

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Coram:

- 1. Shri Bhanu Bhushan, Member**
- 2. Shri R. Krishnamoorthy, Member**

Petition No. 38/2007

In the matter of

Application for grant of permission to Indian Energy Exchange Limited for setting up of Power Exchange

And in the matter of

Indian Energy Exchange Limited

....**Petitioner**

ORDER

Based on the application made by Indian Energy Exchange Ltd. (hereinafter referred to as "the applicant"), the Commission vide its order dated 31.8.2007 accorded approval for setting up and operating the power exchange by the applicant, in accordance with the guidelines issued under order dated 6.2.2007 in Petition No.155/2006 (suo motu). While according approval, the applicant was directed to finalise the power exchange design, its rules and bye-laws keeping in view the guidelines and certain observations made in the said order dated 31.8.2007. Accordingly, the applicant, by affidavit dated 15.2.2008 submitted a set of documents, containing the draft rules, bye-laws and rules of business. The draft rules primarily deal with design of the power exchange, and different aspects of management and qualifications, etc for its membership. The draft bye-laws submitted by the applicant chiefly cover the procedural aspects of working of the power exchange. The draft business rules deal with the procedural aspects in certain greater detail. Therefore, the business rules are treated as part of the bye-laws of the power exchange and any

reference to the bye-laws in this order includes the reference to the business rules as well.

2. After submission, the draft rules and bye-laws were discussed by the applicant with the officers of the Commission under our instructions. Consequent to these discussions, the applicant submitted the revised documents on 21.4.2008. By its affidavit dated 14.5.2008 the applicant has made further changes in the documents submitted on 21.4.2008. These were further discussed by us with Chairman and the Joint Managing Director of the applicant. We have perused the revised documents submitted on 21.4.2008, as amended by affidavit of 14.5.2008. We are discussing certain aspects of these documents, which we consider to be important, in the succeeding paras of this order.

Amendment of rules

3. In the guidelines issued under order dated 6.2.2007, in petition No.155/2006 (suo motu), it was clearly stated that the promoter needs to keep in mind, (i) reliable, effective and impartial management; and (ii) ring-fencing between ownership, management and participation. In the proposal given by the applicant, it was also stated that the proposed power exchange would have clear demarcation between ownership, management and participation by ensuring that the entities having a shareholding in the company would not have any say in the day-to-day management and operation of the power exchange. However, on perusal of the draft rules we find that there do not exist any provisions for segregating ownership, day-to-day management/operations, and participation in trading. In order to ensure ring-fencing between day-to-day operations and participation in trading, and to bolster and

preserve confidence of the entities trading on the power exchange, we direct that the following provision be made in the rules:-

The Managing Director, the Chief Executive Officer, any Director in-charge of day-to-day operations, any employee, any consultant or any advisor of the power exchange shall not be directly or indirectly associated with any trading member or client or participant of the power exchange or with a holding or subsidiary company thereof.

4. Under the draft rules, the power exchange is authorised to constitute Committees for different purposes. It has been proposed that the constitution, purposes and powers of the Committees shall be decided by the Board of the power exchange from time to time. Needless to say, the Committees to be constituted by the Board shall act in conformity with the provisions of the rules and the bye-laws, in addition to the provisions of the Electricity Act, 2003 (the Act) and the Rules and Regulations framed under the Act. The relevant provisions of the rules shall be suitably amended. In the rules and the bye-laws it shall be provided in specific terms that the rules and the bye-laws are to be read subject to the provisions of the Act, the Rules, Regulations framed thereunder and any special or general directions or orders of the Commission.

5. In accordance with para 6.2 (g) of the guidelines issued under order dated 6.2.2007 *ibid*, the power exchange is required to make provisions for the powers and duties of its office bearers in the rules. It is noticed that the powers and duties of the office bearers have not been specifically defined. This requirement shall be complied with.

6. The rules do not contain any provisions regarding the manner of preparation and maintenance of records and accounts including annual accounts of the power exchange. However, since the applicant is a company registered under the Companies Act, 1956, the records and accounts maintained under the Companies Act shall serve the purpose. We direct that this shall be clarified by making a suitable provision to that effect in the rules.

Amendment of bye-laws

7. The applicant in the draft bye-laws has sought to indemnify itself against any events of force majeure. In order to indemnify the National Load Despatch Centre, the Regional Load Despatch Centre and the State Load Despatch Centre, we direct that the bye-laws should provide that the power exchange including its buyers and sellers, shall keep each of the National Load Despatch Centre, Regional Load Despatch Centres and State Load Despatch Centres indemnified at all times and shall undertake to indemnify, defend and save the National Load Despatch Centre, Regional Load Despatch Centres and State Load Despatch Centres against any claim for damages, losses, and actions, including those relating to injury to or death of any person or damage to property of any person, demands, suits, recoveries, costs and expenses, attorney fees, against the third parties, arising out of or resulting from or attributable to the transactions at the power exchange. The bye-laws should also provide that the power exchange, including its buyers and sellers, shall keep each of the National Load Despatch Centre, Regional Load Despatch Centres and State Load Despatch Centres indemnified at all times and shall undertake to indemnify, defend and save the National Load Despatch Centre, Regional Load Despatch Centres and State Load Despatch Centres harmless from any and all damages, losses, claims and

actions arising out of disputes among buyers and sellers, as well as with power exchange inclusive of confidentiality issues. The bye-laws should further provide that the clearance/curtailment advice issued by National Load Despatch Centre to the power exchange at 1400 hrs shall be on good faith basis. It shall be further provided in the bye-laws that the clearance/curtailment advice by the National Load Despatch Centre shall not be binding and Central Transmission Utility, National Load Despatch Centre, Regional Load Despatch Centres and State Load Despatch Centres shall not have any financial liability on account of inability, for any reason whatsoever, to achieve the complete matching between the advice of National Load Despatch Centre issued at 1400 hrs and the final schedules issued at 1800 hours.

8. A provision should necessarily be made in the bye-laws that any entity or the principal or subsidiary or sister concern of an entity defaulting in payment of the transmission charges, UI charges and the fees and charges for the Regional Load Despatch Centres and ULD&C schemes may be barred by the Commission from selling through the power exchange.

9. The bye-laws (business rules) do not provide for checking of bid quantity through the power exchange software with respect to the standing clearance given by the State Load Despatch Centres. A suitable provision for validation of bid quantity either through software or manually before finding the price solution shall be incorporated.

10. The MW quantum in a buy bid of or on behalf of an entity (including a distribution utility) shall not exceed the maximum deficit that the entity can have, i.e.

maximum consumer load minus minimum generation. Similarly, the MW quantum in a sale bid of or on behalf of an entity (including a distribution utility) shall not exceed the maximum possible surplus of the entity, i.e. maximum generation minus estimated consumer load. For this purpose, 'generation' shall include entitlements under power purchase agreements entered into for catering to consumer demand in entity's system. This shall be stipulated in the bye-laws.

11. In its affidavit dated 9.6.2008, the applicant has proposed to delete para 15 (9) of the business rules, and the words "with concurrence of the CERC" appearing in the first line of para 4.12 of the bye-laws. The proposal is accepted.

12. In terms of the Commission's guidelines, the bye-laws are to *inter alia* cover the mechanism for market surveillance and investigation. This requirement has been complied with. However, it shall be made clear in the bye-laws that the Commission shall have a right to carry out checks at any time to ensure that the surveillance mechanism at the power exchange is in effective operation and to pass appropriate orders.

13. The following minor discrepancies observed are listed below for correction:

(a) In clause 19 of the Rules- Conditions precedents for eligibility – The phrase in the last line "or any other country approved by the CERC" shall be deleted.

(b) In clause 15(8) of the business rules – Delivery Point

(i) In the sentence – " For Example delivery point of a state embedded entity in Maharashtra will be at the seam of the inter

state entity.” The expression “inter state entity” shall be replaced by the expression “intra-State entity”.

- (ii) In the last paragraph, “Similarly, in above example if the state embedded entity in Maharashtra has a trade schedule of 100 MW sell, than the schedule at the WRTS periphery and State periphery will be 104.17 MW and 109.65 MW respectively.” shall be replaced by “Similarly, in the above example if the State embedded entity in Maharashtra has a trade schedule of 100 MW sell, then the schedule at the WRTS periphery, State periphery and seam of the intra-State entity will be 100 MW, 104.17 MW and 109.65 MW respectively.”

- (c) In Annexure X – Characteristics of hourly DAM contracts

- Minimum quotation step – “Rs 1 per MW” shall be replaced by “Re.1 per MWh”
- Transmission charges

(b)State Transmission System – “As decided by the concerned State Electricity Regulatory Commission” shall be replaced by “As per the concerned State Electricity Regulatory Commission’s Regulations/CERC (Open Access) Regulations, 2008”

- (d) In the index for the business rules, under chapter II : Market Operations against Ser No.28, the words “trading margin” should be substituted by the words “professional charges”.

General

14. The applicant shall submit complete set of documents after incorporating the additional provisions and reconciling the discrepancies noticed, for formal certification by the Commission, by 27.6.2008.

15. In the preamble of the rules and the bye-laws, it shall be provided that any changes in the rules and bye-laws approved shall be made only with the prior approval of the Commission and also that the Commission reserves its right to specify any condition or to modify any of the present stipulation, in the light of the experience gained and to meet the needs of the future.

16. The power exchange shall comply with the instructions of the National Load Despatch Centre in respect of all matters related to coordination and interface with the system operator. In the event of any difference of opinion between the National Load Despatch Centre and the power exchange, the dispute shall be referred to the Commission for its decision. However, pending decision by the Commission the directions of the National Load Despatch Centre shall be complied with.

17. As the common platform for power trading is a new initiative, the power exchange shall have interaction with the National Load Despatch Centre on regular basis, and at least every month during the first six months to iron out coordination issues. The results of such interaction shall be communicated to the Commission on monthly basis.

18. The entire country shall be configured into suitable bid areas or zones in accordance with the instructions of the National Load Despatch Centre issued from time to time to ensure that in the event of transmission constraint, it is possible to restrict power flows as per the requirement of the National Load Despatch Centre and appropriate price solution can be found through market splitting mechanism. The timelines of the power exchange shall be aligned with the timelines specified by the Central Transmission Utility in the Procedure for Scheduling of Collective Transactions.

19. The applicant shall submit the following information/reports to the Commission:
- (a) Information of total traded quantities and market clearing prices on monthly basis for each hour of the day;
 - (b) A complete list of the trading members of the power exchange and clients registered along with their complete addresses and the names of the contact person, to be updated every month;
 - (c) Details of the Managing Director, Chief Executive Officer, Director in-charge of day-to-day operations of the power exchange, Manager, officers and staff posted, every six months along with their individual responsibilities and self-certification by these persons of compliance of the direction given at para 3 of this order, with proper endorsement by the applicant; the first report to be submitted by 30.9.2008;
 - (d) An updated list of the Board of Directors and Members of the Committees constituted;

(e) Copies of resolutions of the Board of the power exchange and any other authority, having bearing on the matters covered in the rules and bye-laws, within 10 days of passing of such resolutions; and

(f) Copies of Annual Report, together with the Accounting Statements and Auditor's Report by 30th September each year, for the period ending 31st March.

20. The applicant in its rules and bye-laws has proposed different products, named as "contracts".

21. The rules and bye-laws approved by us are applicable to contracts (products) of day-ahead trading. In case the applicant intends to start any other type of contract it shall do so only after obtaining prior approval of the Commission. We also note that the term "contract" used by the applicant is likely to be confused with contract used in the sense of agreement enforceable in law. We prefer that the term is replaced by the term "product" or any other appropriate term, to avoid confusion.

22. In accordance with "in principle" approval granted vide order dated 31.8.2007, the power exchange shall start as a platform for scheduled, day-ahead trading of electricity. All trades cleared by the power exchange, within the available transfer capacity as advised by the National Load Despatch Centre, shall be compulsorily submitted for scheduling. There shall be no fictional trading in the power exchange. The day-ahead trading for hourly contracts shall be based on voluntary simultaneous participation by buyers and sellers on a nation-wide electronic platform.

23. We wish to make it clear that notwithstanding the approval of the rules and bye-laws by the Commission, the persons enrolling themselves as members or clients of the power exchange or transacting trade on the power exchange in any other capacity shall do so after satisfying themselves of all the commercial aspects covered under the rules and the bye-laws, uninfluenced by the fact that the Commission has approved them since these are the matters exclusively between the parties. Under the business rules, the applicant has specified fees and charges such as admission fee, membership and application processing fee, annual membership subscription fee, security deposits, annual client fee, transaction fee, professional charges and the like. While approving the business rules, the Commission have not gone into the basis of charges. Therefore, it is also clarified that the question of fees and charges leviable should also be the concern of the persons desirous of becoming member of the power exchange. The observation in this para shall be notified by the power exchange to its existing members as also to the persons seeking enrolment as member or client in future.

24. The front cover page of the rules and the bye-laws shall contain the following in bold letters of font size not less than 12:-

“These rules and the bye-laws, including the business rules have been approved by the Central Electricity Regulatory Commission. However, as observed by the Commission, notwithstanding the approval of the rules and bye-laws by the Commission, the persons enrolling themselves as members or clients of the power exchange or transacting trade on the power exchange shall do so after satisfying themselves of all the commercial aspects including the fees and charges leviable covered under the rules and bye-laws, uninfluenced by the fact that the Commission has approved them since these are the matters exclusively between the parties.”

25. The Commission shall be entitled to authorize any person to inspect and verify the accounts of the power exchange and its members, if considered necessary. The power exchange shall render all necessary assistance to such person.

26. Under the bye-laws, the applicant has proposed that the power exchange shall maintain a fund called Settlement Guarantee Fund against the security deposits made by the members. In the first instance we felt that the power exchange should hold the Settlement Guarantee Fund in trust on behalf of its members. We proposed to direct the applicant to invest the Settlement Guarantee Fund in risk-free securities and income therefrom was proposed to be regularly credited to the accounts of the members. During discussions, the representatives of the applicant clarified that other exchanges, commodity and security exchanges, have the practice of taking interest-free security deposits from their members. This has been so stated on affidavit filed today, along with necessary evidence. In view of the clarifications furnished we have not interfered with the provisions made in the bye-laws and the business rules in this regard. We make it clear that the persons desirous of becoming members shall take specific note of the provision. Further, the relevant paras of bye-laws should contain the provisions for administration of the Settlement Guarantee Fund by the power exchange, though as has been noted above, the Fund is to be maintained by the power exchange.

27. The approved rules and bye-laws (except the business rules) alongwith all the orders of the Commission on the subject shall be posted on the home page of the website of the power exchange.

28. Subject to compliance of above directions, approval is hereby accorded to the rules and bye-laws submitted by the applicant and the applicant is permitted to start operation of the power exchange from a date to be announced by it in advance.

Sd/-
(R. KRISHNAMOORTHY)
MEMBER

Sd/-
(BHANU BHUSHAN)
MEMBER

New Delhi, dated the 9th June 2008