CENTRAL ELECTRICITY REGULATORY COMMISSION

NEW DELHI

Petition No.4/MP/2013

Coram:
Dr. Pramod Deo, Chairperson
Shri S.Jayaraman, Member
Shri V.S.Verma, Member
Shri M.Deena Dayalan, Member

Date of Hearing: 29.01.2013

Date of order : 26.02.2013

In the matter of

Granting time for complying with Regulation 19(1) read with Regulation 20 of the Central Electricity Regulatory Commission (Power Market) Regulations, 2010, such additional time being three years from January 2013

And
In the matter of
Power Exchange India Limited, Mumbai …Petitioner

Following were present:

Shri Sanjayu A, PXIL

ORDER

The petitioner, Power Exchange India Limited (PXIL) has filed this petition for extension of the time for compliance with Regulation 19(1) of the Central Electricity Regulatory Commission (Power Market) Regulations, 2010 (hereinafter "Power Market Regulations"). The petitioner has submitted that it was granted permission by this Commission to establish and operate a power exchange vide order dated 27.5.2008 in Petition No.21/2008. In accordance with para 10(a) of the said order, the Commission has observed that at least 51% of the equity share capital of the power exchange should be held by the public other than the shareholders having trading rights in the exchange in order to maintain the demutualised character of the company. The petitioner has submitted that at the time of incorporation of the petitioner's company, the authorized capital was Rs. 25 crores and the promoters namely, National Stock Exchange of India Limited (NSE) and National Commodity and Derivatives Exchange Limited (NCDEX) were holding 50% each of the entire equity share capital in the company. On 29.9.2009, the petitioner increased the authorized share capital from Rs.25 crore to Rs.50 crore and allotted equity shares to Power Finance Corporation (PFC), Gujarat Urja Vikas Nigam Limited (GUVNL), GMR Energy Limited, West Bengal State Electricity Distribution Company Limited (WBSEDCL), JSW energy limited, etc on different occasions.

2. The petitioner has submitted that the Commission notified the Power Market Regulations which came into effect from 21.1.2010. Regulation 19 of the Power Market Regulations require that any shareholder other than a member of the exchange can have a maximum of 25% of shareholding and a member of the power exchange can have 5% shareholding subject to a maximum of 49% of shareholding by all members of the exchange taken together. Regulation 20 of Power Market Regulations provides that the power exchanges which have received approval prior to 21.1.2010 would be required to achieve the shareholding pattern within a period of three years i.e.by 20.1.2013.

3. The petitioner has submitted that as on the date of the notification of the Power Market Regulations, the equity shareholding was as under:

Sr. No.	Name of the Member/ Shareholder	% held
1.	National Stock Exchange of India Limited	37.50
2.	National Commodity & Derivatives Exchange Limited	20.93
3.	Power Finance Corporation Limited	14.50

4.	GMR Energy Limited	8.28
5.	Gujarat Urja Vikas Nigam Limited	2.86
6.	JSW Energy Limited	5.55
7.	WBSEDCL	10.36
8.	Mr. M K Ananda Kumar	0.00
9.	Mr. Nirmalendu A Jajodia	0.00
	Total	100.00

4. The petitioner has submitted that in order to comply with Regulation 19(1) of the Power Market Regulations, the petitioner took the following steps on different occasions:

a) On 23.3.2010, the Petitioner had allotted equity shares to GUVNL, GMR Energy Ltd, JSW Energy Limited, Tata Power Trading Company Limited (TTPCL), NSE, NCDEX and Madhya Pradesh Power Management Company Limited (MPPMCL) and on 31.3.2010, the Petitioner allotted equity shares to NCDEX and WBSEDCL. Post allotment, the shareholding of NCE and NCDEX became 36.40% and 24.29% respectively.

b) On 26.5.2010, the petitioner again increased its Authorized Share capital from Rs.50 Crore to Rs.100 Crore with a view to increase the Paid up equity capital. Subsequently, 24.9.2010, the petitioner allotted 46, 60,000 equity shares to NCDEX and 5, 00,000 equity shares to MPPMCL and on 15.10.2010, the petitioner allotted 5,00,000 equity shares to NSE.

c) On 26.8. 2011, the petitioner re-classified the Authorized Share Capital of the company into 8 crore equity shares and 2 crore Preference Shares of Rs.10/- each. Accordingly, the petitioner has individually allotted 50 lakh Optionally Convertible Redeemable Preference Share – Cumulative

[OCRPS] at par to NSE and NCDEX on 15.12.2011 and 24.4.2012 respectively.

d) In the meeting held on 28.3.2012, the Board of the petitioner's company approved a proposal to increase the paid up Equity Share capital from Rs. 41,05,00,500 to Rs 80,00,00,000 by offering further equity shares to existing shareholders as well as potential investors in order to align with the shareholding pattern as stipulated in the Power Market Regulations. Though the petitioner offered equity shares to the existing share holders and few potential investors, the depressed market scenario, uncertain regulatory environment and lower market share of the petitioner have pulled the investors back from investing in the petitioner's company.

5. The petitioner has submitted that the shareholding pattern of the petitioner as on the date of filing the petition is as under:

Sr. No.	Name of the Member/ Shareholder	% held
1.	National Stock Exchange of India Limited	32.57
2.	National Commodity & Derivatives Exchange Limited	28.23
3.	Power Finance Corporation Limited	6.08
4.	GMR Energy Limited	8.69
5.	Gujarat Urja Vikas Nigam Limited	5.43
6.	JSW Energy Limited	2.71
7.	WB State Electricity Distribution Company Limited	8.69
8.	MP Power Management Company Limited	2.17
9.	Tata Power Trading Company Limited	5.43
8.	Mr. M K Ananda Kumar	0.00
9.	Mr. Nirmalendu A Jajodia	0.00
	Total	100.00

6. The petitioner has submitted that in order to dilute the shareholding percentage of the existing members (including promoters) and to maintain the shareholding as per

the Power Market Regulations, the petitioner has been constantly interacting with private equity, strategic and institutional investors. The petitioner has enumerated the following difficulties which are being experienced by it in achieving the desired shareholding pattern:

(a) Petitioner is in dialogue with many state utilities for investment in PXIL and the dialogues are likely to fructify in future. The proposals have been under review by these state governments and in some cases decision making process got delayed due to elections in the states. In some cases the utilities have approved the investment but the approvals from the state governments are awaited.

(b) Introduction of longer term products (delivery beyond 11 days) is stuck in regulatory imbroglio for over two years now which has seriously impacted the growth of the exchange market.

(c) Transmission congestion in the corridors continues to be a major hurdle as a significant portion of trade conducted on the petitioner's platform is lost due to congestion issues.

(d) As per the guidelines issued by the Government of India, Foreign Investment is permitted only up to 49% in the Power Exchanges subject to Foreign Direct Investment (FDI) Limit of 26% (Government approval) and Foreign Institutional investment (FII) of 23%. Further FII purchase is restricted to secondary market only and no non-resident investor will be able to hold more than 5% of the equity in these companies. These conditions are acting as deterrents to large investors since they may not prefer to buy 5% stake in the unlisted companies with limited exit options.

(e) Indian power sector continues to grapple with several critical issues and the entire future course of development of power markets is unclear and more importantly the Exchanges which are the most critical part of market design are being pushed into a peripheral position. Despite more than four years' of existence, the Power Exchanges in the country have not able to grow significantly and contribute effectively towards the development of the sector due to limited product offering which is currently restricted to Day Ahead Spot (DAS) and Term Ahead (week- Ahead) products.

7. The petitioner has submitted that in view of the above mentioned difficulties, the petitioner finds it difficult to comply with the shareholding norms as specified under Regulation 19 of the Power Market Regulations read with regulation 20 thereof. The petitioner has further submitted that the promoters of the petitioner company who were holding about 50% each of the equity share capital have substantially reduced their shareholdings to 32.57% and 28.23% respectively, which shows the bonafide intention and commitment of the promoters to comply with the Power Market Regulations. The petitioner has submitted that in the larger interests of the development of power markets, promoting competition in the power sector and the best efforts made by the petitioner, the Commission may consider to extend the timeframe of three years stipulated in Regulation 20 of Power Market Regulations by another three years i.e. upto 20.1.2016. During the hearing of the petition, the representative of the petitioner submitted that though the petitioner has issued equity shares to the State Discoms in order to comply with the requirement of the Power Market Regulations, most of the State Utilities are still considering the offer in consultation with respective State Governments. Therefore, the timeline given in Regulation 20 could not be complied

with. The representative of the petitioner prayed for three years time to comply with the requirements of the Power Market Regulations.

8. We have considered the submissions of the petitioner. Regulation 19(1) of the Power Market Regulations provides for the shareholding pattern of the power exchanges as under:

> "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.
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> Explanation I – "indirectly" means through an associate where an associate is –
> (i) one who owns or controls shares carrying not less than twenty-six percent of the voting rights of the shareholder intending to hold equity in the power exchange; or
> (ii) in respect of whom the shareholder intending to hold equity in the Power Exchange owns or controls shares carrying not less than twenty-six percent of the voting rights; or
> (iii) one who is under the same management as the shareholder intending to hold equity in the power exchange.
> Explanation II: An associate shall be deemed to be under the same management:
> (i) if the managing director or manager of the shareholder intending to hold equity in the power exchange is the managing director or manager of the associate; or
> (ii) if a majority of the directors of the shareholder intending to hold equity in the power exchange constitute or any time within six months immediately preceding, constituted a majority of the directors of the associate; or
> (iii) if not less than one third of the total voting power with respect to any matter relating to the shareholder intending to hold equity in the power exchange and the associate is exercised or controlled by the same individual or body corporate; or
> (iv) if any of the directors of the shareholder intending to hold equity in the power exchange while holding the majority of shares of such shareholder also holds the majority of shares in the associate."

Further Regulation 20 provides opportunity to the power exchanges which were accorded approval prior to the Power Market Regulations to achieve the shareholding pattern within a period of three years i.e.by 20.1.2013. We have noticed that the petitioner has taken steps to dilute the stakes of major shareholders to comply with the requirements of Regulation 19 of Power Market Regulations. The stakes of NSE have been brought down from 50% to 32.57% and the stakes of NCDEX have been brought down from 50% to 28.23%. The petitioner's shareholding can be said to be in compliance with the requirement of the Power Market Regulations only when the share of NSE and NCDEX are reduced to 25% each. We further notice that GMR Energy Limited, Gujarat Urja Vikas Nigam Limited, West Bengal State Electricity Distribution Company Ltd and Tata Power Trading Company Limited which are members of the power exchange are holding more than 5% of share capital which need to be pruned to 5% each. The petitioner has explained the difficulties faced by it in further diluting the share of the promoters and the members of the exchange for a variety of reasons as explained.

9. We note that the present shareholding pattern of the petitioner is quite diversified. The petitioner has appointed requisite number of independent directors in its Board and the various management committees like risk management committee, market surveillance committee are functioning effectively which ensures that the standards of corporate governance are followed and public interest is safeguarded. The petitioner has made sincere efforts towards complying with the Power Market Regulations. The petitioner has expressed its difficulties in fully complying with Regulation 19 of Power Market Regulations. We are aware that the power markets are in the initial stages of development. The share of Power Exchanges is only 1.5- 2 % of the total electricity generated in the country. The liquidity in the exchanges is low as limited types of contracts are traded on the power

exchanges. Therefore, the trading in the power exchanges has not grown as was expected while making the Power Market Regulations. The difficulties expressed by the petitioner to achieve the statutory shareholding pattern appear to us as genuine. We are of the view that the petitioner needs to be granted some further time to achieve the desired shareholding pattern.

10. We have already taken a view in Petition No.241/MP/2012 regarding the shareholding pattern of IEX. In para 10 of the order in the said petition we have decided as under:

> "10. Regulation 64 of the Power Market Regulations vests in the Commission the power to remove difficulties if any difficulty arises to give effect to the provisions of the regulations. Regulation 64 provides as under:
>
> > "64. Power to remove difficulties
> > If any difficulty arises in giving effect to the provisions of these Regulations, the Commission may, by order, make such provisions not inconsistent with the provisions of the Act, as may appear to be necessary for removing the difficulty."
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> As already noted, difficulties have arisen in giving effect to the Regulation 19(1) of the Power Market Regulations as the process for finding new investors in the power exchange will require further time under the existing statutory and policy framework. Accordingly in exercise of our power under Regulation 68 of the Power Market Regulations, we allow a period of one more year to the petitioner to achieve the shareholding pattern specified in the Regulation 19(1) of the Power Market Regulations."

11. In the light of the above decision, we allow the petitioner to achieve the specified shareholding pattern by 20.1.2014. Petition No. 4/MP/2013 is disposed of accordingly.

sd/-	sd/-	sd/-	sd/-
(M. Deena Dayalan)	**(V. S. Verma)**	**(S. Jayaraman)**	**(Dr. Pramod Deo)**
Member	**Member**	**Member**	**Chairperson**