

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 191/TL/2013

Coram:

Shri Gireesh B.Pradhan, Chairperson

Shri V.S.Verma, Member

Shri M. Deena Dayalan, Member

Shri A.K Singhal, Member

Date of Hearing: 19.12.2013

Date of Order : 07.01.2014

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:

Shri S.N.Shankri, KTL
Shri R.Suraj, KTL
Ms. R.Susaje, KTL
Shri A.M.Pagvi, PGCIL
Shri Ankit Kumar, RECPTL
Shri Abhineet Sinha, Advocate, RECPTL
Shri Yogesh Gupta
Shri Chatanya

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) for grant of transmission licence 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.

The transmission system comprises 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	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)	18 months from effective date

	and Line-2)				and transmission line design should be corresponding to 85°C conductor temperature operation.	
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 to 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)
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4. The petitioner has submitted that the 4 bidders submitted their bids at RfP stage. M/s Parry & Company carried out the responsiveness check of the non-financial bids in accordance with the conditions of RfP and recommended all 4 bids as responsive for opening of financial bids. The financial bids were open on 29.7.2013 by the Bid Evaluation Committee. 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. The Commission after considering the application of the petitioner in the light of the provisions of the Electricity Act, 2003 and the provisions of the Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of Transmission Licence and other related matters) Regulations, 2009 (hereinafter referred to as 'the Transmission Licence Regulations') *prima facie* proposed to grant licence to the petitioner. Relevant para of our order dated 21.11.2013 is extracted as under:

"19.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."

6. The public notice under Section 15 (5) of the Act was published on 24.11.2013 in all editions of Hindustan Times and Amar Ujala. In response to the public notice, no

suggestions/objections have been received. During the hearing on 19.12.2013, none was appeared on behalf of any of the respondents or any objector.

7. One of the Long-term Transmission customer, Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO) in its reply dated 13.11.2013 has submitted that the transmission projects should not be delayed due to time taken in obtaining statutory clearances required under RfP and TSA. The petitioner may be directed to furnish the project execution plan and bring into notice of the respondents immediately upon happening of any force majeure events as stipulated in the TSA. TANGEDCO has requested the Commission to direct the petitioner to execute and complete the transmission system within the time schedule without any slippage. TANGEDCO has further submitted that the respondents should not be burdened with any increase in tariff due to delay in commissioning of the transmission system.

8. In response, the petitioner, in its rejoinder dated 2.12.2012 has submitted that the project execution plan shall be furnished in accordance with the provisions of RfP and the TSA. In the event of any force majeure, same shall be brought to the notice of the respondents in accordance with the TSA. In the event of delay, which is not attributable to the petitioner, same shall be dealt with in accordance with the provisions of TSA and RFP. The petitioner has submitted that any increase in tariff, due to delay in obtaining the transmission licence and commissioning of transmission asset, shall be dealt with in accordance with the provisions of the RfP and the TSA.

9. The Commission vide its order dated 21.11.2013 had directed the petitioner to file an affidavit to the effect that the execution of the transmission project shall not be delayed due to the time taken in obtaining statutory clearances required under the

RfP and the TSA or adjudication of any claim of the petitioner arising under the TSA. In response, the petitioner has filed affidavit dated 2.12.2013. Relevant portion of the affidavit is as under:

"7. It is humbly submitted before the Hon`ble Commission that the bidding process was duly governed by the RFP Project documents and TSA. The tariff quoted inter-alia takes into consideration the rights and obligations of the Petitioner including the provisions available to the Petitioner to claim time and cost variations In accordance of the TSA.

8. It is humbly submitted before the Hon`ble Commission that the terms and conditions of the TSA are duly binding on the parties to the TSA and the entire bidding process have been dealt in accordance to the provisions of RFP Project documents and TSA."

10. The petitioner, vide Record of Proceedings dated 19.12.2013, was directed to file an affidavit in the light of Article 16.4 of the TSA which reads as under:

"16.4. Parties to Perform Obligations: Notwithstanding the existence of any Dispute and difference referred to the Appropriate Commission or the Arbitration Tribunal as provided in Article 16.3 and save as the Appropriate Commission or the Arbitration Tribunal may otherwise direct by a final or interim order, the Parties hereto shall continue to perform their respective obligations (which are not in dispute) under this Agreement."

11. The petitioner in its affidavit dated 27.12.2013 has submitted that it will abide by Article 16 of the TSA and requested to grant transmission licence for timely implementations of the project.

12. We have considered the submissions of the petitioner and TANGEDCO and perused documents on record.

13. Clauses (15) and (16) of Regulation 7 of 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.”

14. In our order dated 21.11.2013, we had proposed to grant transmission licence to the petitioner 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 23.9.2013 has recommended under Section 15 (4) of the Act for grant of transmission licence to the petitioner. We are satisfied that the petitioner 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 the petitioner, Kudgi Transmission Limited, to undertake the business of establishing, commissioning, operation and maintenance of the transmission systems as per the details given in para 1 above.

15. The grant of transmission licence to the petitioner 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 subsistence of the licence.

(c) Since the expiry date as per the TSA is 35 years from the scheduled COD of the project, the petitioner may make an application, two years before the expiry of initial licence period, for grant of licence for another term in accordance with Regulation 13 (2) of the Transmission Licence Regulations which shall be considered by the Commission in accordance with law;

(d) The petitioner 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 petitioner 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 regulations in force. 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 the licence;

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

(h) The petitioner 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 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, 2009 as amended from time to time and Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2010 as amended from time to time;

(i) The petitioner 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 petitioner 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;

(k) The petitioner shall remain bound by the provisions of the Act, the rules and regulations framed thereunder, in particular the transmission licence regulations, the Grid Code, the Standards specified by the Central Electricity

Authority, orders and directions of the Commission issued from time to time;
and

(l) The petitioner shall ensure execution of the project as per the Schedule 3 of the TSA. The petitioner shall remain bound by the provisions of Article 16.4 of the TSA and its affidavit dated 27.12.2013.

16. Central Electricity Authority shall monitor the execution of the project and bring to the notice of the Commission any lapse on the part of the licensee to meet the schedule for further appropriate action in accordance with the provisions of the Act and Transmission Licence Regulations.

17. Petition No. 191/TL/2013 is disposed of in terms of the above. We direct that copies of this order shall be endorsed to all Long Term Transmission Customers of the transmission system and Central Electricity Authority.

Sd/-
(A.K.Singhal)
Member

sd/-
(M. Deena Dayalan)
Member

sd/-
(V.S.Verma)
Member

sd/-
(Gireesh B. Pradhan)
Chairperson