving effect the provisions of the Power Market Regulations.

12. Regulation 18(i) of Power Market Regulations provides as under with regard to networth:

> *"18 (i) A Power Exchange shall always have a minimum networth of Rs. 25 Crore*
>
> *Provided that the Power Exchange shall always maintain the above networth and in case the same depletes due to payment made by the power Exchange to sellers / buyers in default including by the usage of the SGF impacting its networth, the Power Exchange shall increase its networth to comply with the above networth criteria within 3 months from the date of depletion."*

13. Regulation 18(i) makes it mandatory for a Power Exchange to possess and maintain a minimum networth of Rs.25 crore at all points of time. Only exception has been made for a short period of three months if the networth is depleted below the minimum requirement due to payment made by the Power Exchange to sellers/buyers in default including by usage of SGF impacting its networth. In other words, temporary depletion for a maximum period of three months is permissible on account of the operational requirement of the Power Exchange. However, this protection is not available in cases of accumulated losses which are not attributable to operational requirements. Moreover, the requirement of minimum networth of Rs.25 crore is easier to be achieved and maintained in case the Power Exchanges who seek registration under the Power Market Regulations as they would require minimum net-worth of Rs. 25 crores to begin with. On the other hand, the existing Power Exchanges were accorded approval in accordance with the order of the Commission dated 6.2.2007 in Petition No. 155/2006 (suo-motu) which did not prescribe any minimum net-worth criteria. The applicants for the Power Exchange were only required to submit the net-worth as defined in the Companies Act, 1956. The Commission while according the

approval had satisfied itself that the Power Exchange had the liquidity in the form of net-worth to set-up and operate the Power Exchange. In the case of the Petitioner, the Commission was satisfied with the paid-up capital of 5 crore and authorized share capital of Rs. 25 crores while according the approval. Therefore, for an existing Power Exchange which started with a paid-up capital of Rs. 5 crores, it would be difficult to achieve a net-worth of Rs. 25 crores within a short period of two months. Though Regulation 20 of the Power Market Regulations provides for a period of three years to the existing Power Exchanges to achieve the shareholding structure/pattern as specified in Regulation 19, the regulations do not provide for any saving provision under regulation 18 (i) prescribing the minimum time frame within which existing Power Exchanges would be required to achieve the required net-worth of Rs. 25 crores. Therefore, a case is made out for exercise of the power of the Commission to remove the difficulty and prescribe a time frame to enable the existing Power Exchanges to achieve the required net-worth.

14. Regulation 25(ii) mandates the Power Exchange to constitute a Risk Management Committee headed by an Independent Director. Similarly, Regulation 25(iii) mandates the Power Exchange to constitute a Market Surveillance Committee headed by an Independent Director. Regulation 22(ii) provides that at least one-third member (subject to minimum of 2) of the Board shall be appointed as Independent Members from the panel approved by the Commission. Regulation 22(ix) provides that the Power Exchanges which have been granted approval before the notification of the regulations shall achieve the governance structure as given in Regulation 22 within a

period of one year from the date of notification. As the RMC and MSC are to be headed by Independent Directors, by implication both the Committees will be required to be constituted with the appointment of Independent Directors within a period of one year. However, both clauses (ii) and (iii) of Regulation 25 are silent about the time frame within which the Committees shall be constituted by the existing Power Exchanges with Independent Directors as the heads. Therefore, there is a requirement to remove the difficulty to prescribe a time frame within which the existing Power Exchanges shall appoint Independent Directors to head the RMC and MSC of the Exchange.

15. In view of the reasons given in paras 13 and 14 above, we are satisfied that there is a strong case to exercise our power under Regulation 64 of Power Market Regulations to prescribe a time frame for achieving the net-worth, and for appointing the Independent Directors to head RMC and MSC by the existing Power Exchanges. Accordingly we direct that the existing Power Exchanges shall be required to achieve the net-worth specified in Regulation 18(i) and appoint Independent Directors to Risk Management Committee and Market Surveillance Committee as envisaged in Regulation 25(ii) and 25 (iii) respectively within a period of one year from the date of notification of the Power Market Regulations.

16. Petition No. 134/2010 is disposed of in terms of the above.

Sd/-	Sd/-	Sd/-	Sd/-
[M DEENA DAYALAN]	**[V S VERMA]**	**[S JAYARAMAN]**	**[Dr PRAMOD DEO]**
MEMBER	**MEMBER**	**MEMBER**	**CHAIRPERSON**