

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 52/RC/2015**

**Coram:**

**Shri Gireesh B.Pradhan, Chairperson**

**Shri A.K. Singhal, Member**

**Shri A.S.Bakshi, Member**

**Date of Order: 5.8.2015**

**In the matter of:**

Approval of name of inclusion in the panel for appointment as Independent Directors on the Board of Power Exchange of India Limited.

**And**

**In the matter of:**

Power Exchange of India Limited

5<sup>th</sup> Floor, Tower-3, Equinox Business Park (Peninsula Techno Park)

Off Bandra Kurla Complex,

LBS Marg, Kurla (West), Mumbai-400 070

**.....Petitioner**

**ORDER**

The petitioner, Power Exchange of India Limited (PXIL), has filed the present petition on 16.1.2015 seeking approval of the Commission for inclusion of the names of Shri Peter James Bazeley and Shri Pramod Kumar Vaishya in the panel of Independent Directors for appointment on the Board of PXIL.

2. Regulation 22(ii) of the Power Market Regulations which deals with the Independent Directors to be appointed in the Power Exchange, is extracted as under:-

"(ii) Independent Directors – At least one third of the members of the Board or a minimum of two directors, whichever is higher, shall be independent directors selected from a panel constituted by the Power Exchange and



approved by the Commission out of which one person will have professional qualification and experience in finance. The panel shall be constituted of persons of repute and integrity from academics, professionals, industry representatives, public figures none of whom should have any interest in any Member of Power Exchange and any fiduciary relationship with any shareholder of Power Exchange.”

3. The Commission, in its order dated 3.5.2010 in Petition No. 138/2010, while approving the panel of Independent Directors of PXIL discussed the requirements for appointment as Independent Directors in the said order as under:-

“6. As per Para 1.13 of the Articles of Associations of Power Exchange of India Ltd., the number of Directors of the Company shall not be less than 3 and not more than 12. As per the Petitioner, the number of Directors in the Board of PXIL at present is eight. One-third of the Members of the Board works out to 2.66 which rounds up to 3. Therefore, the Petitioner is required to bring 3 Independent Directors on the Board of PXIL in order to meet the statutory requirement of Clause (ii) of Regulation 22 of Power Market Regulations. We are of the view that the panel size and actual number of Independent Directors shall be in the ratio of 2:1. Accordingly, the Petitioner is directed to suggest more names for approval of a panel of six for appointment of 3 Independent Directors.”

4. The Commission, in its order dated 7.8.2013 in Petition No. 113/2011, while approving the panel of Independent Directors discussed the requirements for appointment as Independent Directors in the said order and they are as follows:-

"7. The term 'Independent Director' has not been defined in the Power Market Regulations or Companies Act, 1956. The Judicial Dictionary defines Independent Director to mean a non-executive Director who apart from receiving Director's remuneration, do not have any material/pecuniary relationship or transaction with the company, its promoters, its directors, its senior management or its holding company, its subordinates or associates which in the judgment of the Board may affect the independence of the judgment of the Director. According to Clause 49 of the Listing agreement, the definition of the term 'Independent Director' would mean a non-executive director who:



- (a) Does not have a pecuniary relationship with the company, its directors, its promoters, senior management or affiliate companies;
- (b) Is not related to the promoters or senior management;
- (c) Is not a partner or executive of the auditors/lawyers/consultants of the company for the last three years;
- (d) Is not a supplier, service provider or customer of the company;
- (e) Does not have more than 2% of the shares of the company.

8. Further Regulation 22(ii) of the Power Market Regulations provides that none of the persons in the panel should have any interest in any Member of the Power Exchange and have fiduciary relationship with any shareholders of the Power Exchange. Fiduciary relationship has not been defined in the Power Market Regulations. According to Law Dictionary, fiduciary relationship exists when one person places complete confidence in another person in regard to any particular transaction or general affairs or business. In the context of the Power Market Regulations, none of the persons included in the panel of Independent Directors should have any interest in any member of the exchange or be involved in the general affairs or business of any shareholder of the exchange."

5. The petitioner vide affidavit dated 2.3.2015 has submitted that Shri Pramod Kumar Vaishya does not have any interest in any member and any fiduciary relationship with any shareholder of PXIL.

6. PXIL, vide its affidavit dated 13.6.2015, has submitted that Shri Peter James Bazeley does not have any interest in any member and any fiduciary relationship with any shareholder of PXIL. PXIL has also placed on record the affidavit by Shri Pramod Kumar Vaishya dated 10.2.2015 and Shri Peter James Bazeley dated 26.6.2015 to the effect that they do not have any interest in any member and fiduciary relationship with any of the shareholders of PXIL. PXIL has requested to approve the name of Shri Peter James Bazeley and Shri Pramod Kumar Vaishya for including in the panel of Independent Directors on the Board of PXIL



7. We have considered the submission of the petitioner. PXIL has submitted that its Board consists of ten (10) Directors. As per Regulation 22(ii), at least one third ( $1/3$ ) of the members of the Board or a minimum of two (2) Directors (whichever is higher) shall be Independent Directors. One third of ten (10) Directors work out to 3.33 and as per the explanation to clause (4) of Section 149 of the Companies Act, 2013, any fraction contained in such one-third shall be rounded off as one. As such, the requirement of Independent Directors on Board of PXIL is four (4). At present, three Independent Directors are in position and one vacancy of Independent Director needs to be filled up. Further, the Commission in its order dated 3.5.2010 in Petition No. 138/2010 has held that the panel for appointment of Independent Directors should be double the number of Independent Directors to be appointed. Therefore, a panel of at least two persons needs to be drawn for filling up of post of one Independent Director.

8. The petitioner has now proposed two names for inclusion in the panel of Independent Directors, namely, Shri Peter James Bazeley and Shri Pramod Kumar Vaishya. Their profiles are as follows:-

(a) Shri Peter James Bazeley is a Graduate from University of Gauhati and has worked in different capacities in Government of Meghalaya. He was Chairman, Meghalaya State Electricity Board from 2003 to 06 and Chairman of Meghalaya Electricity Regulatory Commission during the period 2009-11. Presently, he is a President of Haggai Institute of Hyderabad, Member of Governing Council, IIBM Navi Mumbai and



Member of Indian National Trust for Art and Cultural Heritage, Meghalaya.

(b) Shri Pramod Kumar Vaishya is a Bachelor of Engineering (Electrical) and he has worked in various capacities in Government of Madhya Pradesh. He superannuated from the Govt. of Madhya Pradesh as Managing Director of M.P. Power Management Company. He was also a member of business advisory committee of PXIL. Presently, he is working as a power consultant and providing consultancy and professional services to power sector companies.

9. The petitioner has also placed on record the affidavits submitted by Shri Pramod Kumar Vaishya dated 10.2.2015 and Shri Peter James Bazeley dated 26.6.2015. Both Shri Peter James Bazeley and Shri Pramod Kumar Vaishya have stated that they do not have any interest in any member and fiduciary relationship with any of the shareholders of PXIL.

10. The proposal for empanelment of Shri Peter James Bazeley and Shri Pramod Kumar Vaishya for appointment as Independent Directors has been considered in the light of the Power Market Regulations and the requirements laid down by the Commission in its order dated 3.5.2010 in Petition No. 138/2010. After going through the profiles of Shri Peter James Bazeley and Shri Pramod Kumar Vaishya and after being satisfied that they do not have any fiduciary relationship with any of the existing shareholders of PXIL or any interest in any member of PXIL, we are of the view that both persons fulfil the requirement for inclusion in the panel for appointment as Independent



Directors in PXIL. Accordingly, we accord our approval for inclusion of both of them in the panel for appointment of Independent Directors in terms of Regulation 22(ii) of the Power Market Regulations.

11. Petition No.52/RC/2015 is disposed of in terms of the above.

Sd/-  
**(A.S.Bakshi)**  
Member

sd/-  
**(A.K.Singhal)**  
Member

sd/-  
**(Gireesh B. Pradhan)**  
Chairperson

