

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 107/2011

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

DATE OF HEARING: 26.7.2011

DATE OF ORDER: 5.9.2011

In the matter of

Application under Section 14 read with Section 15(1) of the Electricity Act, 2003 for grant of Transmission Licence to Jabalpur Transmission Company Limited, New Delhi.

And in the matter of

Jabalpur Transmission Company Limited, New Delhi

Applicant

Vs

1 Adhunik Power and Natural Resources Limited, Kolkata

2 Corporate Power Limited, Ranchi

3 Essar Power (Jharkhand) Limited, Mumbai

4 West Bengal State Electricity Distribution Company Limited, Kolkata

5 MB Power (Madhya Pradesh) Limited, New Delhi

Respondents

The following were present:

1. Shri T.A.Reddy, JTCL
2. Miss Deepali, JTCL
3. Shri S.M.Singh, PGCIL
4. Shri Ajay Holani, PGCIL
5. Miss Manju Gupta, PGCIL

ORDER

The Applicant Jabalpur Transmission 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:

- (i) Dharamjaygarh-Jabalpur pool 765 kV, D/C transmission line (ACSR/AAAC Zebra) -384 kms; and
- (ii) Jabalpur pool-Bina 765 kV Quad S/C transmission line (ACSR/AAAC Bersemis)-250 kms.

2. The Applicant was incorporated on 8.9.2009 under the Companies Act, 1956 as a wholly owned subsidiary of Power Finance Corporation Limited (hereinafter referred to as 'PFC') 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. The applicant has submitted that 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 generating 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 referred to as "the Guidelines") under Section 63 of the Act. In accordance with the Guidelines, the PFC Consulting Limited (PFCCL) was notified by Government of India, Ministry of Power vide Notification No. 11/12/2006-PG dated 1.7.2009 as the Bid Process Coordinator (BPC) for the purpose of selection of bidder as Transmission Service Provider (TSP) to establish the transmission system for "system strengthening for common WR and NR" through tariff based competitive bidding process.

4. PFC Consulting Limited (PFCCL) in its capacity as BPC initiated the bid process on 25.2.2010 and completed the process on 17.1.2011 as per the Guidelines. M/s Sterlite Transmission Projects private Limited (STPPL) was selected as the successful bidder having quoted the lowest levelised transmission charge in order to establish the transmission project for transmission scheme for System Strengthening for common WR and NR on build, own, operate and maintain basis and provide transmission service to the following identified long-term transmission customers of the projects, namely:

S.No.	Name of long term transmission customers	Allocated capacity (in MW)
1	Audhunik Power and Natural Resources Limited	10.69
2	Corporate Power Limited	11.41
3	Essar Power (Jharkhand) Limited	26.14
4	West Bengal State Electricity Distribution Company Limited	23.76

5. The applicant has submitted that the 13 bidders submitted their offers at RFP stage. M/s Pandey Dua and Mathurs, Financial Consultant carried out the responsiveness check of the non-financial bids in accordance with conditions of RFP and recommended 12 bids as responsive for opening of financial bids. After opening the financial bids, 1 bid was rejected due to non-compliance of requirement. The applicant has submitted that as per the Bid Evaluation Report dated 17.1.2011, STPPL emerged as the successful bidder with the lowest levelized transmission charges of ₹ 1421.28 Million/annum.

6. Consequent to its selection as the lowest bidder, Letter of Intent (LOI) was issued to STPPL by the BPC on 19.1.2011 which has been accepted by STPPL. 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, for the Acquisition Price, 100% share equity share holding of Jabalpur Transmission Company Ltd. from PFC along with all 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, as required under Section 63 of the Electricity Act, 2003
- (F) To apply to the Commission for grant of transmission licence.

7. The applicant has submitted that the STPPL has acquired hundred percent equity holding in Jabalpur Transmission Company Limited on 31.3.2011. The applicant has further submitted that TSA executed between the TSP and the LTTCs who are the beneficiaries of the transmission project has become effective on the date of acquisition of the applicant by STPPL.

8. 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 Ministry of Power, Government of India, vide its letter dated 25.11.2010, has accorded approval to the project under Section 68 of the Electricity Act, 2003. The selection of the project developer, M/s Sterlite Transmission Projects Private Limited, has been made in accordance with the guidelines for competitive bidding.

9. 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."

10. 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 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 Jabalpur Transmission Company Limited with respect to the transmission system as per the details given in para 1 above.

11. The Applicant has made the application as per Form-1 and paid the fee of ₹ 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 ₹ 1421.28 million/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.

12. The Applicant vide its affidavit dated 30.4.2011 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 Navabharat and Central Chronicle having publication from Bhopal, Indore, Jabalpur and Raipur. The Applicant has complied with the requirement of Regulation 4(7) of transmission licence regulations.

13. In response to the application, no reply has been received from the respondents. No objection has been received from the general public in response to the public notice.

14. 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 STPPL was declared as the successful bidder and Lol was issued on 19.1.2011. Accordingly, the applicant file application for grant of transmission licence on 8.4.2011.

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 4(6) of the transmission licence regulations. The CTU in its letter dated 4.7.2011 has forwarded its recommendations in terms of Section 15(4) of the Act. In the recommendations it has been stated that out of the entire high capacity corridor for IPP projects in Jharkhand, Government of India has identified transmission element, i.e Dharanjaygarh-Jabalpur pooling station 765 kV D/C line which was approved by the Committee on Power System planning in Western Region and in the 11th Western Region Power Committee meeting hold on 10.9.2009 and 25.9.2009, respectively. The corridor was also approved in the 16th meeting of the Northern Regional Power Committee and 29th meeting of the Standing Committee on Power System planning in Northern Region held on 16.4.2010 and 29.12.2010, respectively. It has been further stated that to facilitate power transfer from Anupur TPS (1200 MW) in MP of M.B. Power (M.P.) Ltd. strengthening of 765 kV Jabalpur-Bina corridor through a 765 kV S/C line was proposed. The Strengthening scheme was approved by the Standing Committee on Power System

planning in the 30th meeting held in Western Region and in the 21st meeting of Northern Regional Power Committee held on 19.8.2010 and 2.6.2011, respectively. The meeting of Northern Region constituents in regard to Open access was also held on 29.12.1010. This scheme was identified by the Government of India for implementation through tariff based competitive bidding route. Government of India, Ministry of Power had notified the Power Finance Corporation Limited (PFCL) as BPC to select the bidder as Transmission Service Provider on tariff based competitive bidding to implement the above referred scheme on Build, Own, Operate and Maintain (BOOM) basis. The BPC has declared M/s Sterlite Transmission Projects Pvt. Ltd. (STPPL) as the successful bidder with lowest levelised transmission charges to implement the transmission scheme on BOOM basis. M/s Sterlite Transmission Projects Pvt. Ltd. acquired Jabalpur Transmission Company Limited after execution of the share purchase agreement on 31.3.2011. The CTU has recommended under Section 15(4) for grant of Transmission Licence to Jabalpur Transmission Company Limited .

16. The applicant has been selected on the basis of the tariff based competitive bidding as per the guidelines issued by Government of India, Ministry of Power. The applicant has been issued with the Lol as the selected bidder and has acquired 100% stake in the Jabalpur Transmission Company Limited which has been transferred to the applicant on 31.3.2011 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. The CTU has also recommended the applicant for grant of transmission licence. Considering all the material 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.

17. List this petition on 27.9.2011 for further directions.

sd/-
(M. DEENA DAYALAN)
MEMBER

sd/-
(V.S.VERMA)
MEMBER

sd/-
(S. JAYARAMAN)
MEMBER

sd/-
(DR. PRAMOD DEO)
CHAIRPERSON

