

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 203/2009

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

Date of Hearing: 29.7.2010

Date of Order: 10.9.2010

In the matter of

Application for grant of inter-State trading licence to
Arunachal Pradesh Power Corporation Limited.

And in the matter of

Arunachal Pradesh Power Corporation Limited,
Naharlagun, Itanagar, Arunachal PradeshApplicant

The following were present:

1. Shri Sanjay Sen, Advocate
2. Shri Jitinder Kumar Bhatia, Advocate
3. Shri B.N.Jha, Advocate
4. Shri Neeraj Sharma, Director
5. Shri Indu Bhushan Chakraborty, Executive Director
6. Shri Gurav Sadh, Company Secretary
7. Shri Akshay, Manager
8. Shri Vikas Kumar Senior Advocate for objector
9. Shri A.Basu Roy, Advocate for the objector
10. Shri Rohit Kumar Yadav, Advocate for objector

ORDER

The Commission in order dated 15.6.2010 had allowed the Review Petition No. 84/2010 filed by the applicant and reconsidered the Petition No. 203/2009 on merit and came to the conclusion that the applicant *prima facie* qualified for grant of category-III licence for inter-State trading in electricity in whole of India except the State of Jammu & Kashmir. Accordingly, the Commission directed to issue a notice under section 15(5)(a) of the Electricity Act, 2003 (the Act) inviting the suggestions/objections to the proposal of the Commission. Accordingly, a public notice was issued on 26.6.2010 in Hindustan Times and Times of India.

2. In response to the public notice, one Manav Sewa Sansthan, through its Secretary, Shri O. P. Singh, A-8, Amarnath Monga Block, Tis Hazari Courts, Delhi-110 054 filed its objections to the proposal to grant trading licence to the applicant. A copy of the objection was provided to the applicant who has filed its response on 23.7.2010.

3. The Objector, Manav Sewa Sansthan has submitted that in reply to para 23(f) of the application for trading licence, the Applicant has replied that “none of the applicant or any of his Associates or partners, or promoter, or Directors was ever found guilty of contravention of any of the provisions of the Act or the rules or the regulations made there under or an order made by the Appropriate Commission, in any proceedings”. The Objector has submitted that the above stated mandatory statement is false and incorrect due to the following reasons:

(a) The Applicant had undertaken trading in electricity without having a valid trading licence by buying power from the Govt of Arunachal Pradesh and selling the same through the power exchange.

(b) The Applicant has been undertaking trading transaction under the guise of facilitating sale and purchase of power in the Indian Power Exchange.

The Objector has sought directions from the Commission to seek certain documents from the Applicant and the Government

of Arunachal Pradesh in order to examine the nature of transactions being carried out by the Applicant.

4. The Applicant in its reply dated 23.7.2010 has submitted as under:

(a) The Applicant has fulfilled all requirements under the Act and the Trading Licence Regulations. The issues raised by the Objector have no bearing on the grant of inter-State Trading Licence sought by the Applicant through its application filed on 10.9.2009.

(b) The Applicant is an intra State Trading Licensee and has been granted the licence by the Arunachal Pradesh Electricity Regulatory Commission vide order dated 10.8.2009. Therefore the Applicant has acted duly and in accordance with law in dealing with the electricity from the State of Arunachal Pradesh.

(c) In accordance with the Trading Licence granted by the State Commission, the Applicant is buying electricity from the Government of Arunachal Pradesh and selling

electricity within the territory of Arunachal Pradesh. The transactions and trading margins are being regulated by the State Commission. So long as the Applicant acts in accordance with the Regulations of the State Commission in regard to intra State sale, there is no violation violation of the part of the Applicant in dealing with the electricity purchased from the Government of Arunachal Pradesh. This has been settled by the decision of the Hon'ble Supreme Court in the case of Grid Corporation of Orissa Limited v Gajendra Haldea {(2008) 13 SCC 414}.

(d) The Applicant is dealing in electricity through the Power Exchange. The Applicant has been acting as the Professional Member of the Power Exchange in arranging the sale of electricity of the Government of Arunachal Pradesh by delivering the same in the State of Arunachal Pradesh which is in accordance with applicable laws and without a need to take an inter-State trading licence.

(e) The Applicant is duly following the provisions of the Power Market Regulations, 2010 notified by the Commission and the Applicant has stopped all kinds of trading with Department of Power, Government of Arunachal Pradesh since the Commission issued notification on the guidelines for operation of professional members.

5. During hearing of the application on 29.7.2010, the learned senior counsel appearing on behalf of the Objector drew attention of the Commission to paragraphs 8 to 12 of its objections and submitted that the applicant has been purchasing electricity from the Govt. of Arunachal Pradesh and selling the same through the power exchange without valid trading licence from the Commission. The learned senior counsel further submitted that it had requested the Commission to call for information from the applicant regarding all aspects of its transactions from the Department of Power, Govt. of Arunachal Pradesh including copies of the agreements. However, the

Applicant in its response dated 23.7.2010 has submitted that it is an intra-State trading licensee. The learned senior counsel submitted that the Applicant should have given the required information to meet the objections raised by the Objector and sought appropriate directions from the Commission in this regard.

6. Learned counsel for the applicant submitted that it is an intra-State trading licensee and is registered as a Professional Member with the Indian Energy Exchange. He submitted that the applicant is carrying out its business within these two parameters. Learned counsel further submitted that the Commission has asked for the details of the professional members in connection with another case which the applicant has submitted. The applicant is also willing to submit any other information including the books for inspection of the Commission. Learned counsel further submitted that after the Commission has clarified the role of professional members, the applicant has stopped its activities as a professional member as on June 2010 even at the cost of losing the business. Learned counsel submitted that the applicant wants to come to the business through the licensed

route. The learned counsel submitted that as the Commission has already come to the conclusion that the applicant fulfills the conditions for grant of trading licence, the scope of section 15(5) is very limited and confined to considering the recommendations of CTU and STU only. Learned counsel submitted that it is willing submit any information required to satisfy the Commission, but the applicant is under no obligation to share its commercial information with the Objector which can be used against it. Learned counsel submitted that nothing has been proved against it in any court of law or by the Commission that the applicant has indulged in the illegal activity.

7. Learned senior counsel for the Objector submitted that though the applicant might have valid reasons not to provide the required information to the Objector, but it cannot ask for the licence de hors the enquiry. He submitted that either the Applicant may allow the enquiry to be conducted in this proceedings or in order to maintain the secrecy in any other proceeding and in the later case, issue of licence may be made subject to the enquiry.

8. The Applicant in its written submission dated 3.8.2010 has made the following submissions:

(a) The Applicant has not conducted any inter-State trade of electricity. The Applicant used its intra-State trading licence for facilitating sale of electricity through the Indian Energy Exchange from 1.9.2009 to 6.6.2010 as a professional/facilitation member which is a permitted activity under the rules, regulations and bye-laws of the exchange.

(b) The Applicant has filed details of all its financials before the Commission pursuant to the order of the Commission dated 24.12.2009. The Applicant believed that while coming to the view in the order dated 18.6.2010, the Commission has already taken note of the financials of the Applicant which was filed by the Indian Energy Exchange before the Commission in January 2010. Therefore, the Commission cannot take a different view on the subject on the basis of baseless statements made by the Objector.

(c) The Applicant has entered into an agreement with the Department of Power, Arunachal Pradesh on 19.8.2009. The Applicant applied for an inter-State trading licence on 14.9.2009. In the mean time, in order to ensure that the Applicant does not lose its business opportunities, it continued its business activities, through the Indian Energy Exchange in terms of the applicable rules, regulations and bye-laws. The Applicant stopped using the exchange platform for the purpose of trading after the exchange communicated the order of the Commission dated 24.12.2009 on 4.6.2010 for compliance.

(d) The Commission's jurisdiction to consider the suggestions/objections from the general public is exhausted at the stage of section 15(2) where the Commission decides to grant a licence after considering suggestions/objections. At the stage of the proceedings under section 15(5), the Commission is required to consider only the objections/recommendations of Central Transmission

Utility/State Transmission Utility and does not have the jurisdiction to consider the objections of the general public.

9. The Applicant vide its affidavit dated 6.8.2010 has submitted a certificate dated 5.8.2010 from the Indian Energy Exchange. The certificate reads as under:

“This is to certify that Arunachal Pradesh Power Corporation Pvt. Ltd. is registered as Professional Member/Facilitator Member on the Indian Energy Exchange and Department of Power, Arunachal Pradesh has transacted as Grid connected client of them”.

10. The Applicant has raised an objection that the Commission does not have the jurisdiction to consider the objections from the general public received in response to the public notice of the Commission under section 15(5) of the Act. We intend to deal with this objection first.

11. Section 15(5) of the Act provides as under:

“(5) Before granting a licence under section 14, the Appropriate Commission shall -

(a) publish a notice in two such daily newspapers, as that Commission may consider necessary, stating the name

and address of the person to whom it proposes to issue the licence;

(b) consider all suggestions or objections and the recommendations, if any, of the Central Transmission Utility or State Transmission Utility, as the case may be.”

12. A plain reading of the provisions of the above sub-section reveals that the Commission is bound to publish its proposal to grant licence to any particular person and to consider all suggestions or objections received in response to the public notice and the recommendations, if any, from the Central Transmission Utility or State Transmission Utility before granting a licence. This provision is applicable for grant of transmission, distribution and trading licence as envisaged under section 14. In case of the Central Commission, it is concerned with grant of inter-State transmission licence and inter-State trading licence. When clause (b) of sub-section (5) of section 15 is read with sub-sections (3) and (4) of the said section, it becomes amply clear that ‘recommendations, if any, by the Central Transmission Utility or State Transmission Utility’ pertains to the transmission licence only whereunder the

applicant for the transmission licence is required to serve a copy of the application on the CTU or STU as the case may be and the CTU or STU is mandated to send its recommendations, if any, within thirty days to the appropriate Commission. There is no such statutory requirement to serve the copy of the application on the CTU or STU in case of the trading licence nor the CTU/STU is required to send its recommendations to the appropriate Commission. Therefore, 'recommendations of the CTU/STU' is not applicable in case of trading licence. In our view, under the provisions of section 15(5) (b) of the Act, the Commission is required to consider all suggestions or objections received in response to the notice under section 15(5)(a) regarding its proposal to grant trading licence. This position has been made amply clear in clauses (8) and (9) of the Trading Regulations 2009, which are extracted below:

"6.

(8) When the Commission proposes to grant licence, it shall publish a notice of its proposal in two daily newspapers, as the Commission may consider appropriate, stating the name and address of the person to whom it proposes to issue the licence, with such other details as the Commission considers appropriate, to invite further objections or suggestions to its proposal.

(9) On consideration of further objections or suggestions received and the reply of the applicant thereto, if any, the Commission may grant the licence or reject the application, for reasons to be recorded in writing if

the application does not conform to the provisions of the Act, the rules or the regulations or provisions of any other law for the time being in force:

Provided that no application shall be rejected, unless the applicant has been given an opportunity of being heard.”

Thus as per clause (9) of Regulation 6, the Commission is required to consider further objections or suggestions received in response to public notice and the reply of the Applicant thereto before granting trading licence. Thus the Commission is within its jurisdiction to consider the objections received in response to the public notice under section 15(5) of the Act.

13. The main objection of the Objector is that the Applicant has previously undertaken trading in electricity without having a valid trading licence which is in violation of the Act which prohibits purchase and sale of electricity by any person without a valid trading licence. The Applicant has replied that it has been granted a valid intra-State trading licence by the State Regulatory Commission/Government of Arunachal Pradesh on 19.8.2009. As an intra-State trader, it has been purchasing and selling electricity within the State of Arunachal Pradesh. The Applicant has further submitted that as a Professional Member of

the Indian Energy Exchange, it has undertaken the activity of facilitating the sale of electricity through the exchange from 1.9.2009 to 6.6.2010 in accordance with the rules, regulations and bye-laws of the Indian Energy Exchange. The Applicant has also placed on record a certificate from the Indian Energy Exchange stating that Government of Arunachal Pradesh has transacted on the power exchange as a grid connected client of the Applicant.

14. The Applicant has admitted that it has undertaken trading within the territory of Arunachal Pradesh as an intra-State trader and facilitated transactions on the Indian Energy Exchange as a Professional/Facilitator Member. We intend to satisfy ourselves before granting the licence that these transactions of the Applicant do not have any element of inter-State trading which the Applicant is prohibited under law to carry out such business without a licence from this Commission. Accordingly, we direct:

- (a) the Applicant to submit under affidavit (i) tabulated details of all transactions undertaken by it as an electricity trader from 19.8.2009 till date (contract details

like names of buyer and seller to a contract, their physical location, point of injection and drawal, point of sale of electricity for each of the contracts and open access details etc.) and (ii) details of all transactions (client-wise including client ID, whether buyer or seller, point of delivery etc.) undertaken by the Applicant on the Indian Energy Exchange including the complete list of its clients from the date of its membership of the exchange till date, ;

(b) the Indian Energy Exchange to submit on affidavit the details of all transactions client wise carried out by the Applicant on its exchange from the date of membership of the exchange till date. The Indian Energy Exchange shall also confirm whether the Applicant has ever registered any valid power purchase agreement or power sale agreement and obtained any client ID against such agreement; if so, details thereof.

(c) the National Load Despatch Centre in consultation with Regional Load Despatch Centre to submit under affidavit the details of the transactions for which inter-

State open access was sought by the Applicant and was granted.

15. The information sought vide para 14 above shall be submitted by all concerned by 24.9.2010.

16. Government of Arunachal Pradesh, Department of Power is requested to assist the Commission by providing the details of all transactions carried out through the Applicant including the details of the contracts, name of the buyer in each of the contracts, quantity sold, point of delivery etc. by 20.9.2010.

17. Further action on the application of the Applicant will be taken after receipt of the above said information.

Sd/-	sd/-	sd/-	sd/-
(M. DEENA DAYALAN)	(V. S. VERMA)	(S. JAYARAMAN)	(Dr. PRAMOD DEO)
MEMBER	MEMBER	MEMBER	CHAIRPERSON