

some significance in the context of trading activities carried out by the applicant. The Commission felt it necessary to satisfy itself on the issues raised. Accordingly, the comments of the applicant on the letter dated 4.2.2004 from Shri Haldea have been obtained.

2. We have heard Shri M.G. Ramachandran, Advocate for the applicant, and Shri Haldea in person.

3. The applicant, promoted by NTPC, PGCIL, PFC and NHPC was incorporated under the Companies Act, 1956 in April 1999. Though the applicant is not a Government company within the meaning of the term used in Section 617 of the Companies Act, it is stated to be working under the guidance of Ministry of Power. One of the main objects of the applicant is to carry on the business of purchase and sale of all forms of electrical power. The authorised capital of the applicant is Rs.750 crore. In accordance with Articles of Association of the applicant, not less than 32% of the issued equity share capital is subscribed and paid up by the promoters, each subscribing and paying up not less than 8% of the subscribed and paid up capital. At present each of the promoters has subscribed Rs.12 crore, against the paid up capital of Rs.150 crore. Thus, each of the promoters, including PGCIL is holding 8% of the paid up capital and the balance paid up capital is subscribed by other institutions and general public.

4. PGCIL was declared as the Central Transmission Utility (the CTU) on 31.12.1998 under Section 27 A of the Indian Electricity Act, 1910. The Indian Electricity Act stands repealed with effect from 10.6.2003 consequent to

enactment of the Act. However, PGCIL continues to be the Central Transmission Utility even after repeal of the 1910 Act. As the CTU, PGCIL performs the functions specified under Section 38 of the Act. In addition, by virtue of proviso to sub-section (2) of Section 27 of the Act, PGCIL in its capacity as the CTU operates the Regional Load Despatch Centres whose functions are defined in Section 28 of the Act. The Central Transmission Utility and the Regional Load Despatch Centres are also declared the nodal agencies for performing the functions in connection with grant of open access to the transmission system. Therefore, as CTU, PGCIL has to impartially perform certain roles and functions. It has been urged that PGCIL, by virtue of its being shareholder of the applicant company has financial interest and accordingly, it will not be able to function in a non-partisan manner.

5. Further, by virtue of first proviso to Section 38(1) of the Act, the CTU cannot engage in the business of generation of electricity or trading in electricity. Similarly, the second proviso to Section 27(2) also lays down that RLDCs cannot engage in the business of generation of electricity or trading in electricity. It was argued that the presence of PGCIL on the list of shareholders of the applicant would tantamount to PGCIL undertaking trading in electricity though forbidden to do so as the CTU and the transmission licensee.

6. In the light of above facts, the question has been raised as to whether it would be appropriate for the Commission to grant licence to the applicant for inter-state trading in electricity despite PGCIL being one of its shareholders. A

suggestion was made that a direction be issued to PGCIL to disinvest its shareholding in the applicant before the applicant is considered for grant of licence as prayed for. Before taking a final view on the matter, we consider it appropriate to give an opportunity to PGCIL for hearing on the issue. Accordingly, we direct that the present petition be listed for hearing on 13.5.2004 with a notice to PGCIL, in the light of what is stated above. PGCIL may, if it so desires, file its written submissions on the issues raised by 10.5.2004.

7. Shri Haldea has raised certain other issues. We will be recording our views on those issues in the final order after hearing PGCIL and others on 13.5.2004.

8. Meanwhile, the applicant is directed to file, on affidavit, the information as per Form III appended to the Regulations, separately for the quarters October to December 2003 and January to March 2004, the transactions involving inter-state trading in electricity undertaken by it during this period.

9. List this petition for hearing on 13.5.2004.

Sd/-
(BHANU BHUSHAN)
MEMBER

Sd/-
(K.N. SINHA)
MEMBER

Sd/-
(ASHOK BASU)
CHAIRMAN

New Delhi dated the 30th April 2004