

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 193/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 : 08.01.2014**

**In the matter of**

Application under Section 14 read with Section 15 (1) of the Electricity Act, 2003 for grant of transmission license to Vizag Transmission Limited.

**And**

**In the matter of**

Vizag Transmission Limited

c/o/GM I/C (TBCB & RC),

Power Grid Corporation of India Limited, Saudamini, Plot No. 2, Sector-29

Gurgaon-122 001

.....**Petitioner**

**Vs**

1. Tamil Nadu Generation and Distribution Company Limited (TANGEDCO),  
NPKRR Malligai, 144, Anna Salai, Chennai 600 002
2. 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
3. Eastern Power Distribution Company of Andhra Pradesh Limited (APEPDCL),  
3rd Floor, Corporation Office P & T Colony, Seethmmadhara, Vishakhapatnam-530  
013
4. Southern Power Distribution Company of Andhra Pradesh Limited (APSPDCL),  
Srinivassa Kalyana Mandapam Backside, Tiruchanoor Road, Kesavayan Gunta  
Tirupati-517 501
5. Central Power Distribution Company of Andhra Pradesh Limited (APCPDCL),  
6-1-50, Corporate Office, Mint Compound, Hyderabad- 500 063
6. Bangalore Electricity Supply Company Limited (BESCOM),  
K.R.Circle, Bangalore-560 001
7. Gulbarga Electricity Supply Company Limited (GESCOM),



Station Main Road, Gulburga

8. Hubli Electricity Supply Company Limited (HESCOM),  
Navanagar, PB Road, Hubli
9. Mangalore Electricity Supply Company Limited (MESCOM),  
Paradigm Plaza, AB Shetty Circle, Mangalore-575 001
10. Chamundeshwari Electricity Supply Company Limited (CESCOM),  
927, LJ Avenue, Ground Floor, New Kantharaj Urs Road,  
Saraswatipuram, Mysore-570 009
11. Kerala State Electricity Board (KSEB),  
Vaidyuthi Bhavanam, Pattom, Trivandrum-695 004
12. Electricity Department, Govt. of Puducherry (PED), Puducherry-695 004
13. Electricity Department, Govt. of Goa (GED), Vidyut Bhawan, Panaji,  
Goa-403 001
14. Lanco Kondapalli Power Limited (LKPL),  
Plot No. 4 Software Units layout, HITEC City, Madhapur, Hyderabad-500 081
15. Central Transmission Utility (CTU),  
Saudamini, Plot No. 2, Sector 29, Gurgaon
16. Power Company of Karnataka Limited,  
5th Floor, KPTCL Building, Kaveri Bhawan, Bangalore-560 009 ...**Respondents**

REC Transmission Projects Company Limited,  
Core-4, SCOPE Complex, 7 Lodhi Road,  
New Delhi-110 003

**Proforma Respondents**

**The following were present:**

Shri B. Vamsi, VTL  
Shri S. Ravi, VTL  
Shri Debassish Das, Advocate, RECTPCL  
Shri S. Vallinayagam, Advocate, TANGEDCO  
Shri A.M. Pavgi, PGCIL  
Shri Sumod Thomas, PGCIL

**ORDER**

The petitioner, Vizag 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 systems comprising the following elements :

Sl.No	Transmission Lines	Conductor per phase	Completion Target
1.	Srikakulam PP-Vemagiri-II Pooling Station 765kV D/C line	Hexa Zebra ACSR or equivalent AAAC conductor and Transmission line design should be corresponding to 85o C conductor temperature operation.	36 months from effective date
2.	Khammam (Existing) – Nagarjuna Sagar 400 kV D/C line.	Twin Moose ACSR or equivalent AAAC conductor and Transmission line design should be corresponding to 85o 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 transmission projects through private sector participation for System Strengthening in Southern Region for Import of Power from Eastern Region. The said project was to be awarded to developers selected on the basis of the tariff based competitive bidding process. The petitioner has submitted that the Central Government in exercise of the powers under Section 63 of the Act has notified the “Tariff Based Competitive Bidding Guidelines for Transmission Service” (hereinafter referred to as “the Guidelines”) vide Government of India Ministry of Power Resolution No.11/5/2005-PG(i) dated 17.4.2006. The petitioner has further submitted that REC Transmission Projects Company Limited (hereinafter referred to as RECTPCL) was notified by Government of India Ministry of Power vide Notification No. 15/1/2011-Trans dated 4.1.2013 as the Bid Process Coordinator (hereinafter referred to as "BPC") for the purpose of selection of bidder as Transmission Service Provider (TSP) to establish the transmission system for System Strengthening in Southern Region for import of power from Eastern Region on Build, Own, Operate and Maintain (BOOM) basis through competitive bidding in accordance with the Guidelines. The petitioner was incorporated on 30.11.2011 by RECTPCL as its wholly owned subsidiary to initiate work on the project to build, own, operate and maintain

the transmission system for System Strengthening in Southern Region for import of power from Eastern Region and to act as the Transmission Service Provider (TSP) after being acquired by the successful bidder.

3. The petitioner has submitted that RECTPCL in its capacity as the BPC invited bids from the prospective bidders for issue of Request for Qualification (RfQ) to qualify/shortlist the bidders for participation in the next stage of bidding i.e Request for Proposal (RfP) as part of the process for selection of Transmission Service Provider (TSP) in accordance with the Guidelines. The bidder selected in accordance with the bidding process was required to acquire one hundred percent of equity shares in the Vizag Transmission System Limited, New Delhi and then assume the responsibility of the TSP to establish the transmission project and to provide transmission service on long-term basis to the following Long Term Transmission Customers (LTTCs) of the project, namely:

No.	Sl.	Name of the Long Term Transmission Customers
<b>1.</b>		<b>Andhra Pradesh</b>
(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)
<b>2.</b>		<b>Karnataka</b>
		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)
<b>3.</b>		<b>Kerala State Electricity Board (KSEB)</b>
<b>4.</b>		<b>Tamil Nadu Generation and Distribution Company Limited (TANGEDCO)</b>
<b>5.</b>		<b>Electricity Department, Govt. of Puducherry, Puducherry</b>
<b>6.</b>		<b>Electricity Department, Govt. of Goa, Goa</b>
<b>7.</b>		<b>Lanco Kondapalli Power Limited, Hyderabad</b>

4. The petitioner has submitted that 3 bidders submitted their bids at RfP stage. M/s PricewaterhouseCoopers Pvt. Ltd. Gurgaon in consortium with Singhania & Partners, LLP, New Delhi carried out the responsiveness check of the non-financial bids in accordance with the conditions of RfP and recommended all three bids as responsive for opening of financial bids. The financial bids were opened on 24.7.2013. As per the Bid Evaluation Report dated 26.7.2013, M/s Power Grid Corporation of India Limited emerged as the successful bidder with the lowest levelized transmission charges of ₹ 2311.34 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:

"17. ....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 customers, Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO) in its reply dated 13.11.2013 has submitted that 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 27.11.2013 has submitted that the pre-signed TSA between the TSP and LTTCs has been provided by BPC as part of RfP project documents. Any escalation in transmission charges and extension of time shall be dealt in accordance with the TSA. The project execution plan is under preparation and shall be submitted to the Lead LTTC within 120 days period from the effective date as stipulated in the TSA. The petitioner has submitted that notification of force majeure event shall be done by the TSP in accordance with the provisions of 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 28.11.2013. Relevant portion of the affidavit is as under:

"7. It is humbly submitted before the Hon`ble Commission that as mentioned 1 herein above the bidding process was governed by Transmission Service

Agreement (TSA) which is provided as part of the bidding documents. The tariff quoted inter alia takes into consideration the rights and obligations of the developer including the provisions available to claim time and cost variations as allowed in the TSA.

The terms of the TSA are binding on the parties (TSP and LTTC) to the said agreement. That any claim for escalation in transmission charges or for extension of time that may be raised by the Applicant in pursuance of such competitive bidding process need to be dealt in accordance with the terms contained in the bidding documents namely the TSA. Post selection of the successful bidder and the decision to award the project there cannot be a review of the bidding terms including in regard to the scope of the implications of clauses such as force majeure, changes in law etc. stipulated in the TSA. Further, there are provisions in law such as Section 56 of the Indian Contract Act, 1872 dealing with frustration of contract, impossibility of performance etc giving statutory remedies to the contracting parties. The Hon'ble Commission has in the past in number of cases and also other judicial forums have been giving reliefs as per the provisions of law where events occurrence during implementation which are not attributable to the developers. In addition to the above in terms of Section 28 of the Indian Contract Act, 1872 no restraint in taking legal proceedings in future can be validly placed.

8. I say that in the facts and circumstances mentioned above and as set out in the affidavit dated 29.10.2013, it is humbly submitted that claims, if any, made by the applicant shall be in accordance with the provisions of the RFP Project documents."

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 31.12.2013 has submitted that it would implement the transmission system as per the provisions of the Article 16.4 of the TSA. The petitioner has further submitted that the time over run and cost overrun shall be claimed in accordance with the applicable provisions of the Act, the TSA and relevant Regulations of CERC and the exercise of power by Central Electricity Regulatory Commission under the Act and the Regulation.

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, Vizag 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 Commission had directed the petitioner to file an affidavit in the light of Article 16.4 of the TSA to ensure execution of the project in accordance with the time line laid down in the TSA. The petitioner has filed the affidavit in that regard but added that the time and cost overrun shall be claimed in accordance with the applicable provisions of the Act, the TSA and the relevant regulations of CERC and in exercise of power by the Commission under the Act and the Regulation. In this connection, it is clarified that in a competitively bid project, the successful bidder is obliged to execute the project in accordance with the provisions of the TSA and there are no provisions for cost and time overrun except what is admissible under change in law and force majeure events. In any case, if any such application is made, it will be considered strictly in accordance with the provisions of the TSA.

16. 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 the 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.

17. 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.

18. Petition No. 193/TL/2013 is disposed of in terms of the above.

19. 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