

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No.302/MP/2018

**Coram: Shri P.K. Pujari, Chairperson
Dr. M.K. Iyer, Member**

Date of Order: 24th of April, 2019

In the matter of

Petition seeking additional time period to comply with the Commission`s directions regarding Network Norms and Shareholding Pattern as prescribed under Regulations 18(i), 19(1) and 20 of the Central Electricity Regulatory Commission (Power Market) Regulations, 2010.

And

In the matter of

Power Exchange India Limited
Sumer Plaza, 901, 9th Floor
Marol Maroshi Road,
Andheri, Mumbai-400059

.....Petitioner

Parties present:

Shri Sarthak Sen, Advocate, PXIL
Shri Kapil Dev, PXIL

ORDER

The petitioner, Power Exchange India Limited, has filed the present petition seeking additional time period to comply with the Network Norms and Shareholding Pattern as prescribed under Regulations 18(i), 19(1) and 20 of the Central Electricity Regulatory Commission (Power Market) Regulations, 2010 (hereinafter referred to as 'Power Market Regulations').

Background of the Case:

2. Power Exchange India Limited was accorded permission to set up and operate Power Exchange vide order dated 25.7.2008 in Petition No. 21/2008 in accordance with the provisions of the guidelines issued by the Commission in order dated 6.2.2007 in Petition No. 155/2006 (suo-motu). Subsequently, the Commission in exercise of powers conferred under Section 66 read with Section 178 (2) (y) of the Electricity Act 2003, notified the Power Market Regulations on 21.1.2010 providing a regulatory framework for the operations of power exchanges in the country. In terms of first proviso to Regulation 14 of the Power Market Regulations, "Power Exchanges which have been granted approval/in-principle approval by the Commission prior to the date of notification of these regulations shall be deemed to be registered under these regulations subject to payment of annual charges." Accordingly, Power Exchange India Limited is registered under Power Market Regulations and is required to comply with the provisions of the said Regulations.

3. The networth and shareholding pattern requirements as specified in the Power Market Regulations are extracted as under:

"18 (i).A Power Exchange shall always have a minimum networth of Rs. 25 crore:

Provided that the Power Exchange shall always maintain the above networth and in case the same depletes due to payment made by the power Exchange to sellers / buyers in default including by the usage of the SGF impacting its networth, the Power Exchange shall increase its networth to comply with the above networth criteria within 3 months from the date of depletion.



Provided that if and when a Power Exchange separates its clearing function to a Clearing Corporation, it shall be required to have a minimum networth of Rs. 5 crore.

Provided further that the Commission may, by general order, review the networth criteria from time to time."

19. Shareholding Pattern of Power Exchange (1) The shareholding pattern for equity holders in the Power Exchange shall be as follows:

(i) Any shareholder other than a Member of the Power Exchange can have a maximum (whether directly or indirectly) of 25% shareholding in the Power Exchange.

(ii) A Member of the Power Exchange can have a maximum (whether directly or indirectly) of 5 % shareholding in the Power Exchange.

(iii) In total, a Power Exchange can have a maximum of 49% of its total shareholding owned by entities (whether directly or indirectly) which are Members of the Power Exchange.

(2) The share holding pattern shall be reported to the Commission from time to time.

20. Notwithstanding Regulation 19, the Power Exchanges granted approval or in principle approval prior to the date of notification of these regulations, shall within a period not exceeding three years from the date of notification of these regulations, ensure the structure/shareholding pattern as specified in Regulation 19."

4. In accordance with the above provision, an operating Power Exchange is required to always maintain a minimum networth of Rs. 25 crore as per the last audited balance sheet. Further, the Regulations provide that any shareholder other than a member of the Power Exchange can have a maximum of 25% shareholding in the Power Exchange, and a member can hold maximum of 5% share and all members taken together can hold maximum of 49% of share in the Power Exchange. This shareholding pattern was required to be achieved within a period not exceeding three years from the date of notification of these Regulations i.e. by 20.1.2013.



5. As the petitioner was unable to fulfil the minimum prescribed network, the petitioner filed Petition No. 134/2010 seeking extension of time to raise additional equity share capital to achieve the network of Rs. 25 crore provided under Regulation 18(i) of the Power Market Regulations. The Commission vide order dated 25.5.2010 allowed the petitioner a period of one year from the date of notification of Power Market Regulations i.e. till 20.1.2011 to achieve the minimum prescribed network. The petitioner subsequently filed Petition No. 101/MP/2011 for further extension of timeline for complying with the network criteria. The Commission, after considering the relevant facts and prayer of the petitioner, vide order dated 27.10.2011 allowed time till 31.3.2013 to achieve the required network. The petitioner again filed Petition No. 52/MP/2013 under Regulation 63(i) of the Power Market Regulations for grant of additional time of 3 years from 31.3.2013 to achieve the network prescribed by the Commission. The Commission, vide order dated 8.6.2013, directed PXIL to increase its network to Rs.25 crore by 20.1.2014 and at least to Rs.10 crore within one month from the date of issue of the order. The petitioner filed an IA No.17/2013 in Petition No. 52/MP/2013 seeking suspension of the Commission's order dated 8.6.2013 and for extension of time upto 31.3.2014 to increase its network to Rs.10 crore and time upto 31.3.2015 to increase its network to Rs. 25 crore. The Commission vide its order dated 25.7.2013 directed the petitioner to achieve network of Rs. 10 crore by 31.12.2013 and Rs.25 crore of network by 31.3.2014.



6. Subsequently, the petitioner filed 3/RC/2014 and 322/RC/2014 along with IA No. 17/2013 seeking extension of time to achieve networth of Rs. 10 crore by 31.3.2015 and Rs. 25 crore by 31.3.2016. The Commission vide its common order dated 2.7.2014, directed the petitioner to make all out efforts to attract new shareholders who would infuse equity capital into PXIL to comply with the Power Market Regulations. The Commission also relaxed the Regulation 19(1) of the Power Market Regulations regarding maximum shareholding of 25% for any shareholder (who is not a member of Power Exchange) to upto 74% of the equity capital while restricting the voting rights of the non-members to the existing limit of 25% of the equity capital. The petitioner filed review petition seeking review of the order dated 2.7.2014 in light of the restrictions placed under the Companies Act, 2013 with respect to issuance of shares with differential rights. The Commission vide order dated 2.12.2014 in Petition No. 24/RP/2014 withdrew the directions related to relaxation of Regulation 19(1) in consideration of the provisions in Companies Act, 2013 and allowed the petitioner time up to 30.9.2015 to comply with the minimum networth requirement of Rs. 25 crore.

7. The petitioner filed a petition 211/RC/2015 with the Commission seeking additional time of three years for complying with net worth norms and shareholding pattern as specified in the Power Market Regulations. The Commission vide its order dated 29.8.2016 granted additional time till 30.9.2018 to the petitioner to achieve the networth requirement of Rs. 25 crore as specified in Regulation 18 of the Power Market Regulations. The Commission directed the petitioner to submit a report every six months regarding the status of its networth to the Commission. Further, the Commission directed the petitioner to ensure robust risk management process and



that no transaction on power exchange is undertaken unless the same is backed by cash available on behalf of the customer.

8. The petitioner has filed the present petition under Regulations 63(ii) ad 64 of the Power Market Regulations seeking additional time period to comply with the network Norms and shareholding pattern as prescribed under Regulations 18(i) and 19(1) of the Power Market Regulations. The petitioner has made the following specific prayers:

“(a) Grant additional time period of five (5) years for complying with the minimum network requirement under Regulation 18 of the PMR;

(b) Pass/provide flexibility for further infusion of equity capital from existing shareholders as an exemption from PMR to comply with Regulation 19 and Regulation 20 of the PMR for a period of five (5) years;

(c) Pass suitable removal of difficulties order to modify the definition of network, to include preference share capital in the computation of network;

(d) Pass suitable removal of difficulties order to relax the applicability of the shareholding pattern prescribed under Regulation 19 and 20 of the PMR for a period of five (5) years after attaining the requisite minimum network under Regulation 18 of the PMR;”

Submissions made by the Petitioner:

9. The petitioner has submitted the current status of the network and shareholding pattern of the company as under:



Networth of PXIL as on 31.07.2018

Particulars	Amount (Rs in Crores)
Paid up equity capital	48.47
Accumulated Losses	(54.99)
Networth	(6.52)

Shareholding Pattern as on 29.08.2018

S.No	Shareholder	No. of fully paid up Equity Shares of Rs. 10/- each held	Amount (in Rs.)	% Held
1	NSE Investments Limited (NSEIL)	15,000,000	150,000,000	30.95
2	NSE Investments Limited (NSEIL) with Mr. Ravichandran	10	100	0.0
3	NSE Investments Limited (NSEIL) with Mr. Muralidaran	10	100	0.0
4	NSE Investments Limited (NSEIL) with Mr. Yatrik Vin	10	100	0.0
5	National Commodity & Derivatives Exchange Limited (NCDEX)	15,000,000	150,000,000	30.95
6	Mr. M.K.Ananda Kumar	10	100	0.0
7	Ms. Komal Sahini	10	100	0.0
8	Gujarat Urja Vikas Nigam Limited	2,500,000	25,000,000	5.16
9	Power Finance Corporation Limited	3,220,000	32,200,000	6.64
10	GMR Energy Limited	4,000,000	40,000,000	8.25
11	JSW Energy Limited	1,250,000	12,500,000	2.58
12	WB State Electricity Distribution Company Limited	4,000,000	40,000,000	8.25
13	MP Power Management Company Limited	1,000,000	10,000,000	2.06
14	Tata Power Trading Company Limited	2,500,000	25,000,000	5.16
	Total	48,470,050	484,700,500	100.00



10. The petitioner has sought extension of time to achieve the minimum network requirement and shareholding pattern as per the Power Market Regulations based on the following grounds:

(a) **Business Performance** - The exchange business performance has improved in recent times with significant increase in the transactions in intra-day and day ahead contingency market. Further, it has been able to maintain a competitive market share of around 40% of the REC segment and is taking all the necessary steps to meet the requirements of the market.

(b) **Financial Performance** - The exchange business has been good in last few months whereby it has shown a tremendous growth in its revenue as well as profits, which is unprecedented since its incorporation. During the financial year 2017-18, the petitioner has made a net profit of Rs. 10.72 crore and a cash surplus of Rs. 11.92 crore. Consequently, the networth of the petitioner has improved and has reached Rs. (9.51) crore at the end of the financial year 2017-18. The petitioner has also informed that as on 31.07.2018, the audited networth of the power exchange has further improved to Rs. (6.52) crore.

(c) **Initiatives Taken by the Petitioner** - The petitioner has taken several initiatives in the business operations, market development and technology front viz. reviewing of internal procedures & processes, increasing its outreach to all the members & market participants, building business development



network, and up-gradation of technology platform etc. to improve its performance.

(d) **Computation of Networth** - The networth computation made under Power Market Regulations only consider 'paid up equity capital', whereas, the Companies Act, 2013 takes into consideration the 'paid up share capital' which includes both 'paid up equity share capital' and 'paid up preference share capital'. The petitioner has informed that the promoters of the exchange, National Stock Exchange (NSE) and National Commodity & Derivatives Exchange (NCDEX), hold Optionally Convertible Redeemable Preference Shares (OCRPS) of the company worth Rs. 5 crores each, which are not accounted for by the Commission while computing the networth of the company. Besides, the cumulative arrears of preference dividends which are of contingent liability nature, amounting to Rs. 7.36 crores as on 31.3.2018, is lying in the balance sheet of the company as per IND-AS norms. If the OCRPS were to be included in the networth computation and the arrears of preference dividend waived off, the networth of the petitioner as on 31.3.2018 will become positive and improve from Rs. (9.51) crores to Rs. 7.85 Crores.

(e) **Shareholding Cap/Ceiling** - Regulation 19 of the Power Market Regulations prescribes a limit of 25% paid up equity shareholding on a non member shareholder. The petitioner opines that this stringent regulatory limitation has created a very difficult situation for the petitioner, wherein, even if the promoters of the petitioner is/are willing to infuse additional equity to satisfy



the minimum networth prescribed under Regulation 18 of the Power Market Regulations, the shareholding cap under Regulation 19 of the Power Market Regulations restricts them to infuse additional equity share capital. Further, the petitioner emphasized that it is because of this reason that in the past the promoters of the petitioner have been forced to infuse further capital in the form of preference shares (OCRPS). The petitioner has stated that the requirement of maintaining networth may be given the prime importance and the diversification of shareholding should be targeted only after the objective of networth is attained. The petitioner also mentioned that the promoters of the company i.e. NSE and NCDEX are both very large and established market infrastructure institutions with widely diversified institutional shareholding and therefore do not have any single company or individual exerting significant control on their management or operations. The petitioner has humbly submitted to relax the applicability of the shareholding pattern prescribed under Regulation 19 of the Power Market Regulations.

- (f) **Risk Management Mechanism** - A robust risk management mechanism is in place, wherein, at least 100% margin is taken from the buyers before execution of transaction on its platform. Further, the Settlement Guarantee Fund is also maintained by the Petitioner for settlement of any defaults of its members as a result of which the transaction on its platform is secure in nature and risk of default to participants is protected.



- (g) **Additional Capitalization** - The petitioner has been meeting its operational costs on the basis of equity infusion done by the shareholders from time to time as well as by the limited cash profits achieved previously. Any additional capitalization to meet the minimum net worth of Rs 25 crore will only result in 'regulatory capital' as no major capital expenditure is envisaged by the petitioner. The petitioner is apprehensive that this will also make it difficult to service the capital which in turn may make it challenging to raise capital in the future.
- (h) **Limit on FDI/FII** - While there are investors including foreign bourses who have evinced interest in picking up equity stake in the petitioner, they are constrained by existing caps on Foreign Direct Investment (FDI) and Foreign Institutional Investment (FII).
- (i) **Power Market vis-a-vis Other Markets** - As compared to the power sector, the regulatory bodies in the other sectors viz. Commodity Market, Insurance Sector, and Banking Sector etc. have given sufficient time to grow and expand the market in the Indian economy prior to enactment or ensuring compliance of any capital adequacy and prudential norms. The petitioner has submitted that a time period of 10-15 years should have been given before prescribing the norms related to networth or shareholding pattern.
- (j) **Competition in Power Exchange Market** - As there are two power exchanges operating in the country, a relaxation in the networth and



shareholding requirements under Regulations 18 and 19 of the Power Market Regulations for an additional period is necessary for promotion of competition in the power market by sustenance of the petitioner. The petitioner has requested that the Commission may exercise its inherent powers under Regulation 63(i) and the power to remove difficulty under Regulation 64 of the Power Market Regulations to relax the networth criteria and provide additional time to comply with the shareholding pattern prescribed under the Power Market Regulations.

10. The petitioner has proposed the following future plan of action to meet the minimum networth requirement specified under Power Market Regulations:

(a) **Conversion of OCRPS into Equity** - The petitioner has proposed to convert the OCRPS into equity shares and waive off the accumulated dividend on the OCRPS. The petitioner has submitted that this would help the company improve its networth position to Rs. 7.85 crore as on 31.3.2018 (Rs. 11.51 crore as on 31.08.2018). However, this would result into an increase in shareholding of promoters from 30.95% to 34.21% which would be in violation of the Regulation 19 of the Power Market Regulations. Accordingly, the petitioner has prayed for a suitable exemption from Regulation 19 of the Power Market Regulations.

(b) **Internal Resource Mobilization** - The petitioner has submitted that it is targeting and working towards a net profit of Rs. 15.02 crores from its operations during the financial year 2018-19 which will increase the net



worth of the company. The petitioner has assured that with improvement in business operations and conversion of OCRPS and accumulated dividends on OCRPS into equity the networth of the company can reach up to Rs. 22.87 crores by 31st March, 2019.

(c) **Rights Issue by the Board** - The petitioner has submitted that it is also exploring the option of raising additional capital from its existing shareholders through rights issue, should a third party not be ready and willing to invest into the petitioner. Accordingly, the Board of Directors of petitioner in its Board Meeting dated 24.08.2018 have in-principle approved the Rights Issue of Rs. 25 crores. The petitioner has also informed that their existing promoters have evinced interest in subscribing to the Rights to the extent of meeting the Power Market Regulations requirements subject to the shareholding norms being relaxed.

11. The matter was heard on 18.10.2018. After hearing the representative of the Petitioner, the Commission reserved the order in the Petition.

Supplementary Submission on 08.03.2019

12. The petitioner vide supplementary submission dated 8.3.2019 has apprised that the promoters of the exchange i.e. NCDEX and NSE have given their written consent to the conversion of OCRPS into equity shares under applicable provisions



of the Companies Act, 2013 subject to CERC relaxing the shareholding norms as prescribed under Power Market Regulations. The petitioner has stated that with the proposed conversion, the shareholding of both NCDEX and NSE in equity shares would be Rs. 20 crores each amounting to 34.21% of the total paid up equity capital. Besides, the arrears of preference dividend have been provided for in the balance sheet of the company as per IND-AS norms amounting to Rs. 8.46 crore as on 28.2.2019. The petitioner has informed that as per the unaudited and provisional accounts on 28.2.2019, the networth of the company is Rs. (3.48) crore, and, if the proposed conversion of OCRPS into equity is allowed along with the waiving off of the cumulative arrears due to preference dividends, the networth of the company would improve to a positive value of Rs. 14.98 crore.

13. The petitioner has submitted that the performance of the petitioner has improved during last financial year along with the expected performance in the current financial year the networth of the company is going to improve. Further, with the proposed conversion of OCRPS into equity shares and written consents of the promoters, the petitioner is hopeful about its achieving the minimum prescribed regulatory networth in a period of 5 years.

Analysis and Decision

14. As per Regulation 18 of the Power Market Regulations, an operating Power Exchange is required to always have a minimum networth of Rs. 25 crore as per the last audited balance sheet. Regulation 19 provides that any shareholder other than a



member of the Power Exchange can have a maximum of 25% shareholding in the Power Exchange, a Member can hold a maximum of 5% and all Members taken together can hold up to 49% of the share in the Exchange. The prudential norms of minimum networth requirement and diversified shareholding pattern are mandated to ensure that a power exchange is able to safeguard against any business risks and operate in a demutualized and ring fenced manner with no shareholders dominating the proceedings of the exchange.

15. It is observed that the petitioner is not fulfilling the minimum networth requirement and shareholding pattern specified under Regulation 18(i) and 19(1) of the Power Market Regulations to operate a power exchange. As on 31.07.2018, the petitioner has a networth of Rs. (6.52) crore which is significantly below the minimum networth prescribed for a power exchange. Further, it is found that the promoter shareholders (who are non-member shareholders) and some of the member shareholders of the petitioner are exceeding the shareholding ceiling of 25% and 5% respectively, specified under Power Market Regulations. The details of such shareholders are as under:

Shareholders exceeding the limits

Shareholder	Member/Non-Member	% Held
NSE Investments Limited (NSEIL)	Non-Member	30.95
National Commodity & Derivatives Exchange Limited (NCDEX)	Non-Member	30.95
GMR Energy Limited	Member	8.25
WB State Electricity Distribution Company Limited	Member	8.25



Gujarat Urja Vikas Nigam Limited	Member	5.16
Tata Power Trading Company Limited	Member	5.16
Total		100.00

16. The Commission has from time to time given relaxation to the petitioner for complying with the minimum networth requirement and shareholding pattern specified under Power Market Regulations. The Commission has issued various orders in the past with regard to reservation of 10% of transmission corridor for the exchange, issuance of exchange neutral NOCs etc. in order to create a favourable business environment for the petitioner. Moreover, the short term power market including the overall volume traded in exchange platform has also got strengthened during these years providing opportunities for the petitioner to improve its performance and comply with the networth criteria and shareholding pattern. It is indeed a matter of concern that the petitioner has not been able to take advantage of regulatory dispensations and growing opportunities in the market; instead it has put forward the same issues as in earlier petitions seeking grant of time and relaxation for meeting the minimum networth requirement.

17. However, it is noted that the petitioner has, for the first time since its incorporation, made book and cash profit during the financial year 2017-18, as a result of which, the networth has improved during the year. The petitioner has also informed that it is expecting profit during the financial year 2018-19 which would further improve the networth of the company. Furthermore, the petitioner has also proposed a future action plan namely (i) conversion of OCRPS into equity shares (ii)



internal mobilization of resources and (iii) rights issue to the existing shareholders for achieving the minimum networth requirement which appears to be plausible and achievable within short run. It gives a glimmer of hope that the petitioner would be able to achieve its turnaround, improve its market share and attain the minimum prescribed networth in immediate near term.

18. In addition to the above, the Commission is considering a number of initiatives to strengthen the power market in India whose success is intricately linked with the performance of the power exchange market. Besides, the Commission has taken a broad regulatory approach of having multiple power exchanges to promote competition amongst the power exchanges for its inherent benefits viz. product innovation, improved services, price control etc. In this scenario, the Commission is of the view that an additional time may be given to the petitioner for complying with the minimum networth requirement under the provisions of Regulation 64 of the Power Market Regulations.

19. The petitioner has prayed for granting additional time period of 5 years for complying with the minimum networth requirement. The Commission in its earlier orders has underscored the importance of networth for a power exchange to avert any business risks having the potential to create systemic risks and contagion effect in the sector. Considering the importance of networth, the request of the petitioner to allow 5 years for complying with minimum networth requirement cannot be acceded to. Accordingly, the Commission directs the petitioner to attain the minimum networth



prescribed under the Regulation 18(i) of the Power Market Regulations within a period of 2 year from the date of issue of this order.

20. The petitioner has prayed to modify the definition of networth to include preference share capital in the computation of networth. As also deliberated in earlier orders, the Commission after considering the risk involved in management and operation of power exchange has consciously decided that the networth shall include paid-up equity share capital, and not paid up preference share capital as provided under the Companies Act, 2013. The Commission is of the view that the definition of networth provided in 2(1)(v) of the Power Market Regulations is appropriate and does not require any further modifications as requested by the petitioner.

21. The petitioner has prayed for providing flexibility for further infusion of equity capital from existing shareholders as an exemption from Power Market Regulations to comply with Regulation 19 for a period of 5 years after attaining the requisite minimum networth under Regulation 18 of the Power Market Regulations. The Commission is of the view that the diversified shareholding pattern provided under Regulation 19 of the Power Market Regulations is important to ensure that exchanges operate in a demutualized (separation between promoters and management) and ring-fenced (separation between Trader Members and management) manner with no particular shareholder controlling the management of the exchange. Based on the petitioner's submission regarding the future action plan to achieve the minimum networth, the Commission is of the view that the petitioner should first of all strive to mobilize its internal resources by improving its business



performance on a priority basis. Besides, the petitioner while increasing the network through equity infusion should endeavour to reach out to new investors to ensure that the shareholding pattern specified under Regulation 19 is also complied with. In case the petitioner is unable to raise the requisite fund it may seek to fund the remaining gap through equity infusion from its existing shareholders. In order to facilitate the network compliance in terms of the above, the Commission in exercise of power under Regulation 64 of the Power Market Regulations, is relaxing Regulation 19(1) regarding maximum shareholding of each of the promoter shareholders from 25% to 35% for a period of two years. However, it is clarified that the relaxation in shareholding pattern has been allowed only to enable the petitioner to comply with the minimum network requirement within a period of two years. Thereafter, the petitioner shall be required to conform to the shareholding pattern specified under regulation 19(1) of the Power Market Regulations by the end of the third year from the date of issue of this order. The Commission directs the petitioner to submit a road map within two months of issue of this order to meet the network compliance and shareholding pattern within the period as permitted above.

22. The Petition No. 302/MP/2018 is disposed of with the above directions.

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

sd/-
(P.K. Pujari)
Chairperson

