

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 31/2010

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

DATE OF HEARING: 8.7.2010

DATE OF ORDER: 15.10.2010

In the matter of

Application for grant of Transmission Licence to Cross Border Power Transmission Company Limited.

And in the matter of

Cross Border Power Transmission Company Limited, Gurgaon
..... **Applicant**

Vs

PTC India Limited, New Delhi
Powergrid Corporation of India Limited, Gurgaon **Respondents**

The following were present:

1. Shri SC Mishra, CBPTCL
2. Shri V.L.Dua, CBPTCL
3. Shri Vijay Kumar, PGCIL

ORDER

The Applicant, Cross Border Power Transmission company Limited under Regulation 6 (b) of the Central Electricity Regulatory Commission (Procedure, Terms and Conditions of Transmission Licence and other related matters) Regulations, 2009 (hereinafter "transmission licence regulations") has filed this petition for grant of transmission licence to

undertake the business of establishing, commissioning, operating and maintaining of the transmission system comprising the following elements:

(a) Transmission Lines:

Name	Voltage Class(kV)	Length(Km)	Type(S/C or D/C)
Muzaffarpur-Sursand	400 kV to be initially charged at 220 kV level	90 kms	Twin moose

(b) Sub-station: 220 kV- 2 Nos of bays (Bay extension work at Muzaffarpur substation of Powergrid)

2. The Applicant was incorporated on 19.12.2006 under the Companies Act, 1956 as Cross Border Power Transmission Company Private Limited which name was changed to Cross Border Power Transmission Company Limited on conversion to Public Limited Company on 29.1.2010. The Applicant company is a joint venture with the following equity participation:

- (a) Powergrid Corporation of India (PGCIL) 26%
- (b) Satluj Jal Vidyut Nigam Limited (SJVNL)26%
- (c) IL&FS Energy Development Company Ltd ...48%

The Applicant vide its affidavit dated 8.6.2010 has placed on record a signed copy of the draft Share Holder's Agreement as per which out of the present equity capital of Rs.5 lakh, PGCIL and SJVNL have contributed Rs.1.30 lakh each towards their respective shares of 26%. The applicant has submitted that the petitioner will submit the signed Share Holding

Agreement after signing of Transmission Service Agreement with National Electricity Authority of Nepal.

3. The main objects of the Applicant company include the following:

“1. To engage in the business of building, maintaining and operating transmission system between India and neighbouring countries like Nepal, Bhutan, Bangladesh, Myanmar, Sri Lanka and Pakistan for the purpose of export and import of electricity.....”

2. To accumulate electrical power and to transmit, distribute and supply such power throughout the areas of India and neighbouring countries.....”

3. To carry on the business of a transmission company in all its branches, and to construct, lay down, establish, fix and carry out all necessary power stations, cables, wires, line accumulators, lamps and works.....”

4. The Applicant has submitted that Nepal which has large common border with India is facing a power deficit of around 150 MW and as a result, load shedding is being resorted to for eighteen hours in a day. Presently, there are few 132 kV, 33 kV and 11kV interconnections between India through State grid of Bihar and in the neighbourhood of Nepal operating radially and are being used to import power from India to the tune of 70 MW operated under the aegis of Indo-Nepal Power Exchange Committee. Over the next five to seven years, the power deficit in Nepal is going to increase to 200-250 MW. As the existing interconnections are grossly inadequate, the Indo-Nepal Power Exchange Committee in its eighth meeting held on 7th and 8th June 2007 at Kathmandu had agreed to put in place a strong cross border transmission link with a view to facilitate trading of power between the two countries on long term basis. The Applicant has further submitted that Nepal has a very high

hydropower potential and hydropower totaling approximately 23000 MW have been studied in varying details. Nepal Electricity Authority (NEA) has taken up /planned the development of small and medium size hydro projects ranging from 5 to 200 MW capacities aggregating to about 2000 MW for development in a time span of 5 to 7 years. These projects include the projects being developed by Indian companies such as 120 MW Likhu-IV and 50 MW Balephi Projects by Bhilwara Group, 402 MW Arun III HEP by SJVN Ltd and 300 MW Karnali HEP by GMR Energy Limited. NEA in its letter dated 12.10.2008 has conveyed its interest to import 250 MW of round the clock power for five years from PTC after construction of the Dhalkebar-Muzaffarpur 220/400 kV Transmission line and subsequently to export 200 to 300 MW of power when NEA is in the position to sell power after completion of the hydropower projects undertaken by it.

5. The Applicant has submitted that NEA of Nepal signed a Memorandum of Understanding with IL&FS on 5.1.2007 for implementation of cross border transmission line corridor through two JV companies- JVC India incorporated in India and JVC Nepal incorporated in Nepal who would be responsible for project development of the respective portions in their countries. Accordingly, Cross Border Power Transmission Company Limited (CBPTCL) has been incorporated in India with the shareholding by PGCIL, SJVN Ltd and IL&FS. Similarly, Power Transmission Company of Nepal Limited (PTCN) has been incorporated in Nepal with a shareholding of IL&FS and NEA in the ratio of 50:50 with provision to induct Nepalese Banks and Financial Institutions. The Applicant has submitted that at the

instance of Ministry of External Affairs, PGCIL has carried out a study jointly with NEA for identification of transmission lines for interconnection between electric grids of India and Nepal. A joint meeting was held on 17.9.2007 at Kathmandu between Nepalese delegation led by NEA and Indian delegation led by Ministry of Power wherein it was decided to take up initially one interconnection i.e. Dhalkebar in Nepal to Muzaffarpur in India operating in synchronous mode. The line would be constructed for 400 kV D/C and would be initially charged at 220 kV. Consequently, a Memorandum of Understanding was signed on 29.2.2008 between National Electricity Authority of Nepal, PTC India Limited and IL&FS Infrastructure Development Corporation Limited covering such aspects as finalization of transmission line corridor, Operation philosophy, common grid code and dynamic stability issues etc. Subsequently, Ministry of Power, Government of India vide letter No.12/2/06-PG dated 23.5.2008 has accorded approval under section 68 of the Act to the applicant company for implementation of the 400 kV D/C Muzaffarpur to Sursand section falling in Indian territory side of 400 kV Indo-Nepal Cross Border Transmission Line from Muzaffarpur (India) to Dhalkebar(Nepal).

6. The Applicant has submitted that the detailed route survey, preparation of BOQ including cost estimates and Detailed Project Reports have been completed separately for Indian and Nepalese portion and the Transmission line is planned to be commissioned by December 2012. The estimated cost of 400 kV D/C Muzaffarpur to Sursand section falling in

Indian territory side of Indo-Nepal Cross Border Transmission Line including interest during construction is Rs.132 Crores at 1st Quarter 2009 price level and the completion cost is Rs.144 crores.

7. The Applicant has submitted that it has made the application under Regulation 6(b) of transmission licence regulations under the category state owned or controlled company. The Applicant has further submitted that it fulfills the requirements of "state owned or controlled company" as defined in Regulation 2(s) of transmission licence regulations since two Government companies namely, PGCIL and SJVNL hold 52% of the equity in the applicant company and 4 out of 6 Directors on the Board of the applicant company are from these Government Companies. The Applicant has been accorded approval by the Ministry of Power under section 68 of the Act and hence it is identified as a Developer. Moreover, the scheme has been formulated by the Central Electricity Authority and the Central Transmission Utility and hence it forms part of the transmission plan prepared by the Central Electricity Authority. The Applicant is stated to have met the other requirements like serving copies on the respondents, endorsing copy of the application to CTU, posting copy of the application on its website and publishing the notice about making of the application in the news papers etc. The Applicant has prayed for grant of transmission licence to the Cross Border Power Transmission Company.

8. Section 14 of the Act provides that the Appropriate Commission may, on an application made under section 15 of the Act grant licence to any person to transmit electricity as a transmission licence in any area as may be specified in the licence. The word 'person' has been defined in section 2(48) of the Act to include any company or body associate or body or association of individuals whether incorporated or not or artificial juridical person. The Applicant, a Joint Venture Company, has been incorporated under the Companies Act, 1956 and as such is eligible to make application for grant of transmission 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 such fees as may be prescribed.

9. The Central Commission has specified the transmission licence regulations. Regulation 6 of the transmission licence regulations provides for the eligibility for grant of transmission licence as under:

- "No person shall be eligible for grant of licence unless it is-
- (a) Selected through the process under the guidelines for competitive bidding;
 - or
 - (b) A state owned or controlled company identified as a project developer on or before 5.1.2011; or
 - (c) a generating company which has established the dedicated transmission line, and intends to use such dedicated transmission line as the main transmission line and part of the inter-State transmission system."

The Applicant company claims to be a state owned or controlled company. Regulation 2(s) of the transmission licence regulations defines 'state owned or state controlled company' as under:

“(s) ‘state owned or controlled company’ means a company in which not less than fifty one percent of the paid-up share capital is held by a majority of directors on whose Board are appointed, by the Central Government, or by any State Governments, or by any Government company or companies, or by the Central Government and any State Government or Governments and any Government company or companies.”

Section 617 of the Companies Act, 1956 defines “Government Company” as under:

“For the purpose of this Act, Government company means any company in which not less than fifty-one percent 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 or partly by one or more State Governments and includes a company which is a subsidiary of a Government company as thus defined.”

10. PGCIL is a Government of India Undertaking and is the Central Transmission Utility. SJVN Ltd is a joint venture of the Government of India and Government of Himachal Pradesh. Therefore, both the companies meet the criteria of government company as prescribed in section 617 of the Companies Act, 1956. The applicant company is a joint venture company in which two government companies, namely PGCIL and SJVN Ltd together hold 52% of equity. Moreover, in terms of Article 4 of the Share Holding Agreement, four out of the six directors of the applicant company are to be appointed by the government companies i.e. PGCIL and SJVN Ltd. Therefore, the applicant company meets the requirements of a ‘state owned or controlled company’ in Regulation 2(s) of the transmission licence regulations. Pursuant to the decision taken in the joint meeting held on 17.9.2007 between the Nepalese delegation led by NEA and Indian delegation led by Ministry of Power with representatives from CEA, PGCIL and PTC India Ltd., it was decided to develop one

interconnection between Dhalkebar in Nepal to Muzaffarpur in India operating in synchronous mode. The feasibility and Detailed Project Report of the interconnection line has been prepared by PGCIL. Subsequently, Ministry of Power has accorded approval under section 68 of the Act to the applicant company for implementation of the 400 kV D/C from Muzaffarpur to Sursand section of 400 kV D/C Indo-Nepal Cross Border Transmission Line project from Muzaffarpur in India to Dhalkebar in Nepal. Since the applicant company which is a state owned or controlled company has been identified prior to 5.1.2011 as a project developer of the transmission line for which licence has been sought, it is eligible for grant of transmission licence.

11. 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."

12. 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 Form- 1, it is noticed that the identified Long Term Transmission Customer of the project has been mentioned as the Nepal Electricity Authority. However copy of the application for transmission licence has not been served on NEA. The applicant has filed copy of the service of the application on PTC India Ltd and Powergrid Corporation of India Ltd. Perhaps the applicant has not served the application on NEA being an authority under the sovereign Government of Nepal. We find that Ministry of External Affairs, Government of India in a letter dated 3.7.2001 (Annexure 4 of the application) written to the Royal Embassy of Nepal has conveyed that PTC India Ltd has been appointed as the nodal agency to deal with matters relating to exchange of power between India and Nepal. The Nepal Electricity Authority in its letter dated 12.10.2008 (Annexure 6) has expressed its interest to import power from PTC India Ltd on the proposed transmission line for which licence has been sought. As per the minutes of the meeting of stakeholders held on 10.1.2010 on Indo-Nepal Power Trade Co-operation and Cross-Border Transmission Line Project (Annexure 12 of the

application), it is noticed that NEA has agreed to sign PPA with PTC India Ltd and ITSA with JV companies. It has been further mentioned that these documents would be filed before the Commission in connection with the licence application subsequently. These documents go to prove that NEA is the long term customer of the project and on account of the peculiar status of NEA, the applicant has not served the copy of the application on NEA. However, PTC India Limited which is the authorized nodal agency in India to deal with export and import of power with Nepal has been served with a copy of the application. The applicant in his affidavit dated 23.7.2010 has clarified that in case of default by NEA to bear the transmission charges, the applicant company will accept it as a business risk. In view of the above, we condone the infirmity for not serving the copy of the application on the NEA in exercise of our power under Regulation 24 of the transmission licence regulations. The applicant is directed to bring the PPA and ITSA, as and when signed in terms of the minutes of the meeting dated 10.1.2010, on record of the Commission. The applicant is further directed to submit the copy of the signed Share Holding Agreement of the applicant company.

13. The Applicant vide its affidavit dated 26.2.2010 has placed on record the relevant copies of the newspapers in original in which notice of its application has been issued. The Applicant has published the notices in Hindustan Times (English Edition: Patna), Dainik Jagran (Hindi Edition: Bhagalpur, Muzaffarpur and Patna) on 12.2.2010. The Applicant has

complied with the requirement of Regulation 7(7) of transmission licence regulations.

14. In response to the public notice, PTC India Ltd in its letter dated 7.4.2010 has submitted that "PTC India is in the process of signing a PPA with Nepal Electricity Authority for export of electric power to the tune of 150 MW for 25 years and would be utilizing the proposed Muzaffarpur-Dhalkebar transmission line for wheeling of this power. Therefore the establishment of above Indo-Nepal Cross Border Transmission link is essential for export of above power from India. Further it is understood that many Indian IPPS are developing hydro projects in Nepal and would be utilizing this proposed cross border transmission line for export of their power to India." Accordingly, PTC India has recommended for grant of Transmission Licence to the applicant for exchange of power between India and Nepal.

15. 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 7(6) of the transmission licence regulations. The CTU in its letter dated 25.3.2010 has forwarded its recommendations in terms of Section 15(4) of the Act. The CTU in its recommendation has stated that the proposed transmission project falling in the Indian territory side of 400kV D/C Indo-Nepal Cross Border Transmission line from Muzaffarpur(India) to Dhalbekar (Nepal)for exporting power by PTC to NEA on commercial basis during initial five years and afterwards NEA has agreed for making surplus

power available for export to India through this link with the development of hydro project by various IPPs in Nepal. It has been further recommended that the Implementation and Transmission Service Agreement (ITSA) for a period of 25 years is in the process of signing between CPTC and NEA which envisages that CPTC would make available the entire transmission capacity of the Indian portion of the transmission line to NEA for the purpose of import and export of power and NEA would pay the transmission charges. The CTU has recommended for grant of transmission licence to the applicant.

16. The applicant is a joint venture company which intends to undertake the business of establishment, commissioning, operation and maintenance of Indian portion of 400 kV D/C Muzaffarpur (India) – Dhalkevar (Nepal) transmission line for exchange of power between India and Nepal. The applicant has complied with the provisions of the Act and transmission licence regulations for grant of licence. The Central Transmission Utility has also recommended for grant of licence to the applicant. Considering the importance of the transmission line in promoting exchange of power between India and Nepal, the agreement between the Nepalese delegation and Indian delegation to facilitate development of robust and violable interconnection between India and Nepal, and the recommendations of the CTU, the agreement of NEA to bear the transmission charges of the entire transmission capacity of the Indian portion, we are *prima-facie* satisfied that the applicant fulfills the conditions

for grant of transmission licence. Accordingly, we direct that a notice of our proposal to grant transmission licence to the Cross Border Transmission Company Ltd. be published in two daily newspapers inviting suggestions/objections from the public in terms of sub-section 5 of section 15 of the Act.

17. The matter shall be listed for further hearing on 11.11.2010.

**Sd/-
(V.S.VERMA)
MEMBER**

**sd/-
(DR. PRAMOD DEO)
CHAIRPERSON**