

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Coram:

1. **Shri Ashok Basu, Chairman**
2. **Shri K.N. Sinha, Member**

Petition No. 79/2003

In the matter of

Trading Licence to M/s. Adani Exports Ltd (AEL).

And in the matter of

Adani Exports Ltd – Power Division
“Adani House”, C-105, Anand Niketan,
New Delhi – 110 021

.. **Applicant**

The following were present:

1. Shri R.K. Madan, AEL
2. Shri Praveen Nagpal, AEL

**ORDER
(DATE OF HEARING: 20.11.2003)**

This application has been filed with the following prayers:

- (a) “Grant an appropriate approval/clearance permitting the petitioner to market, on behalf of Power Department, Government of Sikkim and Damodar Valley Corporation and such other are surplus electricity to any buying utility”.
- (b) “Grant an appropriate approval/clearance permitting the petitioner to undertake power marketing and trading activities”.
- (c) “Any other approval/sanction/exemption as this Hon’ble Commission may deem fit in the facts and circumstances of this petition. “

2. The applicant is a limited company incorporated under the Companies Act and is stated to be a generating company. It is stated that the applicant has decided to diversify its activities in power trading and is incorporated with the objective, inter alia, to carry on the business of power marketing and trading. The applicant is stated to have engaged professionals for undertaking the business of trading in power. The applicant proposes to market surplus power from Power Department, Govt. of Sikkim and Damodar Valley Corporation to the utilities in Northern/Western Regions and also to undertake the business of power marketing and trading involving inter-state/regional transmission of energy.

3. Accordingly, the applicant has filed the present petition with above noted prayers.

4. The Electricity Act, 2003, (the Act) has come into force with effect from 10.6.2003. Section 15 of the Act, inter alia, lays down that the application for grant of license for inter-state trading is to be made in such form and in such manner as may be specified by the Central Commission and the application is to be accompanied by such fee as may be prescribed by the Central Government. Under Section 16 of the Act, the Commission is to lay down any general or specific conditions applicable to a licensee or class of licensees. Section 52 of the Act further empowers the Central Commission to specify the technical requirements, capital adequacy requirement and credit worthiness for being an electricity trader.

5. The Commission is in the process of finalising the form and manner for making an application for grant of licence, the conditions applicable to electricity traders and the technical and other requirements. The regulations in this regard are likely to be finalised by the end of the current year.

6. Section 172 (b) of the Act legislates that notwithstanding anything to the contrary contained in the Act, all licenses, authorisations, approvals, clearances and permissions granted under the provisions of the repealed laws (which includes Electricity Regulatory Commissions Act, 1998) shall continue to operate for a period of one year or such earlier period as may be notified by the appropriate Government, as if, the repealed laws were in force in respect to such licenses, authorisations, approvals, clearances and permission, as the case may be.

7. The Commission in exercise of its regulatory jurisdiction to regulate the inter-state transmission of energy under the provisions of Section 13 (c) of the Electricity Regulatory Commissions Act, 1998, had notified vide notification dated 24.11.1999, published in the Gazette of India, (Extraordinary) Part III – Section 4, dated 26.11.1999, that

“The Regulatory framework for sale and purchase transactions, involving the inter-sate transmission of energy, is yet to be notified by the Commission. Pending such notification, no specific approval from the Commission would be required for such transactions, subject to the condition that the provisions of the Indian Electricity Act, 1910. Electricity (Supply) Act, 1948 or any other law in force shall be complied with before such transactions involving the inter-state transmission of energy are entered into”.

8. In terms of the Commission's notification dated 24.11.1999 *ibid*, the applicant could undertake transactions involving sale and purchase of inter-state energy without obtaining specific approval of the Commission till the regulatory framework is notified by the Commission. As we have noted in paragraph 5 above, the necessary regulations are yet to be notified by the Commission. In the absence of these regulations and in view of the provisions of Section 172 (b) of the Act, the applicant may, if so advised, undertake sale and purchase transactions involving inter-state transmission of energy in terms of the notification dated 24.11.1999 for a period up to 31.3.2004 for the present at its own risk. The applicant shall file a fresh application for grant of license under Section 14 (c) of the Act by 31.12.2003 or when the terms and conditions etc. are notified by the Commission, whichever is earlier, in accordance with such terms and conditions.

9. As may be noticed, we have not considered the request of the applicant in the context of technical requirement, capital adequacy requirement and creditworthiness as the criteria for achieving these parameters has not yet been notified. Therefore, we leave it to the parties entering into arrangements for sale and purchase of electricity with the applicant to satisfy themselves of these requirements. However, we make it clear that the above interim arrangement shall not *ipso facto* confer on the applicant any right for grant of license in trading in electricity. As and when a fresh application is filed by the applicant, this will be considered on its own merits in the light of the provisions of the Act, the Rules and the Regulations to be notified by the Commission. Needless to say, the applicant

has undertaken to abide by the Regulations that may be framed by the Commission in exercise of its statutory power and submit a fresh application for grant of licence for inter-state trading in electricity.

10. With this order, Petition No. 79/2003 stands disposed of.

**Sd/-
(K.N. SINHA)
MEMBER**

**Sd/-
(ASHOK BASU)
CHAIRMAN**

New Delhi dated the 24th November, 2003