

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. TDL/43/2014

Coram:

**Shri Gireesh B.Pradhan, Chairperson
Shri M. Deena Dayalan, Member
Shri A.K.Singhal, Member**

Date of Hearing: 19.6.2014

Date of Order: 07.8.2014

In the matter of

Application for grant of inter-State trading licence to IL&FS Energy Development Company Limited.

And

In the matter of

IL&FS Energy Development Company Limited
1st Floor, Corporate Office Tower,
Ambience Mall Complex,
Ambience Island, NH-8, Gurgaon-122 001

Petitioner

The following were present:

Shri Haziq Beg, IL&FS
Shri S.C.Mishra, IL&FS

ORDER

The petitioner, IL&FS Energy Development Company Limited, a company registered under the Companies Act, 1956 (1 of 1956) has made the present application under sub-section (1) of Section 15 of the Electricity Act, 2003 (36 of 2003) (hereinafter referred to as "the Act") read with 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”) amended from time to time, for grant of Category `I` licence for inter-State trading in electricity in whole of India.

2. Regulation 6 of the Trading Licence Regulations provides for the procedure for grant of trading licence as under:

“6. Procedure for grant of licence

(1) Any person desirous of undertaking inter-State trading in electricity shall make an applicant to the Commission for grant of licence in the manner specified in Form-I appended to these regulations and such applicant shall be accompanied by ,-

(a) Such fee as may be prescribed by the Central Government from time to time payable through Bank Draft or pay order drawn in favour of Assistant Secretary, Central Electricity Regulatory Commission, New Delhi.

(b) Copies of the annual reports in case of the persons incorporated under the Companies Act, 1956 (1 of 1956) and audited accounts along with the Director’s Report, Auditors’ Report, the Schedules and notices on accounts for three years immediately preceding the year in which the application has been made and the special balance sheet as on any date falling within 30 days immediately preceding the date of making the application:

Provided that where the applicant has not been incorporated, registered or formed during the period of three years immediately preceding the year in which the application is made, the application shall be accompanied by the copies of the annual reports and audited accounts for such lesser period for which the applicant has been in existence.

(2) The application for grant of licence, along with annexures and enclosures shall also be submitted to the Commission on compact disc (CD).

(3) The applicant shall post complete application along with annexures and enclosures on his own website so as to facilitate access to the application by any person through internet and shall keep them on the website till the disposal of his application.

*(4) The applicant shall within 7 days after making such application, publish a notice of his application, in two daily newspapers having circulation in each of the five regions in addition to those published from Delhi, including one economic daily newspaper in Form II, with the following particulars, namely:-
xxxxxx*

(5) The applicant shall within 7 days from the date of publication of the notice as aforesaid submit to the Commission on affidavit the details of the notice published and shall also file the original complete page of the newspaper in which the notice has been published.

(6) The applicant may file his reply to the objections or suggestions received in response to the notice within 45 days of its publication in the newspapers.

(7) The Commission after consideration of the objections or suggestions received in response to the notice published by the applicant and his reply may propose to grant

licence.

(8) When the Commission proposes to grant licence, it shall publish a notice of its proposal in two daily newspapers, as the Commission may consider appropriate, stating the name and address of the person to whom it proposes to issue the licence, with such other details as the Commission considers appropriate, to invite further objections or suggestions to its proposal."

3. The petitioner has made the application as per Form-I along with CD and paid the fee of ₹ one lakh as prescribed by the Government of India.

4. The petitioner has posted the application for grant of trading licence on its website in terms of Regulation 6(3) of the Trading Licence Regulations. The petitioner has placed on record the relevant copies of the newspapers in original in which notice of its application has been issued. The notices under sub-section (2) of Section 15 of the Act read with clause (4) of Regulation 6 of the Trading Licence Regulations have been published by the petitioner on 4.3.2014 in all editions of 'Indian Express' and 'The Financial Express'. No objection has been received in response to the public notices.

5. Proviso to clause (1) of Regulation 3 of the Trading Licence Regulations provides that the applicant should have been authorized to undertake trading in electricity by its Memorandum of Association. Relevant portion of Memorandum of Association of the petitioner is extracted as under:

"2. To engage in the business of procurers, generators, providers, suppliers, distributors, transformers, converters, producers, manufacturers, processors, developers, stores, carries, importers and exporters of, **trading in and dealers in electricity**, and any products or by products derived from any such business (including without limitation steam) and any other form of energy (conventional or non-conventional), fuel handling equipment and machinery, fuel handling facilities thereto, fuel transporting facilities and any products by products derived from any such business including without limitation hydrocarbon fuels, heat, coal, solar, wind, hydro, waive, tidal, bagasse, bio-mass, waste, geo-thermal and biological and to assist execution and promotion thereof either directly or through an independent agency or any other manner."

6. Trading in electricity is covered under the objects of the applicant-company. It is however, noted that 'transmission of electricity' is one of the objects of the petitioner company.

7. Proviso to Section 41 of the Electricity Act, 2003 provides that "no transmission licensee shall enter into any contract or otherwise engage in the business of trading in electricity". Since IL&FS holds a stake in the Cross Border Power Transmission Limited (CBPTCL) which has been granted transmission licence by the Commission, the petitioner was directed during the hearing on 19.6.2014 to explain as to how the provision of Section 41 of the Act is complied with in its case. The representative of the petitioner clarified that the petitioner is merely holding 38% equity stake in the Cross Border Power Transmission Limited (CBPTCL) and the petitioner neither controls nor acts as an agent of CBPTCL. Therefore, the petitioner cannot be said to have been engaged in the business of transmission of electricity.

8. The petitioner, vide Record of Proceedings for the hearing dated 19.6.2014, was directed to file the following information:

(a) Annual report and audited accounts as on 31.3.2014 along with Director`s report, Auditor`s report, the schedules and notes on accounts; and

(b) Affidavit to that effect that during subsistence of the trading licence, if granted by the Commission, the petitioner shall not apply for transmission licence without surrendering the trading licence.

9. The petitioner vide its affidavit dated 1.7.2014 has filed the audited balance sheet as on 31.3.2014. The petitioner has further undertaken that during subsistence of the trading licence if granted by the Commission, it shall not apply for transmission licence without surrendering the trading licence.

10. We note that the shareholding pattern of CBPTCL is as under:

(a) Powergrid Corporation of India (PGCIL)	26%
(b) Satluj Jal Vidyut Nigam Limited (SJVNL)	26%
(c) IL&FS Energy Development Company Ltd.	38%
(d) Nepal Electricity Authority	10%

In CBPTCL, both PGCIL and SJVNL together hold 52% share and Nepal Electricity Authority holds 10% share. IL&FS holds only 38% of the share. Thus, IL&FS has a minority share in CBPTCL and it cannot be said to control the affairs of CBPTCL. Moreover, the utilization of the transmission line will be decided by the concerned RLDC in accordance with the regulations of the Commission. It is, therefore, unlikely that grant of trading licence to the petitioner will have any adverse effect on the non-discriminatory access to the transmission line being developed by CBPTCL. In our view, the case of the petitioner is not affected by proviso to Section 41 of the Act.

11. In accordance with Regulation 3 (3) of the Trading Licence Regulations, a person applying for Category `III` trading licence should have net

worth of ₹ 50 crore, and should have maintained minimum current ratio and liquidity ratio of 1:1, as on date of audited balance sheet accompanying the application. The petitioner has submitted the special audited balance sheet as on 31.1.2013.

12. Based on the special balance sheet as on 31.3.2014, net worth and liquidity ratios has been worked out as under:

(₹ in lakh)

S.No.	Particulars	31.3.2014
1.	Paid up equity capital	88413.82
2.	Reserves and Surplus	26088.66
	Profit and Loss Account	6570.61
	Total Capital and Free Reserves (A)	121073.09
3.	Loans and Advances to associates (B)	75011.60
	Deferred Expenditure (including Misc. Expenses) not written off (C)	0.00
	Net Worth (A-B-C)	46061.49

13. The net worth of the petitioner is further represented by the following:

(₹ in lakh)

S.No.	Particulars	31.3.2014
1.	Fixed /Non-current Assets	
	Net block	218.67
	Capital work in progress	0.00
	Long-term loans and advances	72406.85
	Less: Loans and Advances to associates	54822.51
	Net Loans and Advances	17584.34
	Investments (Non-current)	122894.99
	Other Non-Current Assets (i.e. Deferred Tax and others)	1503.58
	Total Fixed/Non Current Assets (1)	142201.58
2.	Non-Current Liabilities	
	Preference Share capital	3466.07
	Long term Borrowings	97914.28
	Deferred tax Liabilities	0.00
	Long Term Provisions	121.85
	Other long term liabilities	0.00

	Total Non-Current Liabilities (2)	101502.20
3.	Current Assets	
	Cash and Bank Balance	8671.87
	Short Term Loans and Advances	22187.10
	Less: Loans and Advances to associates	20189.09
	Net Loans and Advances	1998.01
	Inventories	0.00
	Trade Receivables/Sundry Debtors	11096.19
	Current portion of long term investments	45692.08
	Current investment	41635.51
	Other current assets (31.3.2014: interest accrued and retention money)	3943.52
	Total Current Asset (3)	113037.18
4.	Sundry Creditors / Trade Payable	2053.22
	Short Term Borrowings	72000.00
	Current maturities of long term debt	24785.71
	Short term Provisions	153.89
	Other liabilities (31.3.2014: interest accrued, income received in advance and statutory dues)	8682.24
	Total Current Liabilities (4)	107675.06
	Net worth (1-2+3-4)	46061.50

14. Based on the above, the net worth, current ratio and liquidity ratio work out as under:

S. No.	Particulars	31.1.2013
1.	Net worth (₹ in lakh)	46061.50
2.	Current ratio	1.05
3.	Liquidity ratio	1.05

15. On consideration of the above facts, we are ***prima facie*** satisfied that the petitioner meets the net worth requirements specified by the Commission for grant of Category 'I' trading licence and fulfills other conditions for grant of trading licence. The Commission proposes to grant Category 'I' trading licence to the petitioner. We direct that a notice under clause (a) of sub-section (5) of Section 15 of the Act be issued inviting further suggestions or objections to the proposal of the Commission.

16. List this petition for further directions on 28.8.2014.

**Sd/-
(A.K.Singhal)
Member**

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

**sd/-
(Gireesh B.Pradhan)
Chairperson**