

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 483/MP/2014

- Subject : Petition under Regulation 63 (iii) of Central Electricity Regulatory Commission (Power Market) Regulations, 2010 seeking consent for enabling cross border transaction at Indian Energy Exchange.
- Date of hearing : 10.2.2015
- Coram : Shri Gireesh B. Pradhan, Chairperson
Shri A.K. Singhal, Member
Shri A.S. Bakshi, Member
- Petitioner : Indian Energy Exchange Limited
- Respondents : National Load Despatch Centre
Ministry of Power
Central Electricity Authority
Central Transmission Utility
Regional Power Committees
POSOCO
All inter-State traders
Power Exchange India Limited
- Parties present : Shri Rajesh Mediratta, IEX
Ms. Shruti Bhatia, IEX
Shri Kapil Dev, PXIL
Ms. Mayuri Singh, PXIL
Shri Sakiya Singh Chaudhuri, Advocate, TPTCL
Shri Ankit Prasoon, Advocate, TPTCL
Shri Saurabh Srivastava, TPTCL
Shri Arun Singh, TPTCL
Shri Sanjeev Mehra, TPTCL
Shri S.S. Barpanda, NLDC
Shri S.C.Saxena, POSOCO
Ms. Abiha Zaidi, POSOCO
Ms. Sunidhi Sharan, Statkraft
Shri Matrugupta Mishra, Advocate, GEL
Shri K.S.Bandyopadhyay, NVVN
Ms. Ranjana Gupta, NVVN
Shri Rajiv Bhardwaj, Advocate, PTC

Record of Proceedings

The representative of the petitioner submitted that as per the Commission`s direction dated 8.1.2015, copy of the petition was served to all the concerned parties.

He further submitted that NLDC, PXIL and traders, namely Knowledge infrastructure, Tata Power trading Ltd., Instinct Infra & Power Ltd., Statkraft, NVVNL and Global Energy Ltd. have filed their responses.

2. The representative of Power Exchange India Limited (PXIL) submitted as under:

(a) There is no clarity with respect to the extent of jurisdiction of the Commission on the cross-border transactions due to following reasons:

- i. Cross-border transactions are not envisaged under the Electricity Act, 2003. It is an established principle of law that a court cannot read anything not provided in the statute.
- ii. There is a presumption against creating or enhancing the jurisdiction provided under the statute. Something not provided in any statute, cannot be enhanced or extended by a court.

(b) The existing rules and regulations are inadequate to deal with cross-border transactions. According to the petitioner, regulations for cross border can evolve in the same manner as the Power Exchanges were established. Prior to establishment of the Power Exchanges in India, the Commission had issued a staff paper in 2006. After due consultation with the stakeholders, the Commission framed the guidelines in 2007 for establishing Power Exchanges. Based on these guidelines, the Power Exchanges were established. After some practical experience, the Central Electricity Regulatory Commission (Power Market) Regulations, 2010 were notified in the years 2010. It is not a case that when the exchanges were allowed, there was no framework at all; rather when they were allowed, proper guidelines were framed. Similarly, a basic framework should be put in place in form of either guidelines or regulations. This was highlighted in agreement entered between the countries. Government of India has highlighted that rule and regulations of both the countries should be harmonized.

3. In response to PXIL's submission, the representative of the petitioner submitted as under:

(a) In context of jurisdiction issue, the delivery point will be within the Indian boundary and therefore, all rules, regulations, operation of exchange as per Indian law would have to be agreed by the cross border participant.

(b) In the suggested model trading licensee or nodal agency, a member of exchange, will facilitate physical transactions within India and financial transaction with the exchange as per India timelines/time zones and currency. Settlement with cross border participant shall be as per contractual agreement between the nodal agency or trading licensee and the cross border participant.

(c) Similar transactions are already taking place i.e. short term transactions with Nepal, medium and long transactions with Bhutan and Bangladesh and

short term transactions is expected with Bhutan. Only difference being that cross border transactions would be through the exchange for the first time.

(d) With regard to framework requirement for cross-border transaction, the framework is already available in the system i.e. the exchange operational time line has been well defined in the power market regulations and the manner of settlement of transactions between trading licensee or the nodal agency with the cross border party is in practice for the last 10-15 years. There is nothing new for which framework has to be established.

4. The Commission raised concern on the jurisdiction of the contractual agreement being entered between the parties for cross border trade. The Commission observed that trading in electricity is already taking place with other countries and more such trades are expected in future and therefore, framework needs to be designed especially when there is widespread cross border trading.

5. In response, the representative of the petitioner submitted as under:

(a) Small quantity of transaction is involved since very limited transmission capacity is available for the next 1-2 years:

- Out of 500 MW of inter-connectivity with Bangladesh only 50 MW can flow on the exchange as 450 MW is already tied up.
- With Nepal, one line is being strengthened which can have maximum 50 MW of transaction
- With Bhutan, maximum 120 MW can come on the exchange.

(b) Only one cross border entity is involved for trading:

- In case of Bangladesh, it has a single buyer model BPDB. IEX has not allowed retail or wholesale competition and therefore multiple parties may not be possible in the next 2 years.
- Only Nepal Electricity Authority would trade from Nepal and reforms in electricity sector in Nepal is not expected in near future.
- In case of Bhutan, an interim arrangement had been given by the Commission for injection of power from a merchant plant.

6. The representative of PXIL submitted as under:

(a) Various models for operation of cross border exchanges have evolved globally and that adoption of a particular model for Indian context needs to be deliberated.

(b) As per minutes of the joint working group dated 14.9.2013 regarding the operational arrangements related to Inter-connection with Bangladesh, NVVN is the nodal agency for transactions with Bangladesh and its role would be more

than that of a trader and PTC or any other trader shall apply for corresponding access with CTU/NLDC, after consent from NRVN.

(c) As per advice of the Commission to the Govt. of India, the Commission has a role to play if anything affects internally with respect to competition etc. In this context, framework should be defined keeping eventualities like single buyer, IPPs etc.

(d) As per minutes of meeting of 8th Joint working group held on 9.10.2014, the import of electricity from Nepal and Bhutan by Bangladesh is a multi-lateral issue and could be discussed under the regional forum. In case of collective transactions on exchanges, with participation from other countries the likelihood of multi-lateral transactions cannot be ruled out.

(e) An interim approval might lead to a situation where in the adopted model, even if it is for short period, becomes fait accompli.

(f) In number of times international experience, particularly Nordic markets, is quoted to establish a precedence which needs to be understood in the right context. In case of Nordic markets, the entire cross border transmission capacity is available with exchange which is not the case.

(c) PXIL has filed the Petition No. 158/MP/2013 regarding transmission corridor allocation which will have an effect on the corridor allocation for cross border transactions also.

7. The representative of NRVN submitted as under:

- (a) NRVN has been undertaking transaction with Bangladesh and transactions on IEX would be one of the types of transactions.
- (b) LOI for procuring power from exchange has already been issued by Bangladesh. Cross border trading only for limited purpose of Bangladesh may be allowed.
- (c) Framework to the limited extent is already available and detailed framework can be looked at a future date.
- (d) UI is being handled by NRVN. Delivery point is in India and it would be as per Indian condition.

8. Learned counsel for TPTCL submitted as under:

- (a) The Commission vide order dated 11.9.2014 in Petition No. 187/MP/2014 had allowed TPTCL to participate in short term trading which includes Power

Exchange also. The power procured would be on account of TPTCL and since it would be selling on the exchange on its own account which is in India.

- (b) In case of bilateral transactions, TPTCL is not entering into cross border transaction. With regard to the collective transaction, the transaction is between TPTCL and an exchange.
- (c) TPTCL is not selling outside but inside India and on exchange.
- (d) Right of TPTCL for selling Dagachhu power on the exchange may not be curtailed.
- (e) Under the regulations, an electricity trader can trade both on its account and on behalf of the client.
- (f) NLDC has neither accepted nor rejected application of TPTCL for import of power from Dagachhu.

9. The representative of NLDC submitted as under:

- (a) In context of market design, there is no issue as there is only one buyer or one seller from the countries. They can be considered as one entity and in future they can be considered as one bid area.
- (b) Policy decision has to be taken since the transactions would amount to a multi-lateral transaction. One entity from one country may trade with another country via Indian grid serving as a transit.
- (c) In neighbouring countries, evolution of electricity market is in a very primitive stage. The concepts of deviation settlement and open access, etc, have not evolved. Therefore, multi buyer and multi seller model cannot be adopted.
- (d) Single agency should be designated for settling transactions with neighbouring countries.
- (e) Curtailment of power is done as per the priority defined in the regulations. Countries have to agree to the priority for curtailment of power, if any. Curtailment is slightly difficult in case of Power Exchange transaction and curtailment priority may be reviewed to give it a higher priority.
- (f) In context of application for scheduling of Dagachhu power in short term market, the representative of NLDC submitted that COD has not been declared and infirm power cannot be scheduled.

10. The Commission observed that the regulator would rely on the nodal agency for UI settlement etc. and not on any cross border entity and that there could be different nodal agencies for different countries. The Commission also observed that curtailment has technical underpinning and therefore, the agreements between neighbouring countries and nodal agency should take cognizance of the same.

11. The representative of the petitioner submitted that curtailment priority may not be changed now and may be reviewed after observing operations with cross border for about 6 months and that same rules, regulations of India would be applicable to the neighbouring countries.

12. Learned counsel for Global Energy Ltd. submitted as under:

(a) Cross border transaction is not envisaged in the Electricity Act, 2003 and therefore, Regulation 63(iii) of the Central Electricity Regulatory Commission (Power Market) Regulations, 2010 may not be applicable for source of filing the petition.

(b) Framework should be defined for cross border transaction.

(c) In context of feasibility of the transaction, the following may be required:

- robust dispute resolution mechanism;
- manner of settlement for currency fluctuation and payment defaults;
- UI settlement;
- Credibility of the promoters is questionable;
- There is no transparency in the algorithm for price determination.

13. In response, the representative of the petitioner submitted as under:

(a) Electricity trading is based on financial contracts. Financial contract which allows multilateral trading may not be allowed. Instead, affidavit can be taken from buyer and seller stating that trading is for sale or purchase within India only.

(b) Two contracts which are already in force, namely Bhutan selling to Eastern States including West Bengal and West Bengal selling 250 MW of short term power to Bangladesh which have not been identified as multi-lateral.

(c) In meetings of Joint Working group in 2014, Bangladesh expressed desire to procure power from Nepal and Bhutan. It is recorded that the Indian side mentioned that this issue is multi-lateral in nature and could be discussed under the appropriate sub-regional forum which has been postponed by them.

- (d) Cross border transaction has elsewhere been developed initially with small transactions and with learning formal institutional framework has been deployed.
- (e) Short term cross border trade in bilateral may happen since it may not be possible to identify every electron.
- (f) Dispute resolution within Indian boundary is under the jurisdiction of the Commission and for cross border it would be governed by the agreement executed between the parties.

14. The Commission observed that some of the respondents have raised certain issues which are outside the scope of the present petition and in such cases, the parties are at liberty to file separate petition, if so advised.

15. After hearing the learned counsels and the representatives of the parties, the Commission reserved the order in the petition.

By order of the Commission
Sd/-
(T. Rout)
Chief (Law)