

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 52/MP/2013

Coram:

Dr. Pramod Deo, Chairperson

Shri V.S. Verma, Member

Shri M. Deena Dayalan, Member

Date of Hearing: 11.04.2013

Date of Order : 08.06.2013

IN THE MATTER OF

Petition under Regulation 63 (i) of the Central Electricity Regulatory Commission (Power Market) Regulations, 2010 for grant of additional time to the Petitioner to raise additional equity share capital to achieve the Networth prescribed in Regulation 18(i), such additional time being three years from the notification of the said Regulations.

AND

IN THE MATTER OF

Power Exchange India Limited

....**Petitioner**

Following were present:

Shri S Ventatesh , Advocate for the petitioner
Shri Navneeraj, PXIL

ORDER

The Petitioner, Power Exchange of India Limited (PXIL), has filed this petition with the following prayers:

"(a) Grant additional time to the Petitioner to raise additional equity share capital to achieve the net worth prescribed in Regulation 18 (i), such additional time being three years from 31.3.2013.

(b) Pass such other and further orders, as this Hon'ble Commission deems fit and proper in the facts and circumstances of the case."

2. The petitioner has submitted as under:

(a) PXIL has made the following progress since for the FY 2011-12 and since passing of order dated 27.10.2011:

Transaction Volume

(i) The average minimum hourly traded volume by the PXIL (in terms of MW) had increased to 107 MW in March, 2011 whereas the same was 50 to 60 MW in 2010-11, hence making a significant increase in daily trade of about 40-50MW.

(ii) The total volume traded by the PXIL in the 'Day Ahead' Spot Market had significantly grown to 619 MUs for quarter ending March, 2011 as compared to 327 MUs in the previous quarter.

(iii) In Q4 of 2010-11, Exchange had maintained an overall market share of over 16% across all traded products.

Revenue

(iv) The total revenue of the PXIL from trading operations for Q 4 of 2010-11 stood at ₹153.43 lakh compared to previous quarter of ₹147.89 lakh.

REC Trading

(v) PXIL had successfully launched REC trade Q4 2010-11. Out of 424 certificates traded on both exchanges, PXIL had traded 274 certificates with a market share of 65%.

(vi) PXIL became a leader in REC trading as the said Exchange traded 68% of the total REC certificates on 27.2.2013.

Members and participants

(vii) PXIL has made a considerable increase in the total number of participants trading on its exchange, In December, 2010 the total strength was 215 which had gone up to 259 members and clients as on March 2011.

(viii) In terms of Membership fees, PXIL had earned ₹ 22.73 lakh in Q4 2010-11 compared to ₹ 19.45 lakh in previous quarter.

(ix) In FY 2011-12 it has added more than 289 Members/Client registering an increase of 111.58% over the previous year. Similarly, in the current year it has added 403 members/Client till January,2013 registering an increase of 73.54% over the previous year.

(x) PXIL in its board meeting held on 26th August, 2011 re-classified its Authorized Share Capital of ₹100 crore into ₹.80 crore Equity Shares and ₹ 20 crore Preferential Shares which was approved by the Shareholders at their meeting held on 27.9.2011.

(xi) PXIL again in its Board Meeting held on 15.12.2011 has decided to allot 50,00,000 Optionally Convertible Redeemable Preference Shares (Cumulative) (herein referred to as "OCRPS") to National Stock Exchange Ltd. The Board also noted the PXIL's ongoing dialogue with GRIDCO Ltd. wherein the Board was consulted with a proposal to allot OCRPS of worth ₹25 lakh at ₹ 10 each.

(xii) Further on 24.1.2012, PXIL held a share Allotment Committee Meeting, wherein the committee decided to allot 10,50,000 preferential shares on equity basis to Power Finance Corporation.

(xiii) After the notification of Power Market Regulations, 2010, the equity capital of the PXIL was raised from ₹ 12.07 crore to ₹ 30.25 crore as on March 31, 2010. Equity capital has now been enhanced to ₹ 56.05 crore by August, 2012. Therefore, the infusion of capital by promoters and other Shareholders from time to time demonstrates confidence of shareholders in PXIL.

(xiv) PXIL is in dialogue with various State Utilities and Infrastructure Institutions for taking acquiring equity shares in the PXIL.

(xv) PXIL has also been in dialogues with a leading Power Exchange in the world for strategic collaboration.

(b) In view of the aforesaid positive steps undertaken by the petitioner, it has been unable to meet with the net worth requirement due to the following reasons:

(i) Limitation of existing Power Exchange market-

- The dominant product in the present Exchange market is Day Ahead Spot (DAS) which is primarily a balancing market where only remnant power in the shortest end of the short term market gets traded on the Exchange platform. The voluntary nature of the Exchange Market coupled with existence of UI mechanism provides an opportunity for real time adjustments to indiscipline behavior of big participants like

Distribution entities in managing their demand which resulted in sporadic and unpredictable participation on Exchange platform. A key challenge before the Petitioner had been to establish a base volume (MUs) in DAS segment over the entire 24 hours.

- Clearing bids and offers requires matching trades on price as well as volumes across all of the corresponding blocks over the entire day. Erratic participation and unidirectional bids created low liquidity preventing successful matching which in turn drives away serious participants creating a vicious cycle for the Exchange. And with the introduction of 15 minutes trading time block, the situation has become all the more acute as now the matching needs to be done across all the 96 time blocks and market participants are at liberty to submit their bids for any of the 96 time blocks.
- Introduction of longer tenure term ahead products ranging from one month up to one year on the Exchange platform was the need of the hour, particularly in view of the need to create a reliable and transparent market place for Open Access customers. Due to regulatory uncertainty over contracts beyond 11 days being pending for over 2 years, PXIL has not been able to capitalize its true potential.

(ii) Losses due to Transmission Congestion - Congestion in the transmission corridor continues to be a major hurdle for PXIL and a significant portion of trade conducted on PXIL's platform is lost due to congestion. As a result of all of the above issues, not only the market participants have been deflated but such a

scenario has also played an overall sectoral dampener in terms of slowdown in investment, innovation etc.

(iii) Restriction of Promoters to infuse further equity - Promoters are restricted to infuse additional equity beyond a prescribed limit as per Regulations 19 and 20 of Power Market Regulations, 2010.

(iv) Overall shortfall in generation due to lack of coal supply - Various generating companies are unable to produce electricity to their full strength due to lack of coal and uncertainty in the coal market in India.

(v) Divergent price expectation – As the market is an emerging state, the participant's behavior is characterized by the normal divergent behavior wherein buyer expects a cheaper price while the seller expects a higher price. The dominant utility players have stiff processes with long delays and may not respond in time to market dynamics. The presence of competition in Exchanges domain further complicates the issue as the participants tend to put favorable rates at bigger exchange with higher liquidity and higher realization prospects. This results in higher divergence in expected prices leading to lesser trade volumes.

(c) The petitioner is aiming to undertake following actions in the near future to comply the Regulation 18 (i) of Power Market Regulations, 2010:

(i) PXIL is confident that with the driving force of its promoters and also support from all other stakeholders, PXIL will overcome the initial

teething problems and achieve minimum network in compliance of Regulation 18(i) of Power Market Regulations, 2010.

- (ii) PXIL has taken a number of focused steps to increase its revenues and minimize the operating expenses leading to a possible achievement of cash break even in the near few months. With the sustained efforts PXIL has achieved a significant market share in REC segment in the preceding few months.
- (iii) PXIL is in dialogue with many state utilities for investment and these dialogues are likely to fructify in future. These proposals have been under review by these state governments and in some cases decision making process got delayed due to elections in the states.
- (iv) PXIL is also aiming to undertake the following activities to increase its network:
 - (a) Take DAS volume from current 2-3 MUs to 6-7 MUs per day i.e. achieve double digit market share in the short term
 - (b) Introduce longer tenure contracts in electricity subject to Regulatory approval
 - (c) Focus on cheap power from Western region
 - (d) Maintain a significant share in REC and others
 - (e) Enhance focus on Any-day/intra-day/emerging market/new product category with an eye on market share.
 - (f) Emphasis on registering Open Access Customers

3. The petitioner had filed a Petition No.134/2010 seeking an extension of 3 years to comply with the net worth requirement as prescribed in Power Market Regulation, 2010. The Commission vide its order dated 25.5.2010 granted extension of one year from the date of notification of the Power Market Regulations to comply with the prescribed net worth requirement. Further, the petitioner filed another Petition No. 101/MP/2011 for grant of an additional time of two years to comply with net worth requirement. The Commission vide its order dated 27.10.2011 granted two additional years i.e. till 31.3.2013 to comply with net worth requirement. The Commission also directed the petitioner to submit its budgeted revenue/cost versus the actual revenue/cost figures with the detailed analysis for a performance review on half yearly basis commencing from the half year that ended on 30.9.2011. The petitioner is complying with the Commission`s direction.

4. During the course of hearing on 11.4.2013, the representatives of the petitioner explained the difficulties being faced to comply with the minimum network requirement within stipulated time of 31.3.2013. The Commission directed the petitioner to submit the following, on affidavit, on or before 15.5.2013:

- (a) A detailed road map along with its Business Plan, deviation from its last projections and the future projections towards achieving profitability ; and
- (b) Time required to achieve the net-worth criteria.

5. In response, the petitioner vide its affidavit dated 10. 5.2013 has submitted the reasons for deviations from previous projections as submitted under petition No.

101/MP/2011, and has provided the new projections towards achieving profitability and time period required to achieve the net worth criteria as under:

(a) Reasoning on deviations from the previous projections

- (i) Exchanges till date are not being seen as the mature market where the needs of the market participants could be met on a sustainable basis for a longer duration due to limitation on the number of days for which contract could be executed on the exchange platform.
- (ii) Congestion in transmission corridor is bane that needs to be reduced for attracting larger volumes of Trade on a transparent platform like Power Exchange.
- (iii) Due to dire financial conditions of Distribution licensees, they are unable to contract power to meet their peak demand requirement.
- (iv) Regulatory interventions that would help in resolving the matters related to Launch of longer tenure products including derivatives in Electricity, substantial reduction in transactions of the Exchange that are subjected to Congestion in Transmission corridors, Retail Market (consumer load above 1MW) opening in a big way by allowing open access in Distribution system, reduction in cross subsidy across various categories of consumers and substantial increase in generation capacity that would help in creation of spinning reserves in the system.

(b) Future projections towards achieving the profitability

- (i) The initiatives introduced by PXIL in Financial Year (FY) 2012-2013 have been taken in the 2nd half of the financial year and the full blown financial impact of these measures would be visible in the FY 2013-2014. Currently, Exchange is operating at an optimal cost structure and its monthly revenues are just enough to meet the monthly cash expenses. With the increase in traded volume (and resultant increase in revenues) in the coming months, the Exchange is poised to generate cash surplus in Q1/Q2 of the FY 13-14 which is a key to attract investors and which in turn help in achieving networth requirement as prescribed in the Regulations.
- (ii) There could be multiple reasons for the fall in market share- both external and internal but PXIL is still having a great chance of capturing a decent market share (10-15 %) in the immediate near term (i.e. within next one year) by deploying right resources, having suitable technology and adopting market friendly and intermediary oriented trade incentive schemes.
- (iii) Some of the plan of action for enhancing PXIL's market share over the four quarters includes various aspects such as steady growth in market share in DAS and REC segments, further strengthening of technological platform, opening up a retail marketing wing to tap existing and emerging Open Access Market in the country, providing

platform access to non-frequent clients in a commercially feasible manner and a strategy to penetrate into northern India market.

(iv) Some of the business initiatives promulgated by PXIL for the FY 2013-14 are as under:

- a. Constitution of a core group consisting Leadership team which will steer the Business-plan formulated for its effective implementation during the following four quarters under close direction and supervision of MD & CEO.
- b. The performance of Exchange market shows that the Exchange market grew by nearly 51% in the FY 2012-13 i.e. from 15.5 BU in the 2011-12 to 23.5 BU in 2012-13. It is assumed that the Power Exchange market will grow at the rate of 25% in the FY 2013-14 yielding an annual market volume of approx 28-29 BUs.
- c. PXIL will steadily increase its volume in the next four quarters and the average quarterly volume in the physical segment for the FY 2013-14 is projected as follows:
 1. Q1 – 4-5 MU per day
 2. Q2 – 8-10 MU per day
 3. Q3 – 12-15 MU per day
 4. Q4 – 18-20 MU per day
- d. Cumulatively, PXIL targets to achieve nearly 3.6 BUs of trade in FY 2013-14, a 500% growth in volume compared to FY 2012-13 and which would yield an average 12.5% market share on an annualized basis. A large chunk of the projected volumes is

targeted from northern India and the southern market is assumed to remain largely congested thereby not posing a significant opportunity for PXIL.

- e. It is assumed that this segment will grow at the rate of 25% in FY 2013-14 yielding an annual market volume of approx 3.25 Million certificates. PXIL will increase its market share steadily from 23% in FY 2012-13 to 30% in FY 2013-14 and likely to trade close to 1 Million certificates in FY 2013-14 as against approx 6 Lakhs REC traded in FY 2012-13.
- f. The increase in market share and trade volume across the product categories would be achieved by offering market friendly and innovative trade incentive schemes to the market participants/intermediaries, improved customer relationships and better customer satisfaction, exploiting market intelligence by having right resources in place, and improved systems and processes.
- g. In order to achieve the above targets PXIL would need to further strengthen the technological platform to meet the customer requirements. For the said purpose PXIL has already started discussions with prominent technical experts and it is under the process of testing the new technology. The proposed technical

solution will be thoroughly tested in the next few months and if the test results are satisfactory it will be deployed at minimal costs within a defined period of time.

- h. The 'Retail Market' (1 MW+ customers) was primarily handled by 'Aggregator or Advisory Members' of PXIL for large number of clients widespread across the country. This retail market segment had a high potential to grow across various states and in order to have deep penetration in this emerging market it is essential to have PXILs own network of people besides consistently growing the base of Aggregators or Advisory Members. In order to have a grip & command over this market segment, the need to open-up a 'Retail Marketing Wing' in Gujarat on a Pilot-basis has emerged and if successful the same will be replicated in other states also with state-specific requirements.
- i. In order to further reduce the entry barriers and improve the trade volumes at the Exchange platform, PXIL will be introducing an option of providing express use of exchange platform to market participants for meeting their trade requirements (either sale or buy) for short period of time say, few days or week(s) or a month at a much lower membership fee.

- j. The northern regional market generally contributes in the range of 6000 MUs to 8000 MUs of trade volumes at Exchange during March/April to September/October period. In order to capture a significant portion of this market in a short span of time, PXIL needs deep penetration into this region. To achieve this PXIL has appointed an experienced & senior person from the power sector to exploit the trade opportunities in this market for PXIL.
- k. Projected financial results for the FY 2013-14 are as under:
- Gross income from trading in physical segment ₹18.28 crore
 - Gross income from trading in REC ₹ 3.90 crore
 - Total revenue: ₹ 24.13 crore
 - Total cash operating expenses: ₹19.76 crore
 - EBITDA: ₹4.37 crore
- l. Under the astute leadership of new MD & CEO, PXIL is poised to build on its market share and profitability in the FY 2014-15 and beyond and become significant number two player in the Exchange space in the country.
- m. Performance of PXIL is also dependent upon other external factors and market perception. Its only when issues such as congestion in transmission corridor, opening of Exchange Market (Permission to launch longer tenure products) products is granted then PXIL can make substantial inroad in the overall exchange Market.

(b) In view of the above mentioned background and in light of the Business plan formulated, the petitioner has prayed to grant three years time to comply with the net worth requirement.

6. We have considered the submission of the petitioner. Regulation 64 of Power Market Regulations 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.”

Thus, the power under Regulation 64 can be exercised by the Commission for removing any difficulties encountered for giving effect the provisions of the Power Market Regulations.

7. Regulation 18(i) of Power Market Regulations provides as under with regard to Net worth:

”18 (i) A Power Exchange shall always have a minimum net worth 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.”

8. Regulation 18(i) makes it mandatory for a Power Exchange to possess and maintain a minimum net worth of ₹ 25 crore at all points of time. Only exception has been made for a short period of three months if the net worth is depleted below the

minimum requirement due to payment made by the Power Exchange to sellers/buyers in default including by usage of SGF impacting its net worth.

9. The petitioner has taken steps, and is making concerted efforts to improve its business performance and market share. The petitioner is also in dialogue with several entities to infuse equity. However, the exchange continues to incur loss and the net worth of the exchange has eroded significantly. The practice adopted by the power exchange in regard to risk management by collecting 100 % margin from buyers before accepting their bids in Day Ahead and REC auctions and the fact that physical deliveries by sellers are deemed deliveries in day ahead market and sellers are allowed to bid only on possession of REC, are ways to insulate the Power Exchanges against the defaults by participants. As a second line of defense, the exchange is maintaining a Settlement Guarantee Fund to address any contingency scenario. The Risk Management Committee and the Settlement Guarantee Fund Committee constituted in compliance with the Power Market Regulations meet regularly to review these processes and their reports are being submitted to the Commission.

10. The Commission had allowed time till 21.1.2011 to achieve the net worth vide order dated 25.5.2010 in Petition No. 134/2010 which was further extended till 31.3.2013 vide order dated 5.4.2011 in Petition No. 101/MP/2011. It is essential to uphold and preserve the mandatory nature of prudential capital requirement as specified in Regulation 18 (i) of Power Market Regulation. The Commission vide its order dated 26.2.2013 has already granted extension of time till 20.01.2014 for compliance with the Regulation 19 of Power Market Regulations relating to

shareholding pattern requirement. This in effect means that, at present, there is no restriction in infusing additional equity capital by any shareholder. Hence, the promoters NSE and NCDEX or any existing shareholder is free to bring in additional equity capital under the present relaxed shareholding pattern norms.

11. The applicant vide its affidavit dated 21.5.2013 has placed on record letters received from the promoters i.e. NCDEX, GUVNL and Tata Power Trading Company Limited who have extended their full cooperation and support to PXIL's new management in its business operations.

12. As a future roadmap, the petitioner is directed to increase its net worth to ₹ 25 crore by 20.1.2014 either through additional capital infusion or by improving the business operations and maintain the minimum net worth thereafter on a consistent basis. To start with, the petitioner should take steps to infuse capital and increase its net worth at least to ₹ 10 crore within one month of the issue of this order and submit a confirmation for the same in the form of CA certificate. The petitioner is also directed to submit a business and financial performance report every quarter commencing from the first quarter of financial year 2013-14 for periodic review by the Commission.

13. In view of the longer investment horizon of equity investment and to provide regulatory certainty and clarity to the investors, the Commission shall take a considered view on the shareholding pattern norm compliance as and when it comes for compliance in January, 2014.

14. The petition is disposed of with above directions.

Sd/-
(M. Deena Dayalan)
Member

sd/-
(V.S.Verma)
Member

sd/-
(Dr. Pramod Deo)
Chairperson