

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
World Trade Centre, Centre No.1, 13th Floor, Cuffe Parade, Mumbai - 400 005
Tel. No. 022 22163964/65/69 – Fax 022 22163976
E-mail mercindia@mercindia.org.in
Website: www.mercindia.org.in

Case No. 99 of 2007

In the matter of
Application of M/s. Indiabulls Power Generation Limited for grant of licence in
accordance with the MERC (Trading Licence Conditions) Regulations, 2004

Shri. A. Velayutham, Member
Shri. S. B. Kulkarni, Member

ORDER

Dated: August 21, 2008

M/s. Indiabulls Power Generation Limited (“IPGL or the applicant”) submitted an application on February 2, 2008 in accordance with the MERC (Trading Licence Conditions) Regulations, 2004, for grant of licence under category ‘F’ to undertake intra-State trading of electricity above 1000 MU per annum in the State of Maharashtra.

2. IPGL submitted the following documents along with their Application:
 - a. Memorandum and Articles of Association of IPGL;
 - b. Names, particulars and experience of the promoters of IPGL and of persons holding key managerial positions in IPGL;
 - c. Net-worth certificate of IPGL [as on February 06, 2008] issued by Shri. Ajay Sardana, Chartered Accountant, on February 06, 2008.

3. Based on preliminary scrutiny of the application in accordance with Regulation 6.1 of the MERC (Trading Licence Conditions) Regulations, 2004, the Commission vide its letter dated March 24, 2008 directed IPGL to submit the following information.
 - a. Trading plans including the sources from where IPGL intends to buy power and the procurers to whom it intends to sell power;
 - b. Detailed profile of the management teams mentioned in the application, certified by the respective individual or by the authorized representative of the company;
 - c. Amount of equity contribution by the applicant as it proposes to finance the licensed business fully on its own balance sheet;



- d. Copy of un-audited financial statements as on February 06, 2008 on the basis of which the Chartered Accountant has issued the net worth certificate;
- e. Undertaking confirming no cases/ litigations are pending against the applicant or against any of its partners, directors or promoters.

IPGL was directed to remove the aforesaid deficiencies/defects pertaining to its application seeking trading license, so that the procedure for publication of notice, as referred to in Section 15(2) of the Electricity Act, 2003 (“EA 2003”) read with Regulation 7 of the MERC (Trading License Conditions) Regulations, 2004, could be complied with.

4. IPGL submitted the following additional information on March 28, 2008:

- a. Brief highlights of the proposed approach for IPGL to under take intra-State trading of electricity in the State of Maharashtra from the two power projects located in the districts of Nashik (2x 660 MW) and Amravati (4x660 MW);
- b. Detailed profile of the management along with the organization chart for key personnel;
- c. Details of the authorised share capital, issued, subscribed and paid up capital and share application money;
- d. Un-audited financial statements of IPGL as on February 6, 2008 and net worth calculations to supports auditors certificate;
- e. Undertaking confirming no cases/litigations pending against the trading application or against any of its partners, directors or promoters.

5. The Commission vide its letter dated April 23, 2008, informed IPGL that the application is ready for being considered for grant of licence in accordance with Regulation 6.2 of the MERC (Trading Licence Conditions) Regulations, 2004 and asked IPGL to submit the revised application incorporating the additional information submitted to the Commission and also directed to comply with the procedure of publication of notice in accordance with Section 15(2) of EA, 2003 read with Regulation 7 of the MERC (Trading Licence Conditions) Regulations, 2004.

6. Thereafter, IPGL vide its letter dated April 23, 2008 received on April 28, 2008, submitted the revised application incorporating the additional information and proof of publication of the notice of its application seeking license, in two English newspapers, viz., The Asian Age, The Free Press Journal and two Marathi language newspapers, viz., Mumbai Lakshadeep, Navshakti (in circulation in Maharashtra), both editions dated April 25, 2008.

7. Subsequently, the Commission in pursuance of clause (a) of sub-section (5) of Section 15 of the EA 2003 issued the Public Notice on June 20, 2008 to invite the suggestions or objections to the proposal to grant the trading licence to IPGL for intra-State trading of electricity in the whole of Maharashtra.



8. The Public Hearing in the matter was held on July 16, 2007 at the Commission's office to take up the application seeking licence. Shri. S Bhalerao and Shri R Gupta appeared for IPGL and submitted that with the publication of the notice of IPGL's application in both English and Marathi editions of newspapers dated April 25, 2008, the public were informed that objections, if any, may be submitted to the Commission directly. Subsequently, the Commission also issued the Public Notice in pursuance of clause (a) of sub-section (5) of Section 15 of the EA 2003 inviting suggestions or objections to the proposal to grant the trading licence to IPGL for intra-State trading of electricity. He submitted that no one has filed any objection/suggestion in regard to the said application.

9. The Commission after considering the submissions made in the aforesaid hearing held on July 16, 2008 and upon further scrutiny of the application and other documents submitted by IPGL, observed the following deficiencies which communicated through letter dated July 17, 2008:

- a. The Applicant is required to submit the Audited Accounts for FY 2006-07 and FY 2007-08 of the Applicant Company and the Auditor's certificate for the numbers given in the audited results
- b. The Applicant should reconcile the discrepancy of total equity shown in its un-audited balance sheet for share capital as Rs 21.50 Crore (including issued, subscribed and paid-up equity capital as Rs 0.50 Crore and share application money as Rs 21.00 Crore) as against the authorized share capital of Rs 1 Crore.

10. IPGL submitted the following information vide letter dated July 17, 2008 received on July 18, 2008:

- a. Audited Balance sheet (duly audited) for FY 2007-08
- b. IPGL submitted that as per the audited balance sheet, the authorised share capital is Rs 22 Crore, and issued, subscribed and paid up capital is Rs 21.50 Crore as per the Audited account as on March 31, 2008.
- c. IPGCL also submitted the revised Memorandum of Association indicating the revised authorised share capital.
- d. IPGL vide its additional information dated July 22, 2008 submitted a certificate from a Chartered Accountant confirming net worth as on March 31, 2008 as Rs 21.53 Crore.

11. On examination of IPGL's application for grant of intra-State Trading License in the State of Maharashtra and additional information submitted by IPGL in accordance with the provisions of MERC (Trading Licence Conditions) Regulations, 2004, observations and findings are made in the following paragraphs:



12. Regulation 5 of MERC (Trading License Conditions) Regulations, 2004 specifies the following eligibility criteria with respect to Technical requirement, capital adequacy requirement and creditworthiness:

“A. Technical Requirement

5.2 The applicant shall have not less than one full-time professional having experience in each of the following disciplines, namely:-

- (a) power system operations and commercial aspects of power transfer;*
- (b) finance, commerce and accounts*

Provided that the technical requirement of staff shall be complied with before undertaking the Licensed Business notwithstanding the fact that the Commission has granted the licence.

5.3 The applicant shall furnish to the Commission the details of the professional and supporting staff engaged by him on full time basis before undertaking the Licensed Business

IPGL, in its Application, has submitted details of key persons of the organization, i.e., the Managing Director, Director-Thermal, Vice President- Commercial and Assistance Vice President- Trading.

Based on brief resumes of the key persons provided along with the application, it is observed that the application submitted by IPGL meets the technical requirement laid down under Regulation 5.2 of the MERC (Trading License Conditions) Regulations, 2004.

B. Capital Adequacy and Credit Worthiness Requirement

As per Regulation 5.4 of MERC (Trading License) Regulations, 2004, the Net worth of the applicant shall not be less than Rs 20 Crore for trading of above 1000 MU per annum. Further, the Net Worth in MERC (Trading Licence Conditions) Regulations, 2004 is defined as follows:

“Net worth means, in the case of an individual or body of individuals, the sum total of cash, bank balances and market value of investments in listed securities as reduced by the amount of any loans and liabilities owing to any person, and, in case of any other person, the sum total of paid up share capital, share premium and such of the reserves as are eligible for distribution as dividend”

The Commission is of the view that, as IPGL is a Limited Company registered under the Companies Act, 1956, the criteria of Net Worth as applicable to any other person shall be applicable in this case. Thus, the Net-worth of IPGL needs to be



considered as the sum of paid up share capital, share premium and such of the reserves as are eligible for distribution as dividend.

IPGL along with its additional information vide letter dated July 22, 2008 received on July 23, 2008, submitted a Net worth Certificate from a Chartered Accountant certifying the Net worth of IPGL. As per the Certificate submitted, the net worth of IPGL as on March 31, 2008 is Rs 21.53 Crore. IPGL also submitted the Annual Accounting Statements along with Auditors Report for FY 2007-08.

13. Section 15(5)(a) of the EA 2003 stipulates as follows:

*“Before granting a licence under section 14, the Appropriate Commission shall -
(a) publish a notice in two such daily newspapers, as that Commission may consider necessary, stating the name of the person to whom it proposes to issue the licence.”*

In compliance with Section 15(5)(a) of the EA, 2003, the Commission issued a notice in two daily newspapers (English), i.e., The Times of India, Indian Express and two daily newspapers (Marathi) i.e., Maharashtra Times and Loksatta, on July 20, 2008.

In response to the aforesaid notice issued on August 20, 2008, the Commission did not receive any objections.

14. The Commission is of the view that IPGL, the applicant, has submitted before the Commission all requisite information in accordance with MERC (Trading License Conditions) Regulations, 2004. The applicant has also submitted undertaking that no cases/litigation are pending against IPGL and its promoters.

The Commission has carried out a detailed analysis of the eligibility of the applicant as against the technical requirement, capital adequacy and creditworthiness pursuant to the provisions under Section 52 of the EA 2003 and MERC (Trading License Conditions) Regulations, 2004 duly amended from time to time. Having considered the material placed on record, the Commission is of the view that the applicant satisfies the technical, commercial and financial requirements to qualify for the grant of licence to undertake intra- State trading in accordance with MERC (Trading License Conditions) Regulations, 2004.

15. In view of the above, the Commission hereby grants licence to M/s Indiabulls Power Generation Limited for undertaking intra-State trading of electricity above 1000 Million kWh per annum in the State of Maharashtra for a period of Twenty Five (25) years as specified under sub-section (8) of Section 15 of the Act. The licence is being granted to the applicant subject to the condition that if “conditions or circumstances” exists that casts a doubt on the ability of IPGL to perform its duties and obligations under the EA 2003, which shall mean and include cases of conviction of IPGL or any of its



partners, directors or promoters by a Court of Law or indictment / adverse order by a regulatory authority or which relates to a grave offence of such a nature that it outrages the moral sense of the community; insolvency and bankruptcy of IPGL or any of its partners, directors or promoters; pending legal proceedings; conviction of an offence involving moral turpitude, or any economic offence; fraudulent and unfair trade practices or market manipulation; financial integrity; competence; reputation and character, and any other sufficient reasons that cast a doubt on the ability of IPGL to perform its duties and obligations under the EA 2003, then the licence shall be liable for revocation under Regulation 4-A of the Maharashtra Electricity Regulatory Commission (Trading Licence Conditions) Regulations, 2006. Moreover, once any such order, as aforesaid, is issued by any court of law against the directors of the applicant as aforesaid, the trading activity under the licence hereby granted shall be stopped immediately whereupon the applicant would be liable to settle the existing liabilities arising out of already carried out trading activity, if any. The onus of intimating the Commission about any such order shall lie with IPGL and IPGL shall submit a copy of such order, on affidavit before the Commission immediately after the issuance of any of such order.

Further, as the applicant has submitted a trading plan for undertaking trading above 1000 MU per year in the next four years and 5000 MU in fifth year and as the license is being granted for a period of twenty five years to trade above 1000 MU electricity on an annual basis, until or unless revoked earlier, IPGL should also submit the detailed trading plans before the end of every fifth year for the subsequent five years.

16. Accordingly, the Commission directs that the Applicant be issued the license for Intra-State trading within the State of Maharashtra and a copy of the same be forwarded to Government of Maharashtra, all electricity transmission and distribution utilities in the State of Maharashtra and a copy be posted on the website of the Commission. The grant of license shall be subject to the Applicant complying with the provisions of the EA 2003, the rules framed by the Appropriate Government and regulations as specified by the Commission from time to time in all respects. IPGL shall abide by such trading margin, as the Commission may decide to fix under Section 86(1)(j) of the EA 2003 for Intra-State trading transactions in the State of Maharashtra. IPGL shall not engage in any trading transaction which would be detrimental to the interests of the electricity consumers in the State of Maharashtra.

Sd/-
(S. B. Kulkarni)
Member

Sd/-
(A. Velayutham)
Member



(P B Patil)
Secretary, MERC