

**Central Electricity Regulatory Commission  
New Delhi**

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

**Date of Hearing: 9.4.2013**  
**Date of Order : 9.5.2013**

**Petition No 127/2012**  
**With I.A. No.9/2013**

**In the matter of**

Application under Section 63 of the Electricity Act'2003 for adoption of Transmission Charges with respect to the Transmission System being established by the Vemagiri Transmission System Limited ( a 100% wholly owned subsidiary of Power Grid Corporation of India Ltd. )

**Petition No. 128/2012**  
**With I.A.No.6/2013**

**In the matter of**

Application under Section 14 of the Electricity Act, 2003 read with Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of Transmission Licence and other related matters) Regulations, 2009 with respect to Transmission Licence to Vemagiri Transmission System Limited.

**And  
in the matter of**

Vemagiri Transmission System Ltd., New Delhi

**Petitioner**

**Vs**

1. Samalkot Power Ltd, Mumbai
2. Spectrum Power Generation Ltd, Hyderabad

**Respondents**

**Following were present:**

Shri M.G.Ramachandran, Advocate, PGCIL  
Shri U.K. Tyagi, PGCIL

Shri B.Vamsi, PGCIL  
Shri RVMM Rao, PGCIL  
Shri R.Y Rao, PGCIL  
Shri R.N.Singh, PGCIL  
Shri Sumod Tom Thomas, PGCIL  
Shri Y.K.Sehgal, CTU  
Shri Dilip Rozeker, CTU  
Ms. Shally Bhasin, Advocate  
Shri Sanjeev K.Bhardwaj, Advocate, SPL  
Shri Aditya Bhardwaj, Advocate, SPL  
Ms. Rishi Jain, Advocate, SPL

### **ORDER**

In Petition No. 127/2012, the petitioner seeks adoption of tariff discovered through the tariff-based competitive bidding process with the following specific prayers, namely:

- “(a) Approve the adoption of Transmission Charges for the project discovered through competitive bidding process.*
- “(b) Allow the Transmission system associated with IPPs of Vemagiri Area: Package-A to be part of Transmission Service Agreement approved by the Hon’ble Commission under PoC Charges Regulations (Sharing of Inter-State Transmission Charges and Losses Regulations, 2010).”*

2. In Petition No. 128/2012, the petitioner has made the following prayers, namely:

- “(a) Declare the Applicant as a deemed licensee and also issue a clarification that a Government company shall be deemed to be a transmission licensee if it emerges as a successful bidder in bidding process undertaken in accordance with the competitive bidding guidelines as notified by Gol.*

Or

- “(b) Issue Transmission License to the Applicant ; and*
- “(c) Allow the Transmission system associated with IPPs of Vemagiri Area: Package – A to be part of Transmission Service Agreement approved by the Hon’ble Commission under PoC charges Regulations (Sharing of Inter-state Transmission Charges and Losses Regulations).*

*(d) Pass such other order/ orders, as may be deemed fit and proper in the facts & circumstances of the case.*

3. Both these petitions are based on common facts and as such they are being disposed of through this common order.

4. The respondents had decided to set up gas-based power plants as Independent Power Producers (IPPs) in Vemagiri area, East Godavari District of the State of Andhra Pradesh. The Central Government in Ministry of Power notified REC Transmission Projects Company Ltd as the Bid Process Coordinator to establish the transmission system for transfer of power from these power projects to the beneficiaries in Western, Northern and Southern Regions (hereafter “the transmission system”) in accordance with the tariff-based competitive guidelines. The transmission system comprises the following elements, namely:

(a) 765 kV D/C Vemagiri Pooling sub-station–Khammam Transmission Line-1, and

(b) 765 kV D/C Khammam- Hyderabad Transmission Line-1.

5. REC Transmission Projects Company Ltd on 21.4.2011 incorporated Vemagiri Transmission System Ltd, the petitioner, as its wholly owned subsidiary to take steps for execution of the transmission system. Subsequently, after its acquisition by the successful bidder the petitioner was to act as the Transmission Service Provider.

6. The respondents were granted long-term access (hereafter “LTA”) on the transmission system, quantum of LTA granted being 2,200 MW to Samalkot

Power Ltd (hereafter "Samalkot") and 1350 MW to Spectrum Power Generation Ltd (hereafter "Spectrum"). The respondents entered into the Transmission Service Agreement (hereafter "the TSA") with the petitioner on 15.12.2011. The petitioner has furnished Contract Performance Guarantee for an amount of ₹22.31 crore and ₹13.69 crore in favour of Samalkot and Spectrum respectively in accordance with clause 3.11 of the TSA.

7. In the bidding process conducted by the petitioner, Power Grid Corporation of India Ltd (hereafter "PGCIL") was selected as the successful bidder and the Letter of Intent was issued in its favour on 20.3.2012. The entire equity of REC Transmission Projects Ltd in the petitioner company was acquired by PGCIL on 18.4.2012. The petitioner has filed Petition No 127/2012 under Section 63 of the Electricity Act for adoption of tariff for the transmission system discovered through the tariff-based competitive process. The other petition (No. 128/2012) has been filed by the petitioner under Section 14 of the Electricity Act for grant of licence to the petitioner for inter-State transmission of electricity. Certain other reliefs have also been claimed by the petitioner, as extracted above.

8. Ministry of Power vide its ID No. 4/5/2012-Th 1 dated 14.3.2012 informed CEA that as per information made available by Ministry of Petroleum and Natural Gas, production of NELP gas was likely to go down by 15.03 mmscmd in 2012-13 and additional 3.42 mmscmd in 2013 against the availability of 42.67 mmscmd of gas in 2011-12. It was added that Ministry of Petroleum and Natural Gas had not given any projections for the years 2014-15

and 2015-16 and therefore no additional domestic gas was likely to be available till 2015-16. Accordingly, the project developers were advised not to plan projects based on domestic gas till 2015-16. Ministry of Power asked CEA to place the information on its website adding that when Ministry of Petroleum and Natural Gas indicated availability of gas, developers would be intimated. Based on the above advice of Ministry of Power, CEA issued Circular No. CEA/PLIRP/501/39/2012/938 dated 19.3.2012 stating that the gas production in the country was going down and the projections of gas production released showed a decline in production of Natural Gas for the year 2015-16 by the Ministry of Petroleum and Natural Gas. CEA accordingly advised the project developers not to plan projects based on domestic gas till 2015-16.

9. When Spectrum became aware non-availability of gas as aforementioned, it by its letter dated 30.3.2012 requested PGCIL not to take action for execution of the transmission system based on LTA and the TSA. The said letter dated 30.3.2012 whose copies were endorsed to Ministry of Power, CEA, REC Transmission Project Company Ltd and the petitioner is reproduced hereunder:

*"We have been granted Long-Term Open Access granted vide PGCIL letter No.. CC/ENG/SEF/TAL/S/10/007 dated 10.12.2010 for grant of Long Term Open Access for our 1350 MW Gas Based Power Project SPGL, Kakinada, Andhra Pradesh.*

*The BPTA on the basis of Long-term Open Access granted by PGCIL has been signed on 24<sup>th</sup> Dec'2010 jointly with M/s. Reliance Infrastructure Limited, M/s. GVK Gautami Power Limited and M/s. GVK Industries Limited. The System strengthening requirement as per Annexure – 3 of BPTA was designed to evacuate 5150 MW power. However, M/s. GVK Gautami Power Limited and M/s. GVK Industries Limited have not deposited the Bank Guarantee and the revised BPTA is yet to be signed. We had also signed the TSA with REC Transmission Project Company Ltd for execution of the Transmission System.*

*We have made substantial progress in the execution of the project and have necessary land and clearances for the project. We have also invited bids for the execution of the project on EPC basis which have already been evaluated and we were about to place order on the selected Bidder. However, based on the Notification dtd. 19.03.2012 (copy enclosed) issued by Ministry of Power, Government of India, wherein it has been intimated that no additional Gas supply is to be available upto 2015-16, we have had to defer the award of EPC Contract for the 1<sup>st</sup> Phase of 350 MW.*

***Keeping in view of the above, it is not possible to go ahead with the implementation of the project since the project Lenders and Share holders would not like to fund the project when the government itself is advising developers not to plan gas based power projects till 2015-16.***

*It is therefore requested that no action may please be taken for implementing the execution of the transmission projects in the scope of PGCIL based on the Long Term Open Access and the BPTA signed with PGCIL. The CEA/MoP have undertaken vide notification dated 19.03.2012 that the Project Developers shall be intimated when MOP&NG indicates the availability of Gas. On receipt of such intimation about the Gas availability SPGCL shall intimate to PGCIL about the transmission system thereafter. Since no project is likely to be commissioned before 2017-18 there is no purpose to block the Bank Guarantee for such a long period. Accordingly it is requested that the Bank Guarantee deposited by us for Rs. 67.50 Crores issued by ICICI Bank Limited submitted on 15<sup>th</sup> June, 2011 may kindly be returned.*

*Similar request is being made to REC Transmission Project Company Ltd for cancellation of the Transmission Service Agreement and you may also kindly write to them not to proceed ahead for execution of the Transmission work.”*

10. Spectrum wrote another letter dated 7.6.2012 addressed to the petitioner for cancellation of the TSA, which is also extracted below:

*“We have signed the Transmission Service Agreement jointly with M/s. Reliance Infrastructure Ltd. for execution of the transmission package as per the Long Term Open Access granted by PGCIL vide letter No.. CC/ENG/SEF/TA/L/S/10/007 dated 10.12.2010 for 1350 MW Gas Project.*

*MOP&NG has vide notification dated 19.03.2012 (copy enclosed) intimated that no additional gas supply is to be available upto 2015-16 hence developers are advised not to plan gas based projects till 2015-16. In terms of the said notification, the Central Electricity Authority has further undertaken that that it shall intimate the developers about the availability of Gas as and when the same is indicated by the MOP&NG.*

*Accordingly, it is not possible to go ahead with the implementation of the project since the project lenders and shareholders would not like to fund the project when the government itself is advising developers not to plan gas based power projects till 2015-16.*

*We have already addressed the issue to PGCIL vide our letter no. spgl/pgcil/TSA/11-12/1317 dated 30.03.2012 for not implementing the execution of the transmission projects based on the LTOA granted and BPTA signed with PGCIL.*

*Keeping in view of the above, it is requested that the TSA signed may kindly be cancelled under intimation to us. The bidding process initiated shall also have to be stalled as SPGL shall not be able to accept the award of contract for execution”*

11. The letter dated 7.6.2012 addressed by Spectrum to the petitioner was preceded by a similar letter dated 6.4.2012, addressed to REC Transmission System Company Ltd.

12. Thus, in view of non-availability of gas, Spectrum has abandoned the project and has requested for cancellation of the TSA.

13. When these petitions were taken up for hearing on 12.7.2012, this Commission directed the Central Transmission Utility to file an affidavit explaining the manner in which the transmission System was going to be fully utilized in view of withdrawal of Spectrum. Samalkot was also directed to submit the status and schedule of implementation of its generation station and the availability of gas for its generating station.

14. Samalkot vide its affidavit dated 1.8.2012 has submitted that its generating station could not be allocated gas because of shortfall of KGD6 gas fields. Samalkot has further submitted that Reliance Power, its parent

company, is working on setting up LNG terminal in close proximity to the proposed generating station, which would offer additional fuel to enable operations. Based on this premise, Samalkot is going ahead with setting up of its generating station and has, in fact, already commissioned some of its units.

15. In terms of its affidavit dated 16.8.2012, the Central Transmission Utility has submitted that in view of the huge investments that have to be undertaken to establish transmission system and the long-term funding to be arranged from project lenders, a clear mandate is required to proceed further in procurement and financing processes which was put on hold.

16. During pendency of the present petitions, the petitioner has not taken any tangible steps for implementation of the transmission system. The petitioner has meanwhile filed IAs 9/2013 and 6/2013 in Petition Nos. 127/2013 and 128 /2012, respectively, with the following prayers, namely:

- a) *Direct that the transmission project awarded to POWERGRID under the Tariff Based Competitive Bidding be implemented by the Applicant with extension of time and with cost increase and cost over-run*
- b) *Extend the time for implementation of project to 36 months from the date of grant of transmission licence, adoption of the tariff and allowing the cost increase and over-run;*
- c) *Direct that the transmission charges shall be payable under the POC regime by Respondent No. 1 & 2 and in the event of failure on the part of respondent No. 1 or/and Respondent No. 2, to pay such transmission charges, decide the course of recovery of all such as a coordinated scheme;*
- d) *Direct that the transmission charges shall be payable to the Applicant even in the absence of the Power project of Respondent No. 1 & 2 being commissioned by the time of the commissioning of*



*the transmission system by the extended period and even in the circumstances where the Respondent No. 1 & 2 are unable to evacuate the power through the above mentioned transmission system for any reason whatsoever; and*

- e) *Pass any such further order or orders as the Hon'ble Commission may deem just and proper in the circumstances of the case."*

17. In the IAs, the petitioner has submitted that in the absence of any decision by the Commission on these petitions it has not been able to proceed with finalization of the contract for execution of the various packages of works as and funding and financing arrangements with the financial institutions for execution of the and proceed with the implementation of the transmission system and it is not in a position to execute the transmission system within the time limit envisaged in the bidding documents i.e. 36 months from the Effective Date and within the capital cost commensurate to the quoted tariff. Accordingly, there will be time and cost increase and over-run. The petitioner has also submitted that the delay in implementation has been on account of reasons not attributable to the petitioner or, its parent company, PGCIL and on account of *Force Majeure*.

18. We have heard learned counsels for the petitioner and respondents.

19. PGCIL had filed Petition No. 154/2011 for regulatory approval for development and execution of certain identified transmission systems which included the transmission system for evacuation of power from various generation projects planned to be promoted by different developers. The approval was granted vide order dated.13.12.2011. In the said order it was

clarified that implementation of various transmission systems should be in accordance with the progress in the generating projects of IPPs. Therefore, in keeping the earlier order, implementation of the transmission system has to keep stride with the construction of the generating stations which were proposed to be set up by Samalkot and Spectrum.

20. Because of problem of availability of gas, Spectrum has discontinued implementation of the generating station and has sought cancellation of the TSA. The other project developer, Samalkot, is also facing problem of availability of gas though it has commissioned some of the units of the generating station. Samalkot has, however, clearly stated that it will not bear the charges of complete transmission system after withdrawal of Spectrum. Generation of power is dependent on availability of gas for which there is no certainty at present. With uncertainty that looms over the operational phase of the generating stations because of unavailability of gas, the transmission assets if raised, are likely to remain unutilized. This is bound to give rise to problem of recovery of the transmission charges as Samalkot has refused to share the entire tariff. The petitioner has represented that with the time overrun it will not be possible to implement the transmission system within the capital cost commensurate with the quoted tariff and has accordingly sought increase in the transmission charges with the increased capital cost when implemented. The capital cost considered by the petitioner while quoting tariff is not known to any person except PGCIL itself. Therefore, it will be difficult to assess the impact of cost overrun on the transmission charges, even if time extension is permitted. In view of the uncertainties and other difficulties being

envisaged, no useful purpose is likely to be served by adopting the transmission charges and granting licence to the petitioner for inter-State transmission of electricity. The petitioner itself does not seem to be very keen to implement the transmission system in the present phase of uncertainty unless it is assured of recovery of the transmission charges. There is, according to us, an imperative need to review the requirement of transmission network needed for evacuation of power of the generating stations being or to be established in Vemagiri area in the light of present day developments. There is also a need to examine the possibility of reconfiguring the required network in the Southern Region based on expected generation and the load and some elements of the transmission system may be combined with the other transmission systems being built / proposed to be built in the Region, if required. The Central Electricity Authority and the Central Transmission Utility are directed to undertake necessary review and reexamination of the entire matter afresh and file their decision/views in the matter by 31.5.2013.

21. In Petition No. 128/2012, the petitioner has sought a declaration to the effect that it is a deemed licensee and in the alternative has sought the transmission licence for execution of the project. In view of our decision to refer the matter to CEA and CTU to reconsider requirement to go ahead with the transmission system, we do not consider it necessary to deal with the prayers of the petitioners in Petition Nos. 127/2012 and 128/2012 at this stage.

22. As the matter is being referred to Central Electricity Authority and the Central Transmission Utility to undertake necessary review and re-examination of the entire matter afresh, I.As have become infructuous. I.As are accordingly, disposed of.

23. The petitions No. 127/2012 and 128/2012 shall be listed for hearing on 13.6.2013.

Sd/-  
**(M. Deen Dayalan)**  
**Member**

sd/-  
**(V.S. Verma)**  
**Member**

sd/-  
**(Dr. Pramod Deo)**  
**Chairperson**