

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 222/AT/2022

Coram:

Shri Arun Goyal, Member

Shri P. K. Singh, Member

Date of Order: 12th November, 2022

In the matter of

Application under Section 63 of the Electricity Act, 2003 for adoption of transmission charges with respect to the transmission system being established by POWERGRID Bhadla Transmission Limited (formerly Fatehgarh Bhadla Transco Limited) a 100% wholly owned subsidiary of Power Grid Corporation of India Limited

And

In the matter of

POWERGRID Bhadla Transmission Limited,
(formerly Fatehgarh Bhadla Transco Limited)
B-9, Qutab Institutional Area,
Katwaria Sarai, New Delhi-110 016

.....Petitioner

Vs

1. SBE Renewables Seventeen Private Limited,
1st Floor, Worldmark-2, Aerocity-110037,
New Delhi.

2. Renew Surya Aayan Private Limited,
138, Ansal Chambers-II,
Bhikaji Cama Place-110066,
New Delhi.

3. Renew Surya Vihaan Private Limited,
138, Ansal Chambers-II,
Bhikaji Cama, Place-110066,
New Delhi.

4. Altra Xergi Power Private Limited,
8th Floor, DLF Square, DLF Phase-II,
Gurgaon-122002, Haryana

5. North Bihar Power Distribution Company Limited,
3rd Floor, Vidyut Bhawan,
Bailey Road-800001, Patna

6. South Bihar Power Distribution Company Limited,
2nd Floor, Vidyut Bhawan,
Bailey Road-800001, Patna

7. Eden Renewable Passy Private Limited,
Unit No. 236 B &C, 1st Floor, DLF South Court,
Saket-110017, New Delhi

8. Chief Executive Officer,
REC Power Distribution Company Limited,
REC Corporate Head Quarter,
C & D Block, Plot No. I – 4, Sector – 29,
Gurugram-122 001, Haryana

9. Chief Operating Officer,
Central Transmission Utility of India Limited,
Saudamini, Plot No.2,
Sector -29, Gurugram-122001, Haryana

.....Respondents

Parties present:

Shri Shubham Arya, Advocate, PBTL
Shri Ravi Nair, Advocate, PBTL
Shri Kaushal Kishor, PBTL
Shri Prashant Kumar, PBTL
Shri Mani Kumar, PBTL
Shri Arjun Malhotra, PBTL
Ms. Rohini Prasad, BSPHCL
Shri Swapnil Verma, CTUIL
Shri Yatin Sharma, CTUIL
Shri Ranjeet S. Rajput, CTUIL
Ms. Priyansi Jadiya, CTUIL

ORDER

The Petitioner, POWERGRID Bhadla Transmission Limited (formerly Fatehgarh Bhadla Transco Limited), has filed the present Petition under Section 63 of the Electricity Act, 2003 (hereinafter referred to as “the Act”) for adoption of transmission

charges in respect of “Transmission System Strengthening Scheme for Evacuation of Power from Solar Energy Zones in Rajasthan (8.1 GW) under Phase II - (Part B)” (hereinafter referred to as “the Transmission System” or “the Project”) to be established on Build, Own, Operate and Maintain (BOOM) basis. The Petitioner has made the following prayers to:

“(a) Adoption of Transmission Charges for Transmission System for evacuation of power from solar energy zones in Rajasthan (8.1 GW) under Phase II (Part B) discovered through competitive bidding process.

“(b) Allow the sharing and recovery of Transmission Charges for Transmission System for evacuation of power from solar energy zones in Rajasthan (8.1 GW) under Phase II (Part B) as per Sharing of Inter-state Transmission Charges and Losses CERC Regulations 2020 and any other amendment thereon issued from time to time by CERC.

“(c) Pass such other order / orders, as may be deemed fit and proper in the facts and circumstances of the case.”

Background of the case:

2. The Petitioner had filed Petition No. 141/AT/2021 for adoption of transmission charges in respect of “Transmission System Strengthening Scheme for Evacuation of Power from Solar Energy Zones in Rajasthan (8.1 GW) under Phase II (Part B). The Commission in its order dated 26.8.2021 observed that as the various elements of the Project of POWERGRID Bhadla Transmission Limited (formerly Fatehgarh Bhadla Transco Limited) as well as up-stream and down-stream systems to this Project fell within the potential habitat of Great Indian Bustard (“GIB”) and accordingly, recognized that uncertainties have cropped up regarding implementation of this Project in terms of the order of the Hon’ble Supreme Court dated 19.4.2021 in IA No. 85618 of 2020 in WP (Civil) No. 838 of 2019 (“the GIB Order”) providing for appropriate steps for laying of transmission network/lines in the priority and potential habitats of GIB. In the GIB Order,

the Hon'ble Supreme Court, inter alia, recognized that the laying of underground power lines more particularly high voltage lines would require technical evaluation on case-to-case basis and an omnibus conclusion cannot be reached for laying down a uniform method and noting that the laying of high voltage underground power line would require expertise to assess the feasibility. Considering the same, the Hon'ble Supreme Court constituted a Committee for the specific purpose of assessing the feasibility and to arrive at a conclusion as to whether the underground power line is feasible or not. Accordingly, the Petitioner was granted liberty to approach the Commission with fresh Petition on the subject matter once the Petitioner has complied with the directions of the Hon'ble Supreme Court dated 19.4.2021, which would provide sufficient clarity regarding implementation of the Project. Relevant portion of the order dated 26.8.2021 is extracted as under:

"17. As the various elements of the Projects of Fatehgarh Bhadla Transco Limited and Sikar New Transmission Limited as well as up-stream and down-stream systems to these Projects and up-stream systems to the Project of Sikar-II Aligarh Transmission Limited fall within the potential habitat of GIB, we recognise that uncertainties have cropped up regarding implementation of these Projects in terms of the order of the Hon'ble Supreme Court dated 19.4.2021 providing for appropriate steps for laying of transmission network/lines in the priority and potential habitats of GIB.

19. Indisputably, the Hon'ble Supreme Court in the aforesaid order has recognized that the laying of underground power line more particularly of high voltage would require technical evaluation on case-to-case basis and an omnibus conclusion cannot be reached laying down a uniform method in this regard. However, the Hon'ble Supreme Court, after noting that laying of high voltage underground power line would require expertise to assess the feasibility, has constituted a Committee comprising of members from MNRE, WII and Corbett Foundation for the specific purpose of assessing the feasibility. Since there are issues relating to feasibility, the matter is required to be referred to the Committee with all relevant material and particulars. Accordingly, the Committee shall assess the matter and arrive at a conclusion as to whether the underground power line is feasible or not.

20. The Petitioners have argued that though the concerned elements of the

Projects fall within the potential habitat of GIB, they being at 765 kV voltage level, it is not feasible to lay underground power line. However, the Petitioners during the hearing stated that they have not yet approached the Committee constituted by the Hon'ble Supreme Court for assessment of feasibility of the Projects falling within the potential habitat area of GIB since the matter was under consideration of the study team constituted by the Ministry of Power. We observe that the study team constituted by the Ministry of Power, has recommended to file IA before the Hon'ble Supreme Court, inter alia, requesting to allow installation of renewable energy projects and laying of future transmission lines in potential habitat of GIB with installation of bird diverters. However, as submitted by the CTU during the hearing on 18.8.2021, the IA to the above effect is yet to be filed before the Hon'ble Supreme Court. Hence, we are clearly of the view that even if the Commission decides to grant transmission licences to the Petitioners, the implementation of the Projects would still remain surrounded in uncertainty till the time the directions of the Hon'ble Supreme Court are complied with.

21. *In addition, we also note that the implementation of the Projects, in absence of ratification of their feasibility by the Committee constituted by the Hon'ble Supreme Court, may face uncertainties relating to route of lines, laying lines over-head or underground and mitigating measures such as installations of bird-diverters, resulting in potential cost overruns and time overruns. During the course of hearing, the representatives of the Petitioners and the CTU made submissions to the effect that the requirement of rerouting of elements falling within the potential area is very unlikely and relied upon the change in law clause under the Transmission Service Agreements (in connection with costs to be incurred towards implementation of directions of the Hon'ble Supreme Court's order) for addressing the issue of time overruns and cost overruns, if any. In our view, there is no force in the submissions of the Petitioners and CTU as, when the Petitioners are aware of the measures required to be undertaken in terms of order of the Hon'ble Supreme Court (i.e. ratification of the feasibility report of the Projects by the Committee constituted by the Hon'ble Supreme Court) and the Petitioners have not undertaken such measures as yet, it would be completely inappropriate to create potential liabilities and pass on such liabilities to the beneficiaries and consumers under change in law.*

22. *During the course of hearing, the representative of the Petitioners pointed out that as per the provisions of the Transmission Service Agreement, they are required to implement the Projects within the timeline stipulated therein to evacuate power from the renewable energy projects. Neither the Petitioners nor the CTU has furnished the exact locations of such renewable energy projects. However, these renewable energy projects are required to lay dedicated transmission lines from their respective projects for connection to the ISTS, which are the Projects of Fatehgarh Bhadla Transco Limited and Sikar New Transmission Limited, the subject matter of present Petitions. As Projects of Fatehgarh Bhadla Transco Limited and Sikar New Transmission Limited fall within the potential habitat of GIB, the dedicated transmission lines for connection to these ISTS will also be subject to similar measures as prescribed by the Hon'ble Supreme Court in its order dated 19.4.2021 for priority and potential habitat of GIB. In such circumstances, we are of the view that timeline for implementation of the Projects of Fatehgarh Bhadla Transco Limited and Sikar New Transmission Limited cannot be considered in isolation ignoring the various renewable energy projects from which power is being proposed to be evacuated and which are also subject to the order dated 19.4.2021 of the Hon'ble Supreme Court.*

23. *In light of the above discussion, we are of the considered view that it would not be appropriate for the Commission to allow the present Petitions for grant of transmission licences and adoption of transmission tariff in respect of the Projects ignoring the order of the Hon'ble Supreme Court dated 19.4.2021 providing for appropriate steps for laying of transmission network/lines in the priority and potential habitats of GIB and when the Petitioners are yet to take required actions in terms of the said order of Hon'ble Supreme Court.*

24. *At the same time, no purpose will be served to keep these Petitions pending till compliance of the order of the Hon'ble Supreme Court. Accordingly, the Petitions are disposed of with liberty to the Petitioners to approach the Commission with fresh Petitions on the subject matters when the Petitioners have complied with the directions of the Hon'ble Supreme Court dated 19.4.2021, which would provide sufficient clarity regarding implementation of the Project. The filing fees deposited by the Petitioners in respect of these Petitions shall be adjusted against the Petitions to be filed by the Petitioners in future in terms of the liberty granted as above."*

3. In compliance to above, the Petitioner approached the Committee constituted by the Hon'ble Supreme Court through application dated 8.9.2021. The Committee vide its letter dated 18.7.2022 has allowed for overhead laying of Fatehgarh II PS - Bhadla-II PS 765kV D/c line (2nd) subject to the condition of diversion of some portion of line and installing bird diverters. The relevant portion of letter of the Committee dated 18.7.2022, is extracted as under:

"1. The Committee discussed the application and above documents in meeting held on 14.10.2021 and 13.12.2021, 26.02.202, 04.07.2022 and 11.07.2022. Committee members also held a VC meeting on 26.05.2022 with the applicant to explore alternatives. As requested by this committee, additional information related to this application were submitted by PGCIL vide email dated 24.09.2021, 21.10.2021, 16.06.2022 and 05.07.2021. The central Electricity Authority (CEA) submitted its technical report on the application vide email dated 16.11.2021.

2. After detailed discussion, committee members concluded that overhead laying of this transmission line is the only option since the technology for undergrounding the 765 kV D/c line is not available and downgrading this line to 132 kV underground lines is also not feasible. However, the proposed line passes through Prioritized GIB are (about 30 km length) of the Potential Area, and crossed prime bustard habitats such as adjoining area of Rasla and Degray Oran.

3. Considering the above, the committee ratifies the overhead laying of this line as under-

- a) *Along the proposed route for approx. 160 km section from R1- Bhadla II Gantry (27.511051 N, 72.473326 E) to R1- AP19 (26.702407 N, 71.582485 E), and*
- b) *Along the suggested alternative route (from R1- AP19 to Jaisalmer II PS – Ramgarh II PS- Fatehgarh II PS so that it runs along -and shares RoW if possible with – the proposed PGCIL 400 kV D/c lines from Ramgarh II PS – Jaisalmer II PS and Ramgarh II PS – Fatehgarh II PS, as shown in Annexure) or any other feasible route south and west of the proposed one that avoids Rasla and Degray Oran areas for the remaining section.*
- c) *The above ratification is with the condition of installing Bird Diverters, which: a) meet quality and standards of Technical Specifications for Bird Flight Diverter' issued by this Committee in consultation with Central Electricity Authority, b) are installed following the method in Wildlife Institute of India's' Powerline mitigation to conserve bustards', i.e., diverters on all lines (earthwire and all types of conductors) with one unit at least 5 m interval of the powerline, c) where one out of five diverters (20%) is LED type, d) are maintained through the life of the Project."*

Hearing dated 11.10.2022:

4. The matter was called out for hearing on 11.10.2022 after notice to the Respondents. During the course of hearing, learned counsel for the Petitioner submitted that the Committee constituted by Hon'ble Supreme court comprising of member from MNRE, WILL and Corbett Foundation, vide its letter dated 18.7.2022, has recommended the overhead laying of Fatehgarh-II-Bhadla-II 765 D/C Line (2nd) with rerouting of line and installation of bird diverters. He further submitted that the Petitioner envisages completion of Part-B Transmission System within a period of 15 months after grant of transmission licence and adoption of tariff. Accordingly, the Petitioner may be permitted to approach the Commission for seeking appropriate remedies with regard to impact of Change in Law and Force Majeure events after implementation of the concerned transmission system. The representatives of CTUIL submitted that CTUIL vide its letter dated 26.8.2022 has recommended for grant of transmission licence to the Petitioner.

5. During the course of hearing, learned counsel appearing on behalf of the Respondent, Bihar State Power Holding Company Ltd. (BSPHCL) sought permission

to file Vakalatnama in the instant Petition and requested for time to file reply. Accordingly, the Respondent, BSPHCL on behalf of Respondent No. 5 and Respondent No. 6, North Bihar Power Distribution Company Ltd. and South Bihar Power Distribution Company Ltd. and Petitioner have filed their respective reply and rejoinder.

6. Bihar State Power Holding Company Ltd. in its reply has mainly submitted as under:

(a) The Petitioner has sought certain claims on the basis of Change in Law and Force Majeure which are beyond the scope of the instant Petition and the prayers made therein ought not be considered.

(b) There is failure to take reasonable care on the part of the Petitioner. Further, it is incumbent upon the Petitioner to demonstrate that the claim sought to be raised by it falls within the four corners of the TSA.

(c) The purported claim of Change in Law sought to be raised on account of acquisition price is also liable to be rejected.

(d) The Petitioner has not brought on record any notice given to the LTTCs in this regard as contemplated by Article 12.3 of the TSA.

(e) No relief beyond the scope of the instant Petition and on the basis of alleged Change in Law and Force Majeure event may be considered by the Commission.

7. The Petitioner, in its rejoinder dated 1.11.2022, has mainly submitted as under:

(a) The Petitioner's transmission system has been severely affected by the force majeure and Change in Law events on account of order dated 19.4.2021 passed by the Hon'ble Supreme Court read with the order dated 26.8.2021 passed by the Commission read with the letter dated 18.7.2022 of the Committee constituted by Hon'ble Supreme Court. The above orders have resulted in introduction of a new law and/or requirement of obtaining a new consent, permit and licence. Further, the Petitioner has also been affected due to increase in the acquisition price paid to the Bid Process Coordinator.

(b) The Commission had noted that the study team constituted by the Ministry of Power, has recommended to file an Interlocutory Application (IA) before the Hon'ble Supreme Court, *inter-alia*, requesting to allow installation of renewable energy projects and laying of future transmission lines in potential habitat of GIB with installation of bird diverters. The above was the reason as to why the Petitioner had also not approached the Committee immediately after passing of the order dated 19.4.2021.

(c) Article 3.1.3 of TSA, *inter-alia*, permits the successful bidder/ Petitioner a period of six months from the effective date of TSA for finalization of EPC contract(s) so that appointed EPC contractor(s) can take up project activities including detailed survey. Although, as per TSA, the Petitioner had a timeline for finalization of contracts till 4.12.2021 (6 months from effective date 4.6.2021) so that the appointed contractor could take up detailed survey activities. However, the Petitioner had already commenced survey work immediately upon acquisition

of the SPV on 4.6.2021. The Petitioner had approached the Committee constituted by the Hon'ble Supreme Court through application dated 8.9.2021 once the survey work of 765 kV D/C Fatehgarh-II-Bhadla-II (2nd) transmission line was completed. Accordingly, there has been no delay, deliberate or otherwise, on part of the Petitioner in taking requisite steps under the TSA and/or the bidding documents.

(d) In fact, the Petitioner had taken timely steps for commencing survey works and awarding contracts for all the packages for construction of the project had been placed and the work was under progress.

(e) The Commission, at the time of passing of the order dated 26.8.2021, had commented on the submissions made by the Petitioner in regard to time over-run and cost over-run, as at the relevant time, no steps had been taken by the Petitioner in terms of the order dated 19.4.2021. The above cannot, by any stretch of imagination, mean that the order dated 19.4.2021 passed by the Hon'ble Supreme Court read with the order dated 26.8.2021 read with the letter dated 18.7.2022 of the Committee, have not resulted in introduction of a new law and/or requirement of obtaining a new consent, permit and license entitling relief to the Petitioner under Change in Law and/or force majeure provisions as prescribed in the Transmission Service Agreement

(f) The Commission has considered and allowed the claim of change in acquisition price as a Change in Law event in various similar matters.

8. Since the Petitioner has complied with the direction of the Committee constituted by the Hon'ble Supreme Court, we proceed to consider the prayer of the Petitioner as regards adoption of transmission charges in respect of "Transmission System for evacuation of power from solar energy zones in Rajasthan (8.1 GW) under Phase II (Part B)" pursuant to competitive bid process carried out in terms of Guidelines issued by the Ministry of Power, Government of India.

9. We have considered the submissions of the Petitioner and perused the documents on record. Section 63 of the Act provides as under:

"Section 63: Determination of tariff by bidding process: Notwithstanding anything contained in section 62, the Appropriate Commission shall adopt the tariff if such tariff has been determined through transparent process of bidding in accordance with the guidelines issued by the Central Government."

10. Ministry of Power, Government of India has notified the "Tariff based Competitive Bidding Guidelines for Transmission Service" (hereinafter referred to as "the Guidelines") under Section 63 of the Act vide Resolution No. 11/5/2005-PG(i) dated 13.4.2006. The salient features of the Guidelines are as under:

(a) The Guidelines are applicable for procurement of transmission services for transmission of electricity through tariff based competitive bidding and for selection of Transmission Service Provider (TSP) for new transmission lines and to Build, Own, Maintain and Operate the specified transmission system elements.

(b) For procurement of transmission services, required for inter-State transmission project, the Central Government shall notify any Central Government Organization or any Central Public Sector Undertaking, or its

wholly owned subsidiary (Special Purpose Vehicle) as the Bid Process Coordinator (BPC) who would be responsible for coordinating the bid process.

(c) BPC shall prepare the bid documents in accordance with the Guidelines and obtain approval of the Appropriate Commission or alternatively, the BPC can use the Standard Bid Documents notified by the Ministry of Power, Government of India. Approval of the Appropriate Commission would be necessary, if any material deviation is proposed to be made in the Standard Bid Documents. Intimation about the initiation of the bid process shall be sent by BPC to the Appropriate Commission.

(d) For procurement of transmission services under the Guidelines, BPC may adopt at its option either a two-stage process featuring separate Request for Qualification (RfQ) and Request for Proposal (RfP) or adopt a single stage two envelope tender process combining both RfQ and RfP processes.

(e) RfQ or combined RfQ and RfP notice shall be issued in at least two national newspapers, on websites of BPC and the Appropriate Government and preferably in the trade magazines also to provide wide publicity. For the purpose of issue of RfQ, minimum conditions to be met by the bidder shall be specified in RfQ notice. The bidding shall be by way of International Competitive Bidding.

(f) Standard documentations to be provided during RfQ shall include definitions of requirements including brief description of the project, commissioning milestones to be achieved by the bidders, qualification required

to be met by bidders, conditions as specified by the Appropriate Commission for being eligible to obtain transmission licence, etc.

(g) Standard documentations to be provided by BPC in RfP shall include specified target dates/ months for commissioning and commercial operations and start of providing transmission services, Transmission Service Agreement (TSA) proposed to be entered with the selected bidder, period of validity of offer of bidder, bid evaluation methodology to be adopted by BPC, discount factor to be used for evaluation of the bids, specification regarding bid bond and project completion guarantee to be furnished by the bidders, proposed indemnification agreement between TSP and the utilities, amount of contract performance guarantee as percentage of cost of the project, liquidated damages that would apply in case of delay in start of providing the transmission services and other technical and safety criteria to be met by the bidder/ TSP including the provisions of the Grid Code.

(h) To ensure competitiveness, the minimum number of qualified bidders shall be two. The Empowered Committee shall constitute a committee for evaluation of the bids with at least one member from Central Electricity Authority (CEA), not less than two members from the concerned Regional Power Committees and at least one independent member. The bids shall be opened in public and the representative of the bidders shall be allowed to remain present. The technical bids shall be scored to ensure that only the bids that meet the minimum technical criteria set out in RfQ shall be considered for further evaluation on the

transmission charge bids. The transmission charge bid shall be rejected if it contains any deviation from the tender conditions for submission of the same. The bidder, who has quoted the lowest transmission charge as per the evaluation procedure, shall be considered for the award.

(i) The timeline suggested for two stage bid process is 145 days and that for single stage two envelope bid process is 180 days. BPC is empowered to give extended time-frame based on the prevailing circumstances and such alterations shall not be construed as the deviation from the Guidelines.

(j) The selected bidder shall make an application for grant of transmission licence to the Appropriate Commission within ten days from the date of issue of Letter of Intent (LoI) or signing of TSA, whichever is later, subject to further extension of time as provided under Clause 2.4 of the RfP.

(k) BPC shall make the final result of evaluation of all bids public. The final TSA along with the certification of Bid Evaluation Committee (BEC) shall be forwarded to the Appropriate Commission for adoption of tariff in terms of Section 63 of the Act.

11. Therefore, we have to examine whether the process as per the provisions of the Guidelines has been followed in the present case for arriving at the lowest levelised transmission charges and for selection of the successful bidder.

12. Ministry of Power, Government of India vide its letter dated 3.3.2020 notified the single stage two envelope standard bidding documents and directed that the same be

followed for the bidding of transmission projects under tariff based competitive bidding process. Ministry of Power, Government of India, vide Gazette Notification dated 27.1.2020 notified REC Transmission Projects Company Limited (RECTPCL) (now known as REC Power Development and Consultancy Limited - RECPDCL) as Bid Process Coordinator (BPC) for the purpose of selection of bidder as Transmission Service Provider (TSP) to establish the Project through tariff based competitive bidding process. It is noticed that in the interregnum, in compliance to the direction of Ministry of Power and order dated 5.2.2021 of the Ministry of Company Affairs, RECTPCL amalgamated with RECPDCL with appointed date as 1st April, 2020 and effective date as 6th February, 2021. As per the Scheme of Amalgamation, all the property, rights, powers, liabilities and duties of RECTPCL stood transferred to RECDPCL without further act or deed.

13. Fatehgarh Bhadla Transco Limited (the Petitioner) was incorporated on 2.6.2020 under the Companies Act, 2013 as a wholly owned subsidiary of RECTPCL with the objective to establish the Project and to act as the Transmission Service Provider after being acquired by the successful bidder. The main objectives of the Petitioner Company in its Memorandum of Association are as under:

“To plan, promote and develop an integrated and efficient power transmission system network in all its aspects including planning, investigation, research, design and engineering, preparation of preliminary, feasibility and definite project reports, construction, operation and maintenance of transmission lines, substations, load dispatch stations and communication facilities and appurtenant works, coordination of integrated operation of regional and national grid system, execution of turn-key jobs for other utilities/organizations and wheeling of power in accordance with the policies, guidelines and objectives laid down by the Central Government from time to time”.

14. In the present case, BPC prepared single stage two envelopes bidding

documents (RfP) vide letter dated 5.3.2020 in accordance with the Standard Bid Documents issued by Ministry of Power, Government of India. BPC started the process of selection of TSP with the publication of Global Invitation for Qualification for selection of developer on BOOM basis for the Project. The notice for RfP was published on 5.3.2020 in various editions of Hindustan Times (English), Mint (English), Hindustan (Hindi) with the last date of submission of response to RfP as 8.5.2020, which was later extended to 21.12.2020. Intimation regarding initiation of the bid process was given to this Commission in accordance with Clause 4.2 of the Guidelines vide letter dated 5.3.2020.

15. The key milestones in the bidding process were as under:

Sr. No.	Events	Date
1.	Publication of RfP	05.03.2020
2.	Technical & Financial Bid (Initial Offer) submission	21.12.2020
3.	Technical Bid Opening	21.12.2020
4.	Financial Bid (Initial Offer) Opening	21.01.2021
5.	e-Reverse Auction	22.01.2021
6.	Final Bid Evaluation Committee Meeting	27.01.2021
7.	Issuance of Letter of Intent	29.01.2021
8.	Signing of Agreement and Transfer of SPV	04.06.2021

16. The scope of the Project as per the Request for Proposal and the Transmission Service Agreement is as under:

Sr. No	Name of the Transmission Element	Scheduled COD in months from Effective Date
1.	Fatehgarh-II PS- Bhadla-II PS 765 kV D/c line (2nd)	
2.	2 no. of 765 kV line bays each at Fatehgarh-II and Bhadla-II for Fatehgarh-II PS- Bhadla- II PS 765 kV D/c line (2nd)	

3.	<p>1x240 MVar Switchable line reactor for each circuit at each end of Fatehgarh-II- Bhadla- II 765kV D/c line (2nd)</p> <p>240 MVar, 765 kV reactor- 4 (2 reactors each at Fatehgarh-II and Bhadla-II).</p> <p>Switching equipment for 765 kV reactor-4 (2 Switching equipments each at Fatehgarh-II and Bhadla-II)</p> <p>[1x80 MVar Spare* reactor each at Fatehgarh-II and Bhadla-II to be used as spare for Fatehgarh-II- Bhadla-II 765 kV D/c line (2nd)]</p> <p>*not under the present scope.</p>	18 Months
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Note:

i. POWERGRID to provide space for 2 no of 765 kV bays each at Fatehgarh-II and Bhadla-II substation and space for 2 no of switchable line reactors each at Fatehgarh-II and Bhadla-II substation.

ii. TSP shall install the 765kV Line Reactor banks at Bhadla II PS under each of the schemes (Part-B, Part-C and Part-E) and all the associated equipment required for switching arrangement viz isolators, circuit breakers, 765kV & 145kV (neutral) auxiliary buses etc., so that spare 1-ph unit, whenever provided in future, is able to replace any of the faulty unit without its physical movement. Respective TSP shall provide the equipment/facilities at Bhadla II PS such that only supply & installation of 1x80 MVAR spare unit of Reactor, associated LA, 1-Ph Circuit Breaker and extension of 765 kV & 145 kV buses will be required for completion of switching arrangement in future.”

17. The identified LTTCs of the Project as specified in the TSA are:

S. No.	Name of LTTCs
1.	SBE Renewables Seventeen Private Limited
2.	Renew Surya Aayan Private Limited
3.	Renew Surya Vihaan Private Limited
4.	Altra Xergi Power Private Limited
5.	North Bihar Power Distribution Company Limited
6.	South Bihar Power Distribution Company Limited
7.	Eden Renewable Passy Private Limited

18. It has been stated by RECPDCL vide letter dated 20.5.2021 that one of the LTTCs, namely, Renew Surya Roshni Private Limited had been deleted from the list of LTTCs. RECPDCL had further informed that a new LTTC, namely, Eden Renewable Passy Private Limited has been added as LTTC to the Project. A copy of Supplementary Agreement dated 12.5.2021 executed between the Petitioner and Eden Renewable

Passy Private Limited was furnished by RECPDCL. Further, RECPDCL has provided the breakup of amount amongst the seven LTTCs indicated in the above table for furnishing the Contract Performance Guarantee.

19. For the purpose of evaluation of bids, the Bid Evaluation Committee (BEC) comprising of the following was constituted:

1.	Sh. Anil Kumar Arora, Head, SBI Capital Markets	Chairman
2.	Sh. Soumitra Mazumdar, Superintending Engineer, Northern Regional Power Committee	Member
3.	Sh. Sudhir Jain, Superintending Engineer (P&P), Rajasthan Rajya Vidyut Prasaran Nigam Limited (RVPN)	Member
4.	Shri Y. K. Swarnkar, Director, PSETD Division, Central Electricity Authority	Member
5.	Shri Awdhesh Kumar, Director, PSPA-I Division, Central Electricity Authority	Member
6.	Shri Sanjay Kulshrestha Chairman of SPV "Fatehgarh Bhadla Transco Limited"	Convener-Member

20. Responses to single stage RfP were received from the following four bidders:

Sr. No.	Name of the Bidder
1.	Power Grid Corporation of India Limited
2.	Torrent Power Limited
4.	Adani Transmission Limited
5.	Sterlite Grid 20 Limited

21. RECPDCL appointed a consultant, namely Mazars Advisory LLP in consortium with Singhania & Partner LLP for providing consultancy services in the process of selection of Project developer. The responses to single stage RfP were opened 21.1.2020 in the presence of BEC and the representatives of the bidders. Based on the evaluation of the responses to RfP, the BEC declared all four bidders meeting

qualification requirement of RfP based on their responses to RfP.

22. Based on the recommendation of BEC, the Initial Offer of all the four bidders, namely, Power Grid Corporation of India Limited, Torrent Power Limited, Adani Transmission Limited and Sterlite Grid 20 Limited were opened online on 21.1.2021 in the presence of BEC. The lowest Initial Offer discovered (Best Deal) at MSTC portal was Rs. 728.93 million to participate in the e-reverse bidding stage and to submit their final offers.

23. As per the provisions of RfP documents, BEC recommended the following four bidders to participate in the e-reverse auction stage and to submit their final offers. These four bidders quoted the Initial Price Offer (Levelised Transmission Charges) as under:

Sr. No.	Name of Bidder	Levelised Transmission Charges (Rs. in Million)	Rank
1	Power Grid Corporation of India Limited	728.93	L1
2	Torrent Power Limited	925.19	L2
3	Adani Transmission Limited	970.00	L3
4	Sterlite Grid 20 Limited	1088.73	L4

24. E-reverse auction was carried out at MSTC portal on 22.1.2021 in the presence of members of BEC after intimating to four qualified bidders regarding lowest Initial Offer. However, no bid was received during e-reverse auction stage. As per clause 3.6.1 of the RfP, "if no bid is received during the e-reverse bidding stage then the bidder with lowest quoted initial levelised transmission charges ("Initial Offer") during e-bidding stage shall be declared as the successful bidder". Accordingly, Power Grid Corporation of India Limited (PGCIL), which had quoted the lowest Initial Offer of Rs. 728.93 million,

was declared as the successful bidder.

25. BEC in its meeting held on 27.1.2021 recommended PGCIL with the lowest levelised transmission charges of Rs. 728.93 million as the successful bidder.

26. Letter of Intent (LoI) was issued by BPC on 29.1.2021 to the successful bidder i.e. Power Grid Corporation of India Ltd. In accordance with Clause 12.3 of the Guidelines, BPC has hosted on its website, the final result of the evaluation of the bids for selection of developer for the Project.

27. In accordance with the provisions of the bid documents and LoI issued in its favour, the Petitioner has prayed for adoption of the transmission charges for the Project which has been discovered through the process of competitive bidding.

28. In accordance with Clauses 2.15.2 and 2.15.4 of RfP, the selected bidder shall within 10 days of issue of LoI, accomplish the following tasks:

(a) Provide Contract Performance Guarantee in favour of the LTTCs;

(b) Execute the Share Purchase Agreement;

(c) Acquire, for the acquisition price, one hundred percent equity shareholdings of Fatehgarh Bhadla Transco Limited along with all its related assets and liabilities;

(d) Make an Application to this Commission for adoption of charges under Section 63 of the Act; and

(e) Apply to this Commission for grant of transmission licence.

29. On 4.6.2021, the Petitioner has acquired hundred percent equity holding in Fatehgarh Bhadla Transco Limited. Accordingly, the Transmission Service Agreement executed between the TSP and the LTTCs dated 11.11.2020 became effective from 4.6.2021.

30. The Petitioner has approached the Commission by a separate application for grant of transmission licence. The Commission vide order dated 22.10.2022 in Petition No. 221/TL/2022 on being satisfied that the Petitioner, prime facie, qualifies for grant of transmission licence as prayed for, directed publication of notices under clause (a) of sub-section (5) of Section 15 of the Act, inviting suggestions/ objections to the proposal of the Commission. Accordingly, notices have been published and the matter is listed for final hearing on 22.11.2022.

31. The provision to Clause 2.15.2 of the RfP provides that "if for any reason attributable to the BPC, the said activities are not completed by the selected bidder within the above period of ten (10) days as mentioned in this clause, such period of 10 days shall be extended, on a day-to-day basis till the end of the Bid validity period". Though Lol was issued on 29.1.2021, BPC, vide its letter dated 6.2.2021, 17.2.2021, 1.3.2021, 15.3.2021, 24.3.2021, 2.4.2021, 14.4.2021, 26.4.2021, 25.5.2021 and 4.6.2021, in terms of Clause 2.15.2 of RfP extended the date upto 17.6.2021 for completion of all activities by the successful bidder. PGCIL furnished the Contract Performance Guarantee to the Long-Term Transmission Customers of the Project for an amount of Rs. 105 million (Rs. 10.5 crore) and has acquired hundred percent equity-holding in the applicant company on 4.6.2021 after execution of the Share

Purchase Agreement with BPC. TSP (the Petitioner) on behalf of PGCIL filed the Petition No. 141/AT/2021 through e-filing for adoption of tariff on 17.6.2021 which was disposed of vide order dated 26.8.2021 with liberty to the Petitioner to approach the Commission after compliance of the direction of the Hon`ble Supreme Court.

32. In accordance with the Guidelines, BEC has to certify that the tariff has been discovered through a transparent process of bidding and that the tariff discovered is in line with prevailing market prices. In the minutes of Bid Evaluation Committee meeting held on 27.1.2021, the following has been recorded:

- “2. The Bid Evaluation Committee had met earlier on 21.01.2021 where the Initial Offers were opened and it was observed that as per provisions of RFP document, following four (4) bidders are qualified to participate in the electronic reverse auction stage and submit their Final Offer:*

Sr. No.	Name of Bidder	Levelised Transmission Charges (Rs. in Million)	Rank
1	Power Grid Corporation of India Limited	728.93	L1
2	Torrent Power Limited	925.19	L2
3	Adani Transmission Limited	970.00	L3
4	Sterlite Grid 20 Limited	1088.73	L4

3. *In the above mentioned meeting, BEC had recommended to initiate the e-reverse auction on 22.01.2021 at 1000 Hrs (IST) after intimation to all the four (4) qualified bidders regarding lowest initial offer.*
4. *Pursuant to the above, RECTPCL confirmed to BEC that all the above four (4) bidders were informed on 21.01.2021 regarding the e-reverse Auction start time and lowest initial offer.*
5. *The e-Reverse Auction started on 22.01.2021 at 1000 Hrs (IST) on MSTC portal and even after expiry of the initial period i.e. 2 hours for conducting the e-reverse auction, no bidder placed its bid. System generated statement after conclusion of e-reverse auction is attached at **Annex-1***
6. *As per Clause 3.6.1 of RFP, if no bid is received during e-reverse bidding stage then the Bidder with lowest quoted initial Levelized transmission charges (“Initial Offer”) during e-bidding stage shall be declared as the Successful Bidder.*
7. *BPC, in their evaluation report (**Annex- 2**) has confirmed the following:*

- a) *Based on the estimated cost as communicated by cost committee constituted by National Committee on Transmission (NCT) and as per prevailing CERC norms, the estimated levelized charges for this project have been computed to be Rs. 1434.74 million.*
- b) *The entire bid process has been carried out in accordance with the "Tariff based Competitive Bidding Guidelines for Transmission Service" and "Guidelines for encouraging competition in development of the Transmission Projects" issued by Ministry of Power, Govt. of India under Section 63 of the Electricity Act, 2003 and as amended from time to time.*

8. After detailed discussions on the evaluation report prepared by BPC (**Annex-2**), the Bid Evaluation Committee decided the following:

- (a) *M/s Power Grid Corporation of India Transmission Limited with the lowest Levelised Transmission Charges of Rs. 728.93 Million, is the successful Bidder after the conclusion of the e- reverse Auction.*
- (b) *The levelised charges quoted by the successful Bidder, during e-reverse auction, is lower than the Levelised Charges estimated by BPC (Para 6(a)), hence the levelised charges discovered through e-reverse auction are acceptable.*
- (c) *In view of (a) and (b) above, M/s Power Grid Corporation of India Limited may be issued Letter of Intent (LoI)."*

33. Bid Evaluation Committee vide its certificate dated 27.1.2021 has certified as under:

"It is certified that:

- a. *The entire bid process has been carried out in accordance with the "Tariff based Competitive Bidding Guidelines for Transmission Service" and "Guidelines for encouraging competition in development of the Transmission Projects" issued by Ministry of Power, Govt. of India under Section 63 of the Electricity Act, 2003 and as amended from time to time.*
- b. *M/s Power Grid Corporation of India Limited, with lowest Levelised Transmission Charges of Rs. 728.93 Million, emerged as the successful Bidder after the conclusion of e-Reserve Auction.*
- c. *Thus, Levelised Transmission Charges of Rs. 728.93 Million discovered through e-reverse auction is acceptable."*

34. In light of the discussions in preceding paragraphs, it emerges that selection of

the successful bidder and the levelised tariff of the Project has been carried out by the BPC through a transparent process of competitive bidding in accordance with the Guidelines issued by the Ministry of Power, Government of India under Section 63 of the Act. BEC has also certified that the process is in conformity with the Guidelines. BEC in its certificate dated 27.1.2021 has certified that Power Grid Corporation of India Limited has emerged as the successful bidder after conclusion of e-reverse auction with lowest levelized transmission charges of Rs. 728.93 million. BEC has further certified that the levelized tariff computed on the basis of rates quoted by the successful bidder, during e-reverse auction, is lower than the levelized tariff calculated based on CERC norms and is acceptable.

35. During the course of hearing, learned counsel for the Petitioner submitted that the Petitioner may be permitted to approach the Commission for seeking appropriate remedies with regard to impact of Change in Law and force majeure events after implementation of concerned transmission system. The Petitioner has further submitted that BPC vide letter dated 9.11.2020 had intimated to the bidders that the acquisition price payable by the selected bidder for acquisition of one hundred percent of equity shareholding of Fatehgarh Bhadla Transco Limited along with all its related assets and liabilities as Rs. 129.154 million (Rs. 12,91,54,000/-). However, subsequent to the bidding and during acquisition, BPC vide letter dated 1.6.2021 intimated the Petitioner that the final acquisition price is Rs. 130.432 million (Rs. 13,04,32,592/-), which is higher by Rs.12,78,592/- than the amount intimated earlier. The Petitioner has submitted that the aforesaid increase in acquisition price after the bid deadline constitutes a Change in Law event under Article 12.1.1 of the TSA and that the Petitioner has furnished the

necessary documentary proof in this regard.

36. The Respondent, Bihar State Power Holding Company Limited, has submitted that the Petitioner has sought certain claims on the basis of Change in Law and force majeure events. It is incumbent upon the Petitioner to demonstrate that the claim sought to be raised by it falls within the four corners of the TSA. It has been further submitted that the purported claim of Change in Law sought to be raised on account of acquisition price is liable to be rejected.

37. We have noted the submissions of the Petitioner and the Respondent. The claims of the Petitioner on account of Change in Law and force majeure events are beyond the scope of the present Petition. Since the scope of the present Petition is limited to adoption of transmission charges under Section 63 of the Act, the Petitioner is granted liberty to claim the Change in Law and force majeure relief on this count at the appropriate point of time in accordance with the law.

38. Based on the certification of the BEC, the Commission approves and adopts the transmission charges for the Project as per Appendix to this order subject to issuance of transmission licence to the Project which shall remain valid throughout the period covered in the TSA. The sharing of the transmission charges by the LTTCs shall be governed by the provisions of the Central Electricity Regulatory Commission (Sharing of inter-State Transmission Charges and Losses) Regulations, 2010 as amended from time to time.

39. A copy of this order shall be sent to CTUIL and Long-Term Transmission

Customers of the Transmission System.

40. The Petition No. 222/AT/2022 is disposed of in terms of the above.

Sd/-
(P.K. Singh)
Member

sd/-
(Arun Goyal)
Member

Appendix

Contract Year	Commencement date of contract year	End date of contract year	Quoted Non-Escalable Transmission Charges (Rs. in Millions)	Quoted Escalable Transmission Charges (Rs. in Millions)
1.	18-Jul-22	31-Mar-23	866.27	-
2.	1-Apr-23	31-Mar-24	866.27	-
3.	1-Apr-24	31-Mar-25	866.27	-
4.	1-Apr-25	31-Mar-26	866.27	-
5.	1-Apr-26	31-Mar-27	866.27	-
6.	1-Apr-27	31-Mar-28	866.27	-
7.	1-Apr-28	31-Mar-29	866.27	-
8.	1-Apr-29	31-Mar-30	866.27	-
9.	1-Apr-30	31-Mar-31	866.27	-
10.	1-Apr-31	31-Mar-32	608.55	-
11.	1-Apr-32	31-Mar-33	608.55	-
12.	1-Apr-33	31-Mar-34	608.55	-
13.	1-Apr-34	31-Mar-35	608.55	-
14.	1-Apr-35	31-Mar-36	608.55	-
15.	1-Apr-36	31-Mar-37	608.55	-
16.	1-Apr-37	31-Mar-38	608.55	-
17.	1-Apr-38	31-Mar-39	608.55	-
18.	1-Apr-39	31-Mar-40	608.55	-
19.	1-Apr-40	31-Mar-41	608.55	-
20.	1-Apr-41	31-Mar-42	608.55	-
21.	1-Apr-42	31-Mar-43	608.55	-
22.	1-Apr-43	31-Mar-44	608.55	-
23.	1-Apr-44	31-Mar-45	608.55	-
24.	1-Apr-45	31-Mar-46	608.55	-
25.	1-Apr-46	31-Mar-47	608.55	-
26.	1-Apr-47	31-Mar-48	608.55	-
27.	1-Apr-48	31-Mar-49	608.55	-
28.	1-Apr-49	31-Mar-50	608.55	-
29.	1-Apr-50	31-Mar-51	608.55	-
30.	1-Apr-51	31-Mar-52	608.55	-
31.	1-Apr-52	31-Mar-53	608.55	-
32.	1-Apr-53	31-Mar-54	608.55	-
33.	1-Apr-54	31-Mar-55	608.55	-
34.	1-Apr-55	31-Mar-56	608.55	-
35.	1-Apr-56	31-Mar-57	608.55	-
36.	1-Apr-57	17-Jul-57	608.55	-