

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 121/TL/2012**

**Coram:**

**Shri V. S. Verma, Member  
Shri M. Deena Dayalan, Member  
Shri A. S. Bakshi, Member (EO)**

**Date of Hearing: 11.6.2013**

**Date of Order: 20.6.2013**

**In the matter of**

Application under Section 14 read with Section 15(1) 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 for grant of Transmission Licence to Nagapattinam-Madhugiri Transmission Company Limited.

**And in the matter of**

**POWERGRID NM TRANSMISSION LIMITED  
Vs**

**Applicant**

**IL&FS Tamil Nadu Power Company Limited, Chennai**

**Respondent**

**The following were present:**

Shri M.G.Ramchandran, Advocate, PGCIL  
Shri U.K. Tyagi, PGCIL  
Shri B.Vamsi, PGCIL  
Shri RVMM Rao, PGCIL  
Shri Dilip Rozeker, CTU  
Shri Param Kumar Mishra, Advocate  
Shri Piyush Joshi, Advocate  
Shri Yadava, Advocate  
Shri Hazig Beg, ITPCL  
Shri S.C. Misra, ITPCL  
Shri V. L. Dua, ITPCL  
Shri A.R.Sah, IPTCL

**ORDER**

The Applicant, Nagapattinam-Madhugiri Transmission Company Limited has filed this application under Section 14 of the Electricity Act, 2003 (the Act) to

establish the "Transmission system associated with IPPs of Nagapattinam/Cuddalore Area-Package-A" on Build, Own, Operate and Maintain basis comprising the following elements:

S. No.	Transmission line	Completion Target	Conductor per phase
1.	Nagapattinam Pooling Station-Salem 765 kV D/C line	36 months from effective date	6xzebra ACSR or AAAC, Transmission line design should be corresponding to 85 <sup>0</sup> C conductor temperature operation
2.	Salem-Mahugiri 765 kV S/C line	36 months from effective date	6xzebra ACSR or AAAC, Transmission line design should be corresponding to 85 <sup>0</sup> C conductor temperature operation

2. The above transmission system was selected to be executed through the competitive bidding under section 63 of the Electricity Act, 2003 (the Act). PFC Consulting Limited (PFCCL) in its capacity as Bid Process Coordinator initiated the bid process through the Special Purpose Vehicle (SPV), Nagapattinam-Madhugiri Transmission Company Limited (NMTCL) and completed the process on 6.3.2012 as per the Guidelines issued by the Government of India. M/s Power Grid Corporation of India Limited (PGCIL) was selected as the successful bidder having quoted the lowest levelised transmission charges of ₹ 987.02 million/annum (₹ 98.7 crore) to establish the Transmission system associated with IPPs of Nagapattinam/Cuddalore Area-Package-A on build, own, operate and maintain basis and provide transmission service to IL&FS Tamil Nadu Power Company Limited ( "long-term transmission customer" or LTTC of the project).

3. PGCIL entered into the TSA dated 2.2.2012 with the respondent and acquired hundred percent equity holding in NMTCL on 29.3.2012. The TSA became effective from the date of acquisition of NMTCL by PGCIL. In accordance

with Article 3.1.3 of the TSA, the applicant approached the Commission for transmission licence and adoption of transmission charges for the project under section 63 of the Act. During the pendency of the proceedings, the applicant brought on record that the name of the applicant has been changed from Nagapattinam-Madhugiri Transmission Company Limited (NMTCL) to POWERGRID NM TRANSMISSION LIMITED (PNMTL). The Commission after due examination of the applications adopted the tariff of the transmission system and directed issue of notice under section 15(5) of the Act proposing to grant transmission licence to PNMTL vide orders dated 9.5.2013. The relevant para of the order proposing to grant transmission licence is extracted as under:

"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 by 25.5.2013."

4. The public notice under Section 15 (5) of the Act was published on 12.5.2013 in all editions of Times of India, Economic Times and Dainik Bhaskar. In response to the public notice, no suggestion/objections have been received. However, the applicant has filed an affidavit dated 9.5.2013 raising certain issues pertaining to time and cost overrun of the project etc. and has requested the Commission to resolve the issues before transmission licence is granted. The submissions of the applicants have been considered in the later part of this order.

5. Clauses (15) and (16) of Regulation 7 of the Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of Transmission Licence

and other related matters) Regulations, 2009 (Transmission Licence Regulations)

provide as under:

*“(15) The Commission may after consideration of the further suggestions and objections, if any, received in response to the public notice aforesaid, grant licence as nearly as practicable in Form-III attached to these regulations or for reasons to be recorded in writing, reject the application if such application is not in accordance with the provisions of the Act, the rules or regulations made thereunder or any other law for the time being in force or for any other valid reasons.*

*(16) The Commission may, before granting licence or rejecting the application, provide an opportunity to the applicant, the Central Transmission Utility, the Long-term customers, or the person who has filed suggestions and objections, or any other person:*

*Provided further that the applicant shall always be given a reasonable opportunity of being heard before rejecting the application.”*

6. In our order dated 9.5.2013, we had proposed to grant transmission licence to the applicant company and directed for issue of public notice. In response to the public notice, no suggestions/objections have been received. The CTU in its letter dated 22.5.2012 has recommended under Section 15 (4) for grant of Transmission Licence to the applicant. We are satisfied that the applicant company meets the requirements of the Act and the transmission licence regulations for grant of transmission licence for the subject transmission system mentioned at para 1 of this order. Accordingly, we direct that a transmission licence be granted to POWERGRID NM TRANSMISSION LIMITED to establish transmission system for "Transmission system associated with IPPs of Nagapattinam/Cuddalore Area-Package-A" on Build, Own, Operate and Maintain basis as per the details given in para 1 above

7. The grant of transmission licence to the applicant is subject to the fulfillment of the following conditions throughout the period of licence:

(a) The transmission licence shall, unless revoked earlier, remain in force for a period of 25 years;

(b) The transmission licensee shall comply with the provisions of the Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of Transmission Licence and other related matters) Regulations, 2009 as amended from time to time or any subsequent enactment thereof during the period of substance of the licence.

(c) Since the expiry date as per the TSA is 35 years from the scheduled COD of the project, the applicant may make an application, two years before the expiry of initial licence period, for grant of licence for another term which shall be considered by the Commission in accordance with law;

(d) The applicant shall not enter into any contract for or otherwise engage in the business of trading in electricity during the period of subsistence of the transmission licence;

(e) The applicant shall have the liability to pay the license fee in accordance with the provisions of the Central Electricity Regulatory Commission (Payment of Fees) Regulations, 2012, as amended from time to time or any of other subsequent enactment thereof. Delay in payment or non-payment of licence fee or a part thereof for a period exceeding sixty days shall be construed as breach of the terms and conditions of licence;

(f) The applicant shall comply with the directions of the National Load Despatch Centre under section 26 of the Act, or the Regional Load Despatch Centre under sub-section (3) of section 28 or sub-section (1) of section 29 of the Act, as may be issued from time to time for maintaining the availability of the transmission system;

(g) The applicant shall remain bound by the Central Electricity Regulatory Commission (Standard of performance of inter-State transmission licensees) Regulations, 2012 or any subsequent enactment thereof.

(h) The applicant shall provide non-discriminatory open access to its transmission system for use by any other licensee, including a distribution licensee or an electricity trader, or generating company or any other person in accordance with section 40 of the Act, Central Electricity Regulatory Commission (Open Access in inter-State Transmission) Regulations, 2008 and Central Electricity Regulatory Commission (Grant of Connectivity, Long-term Access and Medium-term Open Access in inter-State Transmission and related matters) Regulations, 2009as amended from time to time and Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2010;

(i) The applicant shall not undertake any other business for optimum utilization of the transmission system without prior intimation to the Commission and shall comply with the provisions of the Central Electricity Regulatory Commission (Sharing of revenue derived from utilization of

transmission assets for other business) Regulations, 2007, as amended from time to time;

(j) The applicant shall remain bound by the Central Electricity Regulatory Commission (Sharing of inter-State Transmission Charges and Losses) Regulations, 2010 as amended from time to time; and

(k) The applicant shall remain bound by the provisions of the Act, the rules and regulations framed thereunder, the Standards specified by the Central Electricity Authority, orders and directions of the Commission issued from time to time.

8. Next we deal with the concern of the applicant regarding cost and time overrun. The applicant had filed IA No.5/2013 seeking a direction for execution of the project with time and cost overrun and for extension of the project to 36 months from the date of grant of transmission licence. The Commission in order dated 9.5.2013 had directed the applicant to first try to resolve the issues in consultation with the respondent in terms of the TSA and in case of non-resolution of the issues, to approach the Commission in accordance with law.

9. The petitioner in its affidavit dated 5.6.2013 has submitted that in pursuance of the directions of the Commission, the applicant issued a notice dated 11.5.2013 to the respondent in terms of Article 3.3.4 of the TSA in order to arrive at a mutually agreeable solution for various issues such as time extension, cost increase, and other aspects of the project. However, the respondent in their letter dated 17.5.2013 refuted the claim of the applicant. The applicant has submitted that the parties met on 20.5.2013 to find out a mutually agreeable solution and

since the parties were unable to agree on a solution, the applicant sent a termination notice on 5.6.2013. The applicant has submitted that under the circumstances, it is not possible for the applicant to accept the licence proposed to be granted by the Commission for the reasons of non-fulfillment of conditions subsequent for reasons not attributable to the applicant in terms of Article 3.3.4 of the TSA.

10. During the course of the hearing, learned counsel for the applicant submitted that in terms of Article 3.1.3 of the TSA, the applicant as the Transmission Service Provider (TSP) was required to obtain the transmission licence and adoption of transmission charges within six months from the effective date (29.3.2012) i.e. by 29.9.2012. The applicant made the application to the Commission on 4.4.2012. As per Article 3.3.4 of the TSA, if the TSP is unable to fulfill any of the conditions of Article 3.1.3 due to any force majeure event, then the period can be extended by three months and after that, the TSP or the LTTC may terminate the agreement by mutually agreeable basis. Since the tariff was adopted on 9.5.2013 and the transmission licence was proposed to be granted by order dated 9.5.2013, the applicant could not achieve its financial closure and could not proceed with awarding the various contracts for execution of the project. The learned counsel submitted that in pursuance of the directions of the Commission, the applicant approached the respondent to find out a mutually agreeable solution to the issues of time overrun and cost overrun but the respondent refused to accept the liability for time and cost overrun. Learned counsel submitted that though the applicant is prepared to execute the project, its concern regarding cost and time overrun arising out of force majeure event due to delay in issue of transmission licence needs to be addressed.



11. Learned counsel for the respondent submitted that the applicant cannot claim to exercise rights under Article 3.3.4 of the TSA as no force majeure event has occurred. Learned counsel further submitted that in terms of Article 11.5 of the TSA, the affected party is required to give notice to the other party about any event of force majeure within 7 days. However, the applicant has not issued any notice to the respondent under the provisions of the TSA and the applicant is not entitled to claim any relief for force majeure. Learned counsel submitted that the generation project is expected to be commissioned in October 2014 and requested the Commission to direct the applicant to execute the project.

12. We had directed the representative of the CTU as to why the petition No.143/2012 was filed seeking directions regarding the viability of the project in view of the order of the National Green Tribunal regarding the generation project of the respondent. The representative of CTU explained that as soon as CTU came to know about the NGT's order dated 23.5.2012, it filed the said petition seeking clarity in the matter. Learned counsel for the respondent submitted that it kept the applicant informed as soon as the Ministry of Forest & Environment issued the necessary corrigendum dated 14.8.2012 in compliance with the directions of the National Green Tribunal. We observe that the applicant has never pursued the matter with the Commission for early grant of transmission licence.

13. The transmission project has been awarded to the applicant on the basis of the competitive bidding after the applicant was found to be the lowest bidder among the 18 bidders who participated in the bidding. The evacuation of power from the generation project is linked to the execution of the transmission project

and any move by the applicant to abandon the project on the plea of delay in grant of transmission licence would adversely affect the execution and commissioning of the generation project. Moreover, PGCIL was selected as the successful bidder and the applicant company is its 100 per cent acquired company. Even though the grant of transmission licence was delayed, it is not the case that the applicant would not be granted the transmission licence. In that event, PGCIL and the applicant should have taken action to execute the project.

14. However, we are not averse to consider the claim of the applicant for cost and time overrun within the framework of the TSA. To consider whether the delay in issue of the transmission licence has resulted in cost overrun, we direct the applicant to submit the following by 10.7.2013 with an advance copy to the respondent:

- (a) What was the bid validity period and whether the applicant has extended bid validity period or not?
- (b) Whether tender/bid has been cancelled?
- (c) Pert chart showing the milestones for different activities for execution of the project.

15. We also direct CTU to submit the contingency plan of action envisaged to evacuate the power in case of delay in execution of the project on or before 10.7.2013, with an advance copy to the respondent.

16. We are of the view that execution of the transmission project should not be affected on account of the apprehension generated by the applicant regarding viability of the generation project involving the environmental issue associated

with the generation project or the apprehension of the applicant regarding cost and time overrun of the project. The applicant is directed to go ahead with the execution of the subject transmission project and try to draw upon its vast experience in order to execute the project in the shortest possible time frame. The issue of extension of time for execution of project and associated cost implication would be considered on merit by the Commission in accordance with the provisions of the TSA after considering all details of the cost of the project assumed at the time of bidding and indexation etc.

17. The petition shall be listed for hearing on 6.8.2013.

sd/-  
**( A. S. Bakshi )**  
Member

sd/-  
**(M. Deena Dayalan)**  
Member

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