

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 191/TL/2013

**Coram:
Shri M.Deena Dayalan, Member
Shri A.K Singhal, Member**

**Date of Hearing: 15.10.2013
Date of Order : 21.11.2013**

In the matter of

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

**And
in the matter of**

Kudgi Transmission Limited,
CORE-4, SCOPE Complex, 7, Lodhi Road,
New Delhi 110 003

..... **Petitioner**

Vs

1. Bangalore Electricity Supply Company Limited (BESCOM),
K.R.Circle, Bangalore-560 001
2. Gulbarga Electricity Supply Company Limited (GESCOM),
Station Main Road, Gulbarga
3. Hubli Electricity Supply Company Limited (HESCOM),
Navanagar, PB Road, Hubli
4. Mangalore Electricity Supply Company Limited (MESCOM),
Paradigm Plaza, AB Shetty Circle, Mangalore-575 001
5. Chamundeshwari Electricity Supply Company Limited (CESCOM),
927, LJ Avenue, Ground Floor, New Kantharaj Urs Road,
Saraswatipuram, Mysore-570 009
6. Northern Power Distribution Company of Andhra Pradesh Limited (APNPDCL),
H.No. 2-5-3 1/2, Vidyut Bhawan, APNPDCL, Corporate Office, Nakkal Gutta,
Hanamkonda, Warangal-506 001
7. Eastern Power Distribution Company of Andhra Pradesh Limited (APEPDCL),
3rd Floor, Corporation Office P & T Colony, Seethmmadhara, Vishakhapatnam-530
013



8. Southern Power Distribution Company of Andhra Pradesh Limited (APSPDCL),
Srinivassa Kalyana Mandapam Backside, Tiruchanoor Road, Kesavayan Gunta
Tirupati-517 501
9. Central Power Distribution Company of Andhra Pradesh Limited (APCPDCL),
6-1-50, Corporate Office, Mint Compound, Hyderabad- 500 063
10. Kerala State Electricity Board (KSEB)
Vaidyuti Bhavanam, Pattom,
Trivandrum-696 004
11. Tamil Nadu Generation and Distribution Company Limited (TANGEDCO),
NPKRR Malligai, 144, Anna Salai, Chennai 600 002 Respondents

The following were present:

1. Shri S.N Sunkari, KTL
2. Shri R. Suraj, KTL
3. Shri Yogesh Malik, M/s Parry & Company (RECTPCL Consultant)
4. Shri Abhineet Sinha, Advocate, RECTPCL
5. Shri A.M.Pagvi, PGCIL
6. Shri S.Vallinayagam, Advocate, TGDCL

ORDER

The petitioner, Kudgi Transmission Limited has filed this petition 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 system required for evacuation of power from Kudgi TPS (3 x 800 MW in Phase-I) of NTPC Limited (hereinafter referred to as “Transmission system”) on ‘build, own, operate and maintain’ (BOOM) basis, comprising the following elements:

S. No.	Transmission elements	Voltage Class (kV)	Length (km)	Type	Conductors per Phase	Completion Target
1.	Kudgi TPS- Narendra (New) (Line -1 and Line-2)	Line1- 400 Line 2-400	Line1-6.76 Line 2-6.76	D/C	Quad Moose ACSR or Quad AAAC (equivalent to Quad ACSR Conductor) and transmission line design should be corresponding to 85°C conductor temperature operation.	18 months from effective date

2.	Narendra (New)–Madhugiri	765	383.99	D/C	Hex Zebra ACSR or equivalent AAAC conductor and transmission line design should be corresponding to 85°C conductor temperature operation	28 months from effective date
3.	Madhugiri–Bidadi	400	99.32	D/C	Quad Moose ACSR or equivalent AAAC Conductor and Transmission line design should be corresponding to 85°C conductor temperature operation.	28 months from effective date

2. The petitioner 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 'Guidelines for encouraging competition in development of Transmission Projects and competitive bidding for Transmission Service' and '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 REC Transmission Projects Company Limited (RECTPCL) was notified by Government of India, Ministry of Power vide Notification No. 15/1/2011-Trans, dated 8.10.2012 as the Bid Process Coordinator(BPC) for the purpose of selection of bidder as Transmission Service Provider (TSP) to establish the "Transmission system required for evacuation of power from Kudgi TPS (3 x 800 MW in Phase – I) of NTPC Limited (hereinafter referred to as Project)" through tariff based competitive bidding process.

3. REC Transmission Projects Company Limited (RECTPCL) in its capacity as BPC initiated the bid process on 5.12.2012 and completed the process on 30.8.2013 in accordance with the Guidelines. M/s L&T Infrastructure Developments Projects Limited (L&T IDPL) was selected as the successful bidder having quoted the lowest levelized transmission charge in order to establish the transmission system required for evacuation of power from Kudgi TPS (3 x 800 MW in Phase- I) of NTPC Limited on build, own, operate and maintain basis and provide transmission service to the following identified long-term transmission customers (LTTCs) of the projects, namely:

Sl. No.	Name of the Long Term Transmission Customers
1.	Andhra Pradesh
(i)	Northern Power Distribution Company of Andhra Pradesh Limited (APNPDCL)
(ii)	Eastern Power Distribution Company of Andhra Pradesh Limited (APEPDCL)
(iii)	Southern Power Distribution Company of Andhra Pradesh Limited (APSPDCL)
(iv)	Central Power Distribution Company of Andhra Pradesh Limited (APCPDCL)
2.	Karnataka
	Power Company of Karnataka Limited (PCKL) (PCKL to sign TSA on behalf of following Discoms)
(i)	Bangalore Electricity Supply Company Limited (BESCOM)
(ii)	Gulbarga Electricity Supply Company Limited (GESCOM)
(iii)	Hubli Electricity Supply Company Limited (HESCOM)
(iv)	Mangalore Electricity Supply Company Limited (MESCOM)
(v)	Chamundeshwari Electricity Supply Company Limited (CESCOM)
3.	Kerala State Electricity Board (KSEB)
4.	Tamil Nadu Generation and Distribution Company Limited (TANGEDCO)

4. The petitioner has submitted that the 4 bidders submitted their offers at RFP stage. M/s Parry & Company carried out the responsiveness check of the non-financial bids in accordance with conditions of RFP and recommended all 4 bids as responsive for opening of financial bids. After opening the financial bids, as per the Bid Evaluation Report dated 29.7.2013, M/s L&T Infrastructure Development Company Limited (L&T IDPL) emerged as the successful bidder with the lowest levelized transmission charges of ₹1795.8652 million/annum.

5. Consequent to its selection as the lowest bidder, Letter of Intent (Lol) was issued to L&T IDPL by the BPC on 31.7.2013 which has been accepted by L&T IDPL. 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 favor of Long Term Transmission Customers (LTTC);
- (b) Execute Share Purchase Agreement;
- (c) Acquire, for the Acquisition Price, 100% share equity share holding of Kudgi Transmission Company Limited from REC Transmission Projects Limited along with all its related assets and liabilities;
- (d) To execute RFP project document including Transmission Service Agreement (TSA) with LTTCs;
- (e) Make an 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 Central Commission for grant of transmission licence.

6. The petitioner has submitted that the L&T IDPL has acquired one hundred percent equity holding in Kudgi Transmission Limited on 30.8.2013. The petitioner 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 L&T IDPL.

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 petitioner has been incorporated under the Companies Act, 1956. The main object of the petitioner company is as under:

"To plan, promote and develop an integrated and efficient power transmission system network in all its aspects 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 turnkey 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".

8. 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 referred to as "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 9.7.2013, has accorded approval to the project under Section 68 of the Electricity Act, 2003. The selection of the project developer, M/s L&T Infrastructure Development Projects 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 situated, 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 petitioner has approached the Commission by a separate application for adoption of transmission charges in respect of the transmission system which is presently under consideration of the Commission and order in that petition will be issued separately. The petitioner has filed the present application for grant of

transmission licence in accordance with the Transmission Licence Regulations. The petitioner 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 petitioner 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, 2012. The Petitioner has prayed for grant of transmission licence to Kudgi Transmission Limited with respect to the transmission system as per the details given in para 1 above.

11. The petitioner has made the application as per Form-1 and paid the fee of ₹ one lakh as prescribed by the Government of India. On perusal of the application, it is revealed that the petitioner has served copy of the application on the Long Term Transmission Customers (LTTCs) for the project which is scheduled to be commissioned 18 and 28 months from the effective date under the TSA. The levellized tariff charges quoted by the petitioner which have been recommended by the Bid Evaluation Committee for acceptance is ₹ 1795.8652 million/annum. The petitioner has also enclosed copies of the Bid Evaluation Committee recommendations for selection of the L& T Infrastructure Development Projects Limited as the selected bidder and proof of making the evaluation report public by the Bid Process Coordinator as per the Guidelines.

12. The petitioner vide its affidavit dated 19.9.2013 has placed on record the relevant copies of the newspapers in original in which notice of its application has been published. The petitioner has published the notices on 7.9.2013 in Business Standard (English version), Rajasthan Patrika (Hindi version) and Samyukta Karnataka (Kannada version) having circulation in Bangalore. The petitioner has complied with the requirement of Regulation 7 (7) of Transmission Licence Regulations.

13. In response to the petition, no reply has been received from the respondents. No objection has been received from the general public in response to the public notice. During the hearing on 15.10.2013, learned counsel for TANGEDCO had sought one week time to file the reply to the petition which was allowed. However, no reply has been filed by TANGEDCO.

14. The petition was heard on 15.10.2013. The Commission in the vide Record of Proceeding had directed the petitioner to file an affidavit to the effect that the execution of the transmission project shall not be delayed due to time taken in obtaining statutory clearances required under the RfP and Transmission Service Agreement or adjudication of any claim of the petitioner arising under the TSA.

15. The petitioner vide its affidavit dated 12.11.2013 has submitted as under:

"4. That it is submitted that as per the Request for Proposal under the Bidding process, the definition of " RFP Project Documents" shall mean the Transmission Service Agreement (TSA) and the Share Purchase Agreement (SPA). It is submitted that the pre-signed Transmission Service Agreement (TSA) between the Transmission Service Provider (TSP) and the Long Term Transmission Customers (LTTCs) has been provided by the Bid Process Coordinator as part of the RFP Project documents thereby enabling the bidders to participate in the tariff based competitive bidding process.

All the bidders were required to submit their bid on the terms and conditions as stipulated in the RFP and the RFP Project Documents. Accordingly, the successful participant bidder viz., L&T Infrastructure Development Project Limited had also submitted an undertaking in accordance with the prescribed format of the BPC which *inter-alia* states as under:

We have submitted the Bid on the terms and conditions contained in the RFP and the RFP Project Documents. Further, the Financial Bid submitted by us is strictly as per the format provides in Annexure-4 of the RFP, without mentioning any deviations, conditions, assumptions or notes in the said Annexure."

16. We are of the view that the affidavit filed by the petitioner is not in compliance with our directions in the ROP dated 15.10.2013. The purpose of our direction is to ensure that the petitioner after being granted licence is faithfully implementing the

project as per the time line specified and is not delaying the project on account of delay in obtaining the statutory clearances or adjudication of any claim arising out of the TSA. The petitioner is expected to plan the implementation of different activities associated with the development of the transmission system in such a manner that the delays in getting statutory clearances, etc. do not affect the implementation schedule. Submission of the undertaking during the bidding process is not an embargo on the petitioner to submit the affidavit as directed by the Commission. Accordingly, the petitioner is further directed to submit the required affidavit by 30.11.2013

17. 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 L&T IDPL was declared as the successful bidder and Lol was issued on 31.7.2013. Accordingly, the petitioner has filed application for grant of transmission licence on 2.9.2013.

18. The petitioner has 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 23.9.2013 has recommended for grant of transmission licence to the petitioner. Relevant portion is as under:

" Transmission system strengthening was planned for evacuation & supply of Power from the Kudgi TPS (3 x 800 MW) to the beneficiaries of the Generation project which includes Kudgi TPS- Narendra (New) 400 kV D/C Quad line, Narendra (New)-Madhugiri 765 kV D/C line and Madhugiri- Bidadi 400 kV D/C (Quad line).

This transmission system strengthening shall facilitate immediate evacuation as well as supply of power to its beneficiaries with reliability & security. Beyond Madhugiri & Bidadi dispersal of power to the beneficiaries of the generation project shall be through existing planned transmission network under Inter-State Transmission System.

Government of India has identified the above referred transmission elements out of the above corridors for implementation through tariff based competitive bidding as transmission System required for evacuation of power from Kudgi TPS (3x800 MW in Phase-I) of NTPC Limited.

2. REC Transmission Projects Company Ltd. was notified as Bid Process Coordinator (BPC) by Government of India for the purpose of selection of Transmission Service Provider (TSP) to establish the above referred project on BOOM basis. Bid Evaluation Committee appointed by the BPC has certified M/s L&T Infrastructure Development Projects Limited as successful bidder with lowest levelised transmission charges. M/s L&T Infrastructure Development Projects Limited acquired Kudgi Transmission Limited after execution of the Share Purchase Agreement (SPA) on 30.8.2013.

In line with Section 15 (4) of the Electricity Act, 2003 and details furnished by M/s L Kudgi Transmission Limited, POWERGRID as CTU recommends grant of transmission license to M/s Kudgi Transmission Limited for the scope as described at para 1."

19. L&T Infrastructure Development Projects Limited (L&T IDPL) has been selected on the basis of the tariff based competitive bidding as per the Guidelines issued by Government of India, Ministry of Power. L&T IDPL has been issued with the Lol by the BPC and has acquired 100% stake in the Kudgi Transmission Limited which has been transferred to the petitioner on 30.8.2013 after execution of Share Purchase Agreement. Thus, the petitioner has complied with the requirements of the RfP and Transmission Service Agreement. The CTU has also recommended the case of the petitioner for grant of transmission licence. Considering all the material on record, we are *prima facie* of the view that the petitioner satisfies the conditions for grant of inter-State transmission licence under Section 15 of the Act read with Transmission Licence Regulations for 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 6.12.2013.

20. The petition shall be listed on 12.12.2013 for further directions.

Sd/-

(A.K.Singhal)
Member

sd/-

(M. Deena Dayalan)
Member