

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 289/TL/2015

**Coram:
Shri Gireesh B.Pradhan, Chairperson
Shri A.K.Singhal, Member
Shri A.S.Bakshi, Member
Dr. M.K.Iyer, Member**

**Date of Hearing: 16.2.2016
Date of Order: 07.3.2016**

In the matter of

Application under Section 14 read with Section 15 (1) of the Electricity Act, 2003 for grant of transmission licence to Sipat Transmission Limited.

**And
In the matter of**

Sipat Transmission Limited
Achalraj, Opp. Mayor Bungalow, Law Garden,
Ahmedabad-380 006

..... **Petitioner**

Vs

1. Madhya Pradesh Power Management Company Limited
Block No-11, Ground floor, Shakti Bhawan, Vidhyut Nagar, Rampur,
Jabalpur-482 008, Madhya Pradesh
2. Chhattisgarh State Power Distribution Company Limited
P.O Sunder Nagar, Dangania,
Raipur-492 013, Chhattisgarh
3. Gujarat UrjaVikas Nigam limited
VidhyutBhawan, Race Course,
Vadodara-390 007
4. Maharashtra Electricity Distribution Company Limited
Prakashgad, 4th Floor, Bandra (East), Mumbai-400051
5. Goa Electricity Department (ED)
Govt. of Goa,
Aquem Alto, Margao, Goa-403 601

6. Electricity Department Dadar and Nagar Haveli
66kV, Amla Ind. Estate,
Silvassa-396 230, Dadra Nagar Haveli
7. Electricity Department, Administration of Daman and Diu,
Plot No. 35, OI DC Complex, Near Fire Station, Somnath,
Daman-39 210
8. Chief Executive Officer,
PFC Consulting Limited,
First Floor, UrjaNidhi,1, Barakhamba Lane,
Connaught Place, New Delhi-110 001
9. Chief Executive Officer, CTU Planning,
POWERGRID Corporation of India Limited,
Saudamini, Plot No.2, Sector-29,
Gurgaon-122 001

..... Respondents

The following were present:

Shri Venkatesh, Advocate for the petitioner
 Shri Pratyush Singh, Advocate for the petitioner
 Shri M.R.Krishna Rao, ATL
 Shri Jignesh Langalia, ATL
 Shri Sanjay Nayak, PFFCL

ORDER

The petitioner, Sipat Transmission Limited (STL), has filed the present petition for grant of transmission licence under Section 14 read with Section 15 (1) of the Electricity Act, 2003 (hereinafter referred to as "the Act") to establish Transmission System for "Additional System Strengthening for Sipat STPS" (hereinafter referred to as "Transmission System") on Build, Own, Operate and Maintain (BOOM) basis comprising the following elements:

S No.	Name of the Transmission Element	Conductor Specifications	Completion Target
1	Sipat-Bilaspur Pooling Station 3rd 765 kV S/C - 1 no. 765 kV line bay at Sipat STPP of NTPC.	Quad Bersimis ACSR Conductor or equivalent AAAC. The transmission lines to be designed for a maximum operating	36 months

		conductor temperature of 85 deg C for both ACSR as well as AAAC.	
2	Bilaspur Pooling Station–Rajnandgaon 765 kV D/C	Hexa Zebra ACSR Conductor or equivalent AAAC. The transmission lines to be designed for a maximum operating conductor temperature of 85 deg C for both ACSR as well as AAAC.	40 months

2. Based on the competitive bidding carried out by PFC Consulting Limited (hereinafter referred to as PFCCL) in accordance with the Guidelines issued by Ministry of Power, Govt. of India under Section 63 of the Act, M/s Adani Power Limited emerged as the successful bidder with the lowest levelized transmission charges of ₹ 792.15 million/annum.

3. The Commission after considering the application of the petitioner in the light of the provisions of the Act and the Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of Transmission Licence and other related matters) Regulations, 2009 (hereinafter referred to as “the Transmission Licence Regulations”) *prima facie* proposed to grant licence to the petitioner. Relevant para of our order dated 25.1.2016 is extracted as under:

“17. We have considered the submissions of the petitioner and BPC and perused documents on record. As per para 12.1 of the Guidelines as amended from time to time, finally selected bidder shall make an application for grant of transmission licence within ten days of selection. Adani Power Limited has been selected on the basis of the tariff based competitive bidding as per the Guidelines issued by Government of India, Ministry of Power. Lol has been issued to Adani Power Limited by the BPC on 28.7.2015. BPC vide letter dated 30.11.2015 extended the last date of completion of various activities up to 23.11.2015. Accordingly, Adani Transmission Limited, the investing affiliate of Adani Power Limited, has acquired 100% stake in the Sipat Transmission Limited which has been transferred to the petitioner on 23.11.2015 after execution of Share Purchase

Agreement. Thus, the petitioner has complied with the requirements of RfP and Transmission Service Agreement. Considering the material on record, we are *prima facie* of the view that the petitioner satisfies the conditions for grant of inter-State transmission licence under Section 15 of the Act read with Transmission Licence Regulations for construction, operation and maintenance of the transmission system as described in para 1 of this order. We, therefore, direct that a public notice under clause (a) of sub-section (5) of Section 15 of the Act be published to invite suggestions or objections to grant of transmission licence aforesaid. The objections or suggestions, if any, be filed by any person before the Commission by 10.2.2016.”

4. A public notice under Section 15 (5) of the Act was published on 3.2.2016 in all editions of Times of India and Hindustan.

5. Shri Vijay Meghani (hereinafter referred to as ‘Objector’) vide his letter dated 8.2.2016 has filed objections/suggestions to public notice.

6. The petitioner, vide its affidavit dated 25.2.2016, has submitted its response to the objections and the response of the petitioner thereto are discussed as under:

(a) The petitioner has taken a preliminary objection that the issues raised by the Objector are beyond the scope of the present proceedings in which public comments/objections have been sought on the eligibility of the petitioner for grant of transmission licence.

(b) As regards the contention of Objector that information shared in the public notice are insufficient for common public to make any comments, the petitioner has submitted that the entire petition including details of location of transmission system, tariff and the purpose of the line and bidding documents have been uploaded in the petitioner’s website www.adanitransmission.com

in terms of the provisions of the Transmission Licence Regulations. Information in this regard was also captured in the public notice issued by the petitioner for inviting suggestions and comments of general public. Since the Transmission Licence Regulations does not require the Commission to upload the petition on the Commission`s website, such objection amounts to seeking amendment in the said Regulations.

(c) As regards making public the information related to estimated capital cost, the petitioner has submitted that such a contention is misconceived as the present proceedings pertains to grant of transmission licence and not determination of tariff under Section 64 (3) of the Act. The petitioner has further submitted that as per clause 7.6 of the Competitive Bidding Guidelines, the BPC is mandated to ensure reasonableness of the quoted transmission charges. The petitioner has also submitted that sharing of the estimated capital cost of the project would vitiate the very basic purpose of the competitive bidding.

(d) As regards the contention of the Objector that TSP should disclose the type of conductor used for arriving at the quoted tariff as selection of type of conductor is a matter of safety, the petitioner has submitted that the transmission system under consideration has been approved by the Standing Committee for Power System Planning comprising of Chairperson and Member (PS), CEA wherein the representatives of CTU, POSOCO and others have also participated. Once an alternative was given in the bidding

documents, it implied that technically both the alternatives are suitable and would result in achieving the same objectives.

(e) The reliance placed by the Objector upon UPERC`s decision in Petition Nos. 782/2012 and 783/2012 is different from the present case. In the said petitions, the TSP had sought amendment to the RFP and TSA to allow it to use different type of conductor. This is not the issue before the Commission. In fact, RfP grant flexibility to the TSP to use any one type of conductor of its choice and there is departure sought from RfP documents.

(f) With regard to issues relating to ensuring quality and design aspects during construction as well as post construction, the petitioner has submitted that the TSA contains adequate provisions in this regard to ensure that design and construction of the project is in accordance with the Indian Standards and Codes issued by the Bureau of Indian Standards. As regards the quality control mechanism, the petitioner has submitted that in accordance with provisions of Articles 4.1 (g), 5.5 and 5.8 of the TSA, CEA and Lead LTTC will monitor the overall quality of construction of the project by the petitioner for ensuring compliance with Articles 5.1.1 and 5.4 of the TSA.

(g) With regard to the need for quality control for ensuring reliable service, the petitioner has submitted that aspect providing reliable service is not only in the interest of the consumer at large but also in the interest of the TSP. In case of failure of the system, the petitioner would be subjected to the reduction in recovery of quoted transmission charges in addition to the

penalty. Therefore, the petitioner itself would ensure proper quality of the system in addition to the mechanism provided to ensure quality system implementation under RfP and TSA documents.

(h) With regard to compliance of the provisions of the Central Electricity Authority (Grid Standards) Regulations, 2010 (CEA Grid Standards Regulations) for implementing the emergency restoration system, the petitioner has submitted that the transmission system has been designed considering essential aspects dealing with natural calamities. As per Article 5.1.1 of the TSA, the petitioner is required to comply with the norms prescribed in various Regulations issued by CEA, Prudent Utility Practices and other applicable laws. The petitioner has submitted that it will comply with the provisions of Article 5.1.1 of the TSA while implementing the transmission system in entirety without any deviation.

7. We have considered the submissions of the Objector and the Petitioner. The Commission published the public notice under Section 15 (5) of the Act read with Regulation 14 (7) of the Transmission Licence Regulations. The entire petition on transmission licence is available on the website of the petitioner and any interested party can access the details and file its objections/suggestions. We direct the staff to give reference of the petitioner's website (where the petition is available) in the notice published by the Commission. As regards the estimated capital cost and the type of the conductor used and its relation to the quoted tariff, we are of the view that tariff has been discovered through competitive bidding in this case. Examination of capital cost

and different elements of tariff are not relevant in case of project implemented through competitive bidding. Therefore, such information is not required to be given in the public notice issued under Section 15 (5) of the Act. However, we direct BPC to give clarity regarding the type of conductor to be used so that the bidders take into consideration the appropriate types of conductor while quoting the tariff. As regards the quality of the material used, the Commission in order dated 25.1.2016 had directed the petitioner to explain about the mechanism in place or to be put in place for ensuring quality and material and workmanship. This aspect has been dealt with in later part of the order. As regards the reliability of service, the petitioner after grant of licence is subject to the Central Electricity Regulatory Commission (Standards of Performance of inter-State transmission licensees) Regulations, 2012. As regards the emergency restoration system, the petitioner has committed to comply with the provisions of the TSA without any deviation. It is needless to say that the petitioner in its own interest should have emergency restoration system.

8. The petitioner, vide order dated 25.1.2016, was directed to file an affidavit to the effect that the execution of the transmission project shall not be delayed due to time taken in obtaining statutory clearances required under RfP and the TSA or adjudication of any claim of the petitioner arising under the TSA. In response, the petitioner vide its affidavit dated 29.1.2016 has submitted that the terms of the TSA are binding on the parties (TSP and LTTCs). The petitioner has further submitted that any claim for escalation in transmission charges or for extension of time in pursuance of such competitive bidding process need to be dealt with in accordance with the terms contained in the bidding documents including the TSA. The petitioner has submitted that

in terms of the TSA, it would implement the project as per the provisions of the Article 16.4 of the TSA which is extracted as under:

"16.4. Parties to Perform Obligation: Notwithstanding the existence of any Dispute and difference referred to the Appropriate Commission or the Arbitration Tribunal as provided in Article 16.3 and save as the Appropriate Commission or the Arbitration Tribunal may otherwise direct by a final or interim order, the Parties hereto shall continue to perform their respective obligations (which are not in dispute) under this Agreement."

9. The petitioner has further submitted that claims, if any, made by it, shall be in accordance with the provisions of the RFP documents. We direct that the petitioner shall remain bound by the commitment given by it under affidavit dated 29.1.2016.

10. During the hearing on 16.2.2015, we had observed that as per Article 5.1.1 of the TSA, the TSP at its own cost and expense, shall be responsible for designing, constructing, erecting, completing and commissioning each element of the project by Scheduled COD in accordance with the various regulations of the Central Electricity Authority regarding Technical Standards and Grid Standards, Prudent Utility Practices and other applicable laws. Further Article 5.4 of the TSA provides that the TSP shall ensure that the project is designed, built and completed in a good workmanlike manner using sound engineering and construction practices and using only materials and equipment that are new and of international utility grade quality such that the useful life of the project will be till the expiry date. Further, the design, construction and testing of all equipment, facilities, components and systems of the project shall be in accordance with Indian Standards and Codes issued by Bureau of India Standards. Accordingly, the petitioner was directed vide ROP for hearing dated 16.2.2016 to submit the information

with regard to quality control mechanism available or to be put in place by to ensure the compliance of the requirements stipulated in Article 5.1.1 and Article 5.4 of the TSA.

11. The petitioner, vide its affidavit dated 22.2.2016, has submitted as under:

“7. That according to the terms of the TSA, there are two external agencies which monitor the quality of the construction of the Transmission Project being constructed by the petitioner. Further, the Petitioner under the TSA is entrusted with the obligation of providing on a monthly basis, a progress report to the Long term Transmission Customer and Central Electricity Authority (CEA), with regard to the project and its execution, to enable them to monitor and co-ordinate the development of the Project. Further, it is most respectfully submitted that in terms of the TSA, the Lead LTTC is duty bound to designate, at the most 3 employees for the purpose of inspecting the progress of the Project. In addition the CEA may carry out random inspections during the Project execution, as and when deemed necessary by it.

8. That the TSA further provides that TSP i.e. the Petitioner must ensure that the design and construction of the project is in accordance with Indian Standards and Codes issued by the Bureau of Indian Standards and in case they are not applicable, other equivalent internationally recognised Standards and Codes shall be followed. Further in terms of the TSA, the petitioner is also responsible for constructing and commissioning the Project in accordance with the norms prescribed in various Regulations issued by the CEA Prudent Utility Practices and other applicable Laws.....

9. That in terms of above quoted provisions of the TSA, there are sufficient checks and balances by which both the CEA and the Lead LTTC will monitor the overall quality of construction of the Project by the Petitioner.”

12. We find that the petitioner has laid out a systematic protocol to ensure quantity control of the equipment and workmanship in the execution of the project. In the TSA, there is provision for the lead procurer to designate at least three employees for inspection of the progress of the project. Further, the petitioner is required to give a monthly progress report to the lead procurer and the CEA about the project and its execution. The TSA also vests a responsibility in the CEA to carry out random inspection of the project as and when deemed necessary. We consider it necessary to

request CEA to devise a mechanism for random inspection of the project every three months to ensure that the project is not only being executed as per the schedule, but the equipment and workmanship of the project conforms to the Technical Standards and Grid Standards notified by CEA and IS Specifications. In case of slippage in execution of the project within the timeline specified in the TSA or any non-conformance to the Grid Standards/Technical Standards/IS Specifications, the same should be promptly brought to the notice of the Commission so that appropriate direction can be issued to the licensee for compliance.

13. We have considered the submission of the petitioner and perused the documents on record. Clauses (15) and (16) of Regulation 7 of Transmission Licence Regulations provide as under:

“(15) The Commission may after consideration of the further suggestions and objections, if any, received in response to the public notice aforesaid, grant licence as nearly as practicable in Form-III attached to these regulations or for reasons to be recorded in writing, reject the application if such application is not in accordance with the provisions of the Act, the rules or regulations made thereunder or any other law for the time being in force or for any other valid reasons.

(16) The Commission may, before granting licence or rejecting the application, provide an opportunity to the applicant, the Central Transmission Utility, the Long-term customers, or the person who has filed suggestions and objections, or any other person:

Provided further that the applicant shall always be given a reasonable opportunity of being heard before rejecting the application.”

14. In our order dated 25.1.2016, we had proposed to grant transmission licence to the petitioner company and directed for issue of public notice. In response to the public notice, Shri Vijay Meghani has filed his suggestions/objections which have been dealt with in Para 7 above. We are satisfied that the petitioner company meets the requirements of the Act and the Transmission Licence Regulations for grant of

transmission licence for the subject transmission system mentioned at para 1 of this order. Accordingly, we direct that transmission licence be granted to the petitioner, Sipat Transmission Limited, to establish Transmission System for “Additional System Strengthening for Sipat STPS” on Build, Own, Operate and Maintain basis as per the details given in para 1 above.

15. The grant of transmission licence to the petitioner is subject to the fulfillment of the following conditions throughout the period of licence:

(a) The transmission licence shall, unless revoked earlier, remain in force for a period of 25 years;

(b) The transmission licensee shall comply with the provisions of the Transmission Licence Regulations or any subsequent enactment thereof during the period of subsistence of the licence.

(c) Since the expiry date as per the TSA is 35 years from the scheduled COD of the project, the petitioner may make an application, two years before the expiry of initial licence period, for grant of licence for another term in accordance with Regulation 13 (2) of the Transmission Licence Regulations which shall be considered by the Commission in accordance with law;

(d) The petitioner shall not enter into any contract for or otherwise engage in the business of trading in electricity during the period of subsistence of the transmission licence;

(e) The petitioner shall have the liability to pay the license fee in accordance with the provisions of the Central Electricity Regulatory Commission (Payment of Fees) Regulations, 2012, as amended from time to time or any subsequent enactment thereof. Delay in payment or non-payment of licence fee or a part thereof for a period exceeding sixty days shall be construed as breach of the terms and conditions of the licence;

(f) The petitioner shall comply with the directions of the National Load Despatch Centre under Section 26 of the Act, or the Regional Load Despatch Centre under sub-section (3) of Section 28 or sub-section (1) of Section 29 of the Act, as may be issued from time to time for maintaining the availability of the transmission system;

(g) The petitioner shall remain bound by the Central Electricity Regulatory Commission (Standard of Performance of inter-State Transmission Licensees) Regulations, 2012 or subsequent enactment thereof.

(h) The petitioner shall provide non-discriminatory open access to its transmission system for use by any other licensee, including a distribution licensee or an electricity trader, or generating company or any other person in accordance with the Act, Central Electricity Regulatory Commission (Open Access in inter-State Transmission) Regulations, 2008 and Central Electricity Regulatory Commission (Grant of Connectivity, Long-term Access and Medium-term Open Access in inter-State Transmission and related matters) Regulations,

2009 as amended from time to time and Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2010 as amended from time to time;

(i) The petitioner shall not undertake any other business for optimum utilization of the transmission system without prior intimation to the Commission and shall comply with the provisions of the Central Electricity Regulatory Commission (Sharing of revenue derived from utilization of transmission assets for other business) Regulations, 2007, as amended from time to time;

(j) The petitioner shall remain bound by the Central Electricity Regulatory Commission (Sharing of inter-State Transmission Charges and Losses) Regulations, 2010 as amended from time to time;

(k) The petitioner shall remain bound by the provisions of the Act, the rules and regulations framed thereunder, in particular the Transmission Licence Regulations, the Grid Code, the Standards specified by the Central Electricity Authority, orders and directions of the Commission issued from time to time; and

(l) The petitioner shall ensure execution of the project within timeline specified in the Schedule 3 of the TSA and as per the Technical Standards and Grid Standards of CEA prescribed in Article 5.1.1 and Article 5.4 of the TSA.

(m) The petitioner shall as far as practicable coordinate with the licensee (including deemed licensee) executing the upstream or downstream transmission

projects and the Central Electricity Authority for ensuring execution of the project in a matching timeline.

16. Central Electricity Authority shall monitor the execution of the project and bring to the notice of the Commission any lapse on the part of the licensee to meet the schedule for further appropriate action in accordance with the provisions of the Act and Transmission Licence Regulations.

17. Petition No. 289/TL/2015 is disposed of in terms of the above.

Sd/-
(Dr. M.K.Iyer)
Member

sd/-
(A.S. Bakshi)
Member

sd/-
(A.K. Singhal)
Member

sd/-
(Gireesh B. Pradhan)
Chairperson