

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 166/ MP/2011

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

Date of Hearing: 8.9.2011

Date of Order: 17.11.2011

IN THE MATTER OF

Request for approval of Exit Scheme submitted by Power Exchange of India Limited under Regulation 36 of the Central Electricity Regulatory Commission (Power Market) Regulations, 2010.

AND IN THE MATTER OF

Power Exchange of India Ltd.

..... Petitioner

Parties present:

Shri S Venkatesh, Advocate, PXIL

Order

Regulation 36 of the Central Electricity Regulatory Commission (Power Market) Regulations, 2010 (hereinafter “Power Market Regulations”) mandates the Power Exchanges to have their Exit Scheme duly approved by the Commission for closure of the running contracts or succession plan for all

transacted contracts in the event of closure of the power exchange. Regulation 36 of Power Market Regulations is extracted as under:

“ 36. Exit Scheme – The Power Exchange shall have their Exit Scheme approved by the Commission during the registration process detailing the manner in which the running contracts on the Power Exchange shall be closed or the succession plan for all transacted contracts in case of closure of Power Exchange, cancellation or withdrawal of registration under these regulations. Thereafter the Exit scheme shall be provided in the byelaws of the Power Exchange.

Provided that the Power Exchanges operating on the date of notification of these regulations, shall submit to the commission the exit scheme for approval within a period of one year. Consequently the bye laws shall be modified.”

2. The petitioner came into operation prior to the date of coming into force of the Power Market Regulations. In compliance of the proviso to Regulation 36 of Power Market Regulations, the petitioner submitted its Exit Scheme on 21.7. 2011 for approval of the Commission. After hearing the petitioner on 8.9.2011, the Commission in its order dated 18.9.2011 had issued the following directions:

“3.On examination of the Exit Scheme submitted by the petitioner, it is observed that the proposed scheme broadly conforms to the requirements of Regulation 36 of Power Market Regulations. However, the Commission is of the view that the petitioner should incorporate the following points in the Exit Scheme:

- (a) Scenario envisaging voluntary closure of Power Exchange by the shareholders.*
- (b) A provision to the effect that process of Closure under the Exit Scheme shall be without prejudice to compliance of the provisions of the Companies Act or any other law in force with regard to winding up of the company.*

4. The petitioner is directed to submit the modified Exit Scheme incorporating the above within a period of 15 days from the date of issue of this order.”

3. In compliance with the above directions, the petitioner has submitted a modified Exit Scheme on 4.10.2011. After detailed examination of the modified Exit Scheme, we are of the view that the scheme meets the requirement of the Power Market Regulations and has adequate provisions to safeguard the interest of the parties transacting on the platform of power exchange. Briefly, the salient features of the Exit Scheme submitted by the petitioner are as under:

- a) **In the event of withdrawal or cancellation of registration by CERC:** After issue of the orders of the CERC withdrawing or cancelling the registration of the Power Exchange, the Exchange will issue a notification in not less than two national English daily news papers, including one economic newspaper, and one vernacular newspaper and further providing the notice of not less than one month to its clients and members to wind up and close their transactions and affairs on the Exchange. No new contracts, transactions or trades shall be accepted by the Power Exchange and all contracts, transactions or trades entered into prior to such notification shall remain valid and binding and shall be completed as per their respective terms and in accordance with the then current Business Rules, Bye Laws and Rules of the Exchange. Any settlement liability that may arise on the Exchange under any Prior Contract shall, subject to the provisions of Electricity Act, 2003 and the Regulations made thereunder and the then current Business Rules, Bye Laws and Rules of the Exchange, be met out of the Settlement Guarantee Fund which will be utilized to the extent necessary to meet any loss or liability accruing to the Exchange on account of such order. Any amounts that may remain in Settlement Guarantee Fund shall

be distributed by the power exchange in accordance with its Bye Laws. The Power Exchange shall endeavor to settle all claims within the notice period and in any event, no later than 6 months thereafter, subject to resolution of disputes on any claims that may be pending. All members that are not engaged in prior contract shall automatically cease to be members and their accounts settled. The other members upon completion of their obligation under prior contracts shall cease to be in operation.

- b) **In the event of a merger, amalgamation, re-organisation or other corporate restructuring:** This will result in creation of a new legal entity. Power Exchange shall deal with the Prior Contracts in accordance with the approved scheme of restructuring, provisions of Power Market Regulations, any other applicable law and/or as may otherwise be directed by the Commission.
- c) **Voluntary closure of Power Exchange by the shareholders:** In such an eventuality, the Power Exchange shall take the steps in the same manner as applicable in case of withdrawal or cancellation of registration by the Commission or as may otherwise be directed by the Commission.
- d) **Compliance with Applicable Laws:** All actions taken by the Exchange under this Exit scheme shall be without prejudice to the Power Exchange's obligation to comply with provisions of all other laws in force and applicable to the Power Exchange , including but not limited to the Companies Act, 1956.

4. Approval is accorded to the Exit Scheme of the petitioner submitted on 4.10.2011 under Regulation 36 of the Power Market Regulations. The petitioner is further directed to incorporate the approved exit scheme in the Bye Laws of the Exchange.

5. The petition is disposed of in terms of the above.

Sd/-
(M Deena Dayalan)
Member

Sd/-
(V S Verma)
Member

Sd/-
(S Jayaraman)
Member

Sd/-
(Dr Pramod Deo)
Chairperson