

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 113/2011**

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

**DATE OF ORDER: 19.4.2011**

**In the matter of**

Approval of the panel of Independent Directors for Indian Energy Exchange, New Delhi.

**And in the matter of**

Indian Energy Exchange Limited

**.... Applicant**

**ORDER**

Regulation 22 of the Central Electricity Regulatory Commission (Power Market) Regulations, 2010 (hereinafter referred to as "Power Market Regulations") *inter alia* provides as under:-

"22. Ownership and Governance structure of Power Exchange  
(i) .....  
(ii) Independent Directors – At least one third of the members of the Board or a minimum of two directors, whichever is higher, shall be independent directors selected from a panel constituted by the Power Exchange and approved by the Commission out of which one person will have professional qualification and experience in finance. The panel shall be constituted of persons of repute and integrity from academics, professionals, industry representatives, public figures none of whom should have any interest in any Member of Power Exchange and any fiduciary relationship with any shareholder of Power Exchange."

2. The applicant, Indian Energy Exchange Limited ("IEX") was accorded approval by the Commission to establish and operate a

power exchange vide order dated 31.8.2007 in Petition No.38/2007. The applicant started its operation with effect from 27.6.2008. In terms of the first proviso to Regulation 14, the applicant is deemed to be registered under the Power Market Regulations. The applicant is required to comply with *inter alia* the requirements of ownership and governance structure as laid down in the Power Market Regulations. Therefore, at least one third of the members of the Board of the Applicant or a minimum of two directors, whichever is higher, shall be independent directors selected from a panel constituted by the Power Exchange and approved by the Commission.

3. The applicant by its letter dated 20.12.2010 has sought the approval of the Commission to a panel of four persons for appointment as Independent Directors on the Board of IEX in order to comply with Clause (ii) of Regulation 22 of the Power Market Regulations.

4. Regulation 24 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 (hereinafter "Conduct of Business Regulations") provides that the Commission may initiate any proceedings *suo motu* or on a petition filed by any affected or interested person. Clauses (c) and (d) of Regulation 2 of Conduct of Business Regulations define "petition" and "proceedings" as under:

"(c)'Petition' means and includes all petitions, applications, complaints, appeals, replies, rejoinders, supplemental pleadings, other papers and documents;"

"(d)'Proceedings' means and include proceedings of all nature that the Commission may hold in discharge of its functions under the Act;"

It is clear from the above provisions that the Commission is required to hold proceedings for discharge of its functions under the Act on the basis of a petition filed by an interested or affected person. The Commission in due discharge of its functions under section 66 of the Electricity Act, 2003 (the Act) has specified the Central Electricity Regulatory Commission (Power Market) Regulations, 2010 for regulating the establishment, operation and maintenance of power exchanges among other things. All approvals sought by the power exchanges for compliance with the requirements of Power Market Regulations shall be considered by the Commission in discharge of its functions under the Act on the basis of the petitions filed for the purpose. Therefore, the applicant is required to seek approval of the Commission for compliance with the Power Market Regulations by filing appropriate petition under Conduct of Business Regulations. The applicant's letter dated 20.12.2010 been treated as a petition and is being considered accordingly.

5. We have perused the brief profiles of the persons included in the proposed panel submitted by the applicant. We are of the view that certain additional information is required to be submitted by the applicant for examination of the proposal to ascertain whether the proposed persons fulfil the requirements for being appointed as Independent Directors. Accordingly, we direct the applicant to submit the following information:-

- (i) Form No. 24-AA under the Companies Act, 1956 (Notice by the Interested Directors) in respect of the persons proposed in the panel;
- (ii) Information on all pecuniary relationships or transactions of the persons proposed in the panel *vis-a-vis* the applicant;
- (iii) Information as to whether the persons forming the panel (or anyone or more of them) are independent directors of the majority shareholder company(ies) or independent directors of the sponsor of the applicant;
- (iv) Information as to whether any of the persons included in the panel holds any executive positions in any company controlled by an entity which is a majority shareholder/sponsor/promoter of the applicant company, and/or has cross holdings in the applicant company and its affiliates, and whether the persons forming the panel hold equity shares (with or without voting rights) in such company controlled by the entity or in the entity itself;
- (v) Information as to whether the persons forming the panel (anyone or more of them) are partner or executive of any

statutory audit/internal audit/legal firm associated with the  
applicant company

6. The information sought at paragraph 5 above shall be submitted  
within a period of fifteen days from the date of this order.

Sd/-  
(M.DEENA DAYALAN)  
MEMBER

sd/-  
(V.S.VERMA)  
MEMBER

sd/-  
(S.JAYARAMAN)  
MEMBER

sd/-  
(Dr. PRAMOD DEO)  
CHAIRPERSON