

CENTRAL ELECTRICITY REGULATORY COMMISSION

NEW DELHI

Petition No. 135/2010

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

**Date of Hearing: 24.3.2011
Date of Order : 29.6.2012**

In the matter of:

Application for grant of inter-State trading licence to Manikaran Power Limited, Kolkata

And

In the matter of:

Manikaran Power Limited, Kolkata

.....Applicant

Tata Power Trading Company Limited

.....Objector

Following parties were present:

- 1) Ms. Surbhi Sharma, Advocate for applicant
- 2) Shri Amit Ailawadi, MPL
- 3) Shri Sitiesh Mukherjee, Advocate, TPTCL
- 4) Shri Sakya Chaudhari, Advocate, TPTCL
- 5) Shri Vishal Anand, Advocate, TPTCL
- 6) Shri Avijeet Kr. Lala, Advocate, TPTCL

ORDER

The applicant, Manikaran Power limited has made the application under sub-section (1) of section 15 of the Electricity Act, 2003 (the Act) read with the provisions of the Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of Trading licence and other related matters) Regulations, 2009 (hereinafter referred to as "Trading Licence Regulations") for

grant of inter-State trading in electricity in whole of India except the State of Jammu and Kashmir. The Commission after being prima facie satisfied that the applicant meets the requirements of the Act and Trading Licence Regulations for grant of licence proposed to grant Category IV licence for trading in electricity and vide order dated 17.2.2011 directed for issue of notice under section 15(5) of the Act inviting suggestions/objections to the proposal.

2. Notices under section 15(5) of the Act was issued on 7.3.2011 in all editions of the Indian Express and Dainik Bhaskar. In response to the public notice, Tata Power Trading Company Limited (TPTCL) filed its preliminary objections and detailed objections vide letter dated 7.3.2011 and affidavit dated 18.3.2011. The applicant has also filed its replies to the objections vide its affidavit dated 23.3.2011.

3. Clause (9) of Regulation 6 of the Trading Licence Regulations provide as under:

“(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 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.”

4. TPTCL in its affidavit dated 18.3.2011 had alleged that the applicant as a professional member of Indian Energy Exchange had charged the member service charges in excess of 0.75% of the transaction value as specified in 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. In order to ascertain the veracity of the allegations, the Commission initiated suo motu petition No.123 of 2011 and directed the applicant to submit the details of transactions during that period and its compliance with the member service charges as per the regulations and the Indian Energy Exchange to submit the hourly power prices in the day ahead market and the transactions of the applicant during the said period. The applicant and the Indian Energy Exchange filed their replies vide affidavits dated 16.5.2011 and 13.5.2011 respectively. The Commission in its order dated 10.6.2011 directed the applicant to submit certain documents which were submitted by the applicant vide its affidavit dated 8.7.2011. TPTCL filed its submission on the issue vide its affidavit dated 12.10.2011. After considering all material on record, the Commission in its order dated 21.12.2011 in Petition No.123/2011 observed as under with regard to the member service charges charged by the applicant:

"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.

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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.”

5. After examining the case of the applicant in the light of the provisions of Power Market Regulations and the Bye-laws, Rules and Business Rules of the Indian Energy Exchange, the Commission observed and directed as under:

“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.”

6. In compliance with our directions as noted above, both the exchanges have submitted investigation reports about their clients and settlement of the member service charges by the clients in accordance with the provisions of Regulation 27 of the Power Market Regulations. On perusal of the report submitted by Indian Energy Exchange, it was noticed that the applicant has 563 clients and the exchange has submitted an two investigation reports- one by M/s Shankar Aiyar and Co regarding client wise information of excess amounts charged and the other by M/s SK Jena & Associates on compliance and refund

of the excess amounts. As per the said report, the applicant has refunded the excess membership charges to its clients and obtained no dues certificates.

7. As per the submission of the applicant, it was charging the member service charge at a flat rate as per the requirement of its clients. On certain days, 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. The applicant was refunding the excess amount through a process of rolling settlement with the clients. Our investigation in Suo Motu Petition No.123/2011 revealed that on account of absence of clarity on the part of the power exchange and the applicant regarding the manner of calculation of member service charge and in the absence of mechanism with the power exchanges to monitor the member service charge, the applicant was charging a flat rate of member service charge which sometimes exceeded the member service charge calculated as per the ceiling rate specified in the Power Market Regulations. The Commission issued necessary guidelines in the order dated 21.12.2011 for calculation of member service charge and directed the power exchanges to ensure compliance with Regulation 27 of Power Market Regulations. As per the report submitted by IEX, the applicant has refunded the excess member service charge and obtained no dues certificates. We have considered the reports and are satisfied that the applicant has complied with the provisions of Power Market Regulations. In the conspectus of the totality of the factors and circumstances, we are of the view that initial non-compliance of Regulation 27 of Power Market Regulations by the applicant deserves to be condoned, particularly considering the fact that the said non-compliance had occurred on account of lack of clarity on the part of the power exchange and the

applicant with regard to the operation of Regulation 27 of the Power Market Regulations. It has been confirmed by IEX that the applicant has refunded the excess member service charge and settled the matter with all its clients.

8. Another objection of TPTCL pertains to non-compliance of the order dated 24.12.2009 in Petition No.117/2009 and Regulation 26 (ii) of the Power Market Regulations in that the applicant has provided credit and banking facilities to its clients. In reply to the objections, the applicant has submitted that being a member of the exchange, it was following the bye-laws and instructions given by the exchange and the procedure by which payment has to be made for the transactions in the exchange. Therefore, the applicant cannot be held to be in violation of the regulations of the Commission. We have considered objections of TPTCL and the reply of the applicant. The Commission's order dated 24.12.2009 in Petition no. 117/2009 and Regulation 26(ii) of Power Market Regulation required the power exchanges to ensure that the professional members who are neither grid connected entities nor trading licensees shall not be allowed to provide credit or banking facilities to their clients. On account of the failure of the Indian Energy Exchange to implement the said order of the Commission as well as the Power Market Regulations, the applicant continued with the then existing provisions of the by-laws and business rules of the IEX. In our view, the applicant being appointed by IEX and governed by the Rules, Bye-laws and Business Rules of the said exchange had limited option to comply with the directions of the Commission in the order dated 24.12.2009 and Regulation 26(ii) of the Power Market Regulations, particularly when these were not implemented by the IEX. It is pertinent to mention that separate proceeding has been initiated against the IEX for non-compliance of the said order and Power

Market Regulations. The applicant should not be penalized for the failure on the part of the IEX, though it cannot be denied that such failure has resulted in non-compliance of the Power Market Regulations by the applicant.

9. From our discussion in para 7 and 8 above, we are of the view that the applicant has violated the provisions of Regulation 26 (ii) and 27 of the Power Market Regulations. We have already decided to condone the non-compliance of Regulation 27 of Power Market Regulations in para 7 above. Considering the totality of the circumstances, we are not inclined to initiate any action against the applicant for violation of Regulation 26 (ii) of the Power Market Regulations. We administer a stern warning to the applicant that any instance of violation of the regulations or orders of the Commission would entail cancellation of licence of the applicant and invite proceedings under Section 142 of the Act.

10. TPTCL has further submitted that the applicant does not fulfill the networth criteria for grant of trading licence. In response that applicant has submitted that the networth of the company has been calculated in accordance with the accounting principle established by the Commission and has been certified by the Chartered Accountant and consists of capital and reserve and surplus only and does not include the shareholding of any of its clients. We have considered the objection and the submission of the applicant. As regards the networth, the Commission had proposed to grant licence to the applicant after considering the balance sheet for the years 2007-08, 2008-09, 2009-10 and the special balance sheet has on 31.8.2010 after being satisfied that the applicant made the networth requirement and current and liquidity ratio as specified in the Trading Licensee Regulations. The applicant in response to the Commission's

letter dated 28.5.2012 has filed the copies of the balance sheet for the financial years 2010-11, 2011-12 and a certificate regarding the networth of the company as on 31.5.2012. The balance sheets submitted by the applicant have been examined and it is noticed that the applicant is in position of networth of ₹5.24 crore ₹6.00 crore and ₹6.72 crore during 2009-10, 2010-11 and 2011-12 respectively. The applicant also possesses the liquidity ratio and current ratio of more than 1. Since the applicant satisfies the requirements of the Trading Licence Regulations with regard to networth, liquidity and current ratio, we do not find any merit in the objection of TPTCL.

11. In the light of the discussion in the preceding paragraphs, we are satisfied that the applicant fulfills the conditions of the Act and Trading Licence Regulations for grant of Category IV trading licence. Accordingly, we direct that Manikaran Power Limited be issued with a Category IV licence for inter-State trading in electricity throughout the territory of India except the State of Jammu and Kashmir.

12. The grant of trading licence to the applicant is subject to the fulfillment of the following conditions throughout the period of subsistence of the licence:

(a) The applicant shall comply with the provisions of the Act, the Rules and the Regulations, particularly, trading licence regulations, orders and directions issued by the Commission from time to time and any other law in force;

(b) The applicant shall not exceed the volume of trading authorized under the licence, but may, in exceptional circumstances, undertake trading in electricity up to the maximum of 120 per cent of the volume of trade authorized under the

licence granted to him. Where the licensee exceeds the volume of trading in a year authorized under the licence, it shall pay licence fee applicable to the higher category for that particular year;

(c) The applicant shall charge the trading margin strictly in accordance with Central Electricity Regulatory Commission (Fixation of Trading Margin) Regulations, 2009 as amended from time to time;

(d) The applicant shall continue to be governed by the qualifications and disqualifications specified in Chapter 2 of the trading licence regulations during the subsistence of licence;

(e) The applicant shall abide by the terms and conditions of licence specified in Chapter 4 of the trading licence regulations;

(f) The applicant shall have the liability to pay the license fee in accordance with the provisions of the Central Electricity Regulatory Commission (Payment of Fees) Regulations, 2008, as amended from time to time or any of other regulations in force; and

(g) Non-compliance of the provisions of the Act, rules, regulations framed by the Commission and the provisions of trading licence regulations shall make the licence of the applicant liable for revocation.

sd/-
(M. Deena Dayalan)
Member

sd/-
(V.S. Verma)
Member

sd/-
(Dr. Pramod Deo)
Chairperson