

**BEFORE THE CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 71/2011**

**Coram**

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

**Date of Hearing: 24.3.2011**

**Date of Order: 19.9.2012**

**In the Matter of**

Petition seeking clarification of the order dated 17.2.2011 passed in Petition No 135/2010 and clarification *qua* interpretation of Regulation 26 of the Power Market Regulations

**And in the Matter of**

Petition under Regulation 64 of the Power Market Regulations for interpretation of the scope of Regulation 26 of the Power Market Regulations

**And in the Matter of**

Power Exchange of India Ltd, Mumbai

Petitioner

Present:

1. Shri Hemant Sahay, Advocate, PXIL
2. Shri Venkatesh, PXIL

**ORDER**

In this petition filed under Regulation 64 of the Central Electricity Regulatory Commission (Power Market) Regulations, 2010 (the Power Market Regulations) the petitioner seeks clarification on the scope and ambit of activities of a member of the

power exchange who is neither an electricity trader nor a distribution licensee/deemed distribution licensee nor a grid connected entity, in the light of Regulation 26 of the Power Market Regulations.

2. In order to understand the scope of the present petition it is first necessary to take note of the background facts.

3. This Commission in its order dated 24.12.2009 in Petition No 117/2009 wherein two power exchanges established with the approval of this Commission were impleaded as respondents had directed as under:

*“16. Accordingly, the role of members other than the trading licensees and the grid connected entities, being that of a “facilitator” would be only to provide the following services:*

- (a) IT infrastructure for bidding on electronic exchange platform*
- (b) Advisory services related to power prices and the follow on bidding strategy (e.g. weather related information, demand supply position etc)*
- (c) Facilitation of procedures on behalf of his client for delivery of power (e.g. SLDC standing clearances, coordination with NLDC etc)*

*17. We direct that the members of power exchange who are not trading licensee shall not provide any credit or financing or working capital facility to their clients.*

*18. We further direct that the Power Exchanges shall incorporate the role of the members as stated in para 16 and 17 above by amending their bye-laws, business rules and other related documents immediately and submit compliance within a period of one month. Till the time the above directions are complied with, the Respondent power exchanges shall not permit members other than the trading licensees and those connected to the grid to transact on their exchanges in any manner other than as directed above.”*

4. The directions recorded at paras 16 and 17 of the order dated 24.12.2009 *ibid* were incorporated in clause (ii) of Regulation 26 of the Power Market Regulations, notified on 20.1.2010, as under:

*“(ii) Member who is neither an Electricity Trader nor distribution licensee including deemed distribution licensee nor a grid connected entity can only provide the following services to its clients:-*

- (a) IT infrastructure for bidding on electronic Exchange platform or skilled Personnel*
- (b) Advisory services related to power prices and the follow on bidding strategy (e.g. weather related information, demand supply position etc)*
- (c) Facilitation of procedures on behalf of his client for delivery of power (e.g. State Load Despatch Centre standing clearances, coordination with National Load Despatch Centre etc)*

*In no case, such a member shall provide any credit or financing or working capital facility to their clients.”*

5. It is clear that the scope of the above provisions is that a member of the power exchange who is neither a trading licensee nor a distribution licensee/deemed distribution licensee nor a grid connected entity can provide only three services to its clients, namely services of IT infrastructure, advisory and facilitation procedures. No other service can be provided by such a member though by way of illustration and without intending to be exhaustive, it is emphasised that in such cases the provision for credit or financing or working capital facilities by such members shall be prohibited.

6. By this Commission's order dated 15.2.2010 in Petition No 26/2010 (*suo motu*), two power exchanges operating with the approval of this Commission were directed to confirm that the directions contained in paras 16 and 17 of the order dated 24.12.2009 *ibid*. were complied with. They were further directed to submit a

complete list of the members who were acting as facilitators and the transactions carried out by them for their clients since 25.12.2009 with documentary evidence that no credit, financing or working capital facility was provided by such members for transactions of their clients.

7. From the data furnished by the power exchanges, it appeared that the directions in the order dated 24.12.2009 were not complied with in letter and spirit as the members, other than trading licensees and grid connected entities who were required to act as facilitators only and provide limited services continued to provide banking transaction services to their clients. In case of Indian Energy Exchange, it was noticed, the clients deposited money in the Settlement Bank Account of the facilitator members who in turn transferred the money to the bank account of the power exchange. This contravened the order dated 24.12.2009 which did not permit the facilitator members to render any services other than three services specifically mentioned. The handling of money by the facilitator members on behalf of their clients was outside the purview of the facilitator members. Power Exchange of India Ltd, the present petitioner, appeared to have violated para 17 of the order dated 24.12.2009 as the professional clearing member was allowed to extend the credit facility to its client till 21.1.2010. Accordingly, both the power exchanges by order dated 30.3.2010 were directed to show cause why penalty under Section 142 of the Electricity Act be not imposed on them in case there was contravention of the directions contained in paras 16 and 17 of the order dated 24.12.2009 *ibid*.

8. Upon their showing cause, by way of indulgence, the notices under Section 142 of the Electricity Act were discharged against both the power exchanges by

order dated 3.6.2010. By the same order, Indian Energy Exchange was directed to stop the practice of the clients depositing the money in the Settlement Fund Account of the facilitator members with immediate effect as this is in the violation of the Power Market Regulations. In response to the order dated 30.3.2010, Indian Energy Exchange informed that the facilitator members had not extended any credit facility to any of the clients. In order to verify the correctness of the claim, this Commission directed that a special audit into the accounts of Indian Energy Exchange be carried out. As reported by the auditor, the facilitator members of Indian Energy Exchange while handling the money of the clients had not extended any credit facility to them.

9. Indian Energy Exchange made an application for extension of time for implementation of the direction to stop the practice of the clients depositing money in the Settlement Fund Account of the facilitator members, with immediate effect. The application was dismissed by this Commission by order dated 15.7.2010. After rejection of its application for extension of time, Indian Energy Exchange filed Appeal No 154/2010, before the Appellate Tribunal against the orders dated 3.6.2010 and 15.7.2010. The appeal was dismissed by judgment dated 28.3.2011.

10. Manikaran Power Ltd (Manikaran), a facilitator member of Indian Energy Exchange made an application (Petition No 135/2010) for grant of licence for inter-State trading in electricity. This Commission sought a number of clarifications from Manikaran in connection with its activities as a facilitator member of Indian Energy Exchange. On consideration of the explanation and clarifications furnished by Manikaran coupled with the special audit report submitted after audit of Indian

Energy Exchange this Commission was satisfied that there was no material to attribute violation of the Power Market Regulations by Manikaran Power Limited. Accordingly, this Commission by its order dated 17.2.2011 proposed to grant trading licence to Manikaran. The relevant part of the order reads as under;

*“14. On consideration of the above facts, we are **prima facie** satisfied that the applicant meets the networth, current ratio, liquidity ratio and requirements specified by the Commission for grant of Category ‘IV’ licence. Further, based on the materials placed on record, the applicant appears to have acted within the purview of the Power Market Regulations as a Professional Member of the Indian Energy Exchange and has not undertaken any trading in electricity. Therefore, we are of view that the applicant qualifies for grant of Category ‘IV’ licence for inter-State trading in Electricity in whole of India except the State of Jammu and Kashmiri accordance with the provisions of the 2009 regulations.*

15. It is clarified that if any instance of violation of the provisions of the Act or the 2009 regulations or Power Market Regulations on the part of the applicant is brought to our notice, the applicant will be liable for appropriate action under law in addition to making its licence, if issued, liable for cancellation.”

11. The petitioner has submitted that this Commission in its order dated 3.6.2010 made specific observations regarding non-compliance of the provisions of Regulation 26 of the Power Market Regulations by Indian Energy Exchange and its facilitator members. The petitioner has surmised that this Commission by the above observation appears to have ignored and/or condoned the acts of Manikaran of handling money on behalf of its clients prohibited under the Power Market Regulations. The petitioner has accordingly sought clarification regarding the scope and ambit of activities of the facilitator members of the power exchanges under Regulation 26 of the Power Market Regulations.

12. As already noted, the present petition for clarification has been filed under Regulation 64 of the Power Market Regulations. Regulation 64 enacts as under:

**“64. Power to remove difficulties**

*If any difficulty arises in giving effect to the provisions of these Regulations, the Commission may, by order, make such provisions not inconsistent with the provisions of the Act, as may appear to be necessary for removing the difficulty.”*

13. A bare reading of Regulation 64 suggests that it can be invoked in case any difficulty arises in giving effect to the substantive provisions of the Power Market Regulations. In the petition there is not even a whisper of any difficulty encountered by any person in implementing the Power Market Regulations. Therefore, in the present case there is no scope to have resort to Regulation 64 *ibid.* for a clarification and for this precise reason the present petition is not maintainable.

14. Apart from the above view on the maintainability of the present petition under Regulation 64 of the Power Market Regulations, there does not seem to be any ambiguity in the order dated 17.2.2011 giving rise to an occasion for any clarification. This Commission just proposed to grant the trading licence to Manikaran since on the basis of material on record, no infringement of the Power Market Regulations was noticed. The observation was made after thoughtful consideration of material, including the report of the special audit committee adverted above. The auditor did not find anything amiss as regards extending of credit facilities by Manikaran, the facilitator member of Indian Energy Exchange to its clients after publication of the Power Market Regulations. The proposal to grant trading licence to Manikaran cannot be construed as dilution of the stand of this Commission with regard to order dated 24.12.2009 or Regulation 26 of the Power Market Regulations. Though the petitioner could have access to the records of this Commission, it has not brought to our notice any violation by Manikaran Power Limited. Incidentally, this Commission

added a word of caution that in case any violation of the Power Market Regulations came to its notice in future the trading licence, if granted could be cancelled, without prejudice to any other action against Manikaran. Therefore, the question of this Commission having ignored and/or condoned the acts of Manikaran does not arise.

15. Accordingly, the petition is hereby dismissed.

**Sd/-**  
**(M DEENA DAYALAN)**  
**MEMBER**

**sd/-**  
**(V.S.VERMA)**  
**MEMBER**

**sd/-**  
**(DR.PRAMOD DEO)**  
**CHAIRPERSON**