

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 131/2010

**Coram: Dr. Pramod Deo, Chairperson
Shri S.Jayaraman, Member
Shri V.S.Verma, Member
Shri M.Deena Dayalan, Member**

DATE OF HEARING: 15.6.2010

DATE OF ORDER: 16.8.2010

In the matter of

Application under Section 14 read with Section 15(1) of the Electricity Act, 2003 for grant of Transmission Licence to East-North Interconnection Company Limited.

And in the matter of

East-North Interconnection Company Limited, New Delhi..... **Applicant**

The following were present:

1. Shri Prabjot Singh Bhullar, Advocate for Applicant
2. Shri T A Reddy, ENICL
3. Shri Vijay Kumar, PGCIL
4. Shri Padamjit Singh, HPPC
5. Shri TPS Bawa, HPPC

ORDER

The Applicant, East-North Interconnection Company Limited has filed this application under Section 14 read with Section 15(1) of the Electricity Act, 2003 (the Act) to undertake the business of establishing, commissioning, operation and maintenance of the transmission systems comprising the following elements:

- (a) Bongaigaon Siliguri 400 kV transmission line-217.417 kms

(b) Purnea-Biharsharif 400 kV transmission line-209.893 kms.

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 including planning, investigations, research, design and engineering, preparation of preliminary, feasibility and definite project reports, construction, operation and maintenance of transmission lines, sub-station, load dispatch stations and communication facilities and appurtenant works, coordination of integration operation of regional and national grid system, execution of turn key jobs for other utilities/organizations, wheeling of power, purchase and sale of power in accordance with the policies, guidelines and objectives laid down by the Central Government from time to time”.

3. Ministry of Power, Government of India initiated a scheme for development of Independent Transmission Projects through private sector participation for evacuation of power from the generation station and transmission of power from pooling station to other grid stations up to load centers and system strengthening in India. The said projects were to be awarded to developers selected on the basis of tariff based competitive bidding process. Government of India, Ministry of Power, vide its Resolution No. 11.5.2005-PG(i) dated 17.4.2006 notified the ‘Tariff based Competitive-bidding Guidelines for Transmission service’ (hereinafter “the Guidelines”)

under Section 63 of the Act. In accordance with the Guidelines, the applicant was also notified by Government of India, Ministry of Power vide Notification No. 11/12/2006-PG dated 26.6.2007 as the Bid Process Coordinator (BPC) for the purpose of selection of bidder as Transmission Service Provider (TSP) to establish the transmission project for transmission scheme "for enabling import of NER/ER surplus power by NR" through tariff based competitive bidding process.

4. The applicant in its capacity as BPC 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 in order to establish the transmission system on build, own operate and maintain basis and provide transmission serve to the following long term transmission customers, namely:

S.No.	Name of distribution licensee	Allocated capacity (MW)
1.	Jodhpur Vidyut Vitran Nigam Ltd.	48.44
2.	Jaipur Vidyut Vitran Nigam Ltd.	62.28
3.	Ajmer Vidyut Vitran Nigam Ltd.	62.28
4.	BSES Yamuna Power Ltd.(BYPL)	132.275
5.	BSESSE Rajdhani Power Ltd. (BRPL)	201.211
6.	North Delhi Power Ltd. (NDPL)	137.431
7.	New Delhi Municipal Corporation (NDMC)	20.082
8.	Uttarakhand Power Corporation Ltd.	22
9.	Paschimanchal Vidyut Vitran Nigam Ltd.	453
10.	Dakshnanchal Vidyut Vitran Nigam Ltd.	
11.	Purvanchal Vidyut Vitran Nigam Ltd.	
12.	Madhyanchal Vidyut Vitran Nigam Ltd.	
13.	Uttar Haryuana Bijli Vitran Nigam Ltd.	

14.	Dakshin Haryana Bijli Vitran Nigam Ltd .	133
15.	Punjab State Electricity Board	237
16.	Power Development Department (PDD) & J & K	175
17.	Himachal Pradesh State Electricity Board	21
18.	UT Chandigarh	5

5. Consequent to its selection as the lowest bidder, 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 (LTTC).
- (b) Execute Share Purchase Agreement
- (c) Acquire, for the Acquisition Price, 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.

6. The applicant has submitted that in terms of the LOI, STL had initiated the process of acquiring the Applicant within the time stipulated therein but the process of completing the acquisition of the Applicant got delayed on account of delay in grant of approval by the Ministry of Power

to PFC for the transfer of its share holding in East-North Interconnection Company Limited (ENICL) to the successful bidder i.e. Sterling Technologies Limited; delay in getting the TSA signed by all LTTCs resulting in delay in the TSA not being effective; and absence of clarity on the break-up of allocated capacity of Uttar Pradesh and Haryana for the purpose of issuance of contract performance guarantee. The Applicant has submitted that PFC had in its communication dated 25.3.2010 intimated STL that North Central Railway which has been named as a party to the TSA in Schedule 1 and has zero allocation would not be signing the TSA and STL shall not be required to furnish performance guarantee to Railways and since all other parties have signed the TSA, the TSA shall become effective from later of the dates on which STL discharges obligations set out in clauses 2.1(b) and (c) of TSA. PFC also vide another communication dated 27.3.2010 intimated to STL the Acquisition Price of ENCIL as Rs. 2356.72 lakh. In yet another communication dated 27.3.2010, PFC intimated STL the breakup of allocated capacities of Uttar Pradesh and Haryana for the purpose of Contract Performance Guarantee and asked to furnish the same by 29.3.2010. Thereafter STL took necessary steps and acquired the Applicant in terms of the Share Purchase Agreement dated 31.3.2010 and paid the Acquisition Price. The Applicant has submitted that TSA between the TSP and the LTTCs who are the beneficiaries of the transmission project is pre-signed as on 6.8.2009 and has become effective on the date of acquisition of the Applicant by STL.

7. Section 14 of the Act provides that the Appropriate Commission may, on an application made to under section 15 of the Act grant a licence to any person to transmit electricity as a transmission licensee in any area as may be specified in the licence. The word 'person' has been defined in section 2(49) of the Act to include any company or body corporate or association or body of individuals whether incorporated or not or artificial juridical person. The Applicant has been incorporated under the Companies Act, 1956 and as such is eligible to make application for licence. Section 15(1) of the Act provides that every application under section 14 shall be made in such manner and in such form as may be specified by the Appropriate Commission and shall be accompanied by such fees as may be prescribed. The Central Commission has specified the Central Electricity Regulatory Commission (Procedure, Terms and Conditions of Transmission Licence and other related matters) Regulations, 2009 (hereinafter "transmission licence regulations"). Regulation 3 of the transmission licence regulations provide that the Empowered Committee shall identify the projects included in the transmission plan to be developed under the guidelines for competitive bidding. Regulation 4 of transmission licence regulations provides that in case of projects identified by the Empowered Committee for development under the guidelines for competitive bidding, selection of the project developer shall be made in accordance with the procedure laid down in the guidelines. The transmission project under consideration has been identified by the

Empowered Committee. The selection of the project developer, Sterling Technologies Limited, has been made in accordance with the guidelines for competitive bidding.

8. Regulation 7 of the transmission licence regulations provides for the procedure for grant of transmission licence as under:

“(1) The application for grant of licence shall be made to the Commission in Form-I appended to these regulations and shall be accompanied by such fee as may be prescribed by the Central Government from time to time.

(2) In case of the person selected for implementation of the project in accordance with the guidelines for competitive bidding, the application shall also contain such additional information, as may be required under these guidelines.

(3) The application shall be supported by affidavit of the person acquainted with the facts stated therein.

(4) Before making an application, the applicant shall serve a copy of the application on each of the long-term customers of the project and shall submit evidence to that effect along with the application and shall also post the complete application along with annexures and enclosures on its web site, the particulars of which shall be given in the application.

(5) The application shall be kept on the web site till such time the licence is issued or the application is rejected by the Commission.

(6) Immediately on making the application, the applicant shall forward a copy of the application to the Central Transmission Utility.

(7) The applicant shall, within 7 days after making the application, publish a notice of its application in Form-II attached to these regulations, in at least two daily newspapers, one in English language and one in vernacular language, having circulation in each State or Union Territory where an element of the project or a long-term customer is situate, in the same language as of the daily newspaper in which the notice of the application is published.

(8) As far as possible, within 7 days of receipt of the application the Secretariat of the Commission shall convey defects, if any, if noticed

on preliminary scrutiny of the application for rectification and the defects conveyed shall be rectified by the applicant in such time as may be indicated in the letter conveying the defects.

(9) In the notice published in the newspapers under clause (7) it shall be indicated that the suggestions and objections, if any, on the application, may be filed before the Secretary, Central Electricity Regulatory Commission, Third Floor, Chanderlok Building, Janpath, New Delhi-110001 (or the address where the office of the Commission is situated), with a copy to the applicant, by any person, including the long-term customers, within 30 days of publication of the notice,

(10) The applicant shall within 15 days from the date of publication of the notice as aforesaid submit to the Commission on affidavit the details of the notice published, indicating the newspapers in which the notice has been published and the date and place of their publication and shall also file before the Commission the relevant copies of the newspapers, in original, in which the notice has been published.

(11) The Central Transmission Utility shall send its recommendations, if any, to the Commission on the proposal made in the application within a period of thirty days from the date of receipt of application by it:

Provided that copy of the recommendations, if any, made by the Central Transmission Utility shall always be forwarded to the applicant;

Provided further that the recommendations of the Central Transmission Utility shall not be binding on the Commission.

(12) The applicant may file its comments, duly supported by an affidavit, on the recommendations made by the Central Transmission Utility and the suggestions and objections, if any, received in response to the public notice published by him, within 45 days of service of copy of the application on the Central Transmission Utility or publication of notices in the newspapers, with an advance copy to the Central Transmission Utility or the person who has filed the suggestions and objections on the proposal made in the application, as the case may be.

(13) The Commission after considering the suggestions and objections received in response to the public notice published by the applicant and the recommendations, if any, of the Central

Transmission Utility may, propose to grant the licence or for reasons to be recorded in writing, reject the application."

9. The Applicant has approached the Commission by a separate application for adoption of tariff in respect of the transmission system which is presently under consideration of the Commission. The Applicant has filed the present application for grant of transmission licence in accordance with the transmission licence regulations. The Applicant has submitted proof of service of the copies of the application on the LTTCs and Central Transmission Utility and proof of web posting of the complete application. The Applicant has further given an undertaking that in accordance with section 41 of the Act, it would not engage in the sale and purchase of and/or trading of electricity in any form till the subsistence of the Transmission Licence after it is granted. The Applicant has further undertaken to pay the applicable licence fee upon the grant of Transmission Licence in terms of Central Electricity Regulatory Commission (Payment of Fees) Regulations, 2008. The Applicant has prayed for grant of transmission licence to East-North Interconnection Company Limited with respect to the transmission system as per the details given in para 1 above.

10. The Applicant has made the application as per Form-1 and paid the fee of Rs 1 lakh as prescribed by the Government. On perusal of the application, it is revealed that the Applicant has served copy of the

application on the Long Term Transmission Customers (LTC) for the project which is scheduled to be commissioned 36 months from the effective date under the TSA. The levelised tariff charges quoted by the Applicant which have been recommended by the Bid Evaluation Committee for acceptance, is Rs.1187.95 million per annum. The Applicant has also enclosed copies of the Bid Evaluation Committee recommendations for selection of the Applicant as the selected bidder and proof of making the evaluation report public by the Bid Process Coordinator as per the Guidelines.

11. The Applicant vide its affidavit dated 5.5.2010 has placed on record the relevant copies of the newspapers in original in which notice of its application has been published. The Applicant has published the notices in Assam Tribune, Dainik Assam, Hindustan Times, Prabhat Khabar, Statesman and Dainik Statesman having publication from Gauhati, Patna and Kolkata, and in English, Assamese, Hindi and Bengali languages. The Applicant has complied with the requirement of Regulation 4(7) of transmission licence regulations.

12. In response to the application, a common reply to this application and the application for adoption of tariff has been received from Haryana Power Purchase Committee (HPPC) representing Uttar Haryana Bijli Vitran Nigam Limited (UHBVNL) and Dakshin Haryana Vijli Vitran Nigam Limited

(DHBVNL). No objection has been received from the general public in response to the public notice.

13. During the hearing of the petition, the representative of the HPPC raised certain objections regarding the process of competitive bidding and selection of the Sterlite Technologies Limited. The objections are briefly discussed as under:

(a) The Applicant has given an undertaking that it will not engage in sale/purchase/trading of electricity as per section 41 of the Act. However, the undertaking is being contradicted on account of the provision in the Memorandum of Association "to carry on the business of purchasing, importing, exporting and trading of power".

(b) The details/outcome of the fourth bid may be intimated by the applicant.

(c) The application gives details about the selection at RFP stage but no details have been given for selection at RFQ stage.

(d) PFC Consulting Limited should satisfy that requirements of Section 63 have been fully met and the competitive bidding guidelines have been complied with.

14. The applicant has clarified with regard to 13 (a) above that the 'Objects Clause' of its Memorandum of Association (MoA) refers to 'purchase and trading' of electricity as one of the main objects of the company and the said MOA was drafted when Applicant was a subsidiary

of the Power Finance Corporation and before the Applicant was acquired by the selected bidder , M/s Sterlite Technologies Ltd. As the selected bidder was required to file the present proceedings within a time frame post its selection, steps for amendment of the MoA could not be taken. The applicant has furnished an undertaking at para 11 of the application for grant of transmission licence being aware that a transmission licensee cannot undertake trading under the applicable law. If so directed the applicant will take steps to amend its MoA. As regards the objections at para 13(b) to (d), the applicant has submitted that the Bid Process Coordinator was functioning as a fully owned subsidiary of the Power Finance Corporation prior to its acquisition by Sterlite Technologies Ltd. Therefore, PFC and PFCCL may be asked to certify the bid process and the selection of the Sterlite Technologies Ltd. as the Transmission Service Provider.

15. The applicant has given an undertaking at para 11 of the application not to undertake trading in any form during the subsistence of the transmission licence if granted by the Commission. The applicant shall remain bound by the said undertaking and shall take necessary steps to amend its MoA in line with the requirement of section 41 of the Act. As regards the other points raised, we have already issued directions to the Power Finance Corporation in our order dated 4.8.2010 in Petition No. 130/2010 to 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. Therefore we are proceeding to consider the applicant for grant of transmission licence which shall be subject to our final decision in Petition No.130/2010.

16. As per para 12.1 of the guidelines, finally selected bidder shall make an application for grant of transmission licence within one month of selection. Though STL was declared as the successful bidder and Lol was issued on 7.1.2010, STL in its letter dated 11.2.2010 had intimated the Commission that on account of non-intimation of the final acquisition price of ENICL, it could not file the application for grant of transmission licence within the stipulated time. After intimation of acquisition price by PFC and other clarification regarding breakup of allocation of some of the LTTCs on 27.3.2010, the selected bidder has completed the acquisition of ENCIL on 30.3.2010 and thereafter has made the application for grant of transmission licence on 15.4.2010. As per proviso under para 2.4.(e) of RFP, if for any reason attributable to the BPC, the activities are not completed by the selected bidder within a period of 30 days, such period of 30 days shall be extended till the end of the Bid validity period. The Bid validity period is reckoned as six months from the last date of submission of the financial bid. The last date for submission of financial bid was 15.9.2010 and six months from the said date is 15.3.2010. The Applicant has filed the application on 15.4.2010, one month after the expiry of the extended period. The delay in making the application is attributable to the BPC as the acquisition price

was intimated to the selected bidder only on 30.3.2010. Though the application was made on 15.4.2010, the Applicant had brought to the notice of the Commission in its letter dated 11.2.2010 that it could not file the application for transmission licence within the stipulated period as the acquisition price has not been made available by PFC. Since the intimation regarding the reasons for delay was received in the Commission before 15.3.2010 and the Applicant has filed the application within 15 days of its acquisition by the successful bidder, we are of the view that the applicant has complied with the timeline for filing the application for transmission licence.

17. The Applicant had served a copy of the application on Central Transmission Utility (CTU) as required under Section 15(3) of the Act and Regulation 4(6) of the transmission licence regulations. The CTU in its letter dated 29.6.2010 has forwarded its recommendations in terms of Section 15(4) of the Act. In the recommendations it has been stated that the transmission assets for which licence is being sought was agreed by the constituents of the Northern Region in the 21st meeting of the Standing Committee on Power System Planning held on 3.11.2006 as part of system strengthening scheme of Northern Region who had also agreed to bear the transmission charges. Moreover the above scheme was approved in Northern Regional Power Committee and agreed to pre-signing of TSA by the project beneficiaries of the Northern Region on 26.5.2009. Government of India, Ministry of Power on 26.6.2007 had notified the East-North

Interconnection Company Limited(ENCIL) to select the bidder as Transmission Service Provider on tariff based competitive bidding under section 63 of the Act to implement the above referred scheme on Build, Own, Operate and Maintain (BOOM) basis. The Bid Evaluation Committee has declared Sterlite Technologies Limited as the successful bidder through tariff based competitive bidding process to implement the transmission system on BOOM basis and STL has acquired ENCIL on 31.3.2010 on payment of acquisition price. The CTU has recommended under Section 15(4) for grant of Transmission Licence to ENCIL.

18. The applicant has been selected on the basis of the tariff based competitive bidding as per the guidelines issued by Govt. of India, Ministry of Power. The applicant has been issued with the Lol as the selected bidder and has acquired 100% stake in the ENCIL which has been transferred to the applicant on 31.3.2010 in terms of the Share Purchase Agreement. The applicant has complied with the provisions of the transmission licence regulations for grant of inter-State transmission licence. We have considered the reply filed by HPCC and find that there is no objection for the grant of transmission licence to the applicant. The CTU has also recommended the applicant for grant of transmission licence. Considering all the materials on record we are *prima facie* of the view that the applicant satisfies the conditions for grant of inter-State transmission licence for planning, construction, operation and maintenance of the transmission system as described in para 1 of this order. We, therefore,

direct that a public notice under clause (a) of sub-section (5) of Section 15 of the Act be published to invite suggestions or objections to grant of transmission licence aforesaid. The objections or suggestions, if any, be filed by any person before the Commission.

19. List this petition on 9.9.2010 for further directions.

Sd/-	sd/-	sd/-	sd/-
(M. DEENA DAYALAN) MEMBER	(V.S.VERMA) MEMBER	(S. JAYARAMAN) MEMBER	(DR. PRAMOD DEO) CHAIRPERSON