

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Coram:

- 1. Dr. Pramod Deo, Chairperson**
- 2. Shri Bhanu Bhushan, Member**
- 3. Shri R. Krishnamoorthy, Member**
- 4. Shri S. Jayaraman, Member**

Petition No.120/2008

In the matter of

Modification of the order dated 19.9.2008 in I.A.No. 22/2008 in Petition No. 38/2007-Application for grant of permission to Indian Energy Exchange Ltd. for setting of power exchange.

And in the matter of

Indian Energy Exchange Ltd., New Delhi

..Petitioner

The following were present:

1. Shri M.G.Ramachandran, Advocate, IEXL
2. Shri V. Chari, IEXL
3. Shri Rajesh K. Mediratta, IEXL
4. Shri Bikram Singh, IEXL
5. Shri S.K.Soonee, ED (SO), PGCIL

**ORDER
(DATE OF HEARING: 18.11.2008)**

Through this petition, the petitioner, Indian Energy Exchange Ltd. has sought modification of the order dated 19.9.2008 in I.A.No. 22/2008 in Petition No. 38/2007, with certain additional prayers.

2. The Commission by its order dated 31.8.2007 had granted approval for setting up of the power exchange by the petitioner. Subsequently, the Commission by its order dated 9.6.2008, approved the rules, bye-laws, etc. for the proper conduct of business of the power exchange, for day-ahead

contracts (transactions). It was directed that in case the petitioner intended to undertake any other contracts (transactions), it could be done only with the prior approval of the Commission.

3. Pursuant to the above direction, the petitioner filed I.A. No. 22/2008 in Petition No. 38/2007, with following prayers, namely:

- (a) To allow the petitioner to start a continuous market segment with daily, weekly and monthly contracts;
- (b) To approve revised bye-laws and business rules;
- (c) To change scheduling the operation charges from per day basis to per MWHr basis;
- (d) Any other order for smooth functioning of the existing day ahead market and also these additional contracts.

4. By order dated 19.9.2008, I.A. was dismissed as not maintainable, with liberty to the petitioner to file a fresh petition. The petitioner was directed to implead National Load Despatch Centre (NLDC) and all trading licensees in case it filed a fresh petition. The relevant paras of the said order dated 19.9.2008 is reproduced below:

4. When it was pointed out to the representative of the petitioner that in the light of the fact the main petition already stood disposed of and thus the present IA was not maintainable, he prayed that the IA may be treated as a separate petition, proper filing fee for which would be deposited. When further pointed out that the proposals made in the IA were akin to bilateral trading and were likely to affect the existing trading licensees, the representative of the petitioner sought to distinguish the current proposal on the ground of anonymity of the parties, as compared to face-to-face negotiations in the bilateral trading. He submitted that impleadment of the electricity traders as party in the present proceedings was not necessary.

5. Shri S K Soonee, representative of the RLDCs, submitted that the application was not maintainable in the present form, since, according to him, the prayers made in the IA might involve amendment to Open Access Regulations. He urged that the application should be considered only after notice to the RLDCs.

5. The petitioner has sought modification of the said order dated 19.9.2008, so that its application for week-ahead/month-ahead and other long-term contracts (transactions) is considered in terms of the statement of reasons dated 18.1.2007 in Petition No. 155/2006 read with order dated 31.8.2007 *ibid*, without impleading the electricity traders. The petitioner further prays that the approval sought by it be considered in consultation with NLDC, RLDCs, etc.

6. The petitioner has submitted that the approval sought in the IA can be dealt with by the Commission without hearing any of the trading licensees and based on deliberations with the concerned statutory authorities, such as, NLDC and RLDCs. The petitioner has relied upon the statement of reasons dated 18.1.2007 published in support of the guidelines on the development of a common platform for electricity trading, wherein, as contended by the petitioner, the following two aspects were settled by the Commission, namely:

(i) Natural market development cannot be blocked solely for protecting the interest of any particular segment namely, the electricity traders.

(ii) Day ahead as well as long-term contracts (transactions) that could be held in the power exchanges were left to be decided by the promoters of the power exchanges.

7. The relevant para of the statement of reasons dated 18.1.2007 based on which the petitioner has made the above argument is reproduced below:

“25. The Commission is of the view that the transactions finalized through PX should be at least day ahead since all transactions reached through PX must necessarily be scheduled and all scheduling except in an emergency must be done on day-ahead basis. The Commission, therefore, does not foresee any scope for same-day transaction through PX. Even under the prevailing situation, the utilities in India have the option of load shedding as well as of over drawing/under drawing from the grid under the UI mechanism in the event of unforeseen change in the consumer load. The utilities have also no compulsion to stick to schedule unlike the other countries, where all control areas must maintain their actual net exchange as per their respective schedules and, therefore, the utilities have to buy/sell in a hurry if consumer load differs from the forecast.

26. The Commission has noted that most participants have agreed to the PX starting with and concentrating on day-ahead, though some respondents want PX to handle long term contracts as well. The Commission would have no objection to contracts for longer period/maturity being finalized through a PX though such contracts have to be organized through suitable packaging. The Commission would like to leave this aspect to be decided by the promoters of the PX in the light of the requirements and limitations of their prospective customers.”

8. It has been further urged that in terms of the order dated 31.8.2007, the Commission has not modified its earlier observations as given in the statement of reasons dated 18.1.2007 that the power exchanges could be permitted to engage in long-term contracts, namely, week-ahead or month-ahead contracts. It has been submitted that as a procedural requirement, the Commission has been approached before implementation of the long-term contracts by the petitioner, in view of the Commission's directions noted above. The petitioner's case is that the order dated 31.8.2007 read with the statement of reasons dated 18.1.2007 clearly shows that the Commission had intended the power exchanges to start longer duration contracts, after incorporation of

provisions for such contracts in the rules and bye-laws approved by the Commission for day-ahead contracts (transactions). The petitioner has submitted that it is not venturing into any completely new areas or unrelated to those already approved and decided by the Commission. According to it, such an application is necessarily to be by an interim (interlocutory) application in the proceedings initiated by it for grant of permission for setting up of the power exchange and not by way of separate application.

9. We heard Shri M.G. Ramachandran, Advocate for the petitioner.

10. As the order dated 19.9.2008 was not made in any adversarial proceedings, the criteria laid down under the Code of Civil Procedure for review of orders does not apply to the facts of the present case. Therefore, we proceed to consider the present application on its merits.

11. We are not convinced with the petitioner's contention that after disposal of the main petition, an interlocutory application could be made for claiming any substantive relief, like that claimed in the I.A. Therefore, the earlier order on this issue settles the position. Accordingly, a separate petition needs to be filed for the reliefs prayed for in the I.A. However, to cut short the procedural wrangles we direct that the present petition be treated as the fresh petition for the purpose for which the IA was earlier filed.

12. On re-consideration of the issue regarding impleadment of the electricity traders, in view of the earlier decisions of the Commission, now brought

to our notice by the petitioner, we feel that it is not necessary for the petitioner to implead them.

13. Shri S. K. Soonee, ED (SO & NRLDC) informed that the open access regulations will be required to be amended in case the petitioner is granted approval for undertaking transactions for long-term contracts. We direct the petitioner to interact with NLDC, RLDCs on the provisions of the existing open access regulations requiring amendments. The result of such interaction will be placed before the Commission for its decision. If the Commission decides to notify the amendments, the draft amendments to the open access regulations will be published in accordance with the established procedure to invite suggestion and comments from the stakeholders, which include the electricity traders as well. In this manner, the electricity traders, will get opportunity to present their views on the issue raised. This is another reason for which we are not insisting on impleadment of the electricity traders, as decided in the preceding paras.

14. In the light of the foregoing, we, in principle, accept the petitioner's proposal. However, the application will be taken up for final disposal in the light of the prayers made in I.A.No. 22/2008 which are to be read as part of this petition, after a view on amendments of the existing open access regulations is taken. The petitioner shall be able to start long-term transactions only after final decision of the Commission consequent to amendment, if any, approved.

15. The petitioner is directed to deposit the balance filing fee of Rs. 80,000/- within one week for the present petition.

Sd/- **sd/-** **sd/-** **sd/-**
(S.JAYARAMAN) (R.KRISHNAMOORTHY) (BHANU BHUSHAN) (DR. PRAMOD DEO)
MEMBER MEMBER MEMBER CHAIRPERSON

New Delhi dated the 27th November 2008