

**CHHATTISGARH STATE ELECTRICITY REGULATORY
COMMISSION, RAIPUR**

Petition No. 33 of 2007(L)

Petitioner:

Global Energy Ltd.

In the matter of application of M/s. Global Energy Ltd. seeking license under CSERC (License) Regulation, 2004 for undertaking intra-state trading of electricity in the State of Chhattisgarh.

Present:

**S.K. Misra, Chairman
Sarat Chandra, Member**

**ORDER
(Dated 13/03/2008)**

M/s Global Energy Ltd., a company registered under the Companies Act 1956, has made an application under sub-section (1) of section 15 of the Electricity Act, 2003 (the Act), for grant of a license for intra-state trading of electricity in the whole of the state of Chhattisgarh (the State). The company is presently engaged in the business of trading of electricity in the State of Maharashtra and Uttar Pradesh. It has been in this business for the last five years and has approximately traded 400 million units. The company has given the following projection in its application of estimated quantum of power to be traded in the State of Chhattisgarh for five years.

Description	Unit	Year-1	Year-2	Year-3	Year-4	Year-5
Expected Trading Volume	MW	35	39	42	47	51
Available Hours per Annum for Trading	Hours	8760	8760	8760	8760	8760
Expected Availability of Trading Volume	%	25%	50%	50%	50%	50%
Expected Trading Hours per Annum	Hours	2190	4380	4380	4380	4380
Expected Trading Units	Mill. Units	76.65	170.82	183.96	205.86	223.38

Assumptions used above:			
Descriptions		Unit	Value
Expected Trading Volume	Year 1	MW	35
Available Hours per annum for Trading		Hours	8760
Expected Trading (% of Available Hours)	Year 2	%	25%
Expected Trading (% of Available Hours)	Year 2-5	%	50%

2. As per section 15 (2) of the Act, any person seeking license is required to publish a notice of his application inviting objections with such particulars in such a manner as may be specified. In this regard, Regulation 8 of the CSERC, (License) Regulations, 2004 (herein after the "License Regulation") requires that applicant should, within seven days from the date of admission of the application, publish a notice of the application in two local daily newspapers having wide circulation in applicant's area / proposed area of business. This Regulation also requires that the publication should give the addresses of the offices at which the documents therein referred to, may be inspected and the copies of the documents may be purchased and invite representations with regard to the application to be submitted to the Commission within thirty days from the date of publication. In accordance with the procedure laid down in sub-section (2) of section 15 of the Act, read with the above provision of the License Regulation, a notice was published by the company on 05.01.2008 in two newspapers published in the State, namely Dainik Bhaskar (all editions) and Nav Bharat (all editions). No objection / representation has been received by the Commission, in response to the notices.

3. The requirements for a trading license are given in regulation 44 and 45 of the License Regulations and are as under:

"Regulation 44:

- (1)
 - (a) *An applicant for trading licence shall have the technical capability and resources adequate to manage the intended volume of intra-state trade.*
 - (b) *The Commission may from time to time by general or special order decide about the technical capabilities to be maintained by the electricity trader.*
 - (c) *The applicant shall have at least one person in the management with qualification in engineering and adequate experience in electricity industry to comply with the technical requirements for discharging the functions of the electricity trader.*
- (2) *The electricity trader shall maintain the technical capability and resources as directed by the Commission and any changes made which affect such capability must be reported to the Commission with details of the changes. He should satisfy the Commission that the capability maintained thereafter is adequate to cater to the volume of trade undertaken by him.*

Regulation 45:

- (1) *The applicant shall declare to the Commission the maximum trading volume he proposes to handle in a month and its future plans of trading during the initial three years.*
- (2) *The applicant shall maintain at all times the capital adequacy and net worth sufficient to cover the maximum trading volume over an average settlement period of 30 days (one month) worth of credit subject to the minimum requirements as may be laid down by the Commission."*

4. Financial position of the applicant: In the provisions of the License Regulations cited above, there are no monetary limits for capital adequacy and networth as a financial requirement for trading license except for the general prescription that the licensee shall have "resources adequate to manage the intended volume of intra-state trade". However, as per regulation 6 of the Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of Trading licence and other related matters) Regulations, 2004, ("CERC Regulations" here in after) the networth of an applicant for license should not be less than Rs. 1.5 crore, to trade up to 100 Million units of

electricity in a year. This financial limit as prescribed by the CERC seems appropriate for this purpose and we would like to adopt the same.

We have examined the financial position of the applicant. The applicant has placed on record the annual reports including audited annual accounts and audit certificates for the period 2001-2002 to 2006-07. It has also placed on record networth certificates issued by Chartered Accountant. In the certificates based on the Audited financials as on 31.03.2002 to 31.03.2007 the Chartered Accountant has certified the networth of the Company as on 31.03.2002 to 31.03.2007 to be as follows:

Sl. No.	As on	Networth (Rs.)
1.	31.03.2002	17,76,91,760
2.	31.03.2003	18,82,89,662
3.	31.03.2004	27,30,02,794
4.	31.03.2005	24,94,40,332
5.	31.03.2006	23,67,83,966
6.	31.03.2007	26,77,89,365

The following is the annual turnover of the petitioner for the past six financial years:

(DD/MM/YY) to (DD/MM/YY)	Rs. in lacs
a) Year 1 (01.04.01) to (31.03.02)	9.80
b) Year 2 (01.04.02) to (31.03.03)	5.07
c) Year 3 (01.04.03) to (31.03.04)	555.43
d) Year 4 (01.04.04) to (31.03.05)	173.26
e) Year 5 (01.04.05) to (31.03.06)	123.41
f) Year 6 (01.04.06) to (31.03.07)	5348

The Commission on the basis of accounts submitted and the networth of the company is satisfied about the financial position of the company and that it meets the financial requirements for trading license as stipulated in regulation 6 of CSERC Regulations and regulation 45 of License Regulations.

5. Technical Capability of the applicant: Regulation 44 (1) (a) of "License Regulations" requires that the applicant should have "technical capabilities" and resources adequate to manage the intended volume of trading. In this regard the company has stated that it has traded power as early as 1986 through the "Wheeling and Banking" scheme of the Government of Karnataka and has already conducted trade of over 400 million units of power across all the five electricity regions of the country. Further, considering its capability, the U.P. Electricity Regulatory Commission (UPERC) vide order dated 06.03.2007 has permitted the company to undertake electricity trade for 50 million units per year within an upper ceiling of 7 MU per month in the state of Uttar Pradesh, for five years. Similarly, the Maharashtra Electricity Regulatory Commission (MERC) vide order dated 28.09.07 has permitted the company to undertake intra-state trading of electricity upto 100 MU per year in the next five years, on an annual basis.

The company has further stated that it has a fully functional trading desk and the necessary organizational capabilities to efficiently carry out activities related to the trading of power, with adequate office infrastructure with state-of-the-art communication facilities, computer systems and support personnel. The Chhattisgarh operations will be coordinated from its office and control room in New Delhi and local establishments set up in Raipur or other locations in Chhattisgarh as per requirement.

Regulations 44 (1)(c) of License Regulations requires that the applicant shall have atleast one person in the management with qualification in engineering and adequate experience in the electricity industry. The company has submitted the details of the core management team, which includes Shri Shiv Kumar Trikha, General Manager - Technical. The company has stated that Shri Trikha is an electrical engineer with close to 50 years of experiences and that he has immense experience in transmission systems, setting up and operating thermal power plants etc. He has received advanced training in Thermal Generation stations and HT / LT transmission systems.

From the above information as given by the company we come to the conclusion that the company meets the requirements of regulation 44 of the License Regulations.

6. On the basis of the documents filed before this Commission we are of the view that the applicant satisfies the technical and financial requirements for the grant of a licence to undertake intra-state trading in the State of Chhattisgarh in accordance with the Licensing Regulation. In coming to this conclusion the Commission has also taken note of the fact that the applicant holds intra-state trading licence, as already mentioned, in two other States namely, Maharashtra and Uttar Pradesh While in case of the intra-state licences for Maharashtra and U.P. some objections were filed, as the orders of the respective State Regulatory Commissions on the subject would reveal, no objection has been filed against the application in this State.

7. However, the Commission having taken cognizance of the fact that the applicant company was involved in some litigation and that there were criminal proceedings against its Directors, we asked company to submit the copies of the orders of UPERC and MERC permitting company intra-state trading of electricity and also the details and the latest status of the following:

- (i) pending litigation(s) against the company and the directors of the company;
- (ii) arbitration cases pending between the company and other organization(s) / government department; and
- (iii) cases pending, if any, before BIFR / AAIFR in respect of its sister concern / major shareholders of company.

The applicant has filed orders dated 28.09.2007 of MERC and orders dated 06.03.2007 of UPERC issued in the matter of grant of intra-state trading license to the company. The company has also filed an affidavit giving (a) a brief chronological summary of the proceedings related to applications filed by it before CERC for the grant of inter-state trading license and (b) the status of (i) CBI proceedings against Shri Harry Dhault and Smt. Laxmi Dhault; (ii)

arbitrations of disputes with Karnataka Power Transmission Corporation Ltd. (KPTCL); (iii) arbitration with Goa Electricity Department; (iv) arbitration with Tripura Electricity Department; (v) Reference before BIFR in respect of Belgundi Cement Ltd. It has also filed the following documents:

- (1) copy of the order dated 19.08.2004 of CERC in the matter of grant of inter-state trading license to the company;
- (2) copy of the order dated 28.08.2006 of CERC on the same subject;
- (3) copy of the order dated 07.06.2007 of the Hon'ble Appellate Tribunal for Electricity (ATE) on the appeal filed by the company against the orders of CERC in the matter of grant of inter-state trading license to the company;
- (4) copy of the order dated 10.12.2003 of Hon'ble High Court of Karnataka in the case filed by the company against KPTCL; and
- (5) copy of the order dated 02.01.2006 of the sole arbitrator Mr. Justice Shivashankar Bhat in the matter of arbitration of dispute between the company and KPTCL.

From the above documents the following position emerges:

- (i) The CERC has rejected the company's application for inter-state trading licence vide their order dated 28.08.2006, on the ground that the Commission did not 'consider the applicant to be a fit and proper person for grant of licence'. The ATE, however, on appeal, has remitted the matter to the CERC 'to consider afresh the question whether grant of licence to the appellant is likely to affect the interest of the electricity sector or the consumers in view of the involvement of the appellant in the legal proceedings'. In the License Regulations of this Commission there is no disqualification provision similar to Regulation 6A of the CERC Regulations under the provisions of which the company's application for inter-state trading licence has been rejected. However, if the grant of licence to the appellant is likely to affect the interest of the

electricity sector or the interest of the consumers, in view of the various legal proceedings against the company, it would be in the interest of justice and in consonance with the objectives of the provisions of the Act to refuse trading licence. No order has been passed by the CERC so far in the case pending for the grant of inter-state trading licence to the applicant.

- (ii) There are three arbitration proceedings pending regarding dispute with Karnataka Power Transmission Corporation, Goa Electricity Department and Tripura Electricity Department. These are all pending final adjudication. These cases do not have a bearing on the present application as they concern the power plant of Belgundi Cements Ltd. (BCL) which is the company which has promoted GEL.
- (iii) There was a reference to the BIFR in respect of BCL, which had become a sick industrial company. BIFR, however, had abated BCL's reference in view of the possession of company's plant and machinery taken over by Central Bank of India. We have been informed that BCL has preferred an appeal against this order. This case also has no direct bearing on the proposed trading activities of GEL.
- (iv) There is also a criminal investigation initiated by Central Bureau of Investigation (CBI) relating to a loan taken by GEL / promoters concerning the power plant of BCL. In this case serious allegations have been made against Mr. Harry Dhaul and Mrs. Laxmi Dhaul. We have been informed that presently the proceedings against both are pending at pre-charge stage before the court of Special Judge, Dharwad. The applicant has informed that the Board of GEL has since been reconstituted and these two Directors have resigned from the Board of Directors of GEL on 15.3.2007. The applicant has, therefore, claimed that Mr. Harry Dhaul and Mrs. Laxmi Dhaul 'are no longer associated with the management of GEL and any legal proceedings being contested by them in their personal capacity ought not to be considered as having a

bearing on the affairs of GEL'. We, however, find that Mr.Harry Dhaul and Mrs.Harry Dhaul hold 53.66% and 26.22% shares of the company respectively. Further in the application Mr.Harry Dhaul has been shown as member of the core management team of the company as Chief Knowledge Advisor. The extent of shareholding of Mr.Harry Dhaul and Mrs.Laxmi Dhaul in the company and the status of the former in the core management team of the company, indicate that these two persons are important to the company and that Mr.Harry Dhaul is in a position to influence the management of the company. Having said that we would also like to say that a mere charge is not a finding of any nature as to commission of an offence. It would not be appropriate to disqualify the applicant only on the basis of two of its major shareholders being charged in a criminal proceedings. None of the Directors of the company, nor for that matter the two persons holding majority of its shares as above, have been convicted of any offence. Under the circumstance, it would be injustice to deny the applicant trading licence only on the ground of criminal proceedings being pending against the two major shareholders of GEL. At the same time indictment by the court on the basis of the charge sheet submitted by the CBI may put interests of the consumers in jeopardy. The Commission would take into cognizance the outcome of the criminal case and decide on the fate of the license.

8. In the above background the Commission is of the view that the intra-state trading licence may be granted to the applicant subject to examination of the outcome of the criminal proceedings. Therefore, grant of a long-term licence at this stage may not be appropriate.

9. Trading Margin: The CERC in its notification dated 23.01.2006 has stipulated that the licensee shall not charge the trading margin exceeding four (4.0) paise / kWh on the electricity traded, including all charges, except the charges for scheduled energy, open access and transmission losses. The

UPERC in its order dated 06.03.07 has specified the trading margin of 4 paise per unit. MERC in its orders dated 28.09.07 has prescribed the trading margin of maximum 4 paise per unit. We also decide that the trading margin should be 4 paise / kWh till the Commission decides on trading margin separately for the State.

10. On the basis of above considerations, the Commission proposes to grant an intra-state trading license to the applicant for trading in electricity of the quantum applied for, initially for a period of one year which can be extended, on an annual basis, for a further period of four years subject to the conditions mentioned above. We direct that a notice under clause (a) of sub-section (5) of Section 15 of the Act be issued inviting suggestions or objections to the proposal of the Commission to issue the trading license.

sd/
MEMBER

sd/-
CHAIRMAN