

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 130/2010

**Coram: Dr. Pramod Deo, Chairperson
Shri V.S.Verma, Member**

DATE OF HEARING: 8.7.2010

DATE OF ORDER: 4 8.2010

In the matter of

Application for adoption of transmission charges with respect to the transmission system being established by the East-North Interconnection company Limited.

And in the matter of

East-North Interconnection company Limited, New Delhi

..... **Petitioner**

The following were present:

1. Shri Prabjot Singh Bhullar, Advocate for the Applicant
2. Shri P.S.Bhullar, Advocate, ENCIL
3. Shri S.K.Sinha, ENICL
4. Shri S.R.Reddy, ENCIL
5. Shri Padmjit Singh, HPPC

ORDER

The Applicant, East-North Interconnection Company Limited has filed this petition under Section 63 of the Electricity Act, 2003 (the Act) for adoption of transmission charges with respect to the transmission system comprising of Bongaigaon Siliguri 400 kV transmission line and Purnea-Biharsharif 400 kV transmission line. The tariff has been arrived at in accordance with the 'Tariff based Competitive-bidding Guidelines for

Transmission service' (hereinafter "the Guidelines") notified by the Central Government under section 63 of the Act vide Resolution No.11/5/2005-PG(i) dated 17.4.2006.

2. The Applicant was incorporated on 1.2.2007 under the Companies Act, 1956 as a wholly owned subsidiary of Power Finance Corporation Ltd. with the objective to "plan, promote and develop an integrated and efficient power transmission system network in all its respects...". The applicant was also notified as a Bid Process Coordinator (BPC) on 26.6.2007 for the purpose of selection of bidder as Transmission Service Provider (TSP) to establish the transmission system for transmission scheme "for enabling import of NER/ER surplus power by NR" through tariff based competitive bidding process.

3. The applicant in its capacity as BPC is stated to have initiated the bid process on 20.10.2008 and completed the process on 12.10.2009 as per the Guidelines. M/s Sterlite Technology Limited(STL) has been selected as the successful bidder having quoted the lowest levelised transmission charge. Accordingly, a Letter of Intent(LOI) was issued to STL by the BPC on 7.1.2010 which has been accepted by STL. Under the terms of Request for Proposal (RFP) and the Letter of Intent, the successful bidder is obligated to accomplish the following tasks:

- (a) Provide contract performance guarantee in favour of Long Term Transmission Customers (LTC).

- (b) Execute Share Purchase Agreement
- (c) Acquire 100% share equity share holding of East-North Interconnection Company Ltd. from Power Finance Corporation along with its related assets and liabilities.
- (d) To execute RFP project document including transmission service agreement with LTTCs.
- (e) Make application to the Central Commission for adoption of transmission charges
- (f) To apply to the Commission for grant of transmission licence.

3. The applicant has submitted that it has completed the above tasks and has approached the Commission by way of the present application for adoption of tariff in respect of the transmission system. The Applicant has also applied separately for transmission licence to the Commission. Learned counsel for the Applicant submitted during the hearing that in response to the application, Haryana Power Purchase Committee has filed its objection to the application and the applicant has filed its rejoinder which are on record. Learned Counsel submitted that the levelised transmission tariff in respect of the transmission system arrived through the process of competitive bidding under Section 63 of the Act be adopted.

4. The representatives of HPCC made the following submissions:

- (a) In para 11 of page 10 of the petition, the Applicant has stated that the process of selection has been carried out as per the Guidelines issued under Section 63 of the Act. It is not for the

Applicant as the beneficiary of tariff to certify the bid process. As per para 12.4 of the Guidelines, the certification is to be done by the Bid Process Coordinator and the Commission may direct the BPC to give the certificate.

(b) At page 208 of the petition it has been stated that the bidder was cleared at the RFQ stage on the basis of its relationship with Sterlite Industries Ltd and the said relationship 'remains valid till date'. This relationship should remain valid for the full period of the contract/agreement. The petitioner should ensure that the commitment is for the total period of the contract.

(c) In page 6 of the petition, it has been stated that 4 bids were qualified but three bids were opened. This is an apparent discrepancy for which an explanation should be given for the sake of transparency.

(d) As per para 12 of the petition, the acquisition price has been increased from Rs. 2200 lakhs to Rs. 2355.72 lakh on the ground of change of law in the TSA which should be allowed. PFC may be asked to give the details how the acquisition price has increased.

(e) The basis on which successful bidder was shortlisted should be indicated.

5. In response, the learned counsel for the Applicant submitted that no document has been filed by HPPC to demonstrate that it has been authorized to raise objections on behalf of Uttar Haryana Bijli Vitran Nigam Ltd.(UHBVNL) and Dakshin Haryana Bijli Vitran Nigam Ltd.(DHBVNL) who are

long term transmission customers (LTTC) under the Transmission Service Agreement (TSA) signed with the Applicant. The learned counsel submitted that UHVBNL and DHBVNL as LTTC have signed the TSA on 6.8.2009 and right through the entire process, the LTTCs were kept in the loop about the entire process of competitive bidding. As far as participation is concerned, recommendations of the Bid Evaluation Committee dated 9.10.2010 and Bid Evaluation Committee Report are already on record. The entire process was in the public domain. As regards the bid responses, learned counsel submitted that eight bids were found to be qualified and eligible in response to the Request for Proposal and only three bidders filed their bid-cum-financial proposal for the concerned project. The learned counsel submitted that if UHVBNL and DHBVNL were aggrieved by the selection process, they should have questioned the same at an appropriate forum within reasonable time. The learned counsel submitted that appropriate directions may be issued to PFCCCL to certify that Sterlite Technology Limited was selected in accordance with the Guidelines issued by Ministry of Power, Government of India.

6. As regards the change of acquisition price from Rs.2200 lakh to Rs. 2356.72 lakh on 27.3.2010, the learned counsel submitted that the Applicant as the selected bidder was called upon by the Bid Process Coordinator to acquire ENCIL at an acquisition price and did not have the occasion or right to question or negotiate the amount. The learned

counsel submitted that the Acquisition Price intimated seven days prior to the Bid Deadline was Rs.2200 lakh, but the same was modified to Rs.2356.72 lakh on 27.3.2010. The learned counsel submitted that in terms of Article 12.2.1 of the TSA, the non-escalable Transmission charges quoted by STL are to be modified and additional non-escalable Transmission charges are to be approved and paid by LTTCs to the Applicant. Learned counsel submitted that if the Commission proposed to examine the issue of quantum of acquisition price, appropriate directions may be issued to PFCCL and PFC to furnish the details. The learned counsel further submitted that all documents are available on record including the recommendations of the Central Transmission Utility. Therefore the Commission may adopt the tariff.

8. The representative for HPPC clarified that at page 138 of the petition, the authorized signatory of HPPC has signed the TSA on behalf of UHBVNL and DHVBNL and therefore, HPPC represents the interest of both the discoms. He further clarified that the bid process has to be carried out as per the Guidelines and in terms of para 12.4 of the Guidelines, the application alongwith the certification from the Bid Process Coordinator have to be submitted before the Commission and the various steps followed as per the Guidelines have to be explained.

9. We have heard the counsel for the Applicant and the representative of the HPPC. The learned counsel for the Applicant has contested the

objections of HPPC on three counts: HPPC is not authorized to represent UHBVNL and DHBVNL; and both UHBVNL and DHBVNL being LTTCs should have taken objections at the appropriate stage of the bidding and not before the Commission after the bidding process is over; if any clarification is required, then PFC and PFCCL should furnish the details. In response to the first point, the representative of HPPC has clarified that HPPC has signed the TSA on behalf of UHBVNL and DHBVNL which is evident from page 138 of the application. However, we direct HPPC to place on record the copies of the authorization issued by UHBVNL and DHBVNL in its favour to participate in the bid process on their behalf and to represent them before the Commission. As regards the second point, the basic thrust of arguments of the representative of HPPC is that it is not questioning the selection of the STL as the successful bidder, but all materials regarding the selection through the transparent process of bidding as per the Guidelines should be placed before the Commission for adoption of tariff to meet the requirements of Section 63 of the Act and the Guidelines. We are inclined to agree with the submission of the representative of HPPC. Section 63 of the Act has cast a mandate on this Commission to adopt the tariff if such tariff is determined through transparent process of bidding in accordance with the Guidelines. Thus the Commission is required to scrutinise the entire process of selection through competitive bidding for which all materials are to be placed on record. Only because the Long Term Transmission Customers were parties to the selection process does not obviate the need for placing the relevant materials before the Commission. Coming to the

third point, the Applicant has submitted that PFC and PFCIL may be directed to certify the selection of STL as successful bidder and to furnish the quantum of acquisition price. These information are relevant for our consideration before the tariff is adopted. If these information were not available with the Applicant, then PFC should have been impleaded as a respondent.

10. The Applicant company was incorporated as a wholly owned subsidiary of Power Finance Corporation and was appointed as the Bid Process Coordinator. After selection of the successful bidder, it has been acquired by the selected bidder in terms of the Share Purchase Agreement. Therefore, after its acquisition, it ceases to be the Bid Process Coordinator. As per para 12.4 of the Guidelines, the final TSA alongwith the certification from BPC shall be forwarded to the Appropriate Commission for adoption of tariff. The certification from the Bid Process Coordinator about the transparency of bid process is a condition precedent for adoption of tariff by the Commission. Therefore we direct that the concerned officer of PFC who headed the BPC should file an affidavit explaining the different stages of the bidding process and a certificate that transparency in the bidding process and selection of the successful bidder has been maintained in accordance with the Guidelines. The affidavit shall also meet the objections raised by HPCC as mentioned in para 4 above.

12. The Petitioner is directed to place the following on record on affidavit:

(a) The documentary evidence for the original acquisition price and revised acquisition price including the reason therefor.

(b) How the Petitioner shall be entitled for relief with regard to the revised acquisition price when as per para 12.1.1 of the TSA, the relief is allowable for every cumulative increase of Rs.4 crore whereas the increase in the acquisition price is only Rs.1.5 crore.

13. The above information shall be submitted on affidavit by 12.8.2010 with copies to the other parties. The Commission may hold further hearing if any point remains unexplained. Otherwise order will be issued based on the documents on record and documents to be filed by the parties.

Sd/-
(V.S.VERMA)
MEMBER

sd/-
(DR. PRAMOD DEO)
CHAIRPERSON