

CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI

Petition No.176/2011 (Suo-motu)

Coram: Dr. Pramod Deo, Chairperson  
Shri S.Jayaraman, Member  
Shri V.S.Verma, Member  
Shri M.Deena Dayalan, Member

Date of Order: 4.1.2012

**In the matter of**

Tariff of Western Region System Strengthening Scheme-II (Project B and C) after concession period of 25 years.

And

**In the matter of**

Western Region Transmission (Maharashtra) Pvt. Ltd., Mumbai  
Western Region Transmission (Gujarat) Pvt. Ltd., Mumbai  
Power Grid Corporation of India Limited, Gurgaon  
Maharashtra State Electricity Distribution Company Ltd., Mumbai  
Gujarat Urja Vikas Nigam Ltd., Vadodra  
Chattisgarh State Electricity Board, Raipur  
Electricity Department, Government of Goa, Panaji  
Electricity Department, Administration of Daman and Diu, Daman  
Electricity Department, Dadra and Nagar Haveli, Silvassa  
Madhya Pradesh Audyogik Kendra Vikas Nigam Ltd., Indore  
M.P. Power Trading Company Ltd., Jabalpur

....Respondents

**Parties present:**

Shri M Ramachandran, Advocate for PGCIL  
Ms. Swapna Seshadri, Advocate, PGCIL  
Shri Amit Kapur, Advocate, WRSSS-II  
Ms. Sugandha Somani, Advocate, WRSSS-II  
Ms. Poonam Verma, Advocate, WRSSS-II  
Ms. Apoorva Misra, Advocate, WRSSS-II  
Shri LN Misra, RETL  
Shri Anil Rawal, RETL  
Shri Manoj Dubey, Advisor, MPPTCL  
Shri M.M. Patnaik, PGCIL  
Shri Y. Dutt, PGCIL  
Shri Dhermendra Sharma, PGCIL



ORDER

The present proceeding was initiated by the Commission *suo motu* on a reference received from Ministry of Power, Government of India seeking a confirmation that the buy-out price quoted by Reliance Energy Transmission Limited (RETL) for six transmission lines in Maharashtra associated with Western Region System Strengthening Scheme-II Project B and three transmission lines in Gujarat associated with Western Region System Strengthening Scheme-II Project C (hereinafter referred to as “WRSSS-II Project B and Project C”) shall form the basis for determination of tariff at the end of the concession period of 25 years.

2. The background facts of the matter are as under:-

(a) The Commission had approved the process and procedure for implementation of WRSSS-II Project B and Project C vide letter dated 22.9.2005. The procedure envisaged for selection of the implementing agency based on the capital cost proposal and financial package submitted by the bidders. During the pre-bid conference held on 21.4.2006, the beneficiaries of the Western Region had suggested for implementation of the transmission scheme through tariff based bidding. After detailed discussion with various stakeholders and POWERGRID, the Commission decided to adopt the tariff based bidding approach in order to keep the bid evaluation process simple and transparent.



Accordingly, certain guidelines were issued to POWERGRID to incorporate in the bidding documents vide letter dated 16.6.2006.

(b) POWERGRID carried out the process for selection of the successful bidder to implement the project in accordance with the Request for Selection (RfS) and other documents forming part of RfS (hereinafter called "Selection Documents") which specified among others the criteria for evaluation of the bid, shortlisting and selection of the successful bidder. Clause 3.6.5 of the Selection Document which dealt with the evaluation of transmission service charges and Buy-out price is extracted as under:

"3.6.5 Evaluation of Transmission Service Charge & Buy-out Price Proposal

3.6.5.1 POWERGRID will open, evaluate, and rank Envelope-2 (i.e. Transmission Service Charge & Buy-out Price) Proposal of only those Bidders whose Techno-Commercial Proposal have been found responsive to the requirements of the RfS in accordance with Clause 3.6.4.

3.6.5.2 Based on the year wise Transmission Service Charge (TSC) for 22 Year (i.e. License Period of 25 years, excluding construction time) and Buy-out Price payable at the end of License period quoted by Bidders in Section 4, Annexure 4.16 for project B or C (as applicable), the Net present value (npv) of TSC presented by Bidders for 22 years plus discounted Buy-out price shall be calculated by POWERGRID in accordance with the Evaluation Criteria detailed in subsequent pages. The evaluation shall be carried out in line with following steps:

- a) The year wise TSC for 22 years for each Transmission Line of Project B and C (as applicable) shall be discounted @9.25% per annum to determine 9.25% the Net Present Value (NPV) of TSC on the date of Commercial Operation, with the TSC payment being assumed to be made in the middle of the year for evaluation Purpose.
- b) The Buy-out price quoted by the bidders for each of the Project B and C ( as applicable ) Shall be discounted Separately @ 9.25 % per annum to



determine the Net Present Value (NPV) of Buy-out price for each of the Project B and C on the date of Commercial Operation.

c) The sum of NPV of TSC for 22 years for each of the Project B and C shall be calculated.

d) The bidder with the lowest sum of NPV of TSC for 22 years (as computed in a) & c) above) Plus the discounted Buy-out Price (as computed in b) above), for each of the Project B or C (as applicable), shall be ranked first and called for discussions as per Clause 3.7.

3.6.5.3 POWERGRID will evaluate the Envelope-2 (i.e. TSC and Buy-out Price proposal) Proposals and rank them from the lowest to the highest and the lowest evaluated proposal will be deemed to be the best for each of the Project-B or C."

(c) Thus the final selection criteria specified in the selection documents was the Transmission Service Charges and Buy-out price and the bidders were required to provide the proposed Transmission Service Charges and Buy Out Price as per the prescribed format. The participating bidders including RETL submitted their bids in pursuance of the selection documents to POWERGRID. In accordance with the methodology provided in Clause 3.6.5 of the selection documents, the participating bidders were ranked as under:

**For Project-B**

Sl. No.	NAME OF BIDDER	NET PRESNET VALUE (in ₹ million)	RANK
1.	RETL	10,849	1
2.	Consortium of CLP-II & Gommon	13,397	2
3.	Consortium of GMR & KEC	13,964	3
4.	TATA POWER	16,601	4
5.	Consortium of L&T IDPL & L&T	20,341	5
6.	Consortium of LKPPL, LIL & Deepak	21,249	6
7.	Consortium of Inabensa & Abengoa	178,489	7



**For Project-C**

Sl. No.	NAME OF BIDDER	NET PRESENT VALUE (in ₹ million)	RANK
1.	RETL	5,647	1
2.	Consortium of CLP-II & Gammon	7,045	2
3.	Consortium of GMR & KEC	7,193	3
4.	TATA Power	8,002	4
5.	Consortium of LKPPL, LIL & Deepak	9,717	5
6.	Consortium of L&T IDPL & L&T	10,088	6
7.	Consortium of CYMI & IVRCL	14,274	7
8.	Consortium of Inabensa & Abengoa	83,550	8

(d) RETL was ranked as L1 bidder based on the net present value of the bid applying the methodology of Transmission Service Charges and Buy Out price being the lowest, namely, ₹ 10849 million for Project 'B' and ₹ 5647 Million for Project 'C'.

(e) Ministry of Finance issued guidelines on 12.1.2006 regarding Public Private Participation Appraisal Committee (PPPAC). Subsequently, a clarification was issued by Ministry of Finance on 31.1.2007 to the effect that in case there is no contingent liability on PSU/GOI (i.e. no Buy-out Provision and Transfer of project to PSU/GOI) in a project, the proposal need not be referred to PPPAC.

(f) A committee was appointed by Ministry of Power under the chairmanship of Shri AK Khurana, Additional Secretary to consider whether the buy-out provision should be provided in the Standard Bidding Documents and the payment security mechanism to be provided in the bidding document. The



Committee decided that construction risk has to be taken by the developer of the transmission line and the lenders/financial institutions financing the project and therefore there is no requirement to incorporate buy-out provisions for sharing the construction risk in the Standard Bidding Documents.

(g) In the meeting taken by Secretary, Ministry of Power on 6.8.2007, it was decided that the case of WRSSS-II may not require the approval of PPPAC if the bidder agrees to deletion of buy-out provision in line with the recommendations of Khurana Committee. It was further decided that the deletion of the provision would not warrant re-tendering since no relaxation from the notified conditions was being made and only a hardening of the contract conditions for L1 bidder would take place by removal of the buy-out provisions. POWERGRID held discussion with the L1 bidder, RETL who agreed to modify the various agreements confirming that the buy-out price quoted by RETL in its bid would become NIL after change of the project from BOOT to BOO and the balance bid price i.e. transmission charges would remain unchanged. Accordingly, the case was withdrawn from PPPAC by Ministry of Power.

(h) POWERGRID submitted the modified Implementation Agreement between POWERGRID and RETL, Power Transmission Agreement between RETL and the beneficiaries in the light of the Khurana Committee for approval by the Commission in its letter dated 4.10.2007. In the said letter it was clarified that the buy-out agreement was no more required to be issued. It was further submitted



that tariff proposals of all bidders had been re-evaluated as under without the buy-out price:

#### FOR PROJECT-B

Sl.No.	Name of Bidder	NPV of TSC + Buyout (in ₹ million)	RANK	NPV of TSC Proposed without Buyout Price (in Rs million)	Rank
1	RETL	10,849	1	10,844	1
2	Consortium of CLP-II & Gammon	13,397	2	13,397	2
3	Consortium of GMR & KEC	13,964	3	13,946	3
4	TATA POWER	16,601	4	16,422	4
5	Consortium of L&T IDPL & L&T	20,341	5	20,170	5
6	Consortium of LKPPL, LIL & Deepak	21,249	6	21,201	6
7	Consortium of Inabensa & Abengoa	178,489	7	178,310	7

#### For Project-C

Sl.No.	Name of Bidder	NPT of TSC Buyout (in ₹ million)	RANK	NPT of TSC Proposed without Buyout price (in Rs million)	Rank
1.	RETL	5,647	1	5,645	1
2.	Consortium of CLP-II & Gammon	7,045	2	7,045	2
3.	Consortium GMR & KEC & Deepak	7,193	3	7,184	3
4.	Tata Power	8,002	4	7,914	4
5.	Consortium of LKPPL, LIL & Deepak	9,717	5	9,695	5
6.	Consortium of L&T IDPL & L&T	10,088	6	10,003	6
7.	Consortium of CYMI & IVRCL	14,274	7	14,183	7
8.	Consortium of Inabensa & Abengoa	83,550	8	83,460	8



As per the re-evaluation, RETL continued to be L1 bidder in respect of WRSSS-II Project 'B' and 'C'."

(i) The Commission in its order dated 29.10.2007 in Petition No. 8/2007 Suo-motu had directed as under:

"4. As a consequence of the agreement to delete the "buy-out" provisions, PGCIL has suggested modifications in the Implementation Agreement (IA) and the Power Transmission Agreement (PTA), earlier termed as Transmission Service Provider Agreement (TSPA), forming part of the bid documents. PGCIL has sought concurrence/approval of the Commission to the modification in IA and PTA and dispensing with "buy out" arrangement. Similarly, based on the report of A.K. Khurana Committee, PGCIL has recommended incorporation of Payment Security Mechanism in the agreements.

*5. we note from the minutes of meeting taken by Secretary (Power) on 6.8.2007 that the question as to whether the deletion of the 'buy-out' provisions would warrant any re-tendering was duly deliberated in the meeting, and it was concluded that "since no relaxation from the notified conditions was being made, and only a hardening of the contract conditions for the L1 bidder would take place by removal of the 'buy-out' provision, re-tendering would not be required.*

*In view of the above, and the fact that the projects have already been delayed considerably, we direct the concerned parties to proceed further expeditiously."*

6. We are reserving our views on the payment security mechanism (PSM) recommended in para 4(iv) of the A.K. Khurana Committee's report. While the parties may presently proceed with finalization of Implementation Agreement and Power Transmission Agreement as per modifications proposed in the Annexure – VIII and IX to the PGCIL letter dated 4.10.2007, we expect a more appropriate PSM to emerge before the projects get commissioned. This should not hold up the progress on these projects, since the question of PSM can arise only after the projects get to the commercial operation stage."



(j) POWERGRID notified RETL as the prospective IPTC vide its letter dated 12.11.2007 to establish the transmission lines associated with the project and issued the letter of selection on 22.11.2007. POWERGRID and RETL signed the Implementation Agreement on 23.11.2007. RETL filed Petition No. 27/2008 and 28/2008 before the Commission seeking transmission licence to Western Region Transmission (Maharashtra) Pvt. Limited and Western Region Transmission (Gujarat) Pvt. Limited. The Commission after following the procedure prescribed in the Act, granted transmission licences to the petitioners vide orders dated 30.12.2008 for implementation of the transmission systems and to provide transmission services as per the transmission charges given at Annexures to the said orders.

3. The Commission received a letter dated 12.8.2011 from Ministry of Power, seeking a confirmation that the licensees of WRSSS-II Project 'B' and 'C' would get tariff based on the quoted 'buy-out' price of ₹ 5 crore after the expiry of 25 years for which the tariff has been discovered through competitive bidding and transmission licences have been issued to the licensees. The main basis for seeking such confirmation is that since RETL had quoted ₹ 5 crore as the 'buy-out' price at the end of concession period and L1 bidder was selected based on the least NPV of tariff quoted for 22 years and quoted 'buy-out' price considered together, RETL should be entitled to Return on Equity on the quoted buy-out price of ₹ 5 crore after the concession period which would be in conformity with bid evaluation criteria for selection of the L1 bidder and in line with the spirit of



the discussion and understanding in the meeting taken by the then Secretary (Power) on 6.8.2007.. Moreover the bidder had quoted an annual tariff of about ₹83 crore for both the projects for the 25<sup>th</sup> year of concession and therefore, the tariff after the concession period of 25 years should not be higher than the quoted 25<sup>th</sup> year of tariff which would be contrary to the reasonable assumption that any bidder quoting under the BOOT model would have recovered the entire investment including return within the concession period.

4. Since the issues of tariff of the WRSSS-II Projects 'B' and 'C' after expiry of the concession period of 25 years (3 years for construction and 22 years for operation) were not considered at the time of issue of transmission licences, the Commission issued notices to the licensees, Powergrid and the beneficiaries regarding determination of tariff after the concession period of 25 years based on the 'buy-out' price quoted by RETL for both the projects before clarification is provided to the Ministry of Power with reference to the letter dated 12.8.2011.

5. Powergrid, the licensees and Gujarat Urja Vikas Nigam Ltd. (GUVNL) have filed their submissions in the matter. Though, the Commission had directed the other respondents to file their submissions by 25.9.2011, only Madhya Pradesh Power Trading Corporation (MPPTCL) has filed the reply.



6. Western Region Transmission (Maharashtra) Pvt Limited and Western Region Transmission (Gujarat) Pvt Limited (here in after "the licensees") have submitted that they have no objection to the proposal made in the Ministry of Power's letter. The licensees have further submitted that they accept that the tariff for the transmission lines for the project upon completion for 22 years may be determined with reference to buy-out price of 5 crore subject to:

(a) Various components governing capex for renovation & modernization, O&M and returns determined as per the CERC Tariff Regulations prevailing at the relevant period.

(b) Suitable modifications in the license term.

(c) Suitable consideration of the hardship caused to the Licensee when the project model was changed from BOOT to BOO in 2007, as also by the present arrangement which is further inferior since the buy-out price of ₹ 5 crore required to be paid to the Licensee as Terminal payment under the BOOT model will now be recovered by the Licensee over a period of time.

7. Power Grid in its reply filed vide affidavit dated 27.9.2011 has submitted that as per the bids, RETL was entitled to transmission license only for a period of 25 years and it was required to transfer the line and system to Power Grid. The entire investment made by RETL is serviced through tariff which is ultimately borne by the Electricity Utilities, customers and consumers. The buy-out price of



₹ 5 crores for WRSSS-II Project 'B' and 'C' implies that such beneficiaries of transmission line and system would have duly paid through tariff the entire amount due to RETL for its investment both by way of equity and by raising the debt and they are required to service only additional ₹ 5 crores at the end of 25<sup>th</sup> year. In the circumstances, the effect of change from BOOT to BOO needs to be considered. The decision of RETL to specify ₹ 5 crores has necessary implication since the gross value of the transmission line and system of WRSSS-II Projects 'B' and 'C' shall stand adjusted to ₹ 5 crores and the value in excess of ₹ 5 crore shall be deemed to have been totally serviced by tariff, namely the transmission service charges quoted by RETL. It has been further submitted that the servicing of capital cost in case of tariff determined under Section 62 on cost plus basis and the tariff determined under Section 63 of the Act under competitive bidding without any criteria for buy-out cost are to be distinguished from the project whose tariff is determined under competitive bidding for specified period with a buy-out price. In the later case, where there is buy-out price, bidder himself recognizes and limits the capital value of transmission line and system at the end of 25 years to a specified amount accepting that any excess value i.e. the difference between the value of assets in the books of accounts and the quoted buy-out price shall stand adjusted. It will no longer be a capital expenditure incurred by such bidder for purpose of continuing licensee after 25 years. Power Grid has requested the Commission to hold that the value of capital assets to be considered for the purpose of tariff including the return on



equity at the end of 25<sup>th</sup> year would only be ₹ 5 crore and not in excess of the quoted buy-out price.

8. Gujarat Urja Vikas Nigam Ltd., in its reply dated 26.9.2011 has submitted that the tariff of the transmission line and system of WRSSS-II Project 'B' and 'C' should be decided by the Commission considering the buy-out price as quoted by RETL at the time of submission of the bid value of the assets at ₹ 5 crore. It has been further submitted that expenditure on R&M may be allowed with the consent of beneficiaries and duly approved by the Commission. MPPTCL in its reply dated 25.10.2011 has submitted that RETL which was selected as the successful bidder for the projects had quoted ₹ 5 cores as the buy-out price at the end of the concession period and therefore, the value of capital assets after the expiry of 25 years shall equal to the buy-out price of ₹ 5 crore. MPPTCL has further submitted that the tariff after the concessional period of 25 years shall be determined in accordance with the prevailing regulations in force and with the consultations of beneficiaries duly approved by the Commission.

9. During the hearing of the matter on 4.10.2011, the learned counsel for the licensees submitted that the licensees have no objection to the consideration of ₹ 5 crore on completion of the concession period of 25 years for determination of tariff for the transmission line and system. The learned counsel for the CTU submitted that irrespective of whether the projects are retained by the licensees or transferred to any other person at the end of the concession period, the gross



value of the assets will remain the same i.e. ₹ 5 crore since the licensees have agreed to the tariff on the capital cost of ₹ 5 crore at the end of the concession period. The learned counsel submitted that since the licensees have agreed to the determination tariff at ₹ 5 crore after the concession period, the Commission may consider to issue appropriate orders in this regard. The learned counsel further submitted that the claim of the licensees for reimbursement of R&M expenses and other expenses would be considered as per the terms and conditions of tariff regulation in force at the relevant time. The representative of GUVNL reiterated the submission made in its written reply to the petition.

10. During the hearing on 3.11.2011, the representative of the licensees reiterated the submission of the learned counsel for the licensees made during the hearing on 4.10.2011. The learned counsel for PGCIL took objection to the prayer of the licensees for suitable consideration for the hardship caused to the licensees on account of change from the BOOT to BOO model. In response, the representative of the licensees submitted that the Commission may take an appropriate view on the prayers of the licensees.

11. We have considered the submissions made by the licensees, Power Grid, GUVNL and MPPTCL. Ministry of Power have sought a confirmation to the effect that the licensees of WRSSS-II Project 'B' and 'C' would get tariff based on the quoted 'buy-out' price of ₹ 5 crore after the expiry of 25 years for which the tariff has been discovered through competitive bidding and transmission licences



have been issued to the licensees. We notice that as per the selection documents for competitive bidding, the evaluation of the bid was to be made on the basis of the transmission service charges and buy-out price. All bidders were required to quote the buy-out price which could not be higher than 10% of the quoted transmission service charges. All the bidders were evaluated on the basis of the net present value of the transmission service charges for the concession period of 22 years after construction of the project and the NPV of buy-out price at the end of the concession period. RETL had quoted buy-out price of ₹ 3.3 crore for Project 'B' and ₹ 1.7 crore for Project 'C'. All bidders were assessed based on the NPV of transmission service charges and buy-out price and RETL was selected as the L1 bidder. After it was decided by the Secretary (Power) to migrate from the BOOT to BOO model by deleting the buy-out provision, the bidders were assessed only on the basis of the NPV of the transmission service charges. Based on the assessment RETL emerged as the L1 bidder. Accordingly, RETL was issued the letter of selection for execution of the project. The Implementation Agreement and Transmission Service Agreement were accordingly modified by deleting the buy-out provisions and the Buy-Out Agreement was altogether dispensed with. The Commission had approved the modified Implementation Agreement and Transmission Service Agreement by order dated 29.10.2007 in Petition No. 8/2007. The Commission has also endorsed the decision taken in the meeting of Secretary (Power) to delete the buy-out provision and not to resort to retendering in the said order. Therefore, the Commission while granting the transmission licences to the



licensees and accepting the transmission service charges as discovered through the process of competitive bidding has not considered the buy-out price as the same stood deleted from the Implementation Agreement and Transmission Service Agreement and also in the selection of the successful bidder.

12. Against the above background and in view of the reference received from the Ministry of Power, the Commission decided to hear the parties on the question of determination of tariff on the basis of the buy-out price of ₹ 5 crores at the end of the concession period of 25 years. The licensees have agreed to the fixation of tariff after the concession period of 25 years on the basis of ₹ 5 crores subject to such condition as permitting various components governing the capex for renovation and modernization, O&M and returns determined as per prevalent tariff regulations of the Commission, suitable modification in the license terms and suitable consideration for the hardship cost to the licensees as a result of change of the project model from BOOT to BOO. GUVNL has supported that the licensees should get O&M with the consent of the beneficiaries and duly approved by the Commission. MPPTCL has submitted that the tariff of the licensees after 25 years should be determined as per the prevalent regulations of the Commission. In our view, since the licensees have agreed for determination of tariff at the end of 25 years with reference to the buy-out price of ₹ 5 crores, which is in the interest of the consumers, the said amount of ₹ 5 crores shall be taken as the opening capital cost at the end of 25 years for the purpose of determination of tariff which shall be governed by the tariff regulation prevalent at



that time. The transmission assets may continue with the licensees or may be transferred to some other licensees at the end of licence period. In case the transmission assets are transferred to some other licensees after period of 25 years in accordance with the provision of the Act and the Transmission Licence Regulations prevalent at that point of time, the sale price of the assets shall be equal to the buy-out price of ₹ 5 crore.

13. As regards the request of the licensees for changes in the terms of the licence, we are of the view that there is no requirement to change the terms of the licence on account of the decision that the tariff at the end of the 25<sup>th</sup> year shall be determined on the basis of the capital cost of ₹ 5 crore. As regards the other request for granting suitable consideration for the hardship caused to the licensees on account of change of the project model from BOOT to BOO, we are of the view that the licensees have accepted the condition and signed the Implementation Agreement and Transmission Service Agreement. However, no such condition was raised by the licensees at that point of time. Therefore, this request of the licensees cannot be accepted.

14. In view of the above, we direct that the tariff of the WRSSS-II Project 'B' and Project 'C' after the concession period of 25 years (3 years for construction and 22 years for operation) shall be determined on the basis of the buy-out price of ₹ 5 crore quoted by the licensees at the time of submitting their bids for the project.



15. The petition stands disposed of in terms of the above.

sd/-	sd/-	sd/-	sd/-
(M.DEENA DAYALAN)	(V.S.VERMA)	(S.JAYARAMAN)	(Dr. PRAMOD DEO)
MEMBER	MEMBER	MEMBER	CHAIRPERSON