

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Coram**

1. Dr. Pramod Deo, Chairperson
2. Shri R.Krishnamoorthy, Member
3. Shri V.S.Verma, Member

**Petition No. 116/2008**

**In the matter of**

Application for grant of transmission licence to Teestavalley Power Transmission Ltd. (TPTL).

**And In the matter of**

Teestavalley Power Transmission Ltd, New Delhi

**Petitioner**

Vs

1. Power Grid Corporation of India Ltd, New Delhi
2. Teesta Urja Ltd, New Delhi
3. PTC India Ltd, New Delhi
4. Energy and Power Department, Government of Sikkim,  
North Mangan
5. Central Electricity Authority, New Delhi

**Respondents**

**Following were present:**

1. Shri Tarun Johri, Advocate, TPTL
2. Shri A.Sehgal, TPTL
3. Shri Ramchandra, Power Grid
4. Shri Rajiv, Power Grid

**ORDER**

**(Date of Hearing: 26.2.2009)**

The applicant, Teestavalley Power Transmission Ltd., a Special Purpose Vehicle, and a joint venture between Power Grid Corporation of India Ltd, the first respondent and Teesta Urja Ltd, the second respondent has made this application for grant of licence for the following transmission lines which it proposes to execute, namely:-

S.No	Description	Length
1.	400 kV D/C transmission line with quad Moose conductor from generating station to Mangan pooling point.	2 Km
2.	400 kV D/C transmission line with quad Moose conductor from Mangan to new pooling station at Kishanganj.	204 Km

2. The second respondent is executing a 1200 MW hydro-electric generating station (the generating station) in Teesta basin in the State of Sikkim. The third respondent, PTC India Ltd. is said to have entered into a Power Purchase Agreement (PPA) with the second respondent for off-take of 70% of the saleable energy of the generating station at the nearest pooling station (Mangan) from where open access is said to be available in accordance with the Commission's regulations on the subject. The third respondent, in turn, has signed agreements with beneficiaries of Northern Region for sale of power. Thus, the transmission lines are primarily being executed for evacuating the power to the beneficiaries located in Northern Region.

3. The technical and financial strength of the applicant comes from its two principal shareholders, the first and second respondents. The applicant has signed Implementation Agreement and Transmission Service Agreement with the second respondent to ensure payment of annual transmission charges.

4. The generating station is said to have achieved financial closure and is stated to be in the advanced stage of implementation. It is the case of the applicant that the transmission lines need to be established matching with the commissioning schedule of the generating station.

5. The scheme for evacuation of power is said to have been developed as a part of the master plan for evacuation of total power of all the hydro electric generating stations in the State of Sikkim by CEA, the fifth respondent and CTU, the first respondent and the surplus capacity of the transmission lines, other than the dedicated part, are proposed to be used for wheeling of electricity of other generating companies operating in the region. It has been stated that the first respondent received a number of applications for evacuation of power from different generators including second respondent in the region with total generation capacity of about 4225 MW to the entities outside the Eastern Region. Because of the capacity constraints, it was not found feasible to use the existing transmission lines for evacuation of the entire generation capacity. It has been submitted that the first respondent in consultation with the fifth respondent prepared a master plan for an integrated transmission system for evacuation of total power, from all the generating stations in the State of Sikkim to the beneficiaries in Northern and Western Regions. The plan was said to have been approved at the planning sub-committee meetings held in November 2007 and February 2008. The transmission lines are stated to be part of the integrated transmission system.

6. The first and second respondents are said to have decided to execute the transmission lines through the applicant. It has been stated that in case commissioning of Mangan sub-station is delayed, 400 kV D/C transmission line shall be constructed directly from the generating station to Kishanganj pooling point. However, the transmission lines will be LILoed at Mangan after its commissioning. Except for the dedicated part, the transmission lines shall form part of the integrated transmission system and sharing of the transmission

service charges shall be based on decision of the Appropriate Commission, this Commission is the Appropriate Commission as the application for grant of licence has been made before this Commission.

7. The details of transmission lines in Sikkim for execution on Build Own Operate (BOO) basis which forms a part of the pre-identified elements of the evacuation plan for the generating stations coming up in Sikkim and also part of the integrated transmission system have been enclosed as annexure-D to the application. The applicant has committed to carry out route survey, finalize the BOO and submit the estimated annual transmission charges to the Commission within the period that may be stipulated by the Commission after the grant of licence to the applicant. The beneficiaries of the proposed transmission lines are to be consulted by the applicant at the appropriate forum. According to the applicant, non-implementation of the transmission lines would render the 1200 MW of hydro energy un-utilised. This, as submitted by the applicant, would not only waste the sunken investment of approximately Rs.5700 crore made for establishing generating stations but would also defeat the object of the Act as clarified in the National Electricity Policy i.e. promotion of generation and utilization for hydro/renewable energy.

8. The first respondent in its capacity as the Central Transmission Utility has recommended grant of licence to the applicant. It has clarified that it is not taking contingent liability in the JV other than contribution of 26% equity in the applicant company.

9. The applicant has also published notices under sub-section (2) of Section 15 of the Act in the Hindustan times (English), New Delhi; Amar Prajo Shakti

(Nepali), Gangtok, Himali Bela (Nepali), Gangtok and Ananda Bazar Patrika (Bengali), Siliguri. We have been informed that no objections were received in response to the public notices published by the applicant.

10. We heard Shri Tarun Johri, Advocate for the applicant along with Shri S. K. Sinha, its Managing Director in support of the application. The applicant by order dated 16.4.2009 was directed to furnish necessary details of its relationship between Countrywide Power Transmission Ltd. and between Countrywide Power Transmission Ltd and Teesta Urja Ltd. The applicant has filed these details vide affidavit dated 17.4.2009.

11. Having heard the applicant and after considering the material placed on record, at the outset we wish to set out certain important dates and provisions as under:-

6th January, 2006. Tariff Policy notified under Section 3 of the Electricity Act, 2003 by Ministry of Power vide Resolution No. 23/2/2005- R&R (Vol.III) in the Extraordinary Gazette of India, Part-I, Section-1.

23rd March 2006 Date of signing of MOU between Power Grid Corporation of India Ltd and Countrywide Power Transmission Ltd. ("CPTL") , for setting up a joint venture company ("JVC") for establishing transmission system for evacuating power from the aforesaid Teesta Urja's 1200MW hydro-electric generating station, with equity participation of 26% by PGCIL and 74% by CPTL. Subsequently, the JVC was set up by Teeta Urja Ltd and PGCIL.

In terms of the aforesaid MOU, the JVC has signed an Implementation Agreement and Transmission Service Agreement with Teesta Urja Ltd., for providing transmission facility for evacuation of power to be generated from the aforesaid project.

In terms of the aforesaid MOU the JVC was supposed to obtain transmission license from this Commission at an appropriate stage.

13th April, 2006	“Guidelines for Encouraging Competition in Development of Transmission Projects” notified in pursuance of tariff policy, by Ministry of Power vide Resolution No. 11/5/2005-PG(ii).
17th April, 2006	“Tariff based Competitive-bidding Guidelines for Transmission Service” notified in pursuance of Tariff policy, by Ministry of Power vide Resolution No. No. 11/5/2005-PG(i) published in the Gazette of India, Part I, Section 1.
14th June 2006	Empowered Committee constituted by the Ministry of Power to give effect to and implement the provisions of “Guidelines for Encouraging Competition in Development of Transmission Projects”.

12. MOU between PGCIL and Countrywide Power Transmission Ltd. existed as of 23<sup>rd</sup> March, 2006 for setting up a JVC for establishing transmission system for effectuating power from Respondent No. 2. The proposed equity participation was 26 per cent by PGCIL and 74 per cent by CPTL in the JVC.

13. Pursuant to the above, the petitioner company was incorporated as the JVC. Subsequently, CPTL shares stood transferred to Respondent No. 2. Thereafter, it was agreed between PGCIL and CPTL that the JVC will be formed between PGCIL and Respondent No. 2. Finally, in terms of shareholders’ agreement dated 6.8.2008 PGCIL, petitioner and Respondent No. 2 agreed that PGCIL will hold 26% in the petitioner company and Respondent No. 2 will hold the balance of 74% in the petitioner company. However, the MOU dated 23<sup>rd</sup> March, 2006 was kept extended by PGCIL and CPTL till the time the shareholding in the petitioner company fructified. The shareholding pattern of CPTL was in the following ratio:-

- (i) 48% by Respondent No. 2;
- (ii) 22% by employees of Respondent No.2; and

(iii) 30% by Mr. R.S.S.L.N. Bhaskarudu.

14. Respondent No.2, along with its employees, was the majority shareholder of CPTL at the time of execution of the MOU dated 23<sup>rd</sup> March, 2006 between PGCIL and CPTL. As far as the current relationship between TUL and CPTL is concerned, TUL and its employees are holding 100% shareholding stake in the equity shareholding of CPTL. TUL is also holding 74% of majority stake in the applicant, i.e. TPTL, in which the other shareholder is PGCIL with 26% equity. The relationship between CPTL and TPTL is derived through TUL, which is the common majority shareholder behind both CPTL and TPTL, the applicant herein.

15. Clause 7.1(6) of the tariff policy notified by the Central Government in exercise of its power under Section 3 of the Act, states as under:

*“Investment by transmission developer other than CTU/STU would be invited through competitive bids. The Central Government will issue guidelines in three months for bidding process for developing transmission capacities. The tariff of the projects to be developed by CTU/STU after the period of five years or when the Regulatory Commission is satisfied that the situation is right to introduce such competition (as referred to in para 5.1) would also be determined on the basis of competitive bidding.”*

16. One of the mandates of the tariff policy is that the future projects are to be executed by an entity other than the Central Transmission Utility or the State Transmission Utility, selected through the process of competitive bidding. However, such selection is dependant upon inter alia the following factors:

(i) Identification of projects to be covered under competitive bidding once the Perspective Plan, covering three five year plans, the Short Term

Plan and the Network Plan have been prepared. [ref: Paragraph 17 of Guidelines for encouraging competition in development of transmission projects];

(ii) Identification of transmission projects for tariff based competitive bidding, in which Private Investors and Transmission Utilities, both Central and State, could participate; [ref: Paragraph 3 of Guidelines for encouraging competition in development of transmission projects];

(iii) Empowered Committee to be constituted - (a) to identify projects to be developed for tariff based competitive bidding; (b) to facilitate preparation of bid documents and invitation of bid through a suitable agency; etc. [ref: Paragraph 11 of Guidelines for encouraging competition in development of transmission projects];

(iv) Selection of developer for identified projects through tariff based bidding for transmission services according to the guidelines issued under section 63 of the Electricity Act, 2003. [ref: Paragraph 19 of Guidelines for encouraging competition in development of transmission projects];

(v) For immediate implementation the Empowered Committee constituted under the Guidelines for encouraging competition in development of transmission projects to be the Bid Process Co-ordinator (BPC) till any other organization is nominated as BPC by the Ministry of Power. [ref: Paragraph 3.2 of Tariff based Competitive-bidding Guidelines for Transmission Service.



17. The Empowered Committee was constituted on 14th June 2006 to give effect to and implement the provisions of "Guidelines for Encouraging Competition in Development of Transmission Projects". Paragraph 5.1 of the Tariff Policy stipulates that:-

"5.1 Introducing competition in different segments of the electricity industry is one of the key features of the Electricity Act, 2003. Competition will lead to significant benefits to consumers through reduction in capital costs and also efficiency of operations. It will also facilitate the price to be determined competitively. The Central Government has already issued detailed guidelines for tariff based bidding process for procurement of electricity by distribution licensees for medium or long-term period vide gazette notification dated 19<sup>th</sup> January, 2005.

All future requirement of power should be procured competitively by distribution licensees except in cases of expansion of existing projects or where there is a State controlled/owned company as an identified developer and where regulators will need to resort to tariff determination based on norms provided that expansion of generating capacity by private developers for this purpose would be restricted to one time addition of not more than 50% of the existing capacity.

Even for the Public Sector projects, tariff of all new generation and transmission projects should be decided on the basis of competitive bidding after a period of five years or when the Regulatory Commission is satisfied that the situation is ripe to introduce such competition."

18. The stipulation under paragraph 5.1 read with paragraph 7.1(6) of the Tariff Policy has to be taken to mean that till the year 2011 (or when the Commission is satisfied that the situation is ripe to introduce such competition), Government Companies in which not less than fifty-one per cent of the paid-up share capital is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments or by a company which is a Government company as thus defined, may be granted transmission license without the need to be selected on the basis of competitive bidding.

19. However, Power Grid Corporation of India Ltd, the first respondent, in its capacity as the Central Transmission Utility holds 26% equity in the applicant company and thus cannot be said to be within the exception stated above. At the same time, selection of the applicant by competitive bidding could only have been possible if the factors stated above were in place to give effect to the provisions of paragraph 7.1 (6) of the Tariff Policy. The Applicant had signed the MOU on 23rd March 2006. In terms of the aforesaid MOU the JVC has signed an Implementation Agreement and Transmission Service Agreement with Teesta Urja Ltd., for providing transmission facility for evacuation of power to be generated from the aforesaid project. As will be seen from the list of dates above, the actions by the Ministry to give effect to the provisions of paragraph 7.1(6) of the Tariff Policy and thus operationalisation of the said stipulation of paragraph 7.1(6) of the Tariff Policy came into being after the said date of execution of the MOU by the present Applicant. Therefore, the questions that arise before us are that:

- (i) Whether the applicant as a joint venture company not within the meaning in terms of paragraph 5.1 of the Tariff Policy and having not been selected through competitive bidding process, should be granted a license?
- (ii) What would be the implications of refusal of licence in view of the history of the case?
- (iii) If a licence is to be granted, would it violate the provisions of the Tariff Policy?
- (iv) If a licence is to be granted, what should be the conditionalities?

20. The terms mentioned in the aforesaid MoU envisioned what would happen in the future. The JVC was formed subsequently between Power Grid Corporation of India Ltd and Teesta Urja Ltd. The JVC was called “Teestavalley Power Transmission Ltd.” The execution of the MOU to form the JVC happened after the Tariff Policy was notified on 6th January, 2006 but before the “Guidelines for Encouraging Competition in Development of Transmission Projects” were notified on 13th April, 2006. The constitution of the Empowered Committee thereunder was only in the proposal level. Consequently, the functions of the Empowered Committee to inter alia (i) identify projects to be developed under the Scheme; and (ii) facilitate preparation of bid documents and invitation of bid through a suitable agency, could not have been taken on the date of the aforesaid MOU. Further, it was the term of the MOU that the JVC shall approach this Commission at an appropriate stage for grant of licence, approval of tariff and other conditions.

21. In terms of Section 79(4) of the Act, in discharge of its functions, the Commission shall be guided by the inter alia the Tariff Policy published under section 3. When the “Investment by transmission developer other than CTU..” is invited through competitive bids, in terms of Clause 7.1(6) of the Tariff Policy then the Commission would be required to adopt such tariff as determined based on the bidding process. However, as stated above, the MOU for putting in place the transmission system for evacuating the power generated pre-dates the operationalisation of the said Clause 7.1(6) of the Tariff Policy. The “Guidelines for Encouraging Competition in Development of Transmission Projects” notified on 13th April, 2006 and “Tariff based Competitive-bidding

Guidelines for Transmission Service” notified on 17th April, 2006, have to be given a prospective effect.

22. It is, however, to be noted that historically the Commission has recognized the joint venture route for execution of the transmission assets, along with competitive bidding route. The regulations on grant of licence for inter-State transmission, first notified on 24.8.2001, permitted the Central Transmission Utility to decide on the joint venture route in appropriate cases. A similar provision was made in subsequent regulations dated 30.5.2003, specified in supersession of the regulations notified on 24.8.2001. After coming into force of the Act, the Commission published draft of regulations on grant of licence for inter-State transmission of electricity on two occasions, namely on 3.9.2004 and 4.10.2006. Though the final regulations based on these drafts have not been notified, the drafts also allowed execution of inter-State transmission projects through joint venture route. The Commission has recently circulated an elaborate draft of regulations on terms and conditions for grant of inter-State transmission licence on 3.12.2008. In this draft, in keeping with the provisions of the tariff, relating to adoption of joint venture route for execution of the transmission projects has been omitted.

23. On consideration of the existence of the MOU prior to the date of operationalisation of the Guidelines stated above and also because the MOU relates to the same project that is under consideration for grant of licence, we feel that, in public interest, it may not be appropriate to refuse licence to the applicant, based on the provisions of the tariff policy extracted at para 17 above. This, however, should not be taken as a precedent.

24. Section 79(2)(a) of the Act requires this Commission to advise the Central Government on inter alia - (i) promotion of competition, efficiency and economy in activities of the electricity industry; and (ii) promotion of investment in electricity industry. Taking this provision into account and even otherwise, we are of the view that the Central Government ought to issue appropriate directions to the CTU to form only such joint venture companies, if necessary, as envisaged in Paragraph 5.1 of the Tariff Policy.

25. On the above considerations, we are satisfied that in public interest the applicant *prima facie* qualifies for grant of licence for the transmission lines noticed in opening para of this order.

26. On the other questions, the implications of refusal of licence would not only be commercial but also social as electricity generated would not be able to evacuated and the project would be stranded for some time if the history of the case that relating to the MOU signed on 23rd March 2006 is not taken into account.

27. As to whether grant of license would violate the provisions of the Tariff Policy, as will be seen from the list of dates above, operationalisation of the said stipulation of paragraph 7.1(6) of the Tariff Policy came into being after the said date of execution of the MOU by the present Applicant. Therefore, we do see a special circumstance of that relating to the existence of the MOU pertaining to the same project which has to be taken into account.

28. As regards the conditionalities, if any, since we are to, at this stage, take a view on a *prima facie* basis on the issue of grant of licence, no such conditions are envisaged at this stage.

29. Accordingly, we propose to grant licence to the applicant. We direct that a public notice under clause (a) of sub-Section 5 of Section 15 of the Act be published to invite further suggestions or objections, if any, to the above proposal for grant of licence.

30. List this petition on 14.5.2009 for further directions.

Sd/-  
(V.S. VERMA)  
MEMBER

New Delhi, dated 24<sup>th</sup> April 2009

sd/-  
(R. KRISHNAMOORTHY)  
MEMBER

sd/-  
(DR. PRAMOD DEO)  
CHAIRPERSON