

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 20/TDL/2018

Coram:

Shri P.K. Pujari, Chairperson

Shri A.K. Singhal, Member

Shri A.S. Bakshi, Member

Dr. M.K. Iyer, Member

Date of Order: 26th of March, 2018

In the matter of

Application for grant of inter-State trading licence to NHPC Limited.

And

In the matter of

NHPC Limited
NHPC Office Complex,
Sector-33, Faridabad

..... Petitioner

The following were present:

Shri S.P.Rathour, NHPC
Shri Naresh Bansal, NHPC
Shri Dhemesih C.K., NHPC
Shri D. Chakraborty, NHPC
Shri Ashish Saighal, NHPC

ORDER

The Petitioner, NHPC Limited, a company registered under the Companies Act, 1956 (1 of 1956) has made the present application under sub-section (1) of Section 15 of the Electricity Act, 2003 (hereinafter referred to as "the Act") read with the Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of Trading Licence and other related matters) Regulations, 2009 (hereinafter referred to as "Trading Licence Regulations") amended from time to time, for grant of Category 'I' licence for inter-State trading in electricity in whole of India.

2. The Petitioner has submitted that NHPC Limited is a Government company and was incorporated on 7.11.1975 under the Companies Act, 1956 and is listed on National Stock Exchange of India Limited and BSE Limited. The Petitioner has submitted that President of India and Life Insurance Corporation of India are the shareholders of the company. NHPC has prayed for grant of a Category I trading licence. The Petitioner has submitted that as on 31.3.2017, its authorized, issued, subscribed and paid up share capital are Rs. 15,000 crore, Rs. 10,259.32 crore, Rs 10,259.32 crore and Rs. 10,259.32 crore, respectively, and therefore, the Petitioner meets the required networth for grant of Category I Licence. The Petitioner has submitted that its Memorandum of Association authorizes undertaking inter-State trading in electricity and transmission of electricity.

3. NHPC is a generating company in terms of Section 2 (28) of the Electricity Act, 2003 (hereinafter referred to as the Act). Generating Company has been defined under Section 2(28) of the Act as “generating company means any company or body corporate or association or body of individuals, whether incorporated or not, or artificial person, which owns or operates or maintains a generating station”. Section 14 of the Act provides that “no person shall undertake trading in electricity unless he is authorized to do so by a licence issued under Section 14”. Section 14 of the Act provides that the Appropriate Commission may, on an application made to it under Section 15, grant a licence to any person to undertake trading in electricity as an electricity trader in any area as may be specified in the licence. The term “person” has been defined in Section 2 (49) of the Act to include “any company or body corporate or association or body of

individuals whether corporate or not or artificial juridical person”. Thus, NHPC as a generating company is eligible for applying for grant of trading licence under Section 14 of the Act.

4. The issue for consideration is whether there is any legal embargo to grant licence to a generating company to undertake trading for sale and purchase of electricity. There is no provision in the Act which debars a generating company to undertake the function of trading in electricity. However, Section 10 of the Act provides as under:

“10. Duties of generating companies: (1) Subject to the provisions of this Act, the duties of a generating company shall be to establish, operate and maintain generating stations, tie-lines, sub-stations and dedicated transmission lines connected therewith in accordance with the provisions of this Act or the rules or regulations made thereunder.

(2) A generating company may supply electricity to any licensee in accordance with this Act and the rules and regulations made thereunder and may, subject to the regulations made under sub-section (2) of section 42, supply electricity to any consumer.

(3) Every generating company shall-

(a) submit technical details regarding its generating stations to the Appropriate Commission and the Authority;

(b) co-ordinate with the Central Transmission Utility or the State Transmission Utility, as the case may be, for transmission of the electricity generated by it.”

The generating company is authorized to supply electricity to any licensee or consumer. This provision does not debar a generating company to undertake the activity of trading which involves purchase of electricity for the purpose of sale thereof. As a trading licensee, a generating company can purchase power from a seller and sell the same to the buyer. In case of sale of power from its own generating station, since the generating company cannot purchase electricity from itself, therefore, an element of trading, i.e. “purchase of power” cannot be fulfilled. Therefore, a generating company cannot trade electricity generated by it on the basis of licence granted to it. The

generating company can supply the power generated by it only to a licensee or a consumer for which no trading licence is required. Therefore, the trading licence, if granted, to a generating company can be utilized for purchase and sale of power involving other entities. However, the generating company, if granted trading licence, shall be required to maintain separate accounts for trading activity by treating it as a separate cost centre.

5. Regulation 6 of the Trading Licence Regulations provides for the procedure for grant of trading licence as under:

“6. Procedure for grant of licence

(1) Any person desirous of undertaking inter-State trading in electricity shall make an application to the Commission for grant of licence in the manner specified in Form-I appended to these regulations and such application shall be accompanied by ,-

(a) Such fee as may be prescribed by the Central Government from time to time payable through Bank Draft or pay order drawn in favour of Assistant Secretary, Central Electricity Regulatory Commission, New Delhi.

(b) Copies of the annual reports in case of the persons incorporated under the Companies Act, 1956 (1 of 1956) and audited accounts along with the Director's Report, Auditors' Report, the Schedules and notices on accounts for three years immediately preceding the year in which the application has been made and the special balance sheet as on any date falling within 30 days immediately preceding the date of making the application:

Provided that where the applicant has not been incorporated, registered or formed during the period of three years immediately preceding the year in which the application is made, the application shall be accompanied by the copies of the annual reports and audited accounts for such lesser period for which the applicant has been in existence.

(2) The application for grant of licence, along with annexures and enclosures shall also be submitted to the Commission on compact disc (CD).

(3) The applicant shall post complete application along with annexures and enclosures on his own website so as to facilitate access to the application by any person through internet and shall keep them on the website till the disposal of his

(Guwahati edition) and 'The New India Express'. No objection has been received in response to the public notices.

8. Proviso to clause (1) of Regulation 3 of the Trading Licence Regulations provides that the applicant should have been authorized to undertake trading in electricity by its Memorandum of Association. Trading in electricity is covered under Main Objects of the Memorandum of Association of the Petitioner. Para III A 1 (a) and 4 of the Main Objects of the company reads as under:

“(a) To plan, promote and organise an integrated and efficient development of power in all its aspects through Conventional and Non-Conventional Sources in India and Abroad, including planning, investigation, research, design and preparation of preliminary, feasibility and definite project reports, construction, generation, operation and maintenance of power stations and projects, transmission, distribution, trading and sale of power generated at stations in accordance with the national economic policy and objectives laid down by the Central Government from time to time and release of water and other needs to the State Govt. as per the agreed parameters.

4. To carry on the business of purchasing, selling, importing, exporting, producing, trading, manufacturing or otherwise dealing in all aspects of planning, investigation, research, design and preparation of preliminary, feasibility and definite project reports, construction, generation, operation and maintenance of power stations and projects, transmission, distribution, trading and sale of power”

In view of the above, the Petitioner fulfills the requirements specified in Regulation 3 (1) of the Trading Licence Regulations.

9. Transmission of electricity is covered under the Main Objects of the Memorandum of Association of the Petitioner. The Petitioner has submitted that it does not hold transmission licence. The Petitioner is directed to submit the affidavit to the effect that during the subsistence of the trading licence if granted by the Commission, it shall not apply for any transmission licence before any concerned authority without surrendering the trading licence granted to it.

10. In accordance with Regulation 3 (3) of the Trading Licence Regulations, a person applying for Category `I` trading licence should have net worth of ₹ fifty crore, and should have maintained minimum current ratio and liquidity ratio of 1:1, as on date of audited balance sheet accompanying the application. As per Regulation 6 (1) (b) of the Trading Licence Regulations, the applicant is required to submit the special balance sheet as on any date falling within 30 days immediately preceding the date of making the application. The Petitioner filed its application under affidavit dated 10.1.2018 and submitted audited balance sheet as on 31.3.2017 and audited special balance sheet as on 31.12.2017.

11. Based on the special audited balance sheet as on 31.12.2017, net worth and liquidity ratios has been worked out as under:

(Rs. in crore)	
Net Worth Computation	As per audited Balance Sheet as on 31.12.2017
Particulars	
A) Paid up equity capital (1)	10259.32
B) Reserves and Surplus	
B.1. Capital Reserves	0.00
B.2. Capital Redemption Reserve	2041.42
B.3. Debenture Redemption Reserve	1609.27
B.4. Revaluation Reserve	0.00
B.5. Share Options Outstanding Account and Reserves other than free reserves (i.e. R&D fund, Fair value through other comprehensive income-FVTOCI-Equity & Debt instruments)	205.82
B.6. Securities Premium Reserve	242.82
B.7. Surplus (P and L Account)	4971.98
B.8. Other Free Reserves (i.e. General Reserve)	10088.11
Reserves and Surplus not considered for net worth (B1+B2++B3+B4+B5)	3856.51

Free Reserves and Surplus considered for Net worth (2) (B6+B7+B8)	15302.90
C) Loans and Advances given to Associates (3)	0.00
D) Deferred Expenditure (including Misc. Expenses) not written off (4)	0.00
Net Worth (1+2+3+4)	25562.22

12. The net worth of the Petitioner is further represented by the following:

(Rs. in crore)	
Net worth (Asset approach), Current Ratio and Liquidity Ratio Computation	As per special Balance Sheet as on 31.12.2017
A) Non-current Assets	
A.1. Net block of Tangible Asset	19043.75
A.2 Net Block of Intangible Asset (ROW and Computer software)	925.54
A.3 Capital work in progress	18600.68
A.4 Intangible Assets under development	0.00
A.5 Non-Current Investments	2251.18
A.6 Deferred Tax Assets	100.75
A.7 Long-term loans and advances	336.57
A.7.1 Less: Loans & Advances given to Associates included in above	0.00
A.7.2 Net Long Term Loans & Advances (A.7 - A.7.1)	336.57
A.8 Other Non Current Asset (Capital advances, deposit, deferred foreign currency fluctuations and Regulatory Deferral) Regulatory Deferral Account debit balance is a separate line item in B/S, which is neither C/A nor Non Current Asset. However, the same is considered here under Non Current Assets for grouping purposes.	6517.24
A.9 Deferred Expenditure (including Misc. Expenses) not written off (Not considered for net worth computation)	0.00
Total Non-Current Assets	47775.71
Total Non-Current Assets considered for net worth (1)	47775.71
B. Non-Current Liabilities, Pref. Share & Share Application money and Reserves other than free reserves	
B.1 Share application money pending allotment	0.00
B.2 Preference Share Capital	0.00
B.3 Long term Borrowings	17294.25

B.4 Deferred tax Liabilities	1040.13
B.5 Other Long Term Liabilities	1632.02
B.6 Long Term provisions	409.81
B.7 Reserves other than free reserves	0.00
Total Non-Current Liabilities, Reserves other than free reserves considered for Net worth (2)	20376.21
C. Current Assets	
C.1. Current Investments	0.00
C.2. Inventories	104.03
C.3. Trade Receivables	1801.21
C.4. Cash and cash equivalents	3528.19
C.5 Short Term Loans and Advances	47.75
C.5.1 Less: Loans and Advances given to associates	0.00
C.5.2 Net Short Term Loan and Advances (C.5 - C.5.1)	47.75
C.6 Other current assets (Deposits, advance to contractor, other advance and prepaid expenditure)	2028.95
C.7 Deferred Expenditure (including Misc. Expenses) not written off (not considered for net worth & Liquidity purpose)	0.00
Total Current Assets	7510.15
Total Current Asset considered for Net worth (3)	7510.13
D. Current Liabilities	
D.1. Short-term Borrowings	0.00
D.2. Trade payables	192.76
D.3. Other current liabilities (Current maturity of long term debt and income received in advance, advance against deposit works etc. and current tax liabilities)	3400.54
D.4. Short-term provisions	1897.60
Total Current Liabilities considered for Net worth (4)	5490.90
Net worth [(1-2)+(3-4)]	25562.22

13. Based on the above, the net worth, current ratio and liquidity ratio work out as under:

S. No.	Particulars	31.12.2017
1.	Net worth (₹ in crore)	25562.22
2.	Current ratio	1.37
3.	Liquidity ratio	1.35

14. In accordance with Regulation 3 (2) of the Trading Licence Regulations, the Petitioner should have at least one full time professional having, qualifications and experience in power system operation and commercial aspects of power transfer and finance, commerce and accounts. As per information submitted by the Petitioner, it fulfils the requirements of Regulation 3 (2) of the Trading Licence Regulations.

15. In para 4 of the order, we have decided that a generating company is eligible for grant of trading licence. Further, as per the analysis made in paras 5 to 14 above, the Petitioner meets the requirements of Trading Licence Regulations for grant of Category-I Trading Licence. On consideration of the above facts, we are ***prima facie*** satisfied that the Petitioner fulfills conditions for grant of Category-I trading licence. The Commission proposes to grant Category `I` trading licence to the Petitioner. We direct that a notice under clause (a) of sub-section (5) of Section 15 of the Act be issued inviting further suggestions or objections to the proposal of the Commission.

16. List this petition for further directions on 19.4.2018.

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

Sd/-
(A.S. Bakshi)
Member

Sd/-
(A.K. Singhal)
Member

Sd/-
(P.K. Pujari)
Chairperson