

**Central Electricity Regulatory Commission  
New Delhi**

**Coram:**

1. **Shri Ashok Basu, Chairman**
2. **Shri G.S. Rajamani, Member**
3. **Shri K.N. Sinha, Member**

**Petition No. 130/2002**

**In the Matter of**

Review of order dated 09.5.2002 in petition No 54/2001 (*suo motu*) regarding regulations for procurement of electricity and electricity transmission services through competitive bidding.

**And in the matter of**

Power Grid Corporation of India Ltd

Review Petitioner

**The following were present:**

1. Shri B. Bhushan D (O), Powergrid
2. Shri Ashwani Jain, AGM (IPTC), Powergrid
3. Shri Akhil Kumar DGM (IPTC), Powergrid
4. Shri V.K. Sharma, Manager, Powergrid
5. Shri MS Chawla, NTPC

**ORDER**

(Date of Hearing 13.2.2003)

Power Grid Corporation of India Ltd ("PGCIL", for short) through this application filed under Section 12 of the Electricity Regulatory Commissions Act, 1998 ("the Act", for short) read with Section 114 and Order 47 of the Code of Civil Procedure, seeks review of some of the Commission's directions in order dated 09.5.2002 in petition No 54/2001 (*suo motu*).

2. Under clause (d) of Section 13 of the Act, the Commission is assigned the function to promote competition, efficiency and economy in the activities of electricity industry. In furtherance of this function, the Commission invited comments on the Draft Regulations on

Competitive Bidding ("the Regulations", for short) prepared by M/S Pricewaterhouse Coopers (India) Ltd. the Consultants appointed by the Commission, as a *suo motu* Petition No 54/2001. In the light of the comments received from some of the stakeholders and after hearing the parties participating in the process, the Commission passed an order on 09.5.2002. The instant petition has been filed by PGCIL in which review of some of the directions contained in the said order dated 09.5.2002 has been sought. Although the proceedings in the present application for review are strictly not adversarial in nature, yet, at the instance of the Commission, all the stakeholders who had participated in the original proceedings were issued notices. However, only BSES Limited has responded to the application for review. The issues raised by PGCIL and our decisions thereon are discussed in the succeeding paragraphs.

### **Jurisdiction**

3. PGCIL in the original proceedings had questioned the jurisdiction of the Commission to prescribe the regulations for competitive bidding or the procedure for private participation and other related matters proposed to be prescribed through the Regulations. The Commission, in the order under review had rejected PGCIL's objection. PGCIL, based on a letter dated 20.2.2002 written by Ministry of Power to the then Solicitor General of India, has now conceded that the Commission is clothed with jurisdiction and authority to issue guidelines for competitive bidding. PGCIL, however, has now submitted that prescribing the procedure through the Regulations for the Central Transmission Utility ("CTU", for short) to follow is tantamount to micro managing its activities. Accordingly it has prayed for review.

4. When viewed in the light of Ministry of Power letter dated 20.2.2002 which has been accepted by PGCIL, the question of jurisdiction of the Commission to lay down the procedure

for competitive bidding gets settled. However, it is clarified that this jurisdiction cannot be limited to issuing guidelines on competitive bidding only, but covers the entire gamut of the process. The Commission is empowered to specify the detailed procedure in order to fulfill its obligations under the statute.

### **Applicability of the Regulations**

5. Paragraph 14 of the order under review states that in cases of the projects already in progress on the date of coming into force of the Regulations, the Commission shall be approached for exemption of the steps already completed and the Commission shall take a view on a case-by-case basis. PGCIL has submitted that in its understanding, the Commission would exempt the steps already taken before coming into force of the Regulations yet to be notified. In view of the above, PGCIL has prayed for review and suitable modification. The issue raised is primarily of the nature of clarification regarding the date of applicability of the Regulations, after finalization.

6. We would like to seek reference to the Ministry of Power's letter dated 20.02.2002 on this issue, according to which, *"in respect of ongoing current projects, where POWERGRID has already taken the initiatives and moved ahead, petitions will be submitted by POWERGRID to CERC for approval of procedure adopted thus far and the proposed steps for completion of the bidding process"*. PGCIL has already accepted views of the Ministry of Power in the proceedings before Delhi High Court. Thus, it is clear that view of the Ministry are in consonance with the directions of the Commission and no review is required on this ground. CTU shall have to take necessary steps in accordance with the view of the Ministry and the Commission which are congruent so far as the ongoing projects are concerned.

### **Benchmark Price**

7. Paragraph 18 of the order under review specifies that the benchmark price fixed by CTU should be kept secret but paragraph 58 of the order contains a stipulation for providing "tariff profile" to the bidders. PGCIL has made out that there is a contradiction between the directions under paragraph 18 and paragraph 58. Further, according to PGCIL, the prices in privately funded IPTC projects, would be purely based on market and it will not be feasible to estimate the market conditions with any level of confidence. In such a scenario, the benchmark price prepared by the procuring agency based on its own assessment may not reflect the true price. PGCIL has, therefore, requested that the Commission may prescribe the basis for preparing the benchmark price. As against the Commissions direction that the benchmark price shall be a single number without any confidence interval, PGCIL has suggested that the benchmark price should have some pre-determined confidence interval say 10%, that is, Transmission Service Charges proposals above benchmark price + 10% needed to be rejected.

8. We do not find any contradiction between directions contained in paragraph 18 and paragraph 58 of the order under review as has been attempted to be made out by PGCIL. The term "tariff profile" need to be understood as tariff structure, including its type, (levelised / front loaded/ back loaded), specifying cap on foreign currency component, allowable year to year variation in tariff, incentive payment structure, etc. When so construed, the term "tariff profile" cannot by itself stated to be benchmark price per se. Thus, the direction regarding disclosure of tariff profile does not amount to direction for disclosure of benchmark price, since two are different. On the issue of providing for confidence interval on the benchmark price, we tend to agree with PGCIL. In the face of very limited experience of competitive bidding, we feel that there is a need to provide for confidence interval. On reconsideration of

the issue, we direct that a confidence interval of 10% over the benchmark price in the case of competitive bidding for procurement of electricity and transmission services shall be provided. The provision for confidence interval may be reviewed once sufficient experience of the bidding process in transmission sector is gained. PGCIL in the application for review has prayed for prescription of procedure for determination of benchmark price. We have considered the matter. The benchmark price shall be the price of generation of power or transmission service which the procuring agency, PGCIL in this case, will incur on a similar project in case the project is implemented by the concerned agency and shall include additional charges, if any, authorised by the Commission from time to time. As already directed the confidence interval of 10% will be provided over the benchmark price so arrived at.

#### **Term of Transmission Service Agreement (TSA)**

9. In paragraph 21 of the order under review, the Commission had decided that for transmission projects, term of the TSA should be 30 years as stipulated in Commission's order dated 14.6.2001 and subsequent notification dated 24.8.2001 and any modification thereof from time to time. PGCIL has submitted that the Commission, vide its order dated 26.04.2002 has clarified that the transmission license, though initially valid for 30 years from the date of issue, may be suitably extended by the Commission to include the period spent on construction of the project. This will ensure that the license remains in operation for a total period of 30 years from the date of commercial operation. In view of above, PGCIL has prayed for review and suitable modification in this stipulation.

10. As stated by PGCIL, the issue already stands concluded in view of the clarification by the Commission in its order dated 26.4.2002. The relevant part of the order under review shall be amended accordingly.

### **Foreign Currency Indexation**

11. In paragraph 23 of the order under review, in regard to treatment of foreign currency indexation it is provided that, as a first step, the procuring agency should specify limits (cap) for the amount of tariff qualifying for foreign currency indexation, which should be justified before the Commission. PGCIL has submitted that furnishing a justification to the Commission for fixing these limits should not be necessary and this should be left to the procuring agency, CTU in case of procurement of transmission services. According to PGCIL this is in line with the direction of the Commission in the Order dated 27.3.2002, regarding guiding factors for preparation of RfQ / RfP documents, according to which CTU may specify upper limit for foreign exchange component.

12. We have considered the suggestion of PGCIL with utmost care. We agree that it may not be possible to justify a precise number for the foreign currency cap, but we do believe that it should be possible to justify the cap through the process of approximation, if not exactly, because there has to be some basis for deciding the cap as the number decided surely cannot be fixed by hunch. We also recognize that this shall be one of the important parameters on which level of participation in the bidding process shall depend. However, in line with our policy of leaving the micro-management of the bidding-process for the Inter-State Transmission Service (ISTS) to CTU, we leave this decision to CTU. We are hopeful that CTU shall be alive to the parameters affecting level of competition in procurement of services and shall take necessary corrective action as and when called for.

### **Coordination with State Electricity Regulatory Commission**

13. In paragraph 24 of the order under review, the Commission had directed that the procuring agency should ensure proper coordination with the State Commission in the matters related to requirement of power by concerned State, capacity to pay for power and other matters that fall within the jurisdiction of the State Commission. PGCIL has submitted that the projects being implemented by CTU involve all the SEBs in a particular region in case of regional projects and all the SEBs of two or more regions in case of inter-regional projects. According to PGCIL, approaching / petitioning concerned SERCs of all the States for finalizing the requirement of power by concerned State and the capacity to pay for power and other matters will be a daunting task which may take appreciably long time and derail the whole process of private investment in transmission. PGCIL's view is that since agreements are reached with all the concerned SEBs before taking up the project, the concerned SEBs should be responsible for coordination with their State Commissions on the matter related to requirement of power and capacity to pay. In view of above, PGCIL has prayed for review of this stipulation.

14. In view of the practical difficulties pointed out by PGCIL, we dispense with this condition of coordination by CTU with State Commissions for procurement of transmission services through competitive bidding in cases of inter-state and inter-regional projects, it will be the responsibility of the concerned SEB/State Utility to obtain necessary clearances from the State Commissions before entering into any agreements with PGCIL/CTU.

### **Land acquisition and other clearances**

15. The regulation 12(4)(a) of the Regulations states that the procuring agency shall acquire and obtain access right for construction. Further, in paragraph 26 of the order under

review, it is, inter-alia, stated that land acquisition requirement outlined in the regulation 12 (4) (a) will equally apply for rehabilitation and resettlement land. PGCIL has submitted that the land is generally not acquired for transmission line projects. However, for sub-station projects, land is required to be acquired. In such a scenario, prior acquisition of land should not be a condition before initiating the tender process for private participation and instead, it can be included as a condition precedent of the procuring agency.

16. The purpose of the stipulation as contained in the regulation 12 (4)(a) and paragraph 26 of the order under review is to save the private entrepreneurs from the hassles of acquiring land, etc. The purpose will be served even by including this as the condition precedent of the procuring agency. We, therefore, are accepting the suggestion of PGCIL. In the light of this decision, the draft regulation may be suitably modified.

17. PGCIL has also sought review of the direction contained in paragraph 27 of the order under review, whereby the Commission had declined to reconsider sub-clause (d) of clause (4) of the draft regulation 12, which lays down that the different in-principle clearances (IPC), viz., in-principle clearance from Ministry of Environment & Forests and techno-economic clearance (TEC) from CEA that may be obtained before the procuring agency petitions the Commission for obtaining approval of process. PGCIL has submitted that it may not be practical to obtain in-principle clearance from Ministry of Environment and Forests and TEC from CEA before starting the process for private participation in transmission. Unlike generation projects, where zero date starts from the date of approval, the transmission systems linked with generation projects are required to be completed in the given time frame matching with the commissioning of generation project, irrespective of the time taken in approval. Further, transmission projects are generally not considered for approval unless the



corresponding generation project is far ahead in the approval process. Therefore, all the approvals are not likely to be available beforehand but are required to be obtained parallelly during the bidding process to avoid a mis-match. In such a situation, it will be better to include TEC from CEA and application for in-principle clearance from Ministry of Environment and Forests in case of transmission line projects as a condition precedent of the procuring agency.

18. As far as TEC from CEA is concerned, we agree with the suggestion of PGCIL to include in the condition precedent of the procuring agency. However, the responsibility for obtaining the forest clearance will be that of the qualified bidder. Therefore, obtaining forest clearance need not be included as condition precedent of the procuring agency

#### **Transmission Service Charges**

19. The Commission, vide paragraph 28 of the order under review had directed that the regulation 12(5) be suitably amended to provide for demonstration of paying capacity (either on its own capacity or its off-takers capacity or both) of the procuring agency for purchase of transmission services to be availed of from the reference scheme. PGCIL has submitted that PGCIL as the procuring agency can pay transmission service charges (TSC ) to the private developers based on back-to-back arrangements with the SEBs and would not be in a position to demonstrate the paying capacity of the SEBs. Further, a suitable provision for reimbursement of PGCIL's expenses during construction and O&M phase of the project, needs to be devised to compensate PGCIL for various services to be rendered by it, namely. supervision and control of transmission licensee during construction phase, and collection charges, and the expenses for supervision and control of licensee during operational phase etc.

20. We have considered the arguments of PGCIL carefully. In case of bidding for ISTS the process shall be carried out by CTU, a statutory entity. PGCIL, with turn over of more than Rs.2000 crore has been declared CTU by the Central Government. In view of this, the bidders may not be apprehensive about recovery of the transmission charges. We, therefore, relax the condition of demonstration of paying capacity in case of competitive bidding for transmission services. On the issue of compensation for undertaking statutory duties by CTU, the Commission, in its earlier order dated 04.07.2002 in petition No.80/2002, has already directed PGCIL to file separate petition giving detailed justification on this issue. No further directions need to be given at this stage.

### **Bidding**

21. In paragraph 31 of the order under review, it has been directed that minimum number of bids should be prescribed for RfQ and RfP stages and no restriction should be imposed on the maximum number of bids at any of these stages. It has been further directed that the procuring agency may proceed further only after obtaining approval of the Commission in case number of valid bids falls below the minimum prescribed number. Paragraph 32 of the order contains a direction that if 4 bidders were pre-qualified and they formed 2 consortia of pre-qualified bidders, then this should not attract provisions on level of competition. Further, the Commission has directed to amend the regulation 37 of the Regulations to allow for a modified tender process to take place in case of exceptional circumstances, if there are justifiable reasons for lack of the minimum number of compliant bids that could not have been reasonably foreseen and tender process should be allowed to proceed. PGCIL has submitted that the level of competition depends upon various market parameters, e.g., the attractiveness of the project and the other avenues available to the investor. According to PGCIL, once the competitive bidding process is followed, with tender documents that

encourage competition in a fair and transparent manner, the number of parties participating in the tender process becomes meaningless and loses its significance. However, to ensure larger participation, the qualifying requirements may be designed so as to ensure participation by the interested parties, who can develop the project as per stipulated requirements. It is submitted that the qualifying requirements specified by Commission, vide its order dated 27.03.2002, disqualify all Indian parties for 400 kV transmission line projects. In such a scenario, it would not be possible for procuring agency to justify less than 3 bids and still be responsible for constructing the project in time even if the process is stopped because of less than 3 bids. It is further submitted that re-tendering, due to non-availability of minimum 3 compliant bids, may have the same fate, if the base conditions of the documents are not changed. As the revised conditions are again required to be approved by the Commission, this may totally derail the completion schedule of the project, causing serious evacuation problems from the generations projects. PGCIL has sought review of the directions.

22. So far as the stipulation regarding the minimum number of bids is concerned, we reiterate the earlier direction of the Commission that the requirement of minimum number of valid bids has to be provided to ensure some level of competition in the bidding process. However, in case number of valid bids is less than three CTU shall approach the Commission for approval with relevant facts and requisite details of the case. As regards the issue of disqualification of Indian parties for 400 KV projects raised in the application for review, we accept the suggestion of PGCIL to allow the parties having experience of 220 KV projects to be eligible for bidding for 400 KV projects also. The revised conditions for re-tendering, if conforming to the guiding factors for preparation of RfQ/RfP documents as approved by the Commission, do not need approval of the Commission. However, if there are deviations from these guiding factors, the prior approval of the Commission shall be a *sine qua non*. The

Commission on its part shall accord the highest priority to disposal of the petitions filed before it for approval of the deviations.

### **Approval of the Commission**

23. The Commission in paragraph 34 of the order under review had observed that Chapter V of the regulations prescribes the role of the Commission, in approval of tariffs through the competitive bidding process, to ensure that the prescribed procedure under the Regulations is complied with and deviations, if any, properly explained. The Commission's role envisaged under the Regulations is of overview rather than of direct involvement in all stages of the bidding process. PGCIL has now submitted that the Commission may not ask for its approval at various stages of the process in the light of the clarification about its role of overview, rather than direct involvement in the bidding process. Instead, the Commission may be satisfied with the affidavit, which may be submitted by the procuring agency regarding the compliance of the guidelines along with the document(s) for information, if necessary. Otherwise, private investment in transmission sector is anticipated to be difficult as the private investors may be discouraged due to the uncertainty of the timeframe due to intervention of the Commission at every stage of the bidding process.

24. The Commission in the order under review has made it clear that in case of any conflict between provision of that order with the order and notification on the transmission licence, the latter shall prevail. The Commission in its order dated 14.06.2001 in petition No 111/2000 (Terms and conditions of transmission licence) has made it clear that Commission's approval need not be taken for each stage. This approval is required only in case of any deviation from the prescribed procedure. The approval requirements in case of inter-state transmission are already in line with the suggestion of PGCIL. The decision of the Commission in Petition No

11/2000 *ipso facto* applies to the present case as well. The provisions for approval of the Commission in case of deviations, are being made as a confidence-building measure and need to be well-received by the private investors.

### **Approval of RfP/RfQ**

25. In paragraph 35 of the order under review it is envisaged that approval of project documentation (RfQ/RfP) and project agreements would precede the issue of RfQ document as the public hearing at approval of process stage is expected to generate public opinion and views on the agreements. Further, in paragraph 82 of the order under review, CTU has been directed to prepare model RfQ/RfP documents and put the same for approval of the Commission. Once RfQ/RfP documents have been standardized with the approval of the Commission, these would be automatically used for subsequent procurements and CTU would need to take approval of the Commission for any deviations to the approved documents. PGCIL has submitted that the Commission, vide its order dated 27.3.2002, has issued guiding factors for preparation of RfQ/RfP documents. Therefore, RfQ/RfP documents should not be required to be approved by the Commission for each project as a part of the approval of the process. PGCIL has requested the Commission to review and suitably modify these stipulations.

26. The fact that the Commission vide its order dated 27.03.2002 had issued guiding factors for preparation of RfQ/RfP documents for transmission, got inadvertently overlooked while issuing the order under review. We direct that the direction regarding preparation of RfQ/RfP documents as per the Commission's order dated 27.03.2002, as modified from time to time shall govern the preparation of RfQ/RfP documents for the purpose of procurement of transmission service through the process of competitive bidding. As per the Commission's

order dated 27.03.2002 the approval of the Commission is not necessary at every stage as long as the guiding factors for preparation of the RfQ/RfP are followed. The approval will be required only in case of deviation from the prescribed procedure/guiding factors.

#### **Petition for approval of tariff**

27. The Commission, in paragraph 37 of the order under review has expressed that the developers and the procuring agency should ensure that their proposed agreements are fully acceptable to the lenders and the Commission would not allow any change in the agreements nor entertain any petition for change on the ground that the changes are being affected to meet the requirements of the lenders. PGCIL has submitted that the developers and CTU may not always be in a position to ensure the acceptability of proposed agreements by the lenders, till it grants full liberty to CTU to draft the agreements/documents. PGCIL has prayed for review and suitable amendment to this stipulation.

28. In view of the order dated 27.03.2002 issuing guiding factors for preparation of RfQ/RfP documents in case of transmission services, we allow changes in the agreements as long as they conform to these guiding factors. However, if the lender's requirements are in deviation from these guiding factors, the same should be got approved by the Commission.

#### **Process Time Schedule - Pre-bid conference**

29. The Commission in paragraph 38 of the order under review had observed that there should not be any problem for the procuring agency in conducting another pre-bid conference 8 weeks after distributing RfP document, in addition to the first pre-bid conference within 2-4 weeks after distributing RfP document. PGCIL has submitted that the time to hold first pre-bid conference within 2-4 weeks after distributing RfP document is too short. The bidders should

be given enough time to study the provisions of RfP document and discuss the same with their lenders before conducting any meaningful dialogue during pre-bid conference. PGCIL has, therefore, suggested that first pre-bid conference should be arranged within 8 weeks after distributing RfP document. Further, PGCIL has submitted that conducting second pre-bid conference, will elongate the process time without achieving any useful purpose. It has also mentioned that the bidders may request for the time extensions for the pre-bid conference and also the bid opening, which also elongates the process timetable. Accordingly, PGCIL has requested for review and suitable amendments to this stipulation.

30. We have in the order under review given liberty to the procuring agency to conduct another pre-bid conference 8 weeks after distributing RfP document. Therefore, PGCIL is free to hold second pre-bid conference after 8 weeks, if required. The process will further smoothen out after the experience of a few bids for ISTS. We, are, therefore not inclined to accept suggestion of PGCIL in this regard.

31. Schedule 1 of the Regulations prescribes process time table. PGCIL has now submitted that the process timetable, which is one year, proposed in Schedule 1 of the Regulations by the Commission is not adequate because (i) approval from the Commission at various stages is involved, (ii) time given to procuring agency for its activities is too short, and (iii) the bidders may be requesting for time extensions at various stages. According to PGCIL, minimum process timetable should be one year and five months as per the details enclosed at Annexure-1 of the application for review against one year decided by the Commission.

32. In our view, the arguments put forward by PGCIL are not tenable. The Commission in paragraph 43 of the order under review had clearly brought out the reasons for tight time

schedule for the bidding process. The Commission made it clear that the time required for sorting out deviations would not be counted as part of the process timetable. It has already been clarified that in case of bidding for ISTS, approval of the Commission is not necessary at every stage. The approval is required only in case of deviation from the prescribed procedure or deviation from the guiding factors for preparation of RfQ/RfP documents. The Commission has already made it clear that the petitions for approval of deviations shall be given highest priority. However, we give CTU liberty to grant suitable time extension to all the bidders, if approached by any one of them on being satisfied of the merits of the request for extension of time.

33. The paragraph 43 of the order under review states that the time required to for sorting out deviations shall not be counted as part of the process timetable. According to PGCIL, the total time taken from the date of submission of the petition to the receipt of the order including reviews, if any, should not be counted as part of the process timetable. Accordingly it has sought review of the direction.

34. The Commission, in paragraph 46 of the order under review has made it clear that the process timetable as well as approval of process validity, shall be extended by the time taken for public hearing(s). We again clarify that the time period from the date of filing the petition to that of issue of order shall not be counted as the part of the prescribed process timetable. However, in order to discourage the tendency of seeking review on frivolous grounds, time taken in disposal of application for review shall not have the effect of extending the process timetable.



35. In paragraph 46 of the order under review the Commission had stressed on the importance of including guidance on key aspects of the tender documentation in order to facilitate and encourage standardization, transparency, fairness and competition. PGCIL has submitted that the Commission has already issued guiding factors for preparation of RfQ / RfP documents vide its order dated 27.03.2002. Therefore, according to PGCIL, no further guidance on process and key aspects of the tender documentation was required.

36. We have noted the contention of PGCIL. We are of the opinion that there are certain provisions in Schedule 1- "Best practice guidelines for bidding process" of the Regulations, which are not contradictory with the guiding factors for preparation of RfQ and RfP documents for ISTS issued separately by the Commission. Therefore, the guiding factors for RfQ/RfP documents need to be amended to include the provisions in the best practice guidelines, which are relevant to the bidding for transmission service and are not contradictory with these guiding factors.

37. The Commission, in paragraph 48 of the order had upheld the provision of the Regulations that correspondence from a bidder should be communicated to all bidders. PGCIL has submitted that disclosing correspondence of one bidder to other may amount to breach of confidentiality. PGCIL is of the opinion that clarifications on documents, if any, issued at the request of one bidder shall be given to all the bidders without disclosing the identity of the bidder, who sought the clarification.

38. We would like to clarify that the intention of the Commission was only to communicate to all the bidders the clarification sought and the clarification issued. We appreciate that circulating copy of the correspondence of a bidder to others would amount to breach of

confidentiality. We, therefore, accept the submission of PGCIL that clarifications on documents, if any, issued at the request of one bidder shall be given to all the bidders without disclosing the identity of the bidder. The relevant part of the Regulations shall be modified accordingly.

39. In paragraph 49 of the order under review, the Commission has expressed that in the interest of over all transparency; it is essential that the Commission be informed of the competition levels and the essential details. PGCIL has sought clarifications as to whether the information regarding competition levels shall be submitted through a petition or otherwise. Further, PGCIL has sought clarification regarding the information to be submitted under the essential details.

40. It has already been clarified that in case of procurement of transmission services, approval of the Commission at each stage is not required. Therefore, CTU need not approach the Commission by filing petitions unless there is deviation from the prescribed procedure or the guiding factors. If the Commission considers any information essential, the same may be sought at the time of issuance of license or approval of tariff.

41. The Commission, in paragraph 50 of the order under review had upheld the provision in the Regulations that the applicant can be qualified at the RfQ stage on his own, but for the RfP stage, the bidders shall identify and obtain in-principle commitments from the financiers and equipment suppliers. PGCIL has submitted that the lenders may refuse to commit themselves to provide the finances for the project at the stage of submission of RfP. PGCIL has prayed that instead of in-principle commitment, expression of interest from the lenders may be sufficient at the time of submission of RfP.

42. In view of the facts mentioned by PGCIL, we accept the suggestion.

43. The Commission in paragraph 56 of the order under review had expressed that the Regulations required that the procuring agency laid down and justified the bid-evaluation criteria that it proposed to use, during the approval of process stage. PGCIL has submitted that the guiding / governing factors issued by the Commission vide its order dated 27.3.2002 includes the bid-evaluation criteria and hence, submission of bid-evaluation criteria again for the approval of Hon'ble Commission should not be required.

44. We agree that approval of the Commission is not required unless the procedure prescribed by the Commission or the guiding factors issued by the Commission has not been adopted in case of the bidding for procurement of transmission services.

45. PGCIL has pointed out that there are various orders of the Commission on the issue of private sector participation in transmission i.e., order dated 14.6.2001 in Petitions No.111/2000, notification dated 24.8.2001, notification dated 21.9.2001, order dated 27.3.2002 on guiding factors for RfQ/RfP documents and order dated 9.5.2002. There is also a letter dated 20.2.2002 from Ministry of Power. The requirements in these orders overlap and need to have clarity. PGCIL has prayed that the Commission may issue a comprehensive document incorporating the final position.


46. We agree that comprehensive regulations for "the procedure for bidding leading to award of transmission Licence, Terms & Conditions of Licence and other related matters" need to be issued to bring various orders in harmony. These comprehensive regulations shall be based on the order dated 14.6.2001 in the matter of Grant of License- Procedure, Terms &

Conditions of License and, notification dated 24.8.2001 based on this order, order dated 27.3.2002 in the matter of guiding factors for preparation of RfQ & RfP and order dated 9.5.2002 in the matter of Regulations for procurement of electricity and electricity transmission service through competitive bidding and orders in the review petition No. 85/2002, 115/2002 and the instant review petition that is, 130/2002. The provisions relevant to the bidding for procurement of the transmission service as contained in the draft regulations for the competitive bidding (as amended according to the order under review and this order) shall also be adopted for preparing these comprehensive regulations. Consequently, the regulations for competitive bidding shall contain only provisions relevant for competitive bidding for procurement of generation only.

47. Subject to decisions in the present review petitions, the directions contained in the order under review shall continue to apply.

48. We, therefore, direct that comprehensive notification covering the procedure for competitive bidding for procurement of electricity and electricity transmission services shall be issued immediately.

49. With these directions, the petition No. 130/2002 stands disposed of.



(K.N. SINHA)  
MEMBER



(G.S. RAJAMANI)  
MEMBER



(ASHOK BASU)  
CHAIRMAN

New Delhi dated the 9<sup>th</sup> May, 2003