

CENTRAL ELECTRICITY REGULATORY COMMISSION

NEW DELHI

Petition No. 203/2009

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

**Date of last Hearing: 29.7.2010
Date of Order : 11.9.2012**

In the matter of:

Application for grant of inter-State trading licence to Arunachal Pradesh Power Corporation Private Limited, Itanagar.

And

In the matter of:

Arunachal Pradesh Power Corporation Private Limited,
Itanagar

.....Applicant

Following parties were present:

1. Shri Sanjay Sen, Advocate
2. Shri Jitinder Kumar Bhatia, Advocate
3. Shri B.N.Jha, Advocate
4. Shri Neeraj Sharma, APPCPL
5. Shri Indu Bhushan Chakraborty, APPCPL
6. Shri Gurav Sadh, APPCPL
7. Shri Akshay, APPCPL
8. Shri Vikas Kumar Senior Advocate for Objector
9. Shri A.Basu Roy, Advocate for the Objector
10. Shri Rohit Kumar Yadav, Advocate for Objector

ORDER

The applicant, Arunachal Pradesh Power Corporation Private Limited has filed this petition 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 licence for 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 III licence for inter-State trading in electricity and vide order dated 18.6.2010 directed for issue of notice under section 15(5) of the Act inviting suggestions/objections to the proposal to grant licence.

2. Notice under section 15(5) of the Act was published on 26.6.2010 in all editions of the Hindustan Times and Times of India. In response to the public notice, one Manav Sewa Sansthan, through its Secretary Shri O.P. Singh, A-8, Amar Nath Monga Block, Tis Hazari Courts, Delhi-110054 (hereinafter referred to as "the objector") filed its objection to the proposal to grant trading licence to the applicant. The applicant has also filed its reply to the objections.

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 confirm 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. The objector has submitted that the applicant has undertaken trading in electricity without having a valid trading licence by buying power from the

Government of Arunachal Pradesh and selling the same at the power exchange. The applicant in its reply dated 23.7.2010 has submitted that the applicant has been granted an intra-State trading licence by Arunachal Pradesh Electricity Regulatory Commission by order dated 10.8.2009. The applicant has further submitted that it is buying electricity from the Government of Arunachal Pradesh and selling electricity to third parties within the territory of the said State on the authority of the intra-State trading licence. The applicant has also submitted that as a professional member of the Indian Energy Exchange (IEX), it has facilitated the sale of electricity through the exchange from 1.9.2009 to 6.6.2010 in accordance with the rules, regulations, bye-laws of the IEX. The applicant has placed on record a certificate from IEX stating that the Govt. of Arunachal Pradesh has transacted on the exchange as a grid connected client of the applicant. The Commission after hearing the learned counsel for the applicant and the objector issued the following directions by order dated 10.9.2010:

"14. The Applicant has admitted that it has undertaken trading within the territory of Arunachal Pradesh as an intra-State trader and facilitated transactions on the Indian Energy Exchange as a Professional/Facilitator Member. We intend to satisfy ourselves before granting the licence that these transactions of the Applicant do not have any element of inter-State trading which the Applicant is prohibited under law to carry out such business without a licence from this Commission. Accordingly, we direct:

(a) the Applicant to submit under affidavit (i) tabulated details of all transactions undertaken by it as an electricity trader from 19.8.2009 till date (contract details like names of buyer and seller to a contract, their physical location, point of injection and drawal, point of sale of electricity for each of the contracts and open access details etc.) and (ii) details of all transactions (client-wise including client ID, whether buyer or seller, point of delivery etc.) undertaken by the Applicant on the Indian Energy Exchange including the complete list of its clients from the date of its membership of the exchange till date, ;

(b) the Indian Energy Exchange to submit on affidavit the details of all transactions client wise carried out by the Applicant on its exchange from the date of membership of the exchange till date. The Indian Energy Exchange shall also confirm whether the Applicant has ever registered any valid power purchase agreement or power sale agreement and obtained any client ID against such agreement; if so, details thereof.

(c) the National Load Despatch Centre in consultation with Regional Load Despatch Centre to submit under affidavit the details of the transactions for which inter-State open access was sought by the Applicant and was granted.

15. *The information sought vide para 14 above shall be submitted by all concerned by 24.9.2010.*

16. *Government of Arunachal Pradesh, Department of Power is requested to assist the Commission by providing the details of all transactions carried out through the Applicant including the details of the contracts, name of the buyer in each of the contracts, quantity sold, point of delivery etc. by 20.9.2010."*

5. In compliance with the above directions, necessary affidavits have been filed by the applicant, IEX, National Load Despatch Centre and Govt. of Arunachal Pradesh. After considering the said affidavits, the Commission in its interim order dated 15.11.2010 directed the applicant and IEX to file certain further information which were duly complied with. The Commission in its order dated 11.1.2011 sought certain additional information which was filed by the applicant vide its affidavit dated 25.1.2011. The Commission has received a letter bearing No. CE(P)/WEZ/SLDC/APPCL/5911 dated 13.1.2011 from the Chief Engineer, Western Electrical Zone, Department of Power, Government of Arunachal Pradesh forwarding therewith a copy of the letter No. CE (P)/ WEZ/ SLDC/ APPCL/2010-11 dated 31.3.2010 addressed to the applicant. The said letter reads as under:

" This is to inform you on the subject matter that henceforth the power scheduling which you will be doing through the IEX on our behalf, you will be entitled to charge your professional fees @ 0.75% only on total transaction amount as per the Power Market Regulations, 2010 passed by Hon'ble CERC on 20.1.2010.

However, we shall be continuing to raise provisional bills as per our PPA agreement rate. A reconciliation of the billing shall be done on final supplementary bill, which will be raised in accordance with the above Regulation (refer Terms and Conditions of Member-Client Agreement between DoP, AR and APPCL in this regard) and REA accounting till such time you become an Inter-State Electricity Trader."

6. After considering the above letter, Govt. of Arunachal Pradesh was directed by order dated 3.5.2011 to confirm whether it was receiving payment from the applicant at the price discovered at the power exchange after deducting the member service charge as permissible under Power Market Regulations or as per the prices agreed to in the PPA between the applicant and the Govt. of Arunachal Pradesh. Chief Engineer, Western Electrical Zone, Department of Power, Govt. of Arunachal Pradesh in its letter dated 2.6.2011 has confirmed that the applicant would be entitled to charge only the member service charges @ 0.75% on total transaction amount as per the Power Market Regulations. However, Department of Power would continue to raise provisional bills as per the PPA rate and reconciliation of the billings would be done on final supplementary bills. After considering the letter of the Department of Power, Government of Arunachal Pradesh, the Commission in its order dated 29.6.2011 directed the applicant as under:-

"In view of the above submission of the Dept. of Power, Govt. of Arunachal Pradesh, the applicant is directed to demonstrate through documents and relevant records that the accounts for the period from 21.1.2010 till date pertaining to transactions carried out on the power exchanges have been settled with Govt. of Arunachal Pradesh after adjusting the applicant's membership charge @ 0.75% of the transaction value in compliance with the Power Market Regulations."

7. The applicant has filed affidavits dated 1.8.2011 and 17.11.2011 to place on record its request to the Department of Power, Govt. of Arunachal Pradesh for settlement of accounts in accordance with the power purchase agreement dated 19.8.2009. The applicant in its affidavit dated 23.3.2012 has placed on record a comparative statement of settlement of account with Department of Power, Govt. of Arunachal Pradesh showing the balance amount due to be paid by the applicant. The applicant in its affidavit dated 12.4.2012 has submitted the documents regarding settlement of accounts with Govt. of Arunachal Pradesh,

namely, comparative statement of settlement of account, receipt of payment of the excess amount and no dues certificate issued by the Department of Power, Govt. of Arunachal Pradesh. On perusal of the affidavit, it is seen that the applicant has refunded an amount of Rs.1,89,65,349.89/- to Department of Power, Govt. of Arunachal Pradesh and the latter has issued a 'no dues certificate' in favour of the applicant. The applicant vide affidavit dated 18.4.2012 has placed on record a letter dated 17.4.2012 from the IEX along with a copy of the extract of the report of the inspection team constituted in pursuance of the Commission's order dated 21.12.2011 in Suo-Motu Petition No. 123/2011. In the inspection report it has been certified that in case of other clients of the applicant (other than Department of Power, Govt. of Arunachal Pradesh), the applicant has not charged any amount above the ceiling of 0.75% of the transaction amount in accordance with Regulation 27 of the Power Market Regulations.

8. We have considered objections of the Objector, Manav Sewa Sansthan and the reply and subsequent submission of the applicant in response to the various interim orders of the Commission. The main objection of the Objector was that the applicant has been trading in electricity without any trading licence. The applicant has submitted that it has been issued with a trading licence by the Arunachal State Electricity Regulatory Commission and has also placed on record the copy of the trading licence. Thus the applicant is duly authorized to carry out trading in electricity within the State. The applicant has submitted that it was buying and selling electricity within the State and is governed by the terms and conditions of the trading licence. The applicant is also acting as a

professional member of IEX. As a professional member, it has the role to facilitate the transactions in the power exchange on behalf of its clients. IEX has confirmed that the Department of Power, Govt. of Arunachal Pradesh has been registered with the exchange as a grid connected entity and is transacting on the exchange as a client of the applicant. Thus the applicant was facilitating the transaction on behalf of the Government of Arunachal Pradesh at the power exchange as a professional member. As a Professional Member, the applicant is required to facilitate transactions on behalf of the clients and charge a member service charge of 0.75% as specified in the Power Market Regulations.

9. The Commission has also investigated as to whether the applicant was charging member service charge in compliance with Regulation 27 of the Power Market Regulations, keeping in view the manner of settlement of the bills by the applicant with the Department of Power, Government of Arunachal Pradesh. The procedure of settlement has been explained by Department of Power, Government of Arunachal Pradesh in its letter dated 30.3.2010 addressed to the applicant. As per the procedure, the Department of Power would be raising the bills provisionally in accordance with the PPA and the final settlement would be done on the basis of the supplementary bills raised in accordance with the Power Market Regulations. The applicant has got the bills finally settled with Department of Power, Government of Arunachal Pradesh and refunded about Rs.1.89 crore after deducting member service charge as per Power Market Regulations. Moreover, as per the report of the audit team appointed by IEX, the applicant has not charged more than 0.75% of the transaction value as member service charge from its other clients.

10. We note that the petitioner has refunded the excess member service charge collected by it and settled the account only after issue of directions by the Commission in the order dated 29.6.2011. The applicant was expected to charge only the prescribed ceiling rate of member service charge after the power market regulation came into force with effect from 21.1.2010. The applicant should have refunded the sale price of power at the exchange to the Government of Arunachal Pradesh after deducting its member service charge. In our view, the applicant by retaining member service charge in excess of the ceiling prescribed and refunding the same after being directed to do so by the Commission has violated the provisions of Regulation 27 of the Power Market Regulations. However, we have taken a view in our order dated 29.6.2012 in Petition No. 135/2010 that initial non-compliance of the Power Market Regulation with regard to the member service charge happened on account of absence of monitoring mechanism with the power exchange. Considering the totality of the circumstances we take a lenient view and do not propose initiating action against the applicant for non-compliance of the provisions of Regulation 27 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. Accordingly, we dispose of the objections of the objector.

11. . As per Regulation 3(3) (a) of Trading Licence Regulations, the networth of the applicant for inter-State trading licence for three years immediately preceding the year in which the application is made or such lesser period during which the applicant may have been incorporated, registered or formed

shall not be less than ₹5 crore and minimum current and liquidity ratio of 1:1. Since, the applicant was incorporated on 21.5.2009 and accordingly based on the special balance sheet as on 30.11.2009, the applicant was found possess networth of ₹5.03 crore. Accordingly, Commission had proposed to grant licence to the applicant. The applicant in response to the Commission's letter dated 5.6.2012 has placed on record the copies of the auditor balance sheet for the financial years 2009-10 to 2011-12. The balance sheets submitted by the applicant have been examined and it is noticed that the applicant is in possession of networth of ₹5.04 crore, ₹5.08 crore and ₹5.56 crore during the years 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 networth, liquidity and current ratio, it satisfies the requirement for grant of Category III Trading Licence.

12. 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 III trading licence. We direct that Arunachal Pradesh Power Corporation Private Limited, the applicant herein, be issued with a Category III licence for inter-State trading in electricity throughout the territory of India, except the State of Jammu and Kashmir.

13. The grant of trading licence to the applicant is subject to 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.

14. Petition No.203 of 2009 is disposed of accordingly.

Sd/-
(M. Deena Dayalan)
Member

sd/-
(V.S.Verma)
Member

sd/-
(S. Jayaraman)
Member

sd/-
(Dr. Pramod Deo)
Chairperson

