

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Coram**

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

**Petition No. 16/2009**

**In the matter of**

Application for grant of transmission licence to North East Transmission Co. Ltd. (NETCL).

**And In the matter of**

North East Transmission Co. Ltd, New Delhi

**Applicant**

Vs

- 1.Tripura State Electricity Corporation Ltd., Agartala
- 2.Assam State Electricity Board, Guwahati
- 3.Meghalaya State Electricity Board, Shillong
- 4.Deptt. Of Power, Govt. of Nagaland, Kohima
- 5.Power & Electricity Deptt., Government of Mizorm, Aizwal
- 6.Electricity Department, Govt. of Manipur, Imphal
- 7.Department of Power, Govt. of Arunachal Pradesh , Itanagar
- 8.ONGC Tripura Power Company Ltd, Tripura, Agartala
9. North Eastern Regional Power Committee, Shillong

**Respondents**

**Following were present:**

- 1.Shri Haziq Beg, Director, NETC
2. Shri S.C.Mishra, NETC
- 3.Shri V.L.Dua, NETC
4. Shri Anil R.Sah, NETC
5. Shri Parveen Agarwal, IL& FS
6. Shri Vijay Kumar, PGCIL

**ORDER**

**(Date of Hearing: 21.4. 2009)**

The application has been made by the applicant, North-East Transmission Company Ltd., under sub-section (1) of Section 15 of the Electricity Act, 2003 (the Act) for grant of transmission licence for construction, operation and maintenance of the transmission system, comprising of:

- (i) 400 kV D/C Palatana-Silchar D/C transmission line (twin moose) - 250 Kms
- (ii) 400 kV Silchar-Bongaigaon D/C transmission line (twin moose)- 400 Kms

2. The applicant is a joint venture company between Power Grid Corporation of India Limited (PGCIL), ONGC Tripura Power Company Ltd. (OTPC) and the States of North-Eastern Region. OTPC has been formed with participation of ONGC (50%), IL&FS (26%) and Government of Tripura (0.5%) and strategic investors/IPO (23.5%) for development of a 726.6 (2x363.3) MW combined cycle gas turbine generating station at Palatana. The transmission lines proposed is associated with the generating station at Palatana. The first unit of the generating station is scheduled to be commissioned by December 2011 and the second unit by March 2011. The estimated completion cost of the transmission system has worked out to Rs. 162900 lakh.

3. 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 system needs to be established matching with the commissioning schedule of the generating station.

4. Power Grid Corporation of India Limited 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.

5. The applicant has also published notices under sub-section (2) of Section 15 of the Act. However, no objections or suggestions have been received.

6. During the hearing on 19.3.2009, the applicant was directed to confirm whether it was a State owned/controlled company or the transmission lines to be executed by it fell within the scope of Public Sector project within the meaning of the terms used in the tariff policy.

7. The applicant vide its affidavit dated 9.4.2009 has submitted that it is joint venture company, in respect of which a shareholder agreement and associated deed a adherence have been entered as under:

S. No.	Name of the shareholders	% of shareholding
1.	Power Grid Corporation of India Ltd.	26%
2.	Government of Tripura	10%
3.	Government of Manipur	6%
4.	Government of Mizoram	10%
5.	Assam Electricity Grid Corporation Limited	13%
6.	ONGC Tripura Power Company Ltd.	35%

8. The eligibility of the applicant for grant of transmission licence is being examined in the light of the provisions of tariff policy.

9. Para 7.1 (6) of the tariff policy, under the hearing 'Transmission Pricing', provides 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."

10. Para 5.1 of the Tariff Policy states that –

"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."

11. In terms of the tariff policy, the developer for the transmission system, other than CTU/STU (up to a maximum period of 5 years) is to be selected through the process of competitive bidding, in accordance with the guidelines issued by the Central Government. Even in respect of the projects developed by CTU/STU, after 5 years from the date of publication of tariff policy, that is, from 6.1.2011, tariff is to be determined through the process of competitive bidding. The applicant has not been selected through the process of competitive bidding.

12. Para 5 of the tariff policy lays down the general approach to tariff, and covers all the three aspects, namely, generation, transmission and distribution of electricity. Para 5.1 in the first instance legislates that all future requirements of power should be procured competitively by the distribution licensees. However, there are two exceptions to this general principle. These exceptions are (i) expansion of existing projects, and (ii) where State controlled/owned company is an identified developer. Para 5.1 further provides that even for new public sector projects, tariff should be decided on the basis of competitive bidding after five years, or when the Regulatory Commission is satisfied that the situation is ripe to introduce such competition. Therefore, the transmission projects can be undertaken by a state-owned or controlled company identified as project developer till 5.1.2011, without undergoing the process of competitive bidding.

13. The term state controlled/owned company, used in para 5.1 of the tariff policy, is not defined therein. Going by the general connotation, an instrumentality or agency of the Government where the Government has pervasive control is `state`. It is to be seen whether this criterion is met in case of the applicant to fall within the scope of `state`.

14. The majority of the shareholding of the applicant, as noted in para 7 above, is proposed by the Governments (Governments of Tripura, Manipur and Mizoram), and Government companies (PGCIL and Assam Electricity Grid Corporation Ltd.). Further, PGCIL has power to nominate 3 Directors against the total strength of 12. The Governments of Tripura and Mizoram and Assam Electricity Grid Corporation Ltd., have under the Shareholder's Agreement been authorized to nominate 1 Director each. Chairman of PGCIL is the Chairman of the applicant. These provisions in the Shareholders' Agreement indicate that the Governments and Government companies have over-all pervasive control over the applicant. 50% of the shares of the other major shareholder, namely ONGC Tripura Power Company Ltd, are owned by a Government company, ONGC. Though the applicant cannot be considered to be a Government company as defined under section 617 of the Companies Act based on the shareholding pattern, and thereby it cannot be said to be state owned company, yet the instrumentalities or agencies of state have dominant control on the management of the applicant. The combined voting rights of these entire shareholders who are under the direct the indirect control of Central and State Government add up to a decisive majority of 65%. In our opinion, the applicant is thus a State-controlled company.

15. The technical and financial strength of the applicant comes from its two principal shareholders, namely PGCIL and OTPC. The Implementation Agreement and Transmission Service Agreement is stated to have been circulated among the respondents and Power Grid Corporation of India Ltd., OTPC, Governments of Tripura, Meghalaya, Mizoram have initialed, the agreements in token of their acceptance. Government of Arunchal Pradesh has given its consent for in principle approval. It has been stated that the consent of the Governments of Assam, Manipur and Nagaland is likely to be received shortly.

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

17. 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.

18. List this petition on 16.6.2009 for further directions.

Sd/-	sd/-	sd/-	sd/-
(V.S. VERMA)	(S.JAYARAMAN)	(R. KRISHNAMOORTHY)	(DR.PRAMOD DEO)
MEMBER	MEMBER	MEMBER	CHAIRPERSON
New Delhi, dated 21 <sup>st</sup> May 2009			