

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 37/TD/2023

Coram:

Shri Jishnu Barua, Chairperson

Shri I.S. Jha, Member

Shri Arun Goyal, Member

Shri P.K. Singh, Member

Date of Order: 10th April, 2023

In the matter of:

Application for grant of licence for inter-State trading in electricity under Category IV under the Central Electricity Regulatory Commission (Procedure, Terms & Conditions for grant of Trading licence and other related matters) Regulations, 2020.

And

In the matter of:

THDC India Limited,

Pragatipuram, Bypass Road,
Rishikesh, Uttarakhand-249 201

.....Petitioner

The following were present:

Ms Anushree Bardhan, Advocate, THDCIL

Shri R. K. Verma, THDCIL

ORDER

The Petitioner, THDC India Limited (hereinafter referred to as ‘the Petitioner’ or ‘THDC’), a company registered under the Companies Act, 1956 (1 of 1956) has made the present application under Section 14 of the Electricity Act, 2003 (hereinafter referred to as “the Act”) read with Regulation 6 of the Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of Trading Licence and other related matters) Regulations, 2020 (hereinafter referred to as “the Trading Licence Regulations”)



amended from time to time, for grant of Category `IV` trading licence for inter-State trading in electricity in whole of India.

2. The Petitioner has submitted that the Petitioner company under the administrative control of Ministry of Power, Government of India was incorporated on 12.7.1988 as a joint venture of the Government of India and the Government of Uttar Pradesh. The Petitioner company is now a subsidiary of NTPC Limited having shareholders pattern of 74.496% with NTPC Limited and 25.504% with Government of Uttar Pradesh.

3. The Petitioner has submitted that as on date, its authorized, issued, subscribed and paid up share capital are Rs. 4000.00 crore, Rs. 3665.88 crore, Rs 3665.88 crore and Rs. 3665.88 crore, respectively, and therefore, the Petitioner meets the required net worth for grant of Category IV licence. The Petitioner has submitted that its Memorandum of Association authorizes undertaking of inter-State trading in electricity and transmission of electricity

4. THDCIL has submitted that it is a generating company in terms of Section 2 (28) of the Electricity Act, 2003 (hereinafter referred to as 'the Act'). Generating Company has been defined under Section 2(28) of the Act as "generating company means any company or body corporate or association or body of individuals, whether incorporated or not, or artificial person, which owns or operates or maintains a generating station". Section 14 of the Act provides that "no person shall undertake trading in electricity unless he is authorized to do so by a licence issued under Section 14". Section 14 of the Act provides that the Appropriate Commission may, on an application made to it under Section 15, grant a licence to any person to undertake trading in electricity as an electricity



trader in any area as may be specified in the licence. The term “person” has been defined in Section 2 (49) of the Act to include “any company or body corporate or association or body of individuals whether corporate or not or artificial juridical person”. Thus, THDCL as a generating company is eligible for applying for grant of trading licence under Section 14 of the Act.

5. The issue regarding any legal embargo to grant licence to a generating company to undertake trading for sale and purchase of electricity has been dealt with by the Commission in its order dated 26.3.2018 in Petition No. 20/TD/2018. Relevant Portion of said order is extracted as under:

“4. The issue for consideration is whether there is any legal embargo to grant licence to a generating company to undertake trading for sale and purchase of electricity. There is no provision in the Act which debars a generating company to undertake the function of trading in electricity. However, Section 10 of the Act provides as under:

“10. Duties of generating companies: (1) Subject to the provisions of this Act, the duties of a generating company shall be to establish, operate and maintain generating stations, tie-lines, sub-stations and dedicated transmission lines connected therewith in accordance with the provisions of this Act or the rules or regulations made thereunder.

(2) A generating company may supply electricity to any licensee in accordance with this Act and the rules and regulations made thereunder and may, subject to the regulations made under sub-section (2) of section 42, supply electricity to any consumer.

(3) Every generating company shall-

(a) submit technical details regarding its generating stations to the Appropriate Commission and the Authority;

(b) co-ordinate with the Central Transmission Utility or the State Transmission Utility, as the case may be, for transmission of the electricity generated by it.”

The generating company is authorized to supply electricity to any licensee or consumer. This provision does not debar a generating company to undertake the activity of trading which involves purchase of electricity for the purpose of sale thereof. As a trading licensee, a generating company can purchase power from a seller and sell the same to the buyer. In case of sale of power from its own generating station, since the generating company cannot purchase electricity from itself, therefore, an element of trading, i.e. “purchase of



power” cannot be fulfilled. Therefore, a generating company cannot trade electricity generated by it on the basis of licence granted to it. The generating company can supply the power generated by it only to a licensee or a consumer for which no trading licence is required. Therefore, the trading licence, if granted, to a generating company can be utilized for purchase and sale of power involving other entities. However, the generating company, if granted trading licence, shall be required to maintain separate accounts for trading activity by treating it as a separate cost center.”

In the light of the above provision and approach of The Commission, a generating company is eligible for grant of trading licence.

6. The matter was listed for hearing on 27.3.2023. During the course of hearing, the learned counsel for the Petitioner submitted that the Petitioner satisfies all the criteria for grant of Category ‘IV’ trading licence as stipulated in the Trading Licence Regulations. Learned counsel for the Petitioner submitted that as on 31.12.2022, the net worth of the Petitioner company is Rs.1066460.53 lakh. However, the Petitioner Company is not fulfilling the current ratio and liquidity ratio in terms of the Trading Licence Regulations. Accordingly, learned counsel for the Petitioner prayed to relax the criteria of current ratio and liquidity ratio under the provision of "Power to Relax" of the Trading Licence Regulations.

7. Learned counsel further submitted that the Petitioner had published notice of its application in the newspapers, inviting the objections or suggestions thereon in terms of Regulation 6(3) of the Trading Licence Regulations, and no objections or suggestions have been received in response to the notice published by the Petitioner.

8. We have examined the documents available on record. Regulation 6 of the Trading Licence Regulations provides for the procedure for grant of trading licence as under:

“6. Procedure for grant of licence

(1) Any person desirous of undertaking inter-State trading in electricity shall make an application to the Commission for grant of licence in the manner specified in Form-I appended to these regulations and such application shall be accompanied by-

(a) Such application fee as prescribed by the Central Government from time to time and shall be paid as per the procedure specified in Central Electricity Regulatory Commission (Payment of Fees) Regulations, 2012, as amended from time to time or any statutory re-enactment thereof.

(b) Copies of the annual reports in case of the persons incorporated under the Companies Act, 1956 or Companies Act, 2013 including audited accounts along with the Directors' Report, Auditors' Report, the Schedules and notes to accounts for one Year immediately preceding the Year in which the application has been made and the audited special balance sheet as on any date falling within 30 days immediately preceding the date of filing the application.

(2) The Applicant shall post complete application along with annexures and enclosures on its website so as to facilitate access to the application by any person through internet and shall keep them on the website till the disposal of the application.

(3) The Applicant shall within 7 days after making such application, publish a notice of its application, in two daily newspapers having circulation in each of the five regions in addition to those published from Delhi, including one economic daily newspaper in Form II, with the following particulars, namely:-

(4) The Applicant shall within 7 days from the date of publication of the notice as aforesaid submit to the Commission on affidavit the details of the notice published and shall also file the original complete page of the newspaper in which the notice has been published.

(5) The Applicant shall allow a period of 30 days to the public to file objections or suggestions to the notice of application published in the newspapers.

(6) The Applicant shall file its reply before the Commission within 30 days from the last date of receipt of objections or suggestions from the public.

(7) The Commission after consideration of the objections or suggestions received in response to the notice published by the Applicant and its reply may reject the application or may propose to grant licence.

(8) When the Commission proposes to grant licence, it shall publish a notice of its proposal in two daily newspapers, as the Commission may consider appropriate, stating the name and address of the person to whom it proposes to issue the licence and with such other details as the Commission considers appropriate, to invite further objections or suggestions to its proposal.”



9. The Petitioner has submitted the application as per Form-I along with the requisite fees.

10. The Petitioner has uploaded the application for grant of trading licence on its website in terms of Clause (3) of Regulation 6 of the Trading Licence Regulations and further placed on record the relevant copies of the newspapers in original in which notice of its application has been issued. The Petitioner vide its affidavit dated 24.1.2023 has submitted that notices under Sub-section (2) of Section 15 of the Act read with Clause (4) of Regulation 6 of the Trading Licence Regulations have been published by the Petitioner having circulation in each of the five regions on 19.1.2023 in 'The India Express (All editions), 'The Financial Express' (All editions), 'The New Indian Express' (Chennai edition) and 'The Assam Tribune' (Guwahati edition) It has been submitted by the Petitioner that no objection has been received in response to the public notices.

11. Proviso to Clause (1) of Regulation 3 of the Trading Licence Regulations provides that the Petitioner should have been authorized to undertake trading in electricity by its Memorandum of Association. We note that trading in electricity is covered under Main Objects of the Memorandum of Association of the Petitioner company. Paragraph A 3 of the main Objects of the Memorandum of Association of the Petitioner company reads as under:

"(d) To engage in the business of purchasing, selling, importing, exporting, trading or otherwise dealing in power and ancillary activities to operate, maintain and manage all form of power plants and station including transmission lines both in India and abroad."

12. In view of the above, it has been submitted by the Petitioner that it fulfills the requirements specified in Clause (1) of Regulation 3 of the Trading Licence Regulations.

The Petitioner has submitted that Memorandum of Association authorizes to undertake



transmission of electricity. In this regard, the Petitioner has submitted that it will not carry out transmission business without surrendering the trading licence, if granted by the Commission.

13. In accordance with Clause (3) of Regulation 3 of the Trading Licence Regulations, a person applying for Category `IV` trading licence should have net worth of Rs. 10 crore and should have maintained minimum current ratio and liquidity ratio of 1:1 as on the date of audited special balance sheet accompanying the application. The Petitioner has submitted audited special balance sheet as on 31.12.2022. As per the Trading Licence Regulations, the applicant is required to submit the specified balance sheet as on any date failing within 30 days immediately preceding the date of making the application. The Petitioner filed its application on 16.1.2022 and submitted specific balance sheet as on 31.12.2022.

14. Based on the special audited balance sheet as on 31.12.2022, net worth, current ratio and liquidity ratio have been worked out as under:

(Rs. in lakh)	
Net Worth computation	As per Special Audited Balance Sheet as on 31.12.2022
Particulars	
A) Paid up equity capital (1)	366588.17
B) Reserves and Surplus	
B.1. Capital reserves	0.00
B.2. Capital redemption reserve	0.00
B.3. Debenture redemption reserve	17087.50
B.4. Revaluation reserve	0.00
B.5. Share Options Outstanding Account & Reserves other than free reserves	0.00
B.6. Securities premium reserve	0.00
B.7. Surplus (P and L Account)	683846.84

B.8. Other free reserves (i.e. general reserve and cash flow reserve)	-1062.16
Reserves & Surplus considered for net worth (2)	699872.18
C) Loans and Advances given to associates (3)	0.00
D) Deferred expenditure (including miscellaneous expenses) not written off (4)	0.00
Net Worth (1+2-3-4)	1066460.35

15. The net worth of the Petitioner is further represented by the following:

	(Rs. in lakh)
Net worth (Asset approach), Current Ratio & Liquidity Ratio computation	As per Special Audited Balance Sheet as on 31.12.2022
A) Non-current Assets	
A.1 Net block of tangible asset	613804.37
A.2 Net Block of intangible asset	28.40
A.3 Capital work in progress	1249823.76
A.4 Intangible assets under development	0.00
A.5 Non-Current investments	2590.00
A.6 Deferred tax assets	83194.30
A.7 Long-term loans and advances	3302.94
A.7.1 Less: Loans & Advances given to Associates included in above	0.00
A.7.2 Net long term loans & advances (A.7 - A.7.1)	3302.94
A.8 Other non-current asset (Right of use assets, capital advances and prepaid expenses, etc.)	271544.16
A.9 Deferred expenditure (including Misc. Expenses) not written off (Not considered for net worth computation)	0.00
Total Non-Current Assets	2224287.94
Total Non-Current Assets considered for net worth (1)	2224287.94
B. Non-Current Liabilities, Preferential Share & Share Application money and Reserves other than free reserves	
B.1 Share application money pending allotment	0.00
B.2 Preference share capital	0.00
B.3 Long term borrowings	960456.73
B.4 Deferred tax liabilities	0.00
B.5 Other Long Term liabilities	159625.80
B.6 Long Term provisions	17637.35

B.7 Reserves other than free reserves	0.00
Total Non-Current Liabilities, Reserves other than free reserves considered for Net worth (2)	1137719.88
C. Current Assets	
C.1. Current investments	0.00
C.2. Inventories	3695.01
C.3. Trade receivables	114198.63
C.4. Cash and cash equivalents	9279.51
C.5 Short Term Loans & Advances	1843.19
C.5.1 Less: Loans and Advances given to associates	0.00
C.5.2 Net short-term loan and advances (C.5 - C.5.1)	1843.19
C.6 Other current assets	62455.59
C.7 Deferred expenditure	0.00
Total Current assets	191471.92
Total current asset considered for net worth (3)	191471.92
D. Current liabilities	
D.1. Short-term borrowings	101734.46
D.2. Trade payables	1510.16
D.3. Other current liabilities	73547.37
D.4. Short-term provisions	34787.65
Total Current Liabilities considered for Net worth (4)	211579.63
Net worth ((1-2)+(3-4))	1066460.35

16. Based on the above, the net worth, current ratio and liquidity ratio work out as under:

Sr. No.	Particulars	As per Special Audited Balance Sheet as on 31.12.2022
1	Net worth (Rs. in lakh)	1066460.35
2	Current ratio	0.90
3	Liquidity ratio	0.89

17. As per the above special audited balance sheet dated 30.6.2018, the Petitioner fulfills the requirement of net worth for grant of Category-IV trading licensee. However,

the Petitioner does not meet the requirement of current ratio and liquidity ratio specified in Regulation 3(3)(b) of the Trading Licence Regulations.

18. The Petitioner has submitted that as per Ind AS1, the capital liability which is due to be settled within twelve months after the reporting period have to be stated as 'current liability' payable for capital expenditure reflected in current liabilities pertains to assets which are enduring in nature. These liabilities are not part of working capital cycle and are capex in nature. THDC has under construction projects aggregating to 4764 MW (2764 MW standalone & 2000 MW under subsidiary company). THDC is also incurring substantial capex in integrated Coal Mining Project for 1320 MW of Khurja STPP. These Projects have long gestation period, before they get operationalized and generate revenue.

19. The Petitioner has submitted that in line with India's growing per capita consumption of electricity and government's initiative of 'Power for all', THDC has planned for adding substantial capacity over the next 10 years. In order to pursue this object, owing to advance stage of implementation of various projects, CWIP of the company has increased to Rs. 12498.24 crore from Rs. 4390.44 crore during the period from December, 2018 to December 2022. The Petitioner has submitted that current maturities of long-term debt which are due for repayment within the next financial year have been given under the broad classification-current liabilities and current borrowings. The primary purpose of obtaining long term funds is to finance capital projects and carrying out operation on an expansionary scale. Such funds are normally invested into avenues from which greater economic benefits are expected to arise in future. The Petitioner has submitted that around 2764MW capacity is slated to be added by



31.3.2025, which is expected to improve internal resources generation while ensuring that the ratios improve further. The Petitioner has prayed for relaxing the requirement of current ratio and liquidity ratio in terms of Regulation 23 (Power to Relax) of the Trading Licence Regulations.

20. We have considered the submissions of the Petitioner. THDC is a Mini Ratna CPSE (Central Public Sector Enterprise) as notified by the Department of Public Enterprises, Government of India. Thus, we note that by virtue of being granted the Mini Ratna, it is implicit that THDC has a strong balance sheet and has the trust of the shareholders. It is noted that THDC is adding 2764 MW capacity in a few years which may improve its current/ liquidity ratios. In light of the submissions of the Petitioner, we are of the view that in the case of THDC, despite the fact that it does not meet the current ratio and liquidity ratio criteria of the Regulations, it is financially sound with respect to liquidity for carrying out electricity trade. THDC meets other criteria for grant of trading license as required under the Trading Licence Regulations. Keeping in view the facts and circumstances of the case, we, in exercise of power conferred under Regulation 23 of the Trading Licence Regulations hereby relax the current ratio and liquidity ratio requirement in public interest

21. Further, in accordance with Clause (2) of Regulation 3 of the Trading Licence Regulations, the Petitioner should have at least one full-time professional having qualifications and experience in power system operation and commercial aspects of power transfer, finance, commerce and accounts. As per information submitted by the Petitioner, it fulfils the requirements of Clause (2) of Regulation 3 of the Trading Licence Regulations.



22. On consideration of the above facts, after a preliminary examination, we find that the Petitioner meets the requirements as specified in the Trading Licence Regulations for grant of Category `IV` trading licence. In view thereof, the Commission proposes to grant Category `IV` trading licence to the Petitioner. We direct that a notice under Clause (a) of Sub-section (5) of Section 15 of the Act be issued inviting further suggestions or objections to the proposal of the Commission.

23. The Petition shall be listed for final hearing on 4.5.2023.

**Sd/-
(P.K. Singh)
Member**

**sd/-
(Arun Goyal)
Member**

**sd/-
(I.S. Jha)
Member**

**sd/-
(Jishnu Barua)
Chairperson**

