

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

CORAM:

1. **Shri K.N. Sinha, Member**
2. **Shri Bhanu Bhushan, Member**

Petition No.24/2004

In the matter of

Application for grant of inter-state trading licence to Reliance Energy Trading Private Limited ("RETPL")

And in the matter of

Reliance Energy Trading Private Limited, Mumbai **Applicant**

The following were present:

1. Shri J.P. Chalasani, RETPL
2. Shri N.K. Deo, RETPL
3. Shri Virendra Shukla, RETPL
4. Ms. Archana Raina, RETPL
5. Shri M. Madhur, Objector
6. Shri Raghvender Singh, Objector

**ORDER
(DATE OF HEARING: 24.5.2004)**

The applicant, Reliance Energy Trading Private Limited is a group company of Reliance Energy Limited and is incorporated under the provisions of Companies Act, 1956. One of the main objects of the applicant is stated to be to engage in the inter-state trading of electricity. The applicant proposes to undertake trading of 100 million units of electricity during the first year after grant of licence by the Commission and has made the present application under sub-

section (1) of Section 15 of the Electricity Act, 2003 (the Act) for grant of licence for trading in whole of India, except the State of Jammu & Kashmir.

2. In accordance with sub-section (2) of Section 15 of the Act read with Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of Trading Licence and other related matters) Regulations, 2004 (the Regulations), the applicant has published public notices of its application to invite objections to its application for grant of licence for inter-state trading. The objections have been received from three individuals namely, Shri K. Srinivas, Advocate, Raipur; Shri Raghvender Singh, Secretary General, Hind Kisan Sangathan, Agra and Shri M. Madhur, Secretary General, Senior Citizens Council, Paonta Sahib. This petition was originally fixed for hearing on 27.4.2004. However, none of the objectors was present at the hearing despite notices. Therefore, in order to give another opportunity of hearing to the objectors, the hearing of the application was adjourned. The application was heard on 24.5.2004. Shri Raghvender Singh and Shri M. Madhur were present at the hearing on 24.5.2004. Shri K. Srinivas did not attend the hearing, through he filed his written arguments on 13.5.2004. We will consider the objections received in later part of this order.

3. As per Regulation 6, the net worth of the electricity trader at the time of application should not be less than Rs.1.5 crore in case the applicant proposed to trade up to 100 million units of electricity in a year.

4. The applicant was incorporated on 17.7.2003. Therefore, the past financial data on the applicant's business and net worth is not available. The applicant has filed an affidavit dated 22.4.2004 along with the copies of share certificates in support of its net worth as on 23.2.2004. The relevant details are extracted below:

	(Rs.)
a) Share Capital issued and subscribed	: 15500000
b) Less balance in profit and loss account	: 00184337

Net Worth	: 15315663
	=====

5. The details of net worth submitted by the applicant are duly supported by the Auditors certificate. On consideration of the material placed on record by the applicant, we are satisfied that the applicant qualifies for grant of licence for inter-state trading in electricity as category "A" trader, that is, for trading of up to 100 million units of electricity during a year in so far as net worth is concerned.

6. Now we propose to deal with the objections received in response to the public notices issued by the applicant.

7. Shri K. Srinivas has pointed out that the applicant had earlier filed an application, (registered as Petition No. 39/2003) wherein the applicant proposed to trade up to 2000 million units, to which he had filed the objections vide his affidavit dated 21.9.2003. However, in the present application, the applicant has proposed to trade up to 100 million units in the first year of operation after grant

of licence. The objector has pointed out that since the application earlier filed by the applicant is pending no fresh application can be entertained. It is further pointed out that as per the present application, the applicant proposes to trade in electricity in whole of India except the State of Jammu and Kashmir and where ever possible neighbouring countries also whose name have not been indicated. It is the contention of Shri Srinivas that in the earlier application, the applicant had not indicated that it would undertake trading in electricity in the neighbouring countries. According to him, since the Act extends to the whole of India except the State of Jammu and Kashmir, the applicant cannot be granted licence for trading in the neighboring countries.

8. We have considered the objections raised by Shri Srinivas. The applicant had filed application No.39/2003 for grant of licence for inter-state trading before notification of the Regulations. Accordingly, the application was disposed of with the following observations vide order dated 14.11.2003:

“9. 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.

10. 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.

11. This order shall not be construed that the Commission has approved, the applicant's proposal contained in Annexure 'E' to the petition under the head "services to be provided" and referred to in para 2 above."

9. While disposing of the application, it was noted by the Commission that comments/objections received in response to the public notice were not being considered at that stage since the application was not being considered for grant of licence for trading.

10. In the present application, the applicant has prayed for licence to undertake trading up to 100 million units in a year. Therefore, the eligibility of the applicant for grant of licence is to be considered with reference to the prayer made in the present application. The volume of the trading proposed by the applicant in its earlier application is of no consequence since that application no longer survives. As correctly pointed out by Shri Srinivas, the Act extends to whole of India, except the State of Jammu and Kashmir and, therefore, based on the licence that may be granted in the present application, the question of export or import of electricity by the applicant to/from the neighbouring countries does not deserve any consideration. The licence, if granted, based on the present

application, *ipso facto*, has to be limited to trading of electricity within the territory of India in accordance with the Act.

11. Shri Srinivas in his written arguments filed on 13.5.2004 has raised certain issues in regard to the order dated 14.11.2003. He has raised the question of the legal force of the said order. We refrain from recording our views on the issue particularly for the reason that legality of the order cannot be considered in the present proceedings. Incidentally, it has been pointed out by Shri Srinivas that grant of licence for inter-state trading in electricity based on the present applicant will be unlawful in view of the Section 10 and 11 of the Code of Civil Procedure. We are unable to agree. The earlier application filed by the applicant was not considered on merits but was disposed of for the reason that necessary regulatory framework had not been notified, when the application was made. The applicant was given liberty to make a fresh application as and when regulatory frameworth was notified by the Commission. The Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of Trading Licence and other related matters) Regulations, 2004 were notified on 6.2.2004 and the applicant has made the present application thereafter. In view of this the principles laid down in Sections 10 and 11 of the Code of Civil procedure have no applicability. The objections filed by Shri Srinivas thus stand disposed of.

12. Shri Raghvender Singh has pointed out that the applicant has made the application for grant of trading licence in electricity in English only. He made a request to the applicant to provide Hindi version of the application along with other documents. This request made by him was declined by the applicant.

According to Shri Raghvender Singh, 98% of the country's population cannot understand English and, therefore, the Hindi version of the application and other documents needed to be supplied to him before he could offer his substantive comments on the contents of the application.

13. The applicant had published notices of its application in two Hindi newspapers, namely, Dainik Bhaskar and Amar Ujala. The notices, which contained all the relevant details of the application are thus published in Hindi. Therefore, there could not be any material difficulty in the way of Shri Raghvender Singh submitting objections to the applicant's prayer for grant of licence. That apart, in accordance with the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999, the application can be made before the Commission in English or in Hindi. These regulations do not make any provision for providing translated version of the application in a language other than that in which the application is made. Shri Raghvender Singh has not brought to our notice any provision of law which may mandate to furnish Hindi version of the application. As the application has been made in accordance with the conduct of business regulations framed by the Commission, the objection raised by Shri Raghvender Singh is not of much substance and is rejected.

14. Shri M. Madhur has raised the objection about the export of electricity to neighbouring countries by the applicant as stated in the public notice. It has been pointed out by him that electricity which is in short supply in the country should not be allowed to be exported. We note the spirit of the objection. However, in

view of what has been stated in para 10 above, the licence, if at all granted to the applicant shall be valid for trading within the territory of India in accordance with law. Merely, based on the authority of the licence that may be granted to the applicant, the applicant will not be able to undertake export of electricity outside the country. In case the applicant pursues export of electricity, it shall have to comply with other laws in force from time to time.

15. In the light of the above discussion, we are satisfied that the applicant can be considered for grant of licence as category "A" electricity trader, that is, for trading of electricity upto 100 million units in a year. We, therefore, propose to grant the licence to the applicant as category "A" electricity trader. We direct that a notice under sub-section (5) of Section 15 of the Act be issued inviting suggestions or objections to the above proposal.

16. List this petition on 29th June, 2004.

Sd/-
(Bhanu Bhushan)
Member

Sd/-
(K.N. Sinha)
Member

New Delhi, dated 1st June, 2004