

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 207/MP/2019

Coram:

Shri P. K. Pujari, Chairperson

Dr. M. K. Iyer, Member

Shri I. S. Jha, Member

Date of Order: 27th January 2020

In the matter of

Petition under Section 79(1)(k) of the Electricity Act, 2003 read with Section 66 of the Electricity Act, 2003 and Regulations 26(i)(a), 63 & 64 of the Central Electricity Regulatory Commission (Power Market) Regulations, 2010 for grant of proprietary membership of Power Exchanges to M/s. Railways Energy Management Company Limited for transactions involving Indian Railways.

And

In the matter of

- 1) Railways Energy Management Company Limited
RITES Bhawan No. 1, Sector-29
Gurugram – 122001 (Haryana)

- 2) Indian Railways
East Central Railways
Diggi Kala
Hajipur – 844101 (Bihar)

.....**Petitioners**

Versus

Indian Energy Exchange Limited
Unit No. 3, 4, 5 and 6
Fourth Floor, TDI Centre
Plot No 7, Jasola
New Delhi – 110025

.....**Respondent**

Parties present:

Shri Pulkit Agarwal, Advocate, REMCL
Shri Gaurav Maheshwari, IEX

ORDER

The present Petition has been filed by the Petitioners, Railways Energy Management Company Limited (hereinafter referred to as “REMCL”) and Indian

Railways jointly seeking grant of Proprietary Membership of Power Exchanges to REMCL for transactions involving Indian Railways.

Background

2. The Petitioner No.1, REMCL is a joint venture of Indian Railways and RITES Limited, having shareholding of 49% and 51% respectively. Further, since Indian Railways is presently holding 92% equity shares in RITES Limited, Indian Railways has effective and total control over REMCL. The main objectives of REMCL, *inter-alia*, involve facilitating cost efficiencies in the electrical management for Indian Railways through power trading with Power Exchange or other entities.

3. The Petitioner No.2, Indian Railways is a licensee authorized to undertake distribution of electricity for the purpose provided in Section 11 and 12 of the Railways Act, 1989 and has also been held as a deemed distribution licensee in terms of the provisions of the Electricity Act, 2003. Further, the status of Indian Railways as a deemed distribution licensee has been considered in detail and decided by the Commission in order dated 5.11.2015 in Petition No. 197/MP/2015.

4. Indian Railways is entitled to procure electricity from any source of its choice including a Generating Company, a Captive Generating Power Plant, a trader or through Power Exchanges to meet the electricity requirements, as it may consider appropriate. However, to effectively manage the self-power requirements, Indian Railways has incorporated REMCL. Since its incorporation, REMCL has been facilitating and assisting Indian Railways in procurement of power from different sources.

5. In view of the significant power requirement of Indian Railways, particularly to meet the varying load requirements of traction supply linked with the train operation, REMCL planned to tap the power through Power Exchanges, namely Indian Energy Exchange (hereinafter referred to as "IEX"). The intention was to get reasonably priced power for the overall benefit of the general public.

6. Accordingly, REMCL approached IEX in July/August 2018 for grant of Proprietary Membership for being able to procure electrical energy on behalf of Indian Railways. However, to fall under the category of Membership as defined in Regulation 26(i)(b) of the Central Electricity Regulatory Commission (Power Market) Regulations, 2010 (hereinafter referred to as "Power Market Regulations") and consequently Proprietary Membership in terms of 4.3.1 of Rules of Indian Energy Exchange (hereinafter referred to as "IEX Rules"), entity needed to be a distribution licensee including deemed distribution licensee or a grid connected entity. Accordingly, IEX advised REMCL to obtain clarification from this Commission for considering it in the category of Membership as defined in Regulation 26(i)(b) of the Power Market Regulations.

7. In the above background, the Petitioners have filed the present Petition seeking the following prayers:

"(a) Exercise its powers under Regulation 64 of the Power Market Regulations and direct the grant of power exchange proprietary membership to M/s. Railways Energy Management Company Limited for the purposes of transaction involving Indian Railways as per Regulation 26(i)(b) of the Power Market Regulations;

(b) Direct M/s. Indian Energy Exchange Limited, Respondent to grant proprietary membership to M/s. Railways Energy Management Company Limited on behalf of the Indian Railways in terms of Rules 4.3.1 of Rules of Indian Energy Exchange Limited; ..."

Submission of the Petitioners

8. The Petitioners have submitted as under:
- (a) Indian Railways being a deemed distribution licensee, shall form part of the category of Membership as mentioned in Regulation 26(i)(b) of the Power Market Regulations, namely, a Member who is a distribution licensee including deemed distribution licensee or grid connected entity and Proprietary Membership in terms of Rules 4.3.1 of the IEX Rules.
 - (b) REMCL has been specifically incorporated for the efficient management of electrical energy requirement of Indian Railways and to undertake all activities for procurement of electricity for the purpose of Indian Railways. Accordingly, the Proprietary Membership has been sought in the name of REMCL only for the transaction involving the Indian Railways.
 - (c) Except meeting the criteria of being distribution licensee or deemed distribution licensee or grid connected entity, REMCL meets all other criteria stipulated by IEX with regard to its Proprietary Membership.
 - (d) The Commission, in exercise of power under Regulation 64 (Power to remove difficulties) of Power Market Regulations, may grant Proprietary Membership of IEX to REMCL for the purpose of transactions involving Indian Railways as per Regulation 26(i)(b) of the Power Market Regulations.
9. The matter was heard on 24.09.2019. During the course of hearing, the learned counsel for the Petitioner reiterated the submissions made in the Petition.

Analysis and Decision

10. We have considered the submission of the Petitioners. The Petitioners have prayed for grant of Proprietary Membership of Power Exchanges to REMCL for the purpose of transactions involving Indian Railways as per Regulation 26(i)(b) of the Power Market Regulations. According to the Petitioners, while REMCL is not a distribution licensee including deemed distribution licensee or a grid connected entity, it has been specifically established to undertake all the activities for procurement of electricity for Indian Railways who is deemed distribution licensee as well as grid connected entity and is eligible for grant of Proprietary Membership. The Petitioners have sought to invoke the Commission's power to relax under Section 64 of the Power Market Regulations for grant of the aforesaid reliefs.

11. The Commission has, in the exercise of power conferred under Section 66 read with Section 178(2)(y) of the Electricity Act, 2003 and para 5.7.1 (f) of the National Electricity Policy, notified the Power Market Regulations, which *inter-alia*, provide a regulatory framework for Power Exchanges. Regulation 26 of the Power Market Regulations provides for categories of Membership in Power Exchanges, which is extracted as under:

"26. Membership in Power Exchange

- (i) *Membership in Power Exchange shall be of the following three categories:-*
 - (a) *Member who is an Electricity Trader or*
 - (b) *Member who is a distribution licensee including deemed distribution licensee or a grid connected entity or*
 - (c) *Member who is neither an Electricity Trader nor distribution licensee including deemed distribution licensee nor a grid connected entity"*
- (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.*

12. The Rules, Bye-Laws and Business Rules of IEX were approved by the Commission vide order dated 9.6.2008 in Petition No. 38/2007 in accordance with the Guidelines. After the Power Market Regulations were notified in January 2010, IEX modified its Rules in accordance with the Regulations and the same were approved by the Commission on 22.10.2012. Rule 4.3 of the Rules of the IEX dealing with its membership provides as under:

“4.3. For the present, the Membership of the Exchange are classified into three categories as under:-

4.3.1. Proprietary Member means a Member who is a grid connected entity and shall include distribution licensee, generator, end user and open access consumer;

Proprietary Member shall have right to trade for its own account, and clear the same Contracts through the Clearing House as a Clearing Member. The Proprietary Member shall also be entitled to undertake transaction on the Renewable Energy Certificates.

4.3.2. Trader Member means a Member holding a valid and subsisting interstate Trading Licence from the Commission.

Member who is a Trader Member shall trade and clear on their own account or trade and clear on behalf of their clients. Such Member shall be entitled to transact the electricity, right to which has been obtained through an agreement from a grid-connected entity. In such cases, the electricity trader will be treated as client and the delivery shall be undertaken by the party on the other side of agreement i.e. grid connected entity. A Trader Member shall also be entitled to undertake transaction on the Renewable Energy Certificates.

4.3.3. Professional Member means a Member who is neither a grid connected entity nor holding a valid and subsisting interstate Trading License from the Commission.

The Professional Member shall not be entitled to trade for himself. He shall have the right to act for and/on behalf of his Clients but shall not settle and clear the contracts on the Exchange for such Clients in accordance with the Power Market Regulations. In particular, the Professional Member shall only provide the following services:

(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. SLDC standing clearances, coordination with NLDC etc.)

The Professional Members shall not provide any credit or financing or working capital facility to their clients. The Professional Members shall also be entitled to undertake transactions on the Renewable Energy Certificates in the same manner as in the case of other transactions....”

13. As quoted in Para 11 above, Regulation 26(i) provides for three categories of members in power exchanges, namely, (a) Electricity Trader, (b) Distribution Licensee including deemed distribution licensee or a grid connected entity, and (c) Member who is neither an Electricity Trader nor a Distribution Licensee including deemed distribution licensee nor a grid connected entity.

14. Further, as quoted in Para 12 above, the Commission has approved three categories of members for IEX, namely, Proprietary Members, Trader Members and Professional Members under Rule 4.3 of the Rules of the IEX. The Proprietary Member is a grid connected entity which includes distribution licensee, generator, end user or open access consumer and corresponds to Regulation 26 (i)(b) of the Power Market Regulations. The Proprietary Members have the right to trade on their own account as per Regulation 26(iv) of the Power Market Regulations. The Trader Member corresponds to Regulation 26(i)(a) of the Power Market Regulations. Trader Members have the right to trade and clear on their own account or trade and clear on behalf of their clients. The Professional Member

is neither a grid connected entity nor a trading licensee and corresponds to Regulation 26 (i) (c) of the Power Market Regulations. Therefore, in order to be a Proprietary Member, an entity has to be a grid connected entity including distribution licensee, generator, end user or open access consumer.

15. Admittedly, REMCL does not fall under the category of Membership in Power Exchanges under Regulation 26(i)(b) of Power Market Regulations, as REMCL is neither a distribution licensee including deemed distribution licensee nor a grid connected entity, which is the requirement for Proprietary Membership as prescribed under Rule 4.3.1 of the Rules of the IEX. Therefore, in terms of the Power Market Regulations as well as the Rules of the IEX, REMCL is not eligible for Proprietary Membership.

16. The Petitioners have contended that as the Indian Railways is a deemed distribution licensee and qualifies for the Membership category as per Regulation 26(i)(b) of the Power Market and consequently Proprietary Membership in terms of Rule 4.3.1 of IEX Rules and since REMCL has been specifically incorporated for the efficient management of electrical energy requirement of Indian Railways, the Commission, in exercise of its power conferred under Regulation 64 (Power to remove difficulties) of the Power Market Regulations, may grant the Proprietary Membership of IEX to REMCL. As per settled position of law, the power to remove difficulties is exercised to remove difficulties in implementation of provisions of a Regulation, and not for introduction of a new provision which amounts to amendment of the Regulations. REMCL is neither an electricity trader nor a grid connected entity nor a distribution licensee including deemed distribution licensee, which has been admitted by the learned counsel for the petitioner during the hearing. The prayer of the petitioner is to exercise the power to remove difficulty

to admit REMCL as a proprietary member. This in our view would amount to addition of a new category of entity under the proprietary membership and would, therefore, fall beyond the ambit of the “power to remove difficulty” provision of the Power Market Regulations. Therefore, we are not inclined to exercise the power to remove difficulty and the prayer is accordingly rejected.

17. The Petition No. 207/MP/2019 is disposed of in terms of above.

Sd/-
(I. S. Jha)
Member

Sd/-
(Dr. M.K.Iyer)
Member

Sd/-
(P. K. Pujari)
Chairperson