

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

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

**Suo moto Petition No. 123/2011**

**Date of Hearing: 4.10.2011  
Date of Order: 21.12.2011**

**In the matter of:**

Compliance with the provisions of Central Electricity Regulatory Commission  
(Power Market) Regulations, 2010

**In the matter of:**

Manikaran Power Ltd, Kolkata.

..... Respondent

**Parties Present:**

Ms Shurbhi Sharma, Advocate, MPL  
Shri Sakya Chaudhuri, Advocate, TPTCL  
Shri ML Batra, PXIL

**ORDER**

In response to the public notice issued by the Commission under section 15(5) of the Electricity Act, 2003 (hereinafter "the Act") proposing to grant Category IV licence for inter-State trading in electricity to Manikaran Power Limited (MPL), objections were filed by Tata Power Trading Company Limited (TPTCL). Subsequently TPTCL in its affidavit dated 18.3.2011 filed in Petition No.135 of 2010 alleged that MPL as a professional

member of Indian Energy Exchange had charged member service charges in excess of 0.75% of the transaction value as specified in Regulation 27 of the Central Electricity Regulatory Commission (Power Market) Regulations, 2010 (hereinafter “Power Market Regulations”) in the transactions carried out from 5.9.2010 to 8.9.2010. It was further alleged that MPL was charging ₹ 16545/ as processing fee from the clients. In order to ascertain the veracity of the allegation, the Commission initiated the instant petition *suo motu* and had directed MPL in the order dated 5.5.2011 to submit the following information:

- (a) Details of all transactions carried out on the power exchange from 5.9.2010 to 8.9.2010 including details of hourly power price discovered on exchange in the Day ahead market, member service charge charged to these clients for each of these transactions, in absolute value and as a percentage of hourly power price;
- (b) How MPL was ensuring compliance to 0.75 % of transaction value while charging flat rate for member service charge; and
- (c) The reasons for separately charging processing charge whereas the same is included in ceiling of member service charge as per Power Market Regulations.

Indian Energy Exchange was also directed to submit the hourly power prices in day ahead market and the transactions of MPL from 5.9.2010 to 8.9.2010.

2. MPL filed its reply and the information called for vide its affidavit dated 16.5.2011 and Indian Energy Exchange filed its reply vide affidavit dated 13.5.2011. After

examining the submissions of MPL and IEX, the Commission in its order dated 10.06.2011 had directed MPL to submit the following data:-

- (a) Sample copies of Client Agreements having provisions for ceiling of 0.75% as member service charge and periodic settlement of accounts subject to such ceiling;
- (b) Documents to demonstrate that amounts in excess of 0.75% have been adjusted in respect of the transactions made between 5.9.2010 and 8.9.2010
- (c) Excess amounts charged in respect of all clients have been adjusted till 31.3.2011 i.e. accounts finalization of the respondent.

3. MPL in its reply dated 08.07.2011 has submitted copies of three client agreements and documents showing adjustment of excess amount in respect of the transactions from 5.9.2010 to 8.9.2010 along with auditors certificate. As regards the excess amount, MPL has submitted that running accounts are being maintained as it is not possible to make daily adjustments. These transactions have been done transparently through banking channel and have been settled at the close of trade.

4. Tata Power Trading Company Limited (TPTCL) filed IA No.23 of 2011 under Regulation 111 read with Regulation 113 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 (hereinafter "Conduct of Business Regulations") and section 151 of the Civil Procedure Code,1908 seeking impleadment as a party in the instant petition. While Regulation 111 and 113 of the Conduct of Business Regulations deal with the inherent powers of the Commission to

issue such orders as may be necessary to meet ends of justice or prevent the abuse of the process of the Commission, section 151 of the Civil Procedure Code deals with the inherent powers of the courts. The hearing in the matter was held on 04.10.2011. After hearing the learned counsel for MPL and TPTCL, we rejected the plea of TPTCL for impleadment. Relevant portion of the Record of Proceedings of that date is extracted below:

“2. The learned counsel for TPTCL submitted that the present proceeding has been initiated by the Commission suo-motu after TPTCL brought to the notice of the Commission the instances of contravention of the regulations and orders of the Commission by Manikaran Power Limited (MPL). He further submitted that TPTCL has sought impleadment in the proceeding to assist the Commission in effective determination of the issues.

3. The learned counsel for MPL submitted that TPTCL has no *locus standi* to seek impleadment in the present proceeding which has been initiated by the Commission suo-motu.

4. In reply to a query of the Commission, the learned counsel for TPTCL submitted that impleadment as a respondent in the proceedings confers certain rights on the party, particularly in the matter of service of the copies of the documents filed in the proceedings. The Commission observed that TPTCL can obtain copies of the documents filed in this proceeding from the registry of the Commission in accordance with the Conduct of Business Regulations and file its submissions even without being impleaded as a party. Accordingly, the Commission rejected the I.A. for impleadment.”

5. The IA was rejected in terms of our above observation. However, we had allowed TPTCL to file its submission by 17.10.2011 and MPL to file its response by 24.10.2011. TPTCL after obtaining the copies of the documents from the Registry of the Commission has filed its submission vide affidavit dated 12.10.2011 and MPL has filed its reply to the submissions of TPTCL in its affidavit dated 24.10.2011.

7. TPTCL in its submission has alleged that MPL has been carrying on its business in complete disregard of the Power Market Regulations to create large client base which it may not have been able to generate while acting within the parameters of law. Therefore, MPL is knowingly and deliberately violating the provisions set out in Power Market Regulations and thereby availing unfair benefit over its competitors, including the Objector. TPTCL has raised the following primary objections:

- a) Consumer contracts provided by MPL: In compliance with the order dated 10.6.2011, PML has submitted agreements dated 6.6.2011 and 9.6.2011 which are about the same time as the order and raises the doubt about the sanctity of such agreements. Moreover, the facilitation charges at Rs.0.020 per unit/ Rs.0.025 per unit have been provided in the agreement which shows that MPL is charging fixed charges irrespective of the actual amount chargeable as per Regulation 27 of the Power Market Regulations.
- b) Rationale for charging flat rates: MPL in its affidavit dated 16.5.2011 has explained that it charges flat rate since the clients of the professional members do not want to pay higher professional membership charges when transaction value in the exchange are very high and most clients want to freeze the service charges and not make the same a variable component. TPTCL has submitted that MPL despite being aware of the prohibition under Regulation 27 of Power Market Regulations has entered into contracts with its clients contrary to the the said regulation. MPL has failed to provide any evidence of situation where it has not been able to recover

service charges at the prescribed rates from the clients or any demands from the clients to fix the service charge at a flat rate. The justifications by MPL are an afterthought to explain its illegal action of charging service charges higher than that is provided in the Power Market Regulations.

- c) Certification by Chartered Accountant regarding adjustment of excess amount service charge in future transaction: The certification of Chartered Accountant M/s Bothra Nirmal Associates certifying the adjustment of excess charges collected by MPL contradicts the contention of MPL with regard to charging of excess service charges. From the CA's certification, it appears that MPL collects member service charges even before finalization or execution of transaction, maintains a running account and any amount collected in excess of 0.75% is settled "in an eventuality of the beneficiary leaving the trade with MPL". It demonstrates that MPL derives benefit of collecting excess service charges till its relationship with its client is discontinued.
- d) Justification for charging excess service charges for the period of 5.9.2010 to 8.9.2010: MPL in its affidavit dated 16.5.2011 has contended that the cost of power transacted through Exchange from 5.9.2010 to 8.9.2010 were the lowest in the year, and in terms of flat rates charged by MPL it was certain that the service charges were in excess to 0.75% margin. It is evident from the data that MPL has in fact charged up to 1.5% also on the transaction value. TPTCL has submitted a summary of rates charged by MPL on these dates for all its clients. It has also furnished hourly prices on

power exchange for the period from 1.5.2010 to 28.4.2011 and has requested the Commission to call for more information on transactions when power prices were lower than for the period from 5th to 8th September, 2010 .

e) On the issue of maintaining client pool account: As per the Commission's order dated 24.12.2009 and Regulation 26 of the Power Market Regulations, members of Power Exchange who are not trading licensees shall not provide any credit or finance or working capital facility to its clients. It appears that client pool account mechanism was developed by IEX specifically to cater to the requirement of MPL being the member with single largest client base for IEX. MPL had with impunity continued to operate the client pool account at least till April 2011. TPTCL has submitted that MPL has consistently flouted the provisions of Power Market Regulations and continues to do so while entering into contracts with its clients for its own business interest without having any regard to mandate of law. TPTCL has further submitted that it is a fit case where proceedings should be initiated against MPL under section 142 of the Act.

8. MPL in its affidavit dated 24.10.2011 has submitted that the intentions of TPTCL are solely motivated with the object of frustrating competition in the power trading sector. It is undisputed that MPL in accordance with the regulations, byelaws and rules regulating the exchange based transactions has promoted and established sale of power to over 122 consumers having requirement of about 5 MW and 410 consumers

between 1 to 2 MWs. MPL has submitted that it has made open access provisions a reality by developing small consumers by giving them choices which is the real purpose of the Act and the Regulations of the Commission. MPL has further submitted that TPTCL despite not being impleaded as a party appears to have obtained the documents submitted by MPL before the Commission in a *suo motu* proceedings. MPL has also submitted that some of the documents submitted by it are commercially sensitive and confidential in nature, and as such should not be provided to a competitor who is unreasonably hostile and is illegally promoting its own vested interests. MPL has submitted that the conduct of TPTCL is contrary to public interest and opposed to development of the power sector inter alia by induction of new traders. MPL has alleged that TPTCL has entered into side agreements with certain generators, with a view to overreach the trading margin restrictions imposed by the Commission. MPL has submitted that since several licensed traders continue to deliberately violate the trading margin, there is a need for larger investigation into the issue.

9. MPL has submitted its response to the objections of TPTCL as under:

- a) Consumer Contracts provided by MPL: The agreements filed by MPL were executed before Commission's order dated 10.6.2011 and hence the allegations of TPTCL are baseless. Contracts with the clients are based on flat charges solely because the clients of professional members do not want to pay higher professional membership charges when the transaction price in the exchange is very high. Most clients being small size industry want to



freeze the service charges and not make the same a variable component of tariff. MPL has further submitted that tenders of most of the public sector units or state utilities always seek the tenders in paise per unit and not in terms of percentage for convenience. MPL has annexed a copy of the tender issued by Punjab Alkalis and Chemicals Limited in support of its contention. MPL has also submitted that the flat charge is only a ceiling charge and in all times subject to a maximum charge of 0.75% as provided in Regulation 27 of the Power Market Regulations. MPL has submitted that it is willing to provide any undertaking on this issue as may be directed by the Commission.

- b) Rationale for charging flat rates: The settlement of running accounts normally takes place periodically and MPL issues debit/ credit notes, which are adjusted with future transactions, so as to ensure that the agreed rate, subject to the maximum professional charge as mentioned in Regulation 27 of Power Market Regulations is maintained. When the power prices are above Rs 4/Kwh, MPL has earned much lower than 0.75 % margin. MPL has submitted that the demand of TPTCL for evidence where MPL has not been able to recover the service charge at prescribed rates from the customers deserves to be rejected as the average rate of power remained at Rs.3.00/kWh through the last year and the fixed rate of margins has benefited the consumers.

- c) Certification by the Chartered Accountant regarding adjustment of excess amount service charge in future transactions: The certificate of CA has been provided in the license application case and audited books of MPL which have been inspected will also confirm the same.
- d) Justification for charging excess service charges for the period of 5.9.2010 to 8.9.2010: Any excess service charge charged on the basis of the fixed margin contracts are subject to adjustment in the subsequent transactions by MPL and all information sought by the Commission has been furnished by MPL in this regard.
- e) Maintaining Client Pool Account: The regulations issued by the Commission have to be given effect to by the Exchange which require amendment of existing byelaws and rules of business of the exchange. The new procedure, pursuant to the clarifications issued by the Commission which was upheld by the Appellate Tribunal was established by letters/instructions issued by IEX on 30.3.2011 and 31.3.2011 and made effective from 6.4.2011. MPL has complied with the new procedure. MPL has submitted that regulations issued by the Commission have to be implemented by the Exchange and MPL as a professional member has acted in terms of the rules and bye-laws of the exchange and the instructions received from the exchange from time to time.

10. We have examined the documents on record and have carefully considered the submissions of MPL in response to the *suo motu* proceedings and the objections of TPTCL.

11. The present *suo motu* proceedings was initiated to ascertain whether MPL had violated the provisions of Regulation 27 of the Power Market Regulations by charging Member Service Charge in excess of 0.75% of the transaction value from 5.9.2010 to 8.9.2010. MPL has explained that this has occurred on account of two factors: First, MPL is charging the flat Member Service Charge as per the requirements of the clients; second, during 5.9.2010 to 8.9.2010, the transaction price in the power exchange was so low that the flat rate charged by it exceeded the membership charge calculated @0.75% of the transaction value. MPL has submitted that the Member Service Charge is subject to the ceiling specified in the Power Market Regulations and it is refunding the excess Member Service Charge through the process of rolling settlement with the clients. TPTCL has submitted that charging the flat rate is in contravention of Regulation 27 of the Power Market Regulations.

12. As to the status of MPL, it is not an Electricity Trader. It therefore falls under Regulation 26 of the Power Market Regulations in the category of a member who is neither an electricity trader nor a distribution licensee including deemed distribution licensee nor a grid connected entity. Regulation 27 of the Power Market Regulations which deals with Member Service Charge is quoted overleaf.

“27. Member Service Charge for providing services to their clients in day ahead and term ahead markets in Power Exchange shall not be more than 0.75% of transaction value. This ceiling would be an overall ceiling including the service charges of any subordinate service providers.

Provided that Member Service charge to their clients in day ahead and term ahead market in Power Exchange for Electricity Traders who are members of Power Exchange shall be the trading margin only as per CERC (Fixation of trading margin) Regulations 2006 and as amended from time to time.

Provided further that the Commission may, by order, review the members service charge criteria from time to time.

x                                x                                x                                x                                x

Provided also that member service charge shall not include any charges levied by Power Exchange, transmission (open access) charges, other charges payable to National Load Despatch Centre / Regional Load Despatch Centre/State Load despatch Centre, statutory taxes etc.”

The Member Service Charge of 0.75% of the transaction value in terms of Regulation 27 is applicable in case of MPL. Regulation 59(ii) of the Power Market Regulations provides that for electricity traders, trade reports shall be submitted in the format prescribed in Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of trading licence and other related matters)(second amendment) Regulations, 2009 (hereinafter “Trading Licence Regulations”). Forms 4 A to C of Trading Licence Regulations provide for reporting and price of electricity traded by trading licensees and the said formats contain columns such as purchase price, sale price and trading margins. In other words, the trading margin charged by an electricity trader is being monitored by the Commission through regulatory control. However, in respect of the Professional Members such as MPL who are appointed by the power exchanges through a due diligence process of respective exchange and are functioning

under their control and supervision, ensuring compliance with the requirement of Regulation 27 of Power Market Regulations solely rests with the power exchanges.

13. MPL is a member of Indian Energy Exchange. Clause 19 of the Business Rules of Indian Energy Exchange provides as under:

**“19. Member Service Charges**

Subject to the provisions of these Business Rules and the provisions of the Act, Rules and Regulations made thereunder the Member Service Charges that a Member can charge to its Clients, for providing services may be mutually agreed to between them.

Provided however the Professional Member who is not trading licensee shall not provide any credit or financing or working capital facility to their Clients.”

Thus as per the Business Rules of Indian Energy Exchange, a member can charge member service charge to its clients for providing services as may be mutually agreed between them subject to the Business Rules of the Exchange and provisions of the Act, Rules and Regulations. A professional member of the Indian Energy Exchange can mutually decide the member service charge with its client subject to the ceiling specified in the Power Market Regulations. However, there is no provision in the Business Rules of Indian Energy Exchange for monitoring compliance with regard to Regulation 27 of the Power Market Regulations. MPL has placed on record copies of the Client Agreements which contain a provision that member service charge shall be charged in accordance with Regulation 27 of the Power Market Regulations. Though the client agreements submitted by MPL provide for settlement of member service charge as per the Power Market Regulations, there is no mechanism put in place by the Power

Exchange to monitor that the member service charge actually charged by the professional member does not exceed 0.75% of transaction value.

14. MPL has also submitted a Chartered Accountant's certification that in regard to the clients who have left or closed their accounts with MPL in Financial Year 2010-11, member service charges have been settled @ 0.75 % over the financial year. The details of cheques issued to the clients in cases where the charges were in excess of 0.75% have also been submitted. However, it appears from the Chartered Accountant's statement that all trades for a particular client over the financial year 2010-11 have been aggregated and the member service charge @ 0.75 % has been calculated on the aggregated amount and compared with the aggregate value arrived with flat rate charged from the client. The aggregating of all contracts tantamounts to averaging of all trades during the year to calculate the member service charge. In our view, this process of calculation and settlement of member service charge is not in conformity with Regulation 27 of Power Market Regulations. It is clarified that all the 24 hourly contracts in the day ahead market on the power exchange are independent contracts as per the standard contract specifications prescribed in the business rules of the exchange and the price discovery for each hourly contract is done separately. Hence the member service charge for one hourly contract cannot be adjusted against any other hourly contract even in the same auction day. In case of flat service charge, the 0.75% limit will be complied or exceeded based on the hourly power price discovered. However, adjustment cannot be made between contracts where the flat member service charge rate leads to figure above 0.75 % with contracts where the flat member service

charge rate leads to a figure below than 0.75 %. In case the figure is above the 0.75 % value, the extra amount should be refunded to the client and not adjusted with other contracts. It is reiterated that the member service charge shall be calculate for each hourly contract separately at all times and cannot be adjusted by aggregating contracts over a day or a month or a year. However, in view of the well established processes in place for day ahead auction and the practical difficulties to settle member service charges for each hourly contract, we direct that member service charge of Professional Members shall can be settled with their clients on a regular periodicity to be decided by the exchange and included in the byelaws. While making the settlement it should be ensured that calculation of member service charge is done on the basis of each hourly transaction. It is also clarified that after implementation of 15 minute contracts in day ahead market, the member service charges shall be calculated on the basis of 15 minute contract independently.

15. Professional Members of the power exchange have been appointed by the exchange based on the criteria set by them and function under the full control of the power exchange. It is incumbent on the power exchanges to ensure that the Professional Members comply with all the provisions of the Power Market Regulations. On perusal of the Rules, Business Rules and Bye laws of the Indian Energy Exchange, we find that there is no mechanism put in place by the exchange relating to members service charge collection and thereafter monitoring the same so as to ensure that the Professional Members comply with Regulation 27 of the Power Market Regulation. Therefore, we direct the Indian Energy Exchange to put in place a proper mechanism

on the manner of collection, settlement and monitoring of members service charge charged by the professional member to their clients. These should be reported by the professional members through standard formats at regular intervals to the exchange. The new mechanism should be incorporated in the Rules and Bye laws and submitted for approval of the Commission. We further direct the other power exchanges to incorporate similar provisions in their Rules and Byelaws if such provisions do not already exist.

16. Accordingly, we direct operating Power Exchanges to conduct inspection of the accounts of all their professional members through independent agencies to establish compliance of Regulation 27 of Power Market Regulations in the manner as explained in Para 14 above. The inspection should cover the period from the date of notification of the Power Market Regulations till the issue of this order. We further direct that all prospective transactions made through the Professional Members on the Power Exchange shall be in strict compliance with the manner of computation and charging of member service charge as explained in para 14 of this order. The Power Exchanges shall ensure that all past transactions from the date of notification of the Power Market Regulations are settled in the manner explained in para 14 immediately but not later than three months from the date of issue of this order. Compliance Report shall be filed by the Power Exchanges under affidavit.

17. It is the prime responsibility of IEX to ensure compliance of the regulations by all members appointed by it. As IEX has allowed MPL operate in the manner as discussed



in the petition, we direct the IEX to ensure compliance of the provisions of Power Market Regulations in future.

18. MPL should note that compliance of the regulations of the Commission in letter and spirit is quintessential to function as a power market stakeholder. MPL is cautioned that any instance of non-compliance with the regulations will be dealt with sternly in future.

19. The petition is disposed of with the above directions and observations. Copy of this order shall be endorsed to both operating Power Exchanges for compliance.

**Sd/-  
(M.Deena Dayalan)  
Member**

**Sd/-  
(V.S.Verma)  
Member**

**Sd/-  
(S.Jayaraman)  
Member**

**Sd/-  
(Dr. Pramod Deo)  
Chairperson**