CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI

Coram:
Shri Gireesh B. Pradhan, Chairperson
Shri M. Deena Dayalan, Member
Shri A.K.Singhal, Member

Dates of Hearing:

7.1.2014 (Petition No.322/RC/2013) and
1.5.2014 (Petition No. RC/003/2014)

Date of Order: 02.07.2014

Petition No. 322/RC/2013

In the matter of

Application for seeking appropriate directions for modifying the order dated 25.7.2013 in I.A. No. 17/2013 in Petition No. 52/MP/2013.

Petition No.: RC/003/2014

And
In the matter of

Application for seeking extension of time to comply with the Commission`s order dated 26.2.2013.

And
In the matter of

Power Exchange India Limited **….Petitioner**

Following were present:

1. Shri Pawan Kumar, PXIL
2. Shri Kapil Dev, PXIL
3. Shri Jatin Chotani, PXIL

ORDER

The petitioner, Power Exchange India Limited (PXIL) has filed Petition No. 322/RC/2013 for extension of time for compliance of net worth and Petition No.

RC/003/2014 for compliance with the shareholding pattern as required under the provisions of the Central Electricity Regulatory Commission (Power Market) Regulations, 2010 (hereinafter referred to as "Power Market Regulations"). Since the issues of net worth compliance and shareholding pattern compliance are inter-related, both the petitions are being disposed of through a common order.

2. Power Exchange of India Limited was accorded permission to set up and operate a Power Exchange vide order dated 27.5.2008 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*). The Commission notified the Power Market Regulations which came into effect from 21.1.2010. Power Exchange of India Limited was deemed to have been regulated under Regulations 19 of the Power Market Regulations.

3. The net worth and shareholding pattern requirement 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.

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.

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

4. In accordance with the above provisions, an operating Power Exchange is required to always have a minimum net worth of ₹ 25 crore as per the last audited balance sheet. Further, the Regulation 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 maximum of 5% share and all members taken together can hold 49% of the share in the Exchange. The shareholding pattern was required to be achieved by 20.1.2013.

Background of Petition No. 322/RC/2013

5. The petitioner in this petition has submitted as under:

(a) PXIL had filed petition No. 134/2010 seeking extension of time to raise additional equity share capital to achieve the prescribed net worth of ₹25 core as provided in 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 prescribed net worth.

(b) PXIL subsequently filed Petition No. 101/MP/2011 for further extension of timeline for complying with the net worth criteria. Accordingly, the Commission vide order dated 27.10.2011 allowed time till 31.3.2013 to achieve the net worth. PXIL filed Petition No. 52/MP/2013 under Regulation 63 (i) of the Power Market Regulations for granting additional time of 3 years from 31.3.2013 to achieve the net worth prescribed by the Commission. The Commission vide order dated 8.6.2013 directed PXIL to increase its net worth to ₹25 crore by 20.1.2014 and at least ₹10 crore within one month from the date of issue of the order.

(c) The petitioner later filed an Interlocutory Application No. 17/2013 in Petition No. 52/MP/2013 seeking suspension of the Commission's order dated 8.6.2013 by extending time upto 31.3.2014 to increase its net worth to ₹10 crore and upto 31.3.2015 to increase its net worth to ₹ 25 crore. The Commission vide its order dated 25.7.2013 directed the petitioner to achieve net worth of ₹ 10 crore by 31.12.2013 and ₹25 crore of net worth by 31.3.2014. The relevant portion of the said order dated 27.5.2013 is extracted as under:

> *"7. In light of the renewed efforts being made and the difficulty projected by PXIL, the petitioner is directed to increase its net worth to ₹25 crore by 31.3.2014. The petitioner is also directed to infuse capital and increase its net worth to at least ₹10 crore by 31.12.2013 and submit a confirmation for the same in the form of a CA certificate. No further extension shall be granted for the purpose."*

(d) The petitioner has filed the present petition along with IA 17/2013 seeking extension of time to achieve net worth of ₹10 crore by 31.3.2015 and ₹25 crore by 31.3.2016. The petitioner has made the following specific prayers:

> *"a) Allow the Present Application and pass Appropriate Directions modifying the Order dated 25.07.2013 passed by this Hon'ble Commission by extending the time up to 31st March 2015 to increase the net worth to Rs. 10*

Crores and by extending the time up to 31st March 2016 to achieve the net worth of Rs. 25 Crores

(b) Pass an interim order suspending the operation of the Order dated 25.07.2013 passed by this Hon'ble Commission till the pendency of the present Application; and

(c) Pass such other order / orders as this Hon'ble commission deems fit and proper. "

<u>Background of Petition No. RC/003/2013</u>

6. The petitioner filed Petition No. 4/MP/2013 seeking extension of time till 20.1.2016 for compliance with Regulation 19 (1) of the Power Market Regulations. The Commission vide order dated 26.2.2013 allowed the petitioner to achieve the specified shareholding pattern by 20.1.2014. The relevant portion of the said order dated 26.2.2013 is extracted as under:

"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."

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."*

7. The petitioner has filed the present Regulatory Compliance Application No. RC/003/2014 for grant of additional time period up to 31.3.2016 for complying with the order of the Commission dated 26.2.2013 in Petition No. 4/MP/2013.The petitioner has made the following specific prayers:

> *"(a) Allow the Present Application and pass Appropriate Directions modifying the Order dated 26.02.2013 passed by this Hon'ble Commission by extending the time up to 31st March 2016 for compliance of Shareholding Pattern norms stipulated under Regulation 19 read with Regulation 20 of the CERC (Power Market) Regulations, 2010*
>
> *(b) Pass an interim order suspending the operation of the Order dated 26.02.2013 passed by this Hon'ble Commission till the pendency of the present Application*
>
> *(c) Pass such other order / orders as this Hon'ble commission deems fit and proper."*

<u>Summary of submissions made by the petitioner</u>

8. The petitioner has submitted the following reasons for seeking time to achieve the net worth and shareholding pattern as per the Power Market Regulations:

(a) The promoters of PXIL are National Strategic Investment Corporation Limited (NSICL) which is the investment subsidiary of National Stock Exchange and National Commodity and Derivatives Exchange Limited (NCDEX). As per the latest shareholding as filed in Petition No. RC/003/2014, NSICL and NCDEX are holding about 32.28% and 27.98% equity shares respectively in PXIL. The petitioner has submitted that one of the ways to increasing the net worth is to make the promoters and other existing shareholders infuse more equity to comply with Regulation 18. However, this proposition violates the Regulation 19 and Regulation 20 of the Power Market Regulations which provide that the promoter members cannot hold more than 25% of equity share in the Power Exchange.

(b) The performance of the Exchange does not attract attention of investors who could be willing to buy equity shares from the existing shareholders and promoters thereby helping PXIL to attain the shareholding pattern in line with the applicable provisions of the Power Market Regulations.

9. The petitioner has further submitted as under:

(a) The Commission vide order dated 8.6.2013 in Petition No. 52 of 2013 has referred to adopting a considered view in compliance of Regulation 19 in order to allow the promoters and existing shareholders to invest additional equity in PXIL to satisfy the net worth norm prescribed under Regulation 18 of the Power Market Regulations.

(b) The petitioner has annexed the details showing periodic capital contribution of the promoters and shareholders and the current shareholding pattern of PXIL which is attached with this order as Annexure**.**

(c) The Promoters, namely NSICL and NCDEX, have reposed complete faith in PXIL and have made to equity infusion that has helped PXIL to achieve share capital of ₹ 56.05 crore as on 30.11.2013, which includes preference share capital of ₹10 crore that is not included in computation of net worth as per Regulation 2(i)(v) of Power Market Regulations. The paid up equity share capital of the petitioner at the time of notification of Power Market Regulations was ₹ 12 crore. Out of ₹44 crore infused later, major percentage of capital has been infused by the promoters.

(d) It could not succeed in aligning the shareholding pattern as prescribed under Power Market Regulations due to number of reasons including but not limited to its suboptimal business and financial performance over the past 4-5 years.

10. The petitioner has further submitted as under:

(a) Power Exchanges are constrained by regulatory issues (unlike other sectors where Exchanges can offer host of products) and existing caps on FDI/FII.

(b) As per the guidelines issued by Govt. of India (GoI) for foreign investment in Power Exchanges, foreign investment is permitted only up to 49% (automatic route) subject to Foreign Direct Investment (FDI) limit of 26% and Foreign Institutional investment (FII) limit of 23%.

(c) FII purchase is restricted to secondary market and no non-resident investor can hold more than 5% of equity in these companies.

(d) As per the current FDI norms with regard to Power Exchanges, the shareholding rights are restricted to 5% for a single non-resident entity. With the cap on shareholding, foreign investors may not be interested because of limited ownership interest in the Exchange.

(e) With the current place of Power Exchanges on the growth curve, it is imperative to adopt a relaxed approach in attracting foreign capital in initial stages (like 5% cap in 10-15 years from now).

(f) It had approached Department of Industrial Policy and Promotion, GoI vide its letter dated 26.12.2013 seeking amendments in FDI norms.

11. The petitioner has suggested that cap of 5% of shareholding of members in Power Exchanges as per Regulation 19(ii) should be increased to 10% to attract investors.

12. The petitioner has submitted that one of the promoters, NCDEX is regulated by Forward Market Commission (FMC) and as per the Regulations of FMC, NCDEX is required to obtain consent from FMC for any investment outside the commodity exchange space. The petitioner has also submitted that the Board of Directors of NCDEX approved a further equity investment in PXIL at its meeting held on 11.10.2012 and accordingly, NCDEX filed an application before FMC in November

2012 seeking approval to infuse additional equity share capital of ₹ 2 crore in the PXIL. The petitioner has further submitted that the said application was rejected by FMC in June 2013 primarily as an abundant caution towards compliance to Regulation 19 read with Regulation 20 of the Power Market Regulations.

13. The petitioner has submitted that the Commodity Futures and Derivative Markets were opened in 2002. However, the Regulators set the guidelines for shareholding on Commodity Exchanges in 2008, by which time the commodity market had witnessed very rapid growth and had attained maturity. The petitioner has further submitted that at the time when the Commodity Futures and Derivative Markets were opened, the security markets and security Exchanges were operational and they had their own shareholding framework. The petitioner has suggested that the Commission may consider to impose restrictions on shareholding only after the Power Exchanges and the power market attain desired maturity to attract investors.

14. The petitioner has submitted that it has made the following efforts for increasing the equity capital as under:

(a) PXIL has been approached by few private equity investors such as Gomukhi Indus, Aloe Capital, ICICI Venture Funds, Global Environment Fund, Olympus Capital, Fidelity Growth Partners, etc. most of which were interested in investing through offshore fund. However, due to cap of 5% in FDI regulations, dialogue on equity subscription could not materialize.

(b) PXIL is in dialogue with few large corporate houses for analyzing the business model and current and projected financial performance of PXIL.

(c) The present FDI norms is also deterring interest of foreign institutional investors (International Power Exchanges) like Chicago Mercantile Exchange and European Power Exchange (EPEX Spot).

(d) PXIL has also invited State entities such as Govt. of Chhattisgarh, Uttarakhand Power Corporation Limited and Government of Himachal Pradesh for equity stake.

(e) Power Finance Corporation has agreed principally to infuse additional equity share capital of ₹ 42 lakh in PXIL immediately and similar dialogues are on with Tata Power Trading Co. Ltd, JSW Energy, Gujarat Urja Vikas Nigam Ltd, Madhya Pradesh Power Management Co., GRIDCO- Odisha for infusion of additional equity in PXIL.

(f) The petitioner has also approached NCDEX with a request to revive dialogues with FMC seeking permission to invest ₹2 crore as equity in PXIL and it has also approached all its existing shareholders for equity capital infusion.

(g) ICICI Bank has joined as clearing bank with PXIL

(h) PXIL expects an amount of ₹30 to ₹35 crore to be infused from existing shareholders and new investors in the coming years which would help them maintain the networth of ₹25 crores by March 2016.

15. The petitioner has submitted that it is obliged by the Commission's view that equity investments are long term in nature and therefore, will warrant perceptible differences in PXIL, both in terms of volume transacted and new products to attract serious, long term investors to the exchange.

16. The petitioner has submitted that some of the measures adopted to improve its business performance and achieve the cash break-even in the shortest possible time are as under:

(a) Business Performance

(i) REC Segment: Increase in market share from 23.11% in Financial Year (FY) 2012-13 to 53% till November 2013 (in FY 2013-14) (18% in YTD November 2012) in the backdrop of decline in RECs traded on Exchanges from 11.75 lakh RECs in H1 of FY 2012-13 to 4.39 lakh RECs in H1 of FY 2013-14. PXIL's volume increased from 1 lakh to 2.19 lakh RECs during the same period registering a volume growth of 120%. Superior business performance in the REC segment has helped PXIL to improve its revenues and cash flows and contributed significantly to turning around of the business.

(ii) Physical Market: Average traded volume increased from less than 2 MUs per day in FY 2012-13 to nearly 5 MUs per day in Q2 of FY 2013-14 which further increased to 6 MUs per day in November

2013. The petitioner has exceeded the traded volume for FY 2012-13 in the first eight months of FY 2013-14 and has witnessed 100% volume growth in Q2 as against Q1 of FY 2013-14 (440 MUs in Q2 against 212 MUs in Q1).Market share of PXIL is 5% in first 8 months of FY 2013-14 as against 3% in FY 2012-13. The petitioner in its petition has furnished month-wise highlights of its performance in the physical segment. PXIL has achieved nearly 1 BU of volume in current financial year and projects to achieve more than 100% volume growth in comparison to FY 2012-13. The petitioner has submitted the business performance of PXIL in physical segment, both in terms of absolute volume (i.e. in MUs) and market share till YTD November 2013 as in the table below:

Particulars	Q1 FY 13-14	Q2 FY 13-14	Oct-13	Nov-13	YTD Nov 2013	YTD Nov 2012
Market Volume (MUs):						
DAS	7,318	7,728	2,755	2,654	20,455	*14,275*
Other Products	49	340	28	68	485	*362*
Total Market Volume>>	***7,367***	***8,068***	***2,783***	***2,722***	***20,940***	***14,637***
PXIL Volume (MUs):						
DAS	187	267	110	173	737	*451*
Other Products	25	173	7	9	214	*28*
Total PXIL Volume>>	***212***	***439***	***118***	***182***	***952***	***479***
Avg. MUs traded per day (DAS+Others):						
PXIL	2	5	4	6	4	*2*
IEX	79	83	86	85	82	*58*
Total >>	***81***	***88***	***90***	***91***	***86***	***60***
PXIL Market Share (%):						
DAS	3%	3%	4%	7%	4%	*3%*
Other Products	51%	51%	27%	13%	44%	*8%*
Market Share in physical	***3%***	***5%***	***4%***	***7%***	***5%***	***3%***

(b) Financials

(i) PXIL over the past several quarters has rationalized its cost structure in a major way along with improvement in revenues to eliminate cash losses. The summary of P&L for the previous and current years is given below:

(in ₹ lakh)

Particulars	FY 11-12 (Audited)	FY 12-13 (Audited)	FY 13-14 (unaudited)					
			Q1	Q2	OCT 2013	NOV 2013	YTD NOV 2013	YTD NOV 2012
Total Revenue	799	1008	218	331	*106*	164	*819*	*632*
Total Operating Expenses	1984	1585	312	286	*101*	*135*	*834*	*1150*
EBIDTA (Cash Loss) /Cash Surplus	(1185)	(577)	(94)	45	*5*	*29*	*(15)*	*(518)*

(ii) Cash loss of PXIL reduced by 51% in FY 2012-13 in comparison to FY 2011-12. Cash surplus of ₹ 45 lakh in H1 of FY 2013-14, ₹ 5.27 lakh in October 2013 and ₹29.35 lakh in November 2013. Total revenues grew by 50% in Q2 over Q1 in FY 2013-14 and it grew by 30% in YTD November 2013 over YTD Nov 2012. PXIL achieved cash break even in August 2013 for the first time since it commenced operations and cash profit trend continued from September-November 2013.

(iii) PXIL expects to deliver substantial cash profit in FY 2013-14 as against cash loss of nearly ₹6 crore in FY 2012-13.

(c) Business Strategy: Some of the initiatives adopted by PXIL to improve the business are as under:

(i) Initiatives to enhance Physical Market: PXIL has adopted market maker appointment route linked to a slab based incentive structure and has also been marketing Liquidity Enhancement Schemes amongst such market makers etc.

(ii) Removal of entry barrier: PXIL has allowed participants express use of Exchange platform for short periods (day/week/month) instead of a whole year and at much lower membership fee.

(iii) Removal of regulatory hurdles: PXIL has identified regulatory issues, such as NLDC operating charge, congestion on transmission corridor and lack of longer tenure products for which necessary petitions have been filed before the Commission.

(iv) Focus on retail market: PXIL has opened retail wing (to tap retail market (≥1 MW)) in the State of Gujarat and Rajasthan and is extending the same to the State of Himachal Pradesh, Uttarakhand, Odisha, Andhra Pradesh, etc.

(v) Renewed focus on regional markets: PXIL has appointed experienced and senior persons from power sector. Owing to efforts put by PXIL, entities like UPCL, UPPCL, J.P. Hydro, Sterlite Power and States such as Tripura, Arunachal

Pradesh etc. are participating on the petitioner's platform.

(vi) Revamping the DAS engine: With the objective of undertaking social welfare maximization, PXIL has launched and has integrated 'OptiPX' Day Ahead Spot matching engine (Mixed Integer Linear Programming based solution developed by IIT Bombay) in its software on 22.10.2013 replacing heuristic based algorithm developed by Chennai Mathematical Institute (CMI).

(vii) Product Innovation: More than 95% of the trade has happened on day ahead market on Power Exchange platform with Term Ahead Products (comprising DAC, Intraday, Week Ahead and Any Day) receiving a lukewarm response from participants. Except for the month of September 2013, the average transaction volume of intraday and contingency product for the period October 2012 – September 2013 is less than 1 MU/day. PXIL is analysing the concept of transacting power in week ahead product at settled price based on weighted average price of day ahead market of both exchanges. PXIL expects that major portion of UI volume would be migrated to Ancillary Services product and PXIL would make all out efforts to attain majority share in the new product.

(viii) The total number of participants has increased on the petitioner's platform. The number of members and clients has increased to 74 and 1146 (in Nov 2013) from 64 and 960 respectively (in March 2013).

(ix) PXIL has developed excellent robust management mechanism wherein 100% margins are taken from buyers before aaccepting bids in day ahead and REC product. The Exchange also maintains Settlement Guarantee Funds that would be accessed in event of default by a participant.

(x) PXIL is the only Power Exchange to achieve ISO 9001:2008 certification.

17. The petitioner has submitted that all possible efforts to increase the net worth would take some more time to achieve ₹10 crore and may require long/extended time to achieve ₹25 crore.

18. The petitioner has submitted that the Board of PXIL in its meeting held on 26.5.2010 had increased the share capital from ₹ 50 crore to ₹100 crore and in the Annual General Meeting held on 26.9.2013, the shareholders approved the proposal to increase paid up equity share capital from ₹46,05,00,500/- to ₹ 80,00,00,000/- by offering further equity shares to existing share holders and potential investors.

19. The petitioner has submitted that it is adopting the following three pronged

strategy for investment in equity capital to meet the regulatory net worth:

(i) Turn around in business;

(ii) Equity contributions from existing shareholders; and

(iii) Equity contribution from new investors like PE, State utilities and other corporate

20. The petitioner has submitted that the recent growth delivered by PXIL coupled with its institutional character and strong promoters has boosted confidence of existing shareholders and prospective investors. The petitioner believes that it will continue to deliver superior business and financial results in the coming quarters and would be in a position to radically transform the power markets by working closely with the Commission. The petitioner has further submitted that the cumulative effect of the above would translate into attracting fresh capital and achievement of desired regulatory net worth of ₹10 crore and ₹25 crore by March 2015 and March 2016,respectively.

Hearing in Petition No. 322/RC/2013 and subsequent submissions by the petitioner

21. The Commission vide Record of Proceedings of hearing dated 7.1.2014 in petition No. 322/RC/2013 directed the petitioner and the staff of the Commission to examine ways and means by which restructuring can be done to infuse equity by NSE and NCDEX without increasing their percentage holding in the Exchange. The petitioner was further directed to submit a declaration to the effect that in light of the depleted net worth of PXIL, 100% payment is being taken form participants before

execution of transaction on Exchange. The petitioner was also directed to submit quarterly performance report, audited account statement, Balance Sheet and ratios as required under SEBI guidelines for monitoring the business and financial performance of the Exchange and future business plan for next 5 years giving details of the performance comprising Profit and Loss Account and Balance Sheet along with liquidity ratios.

22. PXIL has submitted the following documents as directed in the RoP dated 7.1.2014:

(a) An affidavit dated 16.01.2014 that 100% margin is being taken from buyers before execution of transactions on Exchange in Physical and REC segments.

(b) Performance review report and audited accounts statement, balance sheet, liquidity ratios prepared as per SEBI guidelines for quarter ended on December 2013 and March 2014 vide letters dated 30.1.2014 and 30.5.2014 respectively.

(c) Letter of PXIL dated 5.2.2014 referring to its meeting along with MD and CEO of NSE with Chairperson, CERC wherein NSE reiterated its commitment and support towards PXIL.

(d) Five year business plan and key assumptions taken in the plan vide letters dated 26.2.2014 and 19.3.2014 respectively.

(e) Letters from its two promoter's, namely NSICL and NCDEX dated 14.5.2014 and 4.4.2014, respectively supporting the Exchange and expressing their commitment towards keeping PXIL in business.

(f) PXIL vide its letter dated 1.1.2014 informed the Commission that the Share Allotment Committee (Sub-Committee) of the Board of PXIL at its meeting held on 19.12.2013 has allotted 4,20,000 equity shares at par value of ₹ 10/- aggregating to ₹ 42 lakh to PFC on preferential basis.

(g) PXIL vide letter dated 3.6.2014 intimated receipt of ₹ 2 crore towards equity share application from NCDEX on 29.5.2014.

(h) PXIL vide letter dated 10.6.2014 has informed the Commission that the Share Allotment Committee of the Board of PXIL at its meeting held on 2.6.2014 has allotted twenty lakh equity shares at par value of ₹10/- aggregating to ₹2 crore to NCDEX on preferential basis. PXIL has also submitted their latest shareholding pattern.

Hearing in Petition No.RC/003/2014 and subsequent submissions by the petitioner

23. During the course of hearing on 1.5.2014 in Petition No. RC/003/2014 the Commission advised the petitioner that the reduction in share capital be considered by the Board of PXIL. In response, the petitioner, vide its letter dated 22.5.2014, has submitted that the next Board meeting of PXIL is scheduled on 26.6.2014

wherein point about reduction in share capital would be discussed.

Analysis and Decision

24. We have heard the representative of the petitioner and perused the documents on record.

25. The Commission through notification of Power Market Regulations in January 2010 created a well-founded regulatory framework for Power Exchanges and ensured that Power Exchanges are subjected to appropriate and effective regulation, supervision, and oversight. Power Market Regulations clearly define and disclose the regulatory, supervisory and oversight policies with respect to Power Exchanges. The mandatory net worth requirement and the shareholding norms are a part of this regulatory approach.

Net worth Requirement

26. The Commission is of the view that the minimum net worth requirement is a mandatory prudential requirement and needs to be maintained at all times to undertake Power Exchanges business since they are self-clearing institutions. Share capital and retained earnings collectively constitute net worth form the primary sources of capital resources for the company due to their permanence and ability to absorb losses. This is a minimum capital requirement and a safeguard against any systemic risk to avert any contagion effect especially in situations of market stress. While the Power Exchanges have a robust risk management process and charge risk based capital (bid margin, contribution to Settlement guarantee fund) from participants separately to address market risk and credit risk of

participants, the Power Exchanges have constituted Settlement Guarantee Fund to address potential business losses or default. As a second line of defense, Power Exchange should hold sufficient liquid net assets funded by equity to cover potential business losses so that they can continue operations and provide services as a going concern if those losses materialize. Further, liquid net assets should at all times be sufficient to ensure a recovery or orderly wind-down of critical operations and services. A Power Exchange which is a market infrastructure and deals with financial transactions and monies of participants and undertakes risk management, clearing and settlement post transactions to meet liabilities as one of its principal functions, should remain robust and safe at all times and maintain market participants' confidence in the institution.

Shareholding Structure:

27. On the issue of shareholding pattern compliance by Power Exchanges, the Commission has adopted a framework which allows for anchor institutional investors to hold upto 25% of equity capital of the company and play the role of promoter in developing the power exchange business. The concept of ‘Anchor Institutional Investor’ would require infusion of funds and taking the lead role of setting up a power exchange. The promoter's role and support becomes even more germane in the power market which can still be said to be in nascent stage of development. However, the implementation of the above proposal should not result in the dilution of dispersed ownership norms for stock exchanges. Therefore, we are of the view that there should be a cap on the maximum shareholding held by an

anchor institutional investor put together. In addition, the anchor institutional investors are expected to bring down their shareholding within a prescribed period. Members of Exchange who use the Exchange platform can hold individually upto 5% share and on an aggregate basis upto 49% share. This is to maintain the demutualized structure (separation of shareholder, management and members) of the Exchange. For good governance, the regulation also stipulates constitution of A Risk Management Committee and Market Surveillance Committee under the chairmanship of Independent Directors of the Power Exchange along with a Settlement Guarantee Fund Committee with representative of a member. Imposing restrictions on ownership is one of the ways of exercising regulatory control over a Power Exchange. Dispersed ownership structure has been adopted for Power Exchanges so that no single entity becomes a dominant shareholder in an entity that is entrusted with vital economic and regulatory functions. It is felt that for effective public policy, it is desirable to encourage widespread ownership, to reduce the likelihood of decisions being made in the interests of any one particular segment of the market.

28. The Commission envisions competition in the Power Exchanges business to avoid perverse monopoly and in view of the well-established benefits which ensue out of competition like choice to customers, new product introduction and innovation, competitive pricing, etc. The threat of potential entry too imposes a significant competitive discipline. At the same time, the Commission is not in favor of too many Power Exchanges since it fragments liquidity and deteriorates robustness of price discovery. In line with this philosophy, the Commission earlier

has taken a generous view and has granted time extension for compliance to net worth in order dated 25.7.2013 and time to comply with shareholding pattern in order dated 26.2.2013.

29. In the prevailing market scenario on Indian stock, commodity and power market in general, while competition in power exchange business is desirable, compliance of mandatory requirements by Power Exchanges, as the name suggests is a must and cannot be relaxed. The Commission, in its prudence, is of the view that in the present situation, net worth compliance is a larger and graver concern than compliance to shareholding structure since minimum net worth requirement is directly linked to risk management, safety of transactions, smooth operations of the power exchanges and overall public interest. While shareholding structure has bearing on shareholder`s control over the company and its corporate governance it is relatively a lesser concern and can be addressed through regulatory measures like Independent Directors heading board committees, or by capping the voting rights of the shareholders, etc.

30. The anchor institutional investors of PXIL viz NSE and NCDEX have earlier expressed their inability to infuse more funds due to the ceiling on shareholding pattern prescribed in the Power Market Regulations. Under such circumstances, they have infused funds as preferential capital which is not a part of the net worth definition. This issue has been mentioned by PXIL in its petition also and subsequently reiterated by NSE and NCDEX in their letters dated 14.5.2014 and 4.4.2014 respectively. The Commission feels that the regulatory ceiling has become

a major hindrance in capital infusion by promoter of PXIL i.e. NSE and NCDEX.

31. The situation of PXIL is extraordinary which calls for extra ordinary solutions. In view of the above, the Commission in exercise of its power under Regulation 63 (ii) of Power Market Regulations directs the following:

(a) PXIL shall make all out efforts to attract new shareholders who would infuse equity capital in PXIL. Necessary financial restructuring including increase in authorized capital should be done to comply with minimum net worth requirement of ₹25 crore and to accommodate new shareholders.

(b) In the scenario of the above not materializing, the Commission is relaxing Regulation 19(1)(i) of the Power Market Regulations regarding maximum shareholding of 25% shareholding for any shareholder (who is not a member of Power Exchange) to upto 74% of the equity capital. Hence, NSE and NCDEX which are the promoter shareholders of PXIL can invest upto 74% of equity capital. This will remove the present regulatory constraint on the promoters and facilitate further equity infusion by the promoter in PXIL. The equity capital infusion is expected to restore the net worth of the company to ₹25 crore and manifest the commitment of the anchor investors in the company which they have been reiterating time and again. To allay any concerns, NSE and NCDEX being premier market infrastructure institutions of the country are professionally run, well managed and are under regulatory oversight. A higher promoter stake by these institutions for a limited period to address the critical issue of capital infusion will not adversely affect public interest. Further, NSE and NCDEX which are leading Stock and Commodity Exchanges respectively, are expected to play a lead role in supporting and guiding the management of PXIL to improve its business performance and create a sustainable business. While allowing higher equity stake to promoters presently, the Commission is of the view that the diversified equity holding structure of the Power Exchange, which is a market infrastructure, is maintained in larger public interest and hence, directs that the voting rights of each promoter shareholder (who is not a member of Power Exchange) be capped at the existing limit of 25% of equity capital. These promoter shareholders will however to allowed corporate benefits which accrue out of higher shareholding. PXIL is also directed to enhance its equity capital, if need be, to increase its net worth, to make all necessary financial restructuring to bring back the net worth to ₹25 crore.

(c) Section 48 of the Companies Act, 2013 allows for variations for shareholders rights. Accordingly, we direct PXIL to take necessary steps to ensure that our directions are complied with by taking appropriate action under the relevant provisions of the Companies Act, 2013.

(d) PXIL is directed to make necessary amendments to its Articles of Association to effect this structural change through necessary board resolution/AGM.

(e) PXIL is also directed to submit its financial restructuring plan to the Commission within one month of the issue of this order and report compliance with ₹25 crore net worth at the end of 3 months of the order. It is clarified that the relaxation of shareholding structure for promoters shall be valid for a period of 3 years from the date of this order. The anchor investors shall reduce their shareholding to 25% at the end of 3 years.

32. The petitions No. 322/RC/2013 and RC/003/2014 are disposed of with above directions.

Sd/-	sd/-	sd/-
(A.K.Singhal) **Member**	**(M Deena Dayalan)** **Member**	**(Gireesh B.Pradhan)** **Chairperson**

Annexure

Power Exchange India Limited

Current Shareholding Pattern as on 31st Dec, 2013

Authorised Share Capital -100 Crs

(a) Equity Share Capital - 80 Crs

(b) Preference Share Capital - 20 Crs

Break-up of paid-up equity share capital				
Sr. No.	**Nature of shares**	**Name of Member/Shareholder**	**Amount (in Rs)**	**% held**
1	Equity	NSE Strategic Investment Corporation Limited (NSICL)	150,000,000	32.28
2	Equity	NSICL - Mr. J Ravichandran	100	0.00
3	Equity	NSICL - Mr. R Nanda Kumar	100	0.00
4	Equity	NSICL - Mr. Yatrik Vin	100	0.00
5	Equity	National Commodity & Derivatives Exchange Limited	130,000,000	27.98
6	Equity	Mr. M K Ananda Kumar	100	0.00
7	Equity	Mr. Nirmalendu A Jajodia	100	0.00
8	Equity	Gujarat UrjaVikas Nigam Limited	25,000,000	5.38
9	Equity	Power Finance Corporation Limited	32,200,000	6.93
10	Equity	GMR Energy Limited	40,000,000	8.61
11	Equity	JSW Energy Limited	12,500,000	2.69
12	Equity	WB State Electricity Distribution Company Limited	40,000,000	8.61
13	Equity	MP Power Management Company Limited	10,000,000	2.15
14	Equity	Tata Power Trading Company Limited	25,000,000	5.38
		Total	464,700,500	100.00
Note: w.e.f. 10/4/2012 the name of MP Power Trading Co. Ltd has been changed to MP Power Management Company Limited.				
Break-up of paid up Preference Share Capital				
Sr. No	**Nature of Shares**	**Name of the Member / Shareholder**	**Amount (in Rs)**	**%**
1	Optionally Convertible Redeemable Preference Shares	NSE Strategic Investment Corporation Limited (NSICL)	50,000,000	50.00
2	Optionally Convertible Redeemable Preference Shares	National Commodity & Derivatives Exchange Limited	50,000,000	50.00
		TOTAL	100,000 000	100.00

Capital Contribution and Shareholding Pattern as on 31-12-13
Equity Share Capital

(A) Promoters

	Feb'08	Aug'08	Dec'08	Mar'09	May'09	Aug'09	Mar'10	Sep'10	Dec'10	Jan'12	May'12	Aug'12	Dec'13	Total	% Eq.S/Holding
NSICL	2.50	25.00	225.00			200.00	797.50		50.00		200.00			**1,500**	**32.28**
NCDEX	2.50	25.00	225.00	-			581.50	466.00						**1,300**	**27.98**
SUB TOTAL (A)	5.00	50.00	450.00	-	-	200.00	1379.00	466.00	50.00	-	200.00	-	-	**2,800**	**60.25**

(B) Others

PFC					175.00					105.00			42.00	**322**	**6.93**
GMR Energy					100.00		150.00					150.00		**400**	**8.61**
GUVNL					34.59		215.41							**250**	**5.38**
IND SUB	-													**-**	
JSW						66.97	58.03							**125**	**2.69**
WBSEDCL						125.00	125.00				150.00			**400**	**8.61**
MP Power							50.00	50.00						**100**	**2.15**
TPTCL							250.00							**250**	**5.38**
SUB TOTAL (B)	**-**	**-**	**-**	**-**	**309.59**	**191.97**	**848.44**	**50.00**	**-**	**105.00**	**150.00**	**150.00**	**42.00**	**1,847**	**39.75**
Grand Total	**5.00**	**50.00**	**450.00**	**-**	**309.59**	**391.97**	**2227.45**	**516.00**	**50.00**	**105.00**	**350.00**	**150.00**	**42.00**	**4,647**	**100.00**

Preference share capital - 100 00 000 share of Rs 10 each, fully paid up					
Shareholders Name				% PrefSh Cap Holding	
	Dec '11	**April '12**	**Total**		
NSICL	500.00		500.00	50%	
NCDEX		500.00	500.00	50%	
Total			**1000.00**	**100%**	