

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Coram:

1. **Shri Ashok Basu, Chairman**
2. **Shri K.N. Sinha, Member**
3. **Shri Bhanu Bushan, Member**

Petition No. 93/2003

In the mater of

Application for Grant of Transmission License to Bina-Dehgam Transmission Company Limited for 400 KV D/C Bina-Nagda-Dehgam in the States of Madhya Pradesh, Rajasthan and Gujarat.

And in the matter of

Consortium of Tenaga Nasional Berhad, Malaysia (TNB) & Kalpataru Power Transmission Ltd., India (KALPATARU) named TNB-KPTL Consortium for 400 KV D/C Bina-Nagda-Dehgam Line (Project) in the States of Madhya Pradesh, Rajasthan and Gujarat. **Applicant**

The following were present:

1. Shi K.V. Mani, TNB Kalpataru Consortium
2. Mr. Dato Anwar, TNB Kalpataru Consortium
3. Shri Sreesanthan, TNB Kalpataru Consortium
4. Mr. Mofatraj Munot, TNB Kalpataru Consortium
5. Shri Kuljit Singh, TNB Kalpataru Consortium
6. Shri Yogesh Aggarwal, TNB Kalpataru Consortium
7. Shri Hafez, TNB Kalpataru Consortium
8. Shri Ajay Munot, TNB Kalpataru Consortium
9. Shri Anil Kothiwal, TNB Kalpataru Consortium
10. Shri Pawan Singh, DGM, PGCIL
11. Shri Akhil Kumar, PGCIL
12. Shri Ashwani Jain, AGM, PGCIL
13. Shri N. Bhattacharya, GM, PGCIL
14. Shri M. Krishnakumar, PGCIL
15. Shri D.K. Sarkar, PGCIL
16. Shri V.K. Sharma, PGCIL
17. Shri Vijay Kumar, PGCIL
18. Shri S. Garg, DGM, PGCIL
19. Shri N.R. Gupta, PGCIL
20. Shri Sanjay Rai, PGCIL
21. Shri Kanday Patil, GEB

22. Shri S.B. Khyalia, GEB

ORDER
(DATE OF HEARING: 27.2.2004)

The applicant, Consortium of Tenaga Nasional Berhad, Malaysia (TNB) & Kalpataru Power Transmission Ltd., India, named as TNB-KPTL Consortium, in this application filed under sub-section (1) of Section 15 of the Electricity Act, 2003, (for short "the Act") has prayed for grant of transmission licence in favour of Bina-Dehgam Transmission Company Limited, a shell company floated by Power Grid Corporation of India Ltd, for implementation of Bina-Nagda-Dehgam Transmission Lines for evacuation of power from Sipat Power Station of NTPC,

2. Power Grid Corporation of India Ltd in its capacity as the Central Transmission Utility has also submitted its recommendations in terms of sub-section (4) of Section 15 of the Act.

3. In exercise of its powers under Section 27 C of the Indian Electricity Act, 1910, (since repealed) the Commission issued a notification dated 24.8.2001 on procedure, terms and conditions and application for grant of transmission licence and other related matters. The said notification dated 24.8.2001, which deals with evaluation and selection of implementing agency for grant of transmission licence, *inter alia*, laid down that the Central Transmission Utility (Power Grid Corporation of India Ltd has been notified as the Central Transmission Utility by the Central

Government) would coordinate the selection of IPTC for execution of the transmission system identified to be undertaken through IPTC route.

4. The Power Grid Corporation of India Ltd as the Central Transmission Utility had identified the Bina-Nagda-Dehgam Transmission Lines, for implementation through IPTC route for which the bidding process was carried out in two stages, namely, the Request for Qualification stage (RfQ) and the Request for Proposal stage (RfP). The applications were invited for issue of Request for Qualification document for short-listing of prospective IPTC for implementation of the project on Build-Own-Operate-Transfer basis through an advertisement. A total of 15 organisations (including 6 foreign companies) were stated to have responded to the advertisement and purchased RfQ document for the purpose. However, only 6 parties had submitted their qualification statement. Based on the qualifying requirements contained in the RfQ document, 4 parties including the applicant were further short-listed.

5. The RfP document was issued to the short-listed parties. However, only the applicant submitted its techno-commercial and tariff proposals. Thus, there was only one proposal, made by the applicant for implementation of the project. It transpired that against the estimated project cost of Rs.485 crore, the applicant's financing plan indicated the estimated project cost of Rs.798 crore, which represented increase of about 65% over the estimated cost by the Central Transmission Utility. The applicant was stated to have deviated from two of the six

non-negotiable conditions mentioned in the Implementation Agreement and Transmission Service Agreement, namely on the scope of work and buy-out price provisions, besides a large number of other deviations from other conditions contained in RfP documents. The Central Transmission Utility moved the Commission by filing a petition (No. 124/2002) for obtaining its approval in accordance with the regulations notified by the Commission to proceed further with the evaluation of the proposal received from the applicant. The approval of the Commission to proceed further with the evaluation was accorded vide order dated 20.1.2003.

6. Subsequently an Interlocutory Application (No.18/2003) was filed by the Central Transmission Utility, stating that on evaluation of the price bid, the Transmission Service Charges quoted by the applicant were found to be higher by 75% to 80% over those in case the transmission lines were implemented by the Central Transmission Utility through its own resources. The Central Transmission Utility prayed for further guidance and directions in the light of the higher Transmission Service Charges quoted by the applicant and also the deviations by the applicant in respect of necessary and non-negotiable conditions. The application was heard on 25.6.2003 after notice to the applicant. In its reply to the application filed by the Central Transmission Utility, the applicant raised a number of issues on the evaluation criteria adopted by the Central Transmission Utility for evaluation of the bid. It was explained on behalf of the Central Transmission Utility that the comparison of project cost was made based on the estimated cost.

7. The proceedings before the Commission were conducted under Section 27C of the Indian Electricity Act, 1910, since repealed through the Act, which came into force with effect from 10.6.2003, It was noted that in accordance with Section 15 of the Act, any person desirous of obtaining license was required to file an application before the Commission. In the face of the changed legal provisions the application filed by the Central Transmission Utility was disposed of by granting liberty to the applicant to file an appropriate application for grant of transmission licence in accordance with the revised procedure. However, the Commission also observed that the applicant and the Central Transmission Utility could mutually discuss the issues raised by them with a view to resolving them, before anyone approached the Commission again. Against the above background, the present application has been filed

8. According to the applicant, in accordance with the terms and conditions of RfP document, the Bina-Dehgam Transmission Company Limited was to undertake some of the pre-developmental work in order to expedite implementation of the transmission lines. It is stated that the applicant will acquire 100% equity of the Shell Company and an Independent Power Transmission Company (IPTC) shall be formed, which shall implement the transmission lines after entering into Implementation Agreement and Transmission Service Agreement with the Central Transmission Utility. The applicant had indicated the year-wise transmission service charge for a period of 30 years after the date of

commercial operation and the estimated completion cost of the transmission lines to be Rs.675.87 crore.

9. The Central Transmission Utility in its recommendations stated that the Bina-Dehgam Transmission Company Limited could be taken over by the applicant only after the Implementation Agreement and Transmission Service Agreement were finalised. The Central Transmission Utility further submitted that the levelised tariff worked out by the applicant was higher by 12.34% to 24.33% , for which the beneficiaries had not been consulted, though no other details were furnished.

10. The application was initially heard on 30.1.2004. At the hearing Shri Ashwani Jain representing the Central Transmission Utility stated that as per its estimates, the completion cost of the transmission lines should be around 617 crore. It was also stated that the Power Grid Corporation of India Ltd. could undertake the transmission lines through its own resources. However, neither the applicant nor the Central Transmission Utility had indicated the basis for cost calculations. The Commission, therefore, directed the applicant and the Central Transmission Utility to furnish the detailed basis for calculation of estimated completion cost arrived at by them, along with certain additional details. The Central Transmission Utility was further directed to file an affidavit to indicate the estimated completion cost of the transmission lines if their implementation was

undertaken by Powergrid Corporation of India Ltd/Central Transmission Utility within its own resources.

11. It was further noted that the beneficiaries of the transmission lines were not consulted on the question of tariff. The Commission accordingly directed that all the state utilities in Western Region, be impleaded by the applicant and a copy of the petition be served on them for their response.

12. The application was again heard on 27.2.2004, when the representatives of the applicant as also those of the Central Transmission Utility and Gujarat Electricity Board were heard. None was present on behalf of other beneficiaries despite notice.

13. In the revised affidavit filed before the Commission, the applicant indicated the estimated completion cost of the transmission lines to be Rs.657 crore. In the affidavit filed on behalf of the Central Transmission Utility, the estimated completion cost is stated to be Rs.557 crore, which according to the representative of the Central Transmission Utility, should be the benchmark price. In the revised affidavit, the applicant indicated the revised tariff for 30 years and the levelised tariff of about Rs.99 crore per year for 30 years. However, the Central Transmission Utility indicated the levelised tariff of about Rs.73 crore per year. While explaining the reasons for variation in the estimated completion cost of Rs.617 crore indicated by the Central Transmission Utility at hearing on

30.1.2004 and the benchmark price of Rs.557 crore given in its affidavit, the representative of the Central Transmission Utility stated that the estimated completion cost of Rs.617 crore was worked out in accordance with the methodology adopted by the applicant for computation of estimated completion cost of Rs.675 crore. However, the benchmark price of Rs.557 crore had been arrived at by applying the methodology prescribed by the Central Government for calculation of estimated cost. The representative of Gujarat Electricity Board raised certain questions on the proposal of the applicant regarding the estimated completion cost, tariff etc. As no formal reply was filed on behalf of Gujarat Electricity Board, its representative was allowed time to place on record the views through a formal affidavit.

14. Before taking a final view on the application for grant of licence, we considered it necessary to satisfy ourselves on the question of the estimated completion cost, and its likely implications on tariff for the transmission lines and other relevant factors. We, therefore, directed by our order of 5.3.3004 that some additional information be filed by the applicant as also the Central Transmission Utility.

15 The fresh details were duly filed on behalf of the applicant as also the Central Transmission utility. The matter was also discussed with the representatives of the applicant and the Central Transmission Utility. The

information conveyed in the affidavits and through the discussions has been analysed with the assistance of Secretariat of the Commission.

16. The major issues that emerged from the pleadings of the applicant are as follows:

(a) The under estimation of the project cost by about 19% by the Central Transmission Utility is on account of its reliance on price levels of three latest contracts awarded, instead on the lowest price-bids recently received.

(b) While determining the estimated completion project cost, the unprecedented increases in the raw material prices is not reflected in the escalation rate of 4% considered by the Central Transmission Utility.

(c) The impact of quantity variation has not been considered by the Central Transmission Utility.

(d) While comparing the tariff the following items have not been considered by the Central Transmission Utility; namely:

(i) Licence fee of Rs. 25 lakh per annum payable by the applicant as a licensee.

(ii) Change in law cost of Rs. 10 lakh per annum.

- (iii) Insurance cost at 0.5% per annum.
- (iv) Depreciation being limited to 90% of the project cost instead of 100% considered by the applicant.
- (v) Income-tax on Advance Against Depreciation and deferred taxes.
- (vi) 10% confidence interval over the benchmark price.
- (vii) Cost relating to fees charged by lenders.
- (viii) Validity of the transmission licence for a period of 25 years instead of 30 years

17. The issues raised by the applicant are proposed to be discussed in greater detail.

18. The estimated completion cost initially indicated by the applicant is for Rs. 675.87 crore, which was subsequently scaled down to Rs. 657.05 crore by offering a discount. In view of this, the break up of the estimated completion cost corresponding to Rs. 657 crore has been done proportionately by the Commission for the purpose of analysis. The details of Rs. 557 crore submitted by the Central Transmission Utility in support of the estimated completion cost reveals that the major difference, to the tune of Rs. 42 crore is on account of the cost of transmission line materials and also to the tune of Rs. 18 crore on taxes and duties. The IDC and the financing charges of the Central Transmission Utility are on the lower side by about Rs. 30 crore. In fact IDC component of tariff in the estimates of the Central Transmission Utility works to about 6% of the works cost

of Rs. 526 crore and this is on the lower side, taking into account the fact that foreign loan is not factored in by the Central Transmission Utility. In other projects of the Central Transmission Utility, IDC component was found to be of the order of 12% to 14 %. The quantity variation in the case of the Central Transmission Utility would be at actuals. However, since not much of hilly terrain is to be encountered in the proposed transmission lines route, the quantity variation in this case may be negligible and, therefore the estimate made by the Central Transmission Utility may not undergo any significant change on that account.

19 The price variation formula to be included in various project contracts would decide the price variation during construction. Such variations are passed on to the capital cost as per the practice of the Central Transmission Utility. For the purpose of the cost estimates the Central Transmission Utility has considered the price escalation till the completion of the transmission line @ 4% and 7% per annum for arriving at capital cost of Rs.557 crore and 617 crore respectively. The applicant has pointed out that there is run-away inflation in the prices of steel and aluminum which are bound to increase the Central Transmission Utility cost estimates considerably over the base estimated completion cost of Rs. 557.80 crore considered by them. This is a relevant issue that needs to be taken into account while deciding the case.

20. The Central Transmission Utility has also furnished another cost estimate based on latest tenders received by it and arrived at a capital cost of Rs. 617 crore, which is also lower than the capital cost indicated by the applicant.

21. It will be pertinent to take note of the capital cost considered in various petitions of the Central Transmission Utility which came before the Commission over the last couple of years. In most of these cases, the Commission has observed that the completion cost of the projects was much less than the estimated cost based on which the competent authority approved the project cost. The Central Transmission Utility clarified that reduction in actual completion cost is on account of the fact that the estimates were based on prices contained in the three previous orders and the actual prices accepted during bidding were much less than the estimated costs. Besides, there is considerable reduction in interest rates which has resulted in lower capital cost.

22. As regards the items of tariff indicated by the applicant, the following need to be highlighted :

(a) Licence fee payable by the licensee will be "pass through" item in tariff.

(b) Change in law cost of Rs. 10 lakh per annum cannot be included in tariff as this is not covered under the terms and conditions notified by the Commission.

(c) The insurance cost at 0.5% per annum cannot be considered for the purpose of tariff as it is not separately provided for in the terms and conditions of tariff notified by the Commission.

(d) Depreciation being limited to 90% of the asset value is as per the terms and conditions of tariff.

(e) Income-tax provisions would be in accordance with the Income-tax Act, 1961 and cannot include any other items.

(f) 10% confidence interval over the benchmark price is only for taking decisions in comparison to the benchmark prices and need not necessarily be included to justify high cost bids.

(g) There is no doubt that an IPTC sponsored project would entail certain higher financing cost as opposed to balance sheet financing resorted to by PGCIL.

(h) Transmission licence period shall be 25 years in accordance with the Act.

(i) The entire evaluation should be limited to the payment of annual transmission charges corresponding to the target availability prescribed by the Commission and the incentives need not to be compared for the purpose of deciding the case.

23. Another important aspect to be taken note of in the bid of the applicant is that there is a sizable foreign currency component of tariff indicated in US Dollar terms which will be subject to exchange rate variation through out the agreement period. This will obviously have implications on tariff.

24. One of the beneficiaries of the region namely the Gujarat Electricity Board had indicated that the project cost indicated by the applicant is very high as compared to the cost estimates prepared by the Central Transmission Utility as well as by its own. It is also pointed out that two LCs are required for payment, one for payment to the Central Transmission Utility and another for payments by the Central Transmission Utility to IPTC. In addition, the service charges of the Central Transmission Utility have also to be borne by them. The additional costs involved in case the transmission lines are executed by the applicant would prove to be a deterrent, Therefore, Gujarat Electricity Board has strongly objected to grant of licence to the applicant and has sought directions to the Central Transmission Utility for execution of the transmission lines to match with the commissioning of Sipat Thermal Power Station.

25. The main reason for higher prices estimated by the applicant appears to be on account of assuming the risk of quoting a firm tariff. Further, the offer of the applicant being a single bid, the advantages of competition are not really achieved in this case.

26. The Commission's objective is two-fold namely, (i) to promote investment in the electricity sector and (ii) to protect interest of the consumers. The consumer interest cannot be sacrificed at the altar of promotion of private sector participation in the power sector. On analysis of the proposals for estimated completion cost and the likely tariff on commissioning of the transmission lines, we are convinced that grant of license will not benefit the end consumer. On the contrary, he may be forced to a higher tariff. On these considerations, we reject the applicant's prayer for grant of licence for the Bina-Nagda-Dehgam transmission lines.

27. Before parting with the case, we consider ourselves duty bound to record that Power Grid Corporation of India Ltd., who is to construct the transmission lines, shall make every endeavor to execute the transmission lines within the cost which it has termed the benchmark price, that is Rs. 557 crore, and in any case the total cost should not exceed Rs.617 crore.

Sd/-
(BHANU BHUSHAN)
MEMBER

Sd/-
(K.N. SINHA)
MEMBER

Sd/-
(ASHOK BASU)
CHAIRMAN

New Delhi dated the 27th April 2004