

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 90/TL/2014

Coram:

Shri Gireesh B. Pradhan, Chairperson

Shri M.DeenaDayalan, Member

Shri A.K. Singhal, Member

Date of Hearing: 03.7.2014

Date of Order : 24.7.2014

In the matter of

Application under Section 14 read with Section 15(1) of the Electricity Act, 2003 for grant of Transmission License to NRSS XXXI (B) Transmission Limited.

And

In the matter of

NRSS XXXI (B) Transmission Limited
Essel House, B-10, Lawrence Road,
Industrial Area
New Delhi 110 035

..... **Petitioner**

Vs

1. Ad Hydro Power Limited
Bhilwara Towers, A-12, Sector-1,
Noida - 201 301
2. Haryana Power Purchase Centre
Shakti Bhavan Energy Exchange Room No. 446,
Top Floor, Sector - 6,
Panchkula - 134 109
3. Punjab State Power Corporation Limited
Thermal Sheds, T 1-A, Patiala, Punjab
4. Himachal Sorang Power Pvt. Ltd.
901 B, 9th Floor, Time Tower,
M. G. Road, Gurgaon - 122 009



5. Adani Power Limited
Mundra Achalraj, Opp Mayor Bunglow,
Law Garden, Ahmedabad - 380 006
6. Jaipur Vidyut Vitran Nigam Limited
Vidyut Bhawan, Janpath,
Jaipur - 302 005
7. Ajmer Vidyut Vitran Nigam Limited
Vidyut Bhawan, Panchsheel Nagar,
Makarwali Road, Ajmer– 305004
8. Jodhpur Vidyut Vitran Nigam Limited
New Power House, Industrial Area,
Jodhpur - 342 003
9. Lanco Anpara Power limited,
Plot no. 397, Udyog Vihar, Phase 3,
Gurgaon – 122 016
10. Lanco Budhil Hydro Power Pvt. Ltd.
Plot no. 397, Udyog Vihar, Phase 3,
Gurgaon – 122 016
11. Power Development Deptt., Govt. of J&K,
Govt. of Jammu & Kashmir, SLDC Building,
1st Floor, Gladani Power House,
Narwal, Jammu
12. North Central Railway, DRM Office,
Nawab Yusuf Road, Allahabad
13. Jaiprakash Power Ventures Limited
Sector -128, Noida - 201 304
14. BSES Yamuna Power Limited
BSES Yamuna Power Ltd. 2nd Floor,
Shakti Kiran Bldg., Karkardooma,
New Delhi – 110092
15. BSES Rajdhani Power Limited
BSES Rajdhani Power Limited, BSES Bhawan,
Nehru Place, New Delhi - 110 019

16. TATA Power Delhi Distribution Limited
NDPL House, Hudson Lines,
Kingsway Camp, Delhi - 110 009
 17. New Delhi Municipal Corporation
NDMC, New Delhi
 18. Electricity Wing of Engineering Department
Union Territory of Chandigarh,
Electricity OP Circle, UT – Chandigarh
 19. Power Grid Corporation of India Limited
HVDC Dadri and HVDC Rihand,
“Saudamini”, Plot No. 2, Sector 29,
Near IFFCO Chowk,
Gurgaon - 122 001
 20. U.P. Power Corporation Limited
14th Floor, Shakti Bhawan Extension,
14 - Ashok Marg, Lucknow
 21. PTC India Limited, PTC (Budhil) and PTC (Everest),
2nd Floor, NBCC Tower,
15, Bhikaji Cama Place, New Delhi
 22. Uttarakhand Power Corporation Limited
UPCL, Urja Bhawan, Dehradun
 23. Himachal Pradesh State Electricity Board Limited
HPSEB Ltd. , Vidyut Bhawan,
Shimla - 171 004
- Respondents**

The following were present:

1. Shri Mohit Jain, NTL
2. Shri Amit Kumar, NTL
3. Shri Debasish Das, NTL
4. Shri Arun Chaturvedi, Advocate, RECTPCL

ORDER

The petitioner, NRSS XXXI (B) 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 of the transmission system for "Northern Region System Strengthening Scheme NRSS-XXXI (Part B)" (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)	Approximate Length (km)	Type	Conductors per Phase	Completion Target
1	Kurukshetra-Malerkotla 400 kV D/C transmission line	400 kV	135.15kms	D/C line	Twin Moose ACSR or equivalent AAAC	28 months from the effective date
2	Malerkotla-Amritsar 400 kV D/C transmission line	400 kV	147.01 kms	D/C line	Twin Moose ACSR or equivalent AAAC	28 months from the effective date

2. The petitioner has made the following prayers:

"(a) Grant Transmission Licence to the Applicant:

(b) Allow Transmission System Northern Region System Strengthening Scheme NRSS-XXXI (Part B) to be part of the Transmission Service Agreement approved by the Hon`ble Commission under POC Charges Regulations CERC (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2010;

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

3. The petitioner has submitted that Ministry of Power, Government of India initiated a scheme for development of Transmission System for "Northern Region System Strengthening Scheme NRSS-XXXI (Part B)". 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, REC Transmission Projects Company Ltd. (RECTPCL) was notified by Government of India, Ministry of Power vide Gazette Notification No. 15/1/2013-Trans dated 20.5.2013 as the Bid Process Coordinator (BPC) for the purpose of selection of bidder as Transmission Service Provider (TSP) to establish the Transmission System for "Northern Region System Strengthening Scheme, NRSS-XXXI (Part-B) (hereinafter referred to as Project)" through tariff based competitive bidding process.

4. RECTPCL in its capacity as BPC initiated the bid process on 29.7.2013 and completed the process on 12.5.2014 in accordance with the Guidelines. M/s Essel Infraprojects Limited (EIL) was selected as the successful bidder having quoted the lowest levelized transmission charges of Rs.886.50 million in order to establish the transmission system required for "Northern Region System Strengthening Scheme, NRSS-XXXI (Part-B)" on BOOM 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.	Ad Hydro Power Limited

2.	Haryana Power Purchase Centre
3.	Punjab State Power Corporation Limited
4.	Himachal Sorang Power Pvt. Ltd.
5.	Adani Power Limited
6.	Jaipur Vidyut Vitran Nigam Limited
7.	Ajmer Vidyut Vitran Nigam Limited
8.	Jodhpur Vidyut Vitran Nigam Limited
9.	Lanco Anpara Power limited
10.	Lanco Green Power Ltd.
11.	Power Development Deptt., Govt. of J&K, Govt. of Jammu and Kashmir
12.	North Central Railway
13.	Jaiprakash Power Ventures Limited
14.	BSES Yamuna Power Limited
15.	BSES Rajdhani Power Limited
16.	TATA Power Delhi Distribution Limited
17.	New Delhi Municipal Corporation
18.	Electricity Wing of Engineering Department, Union Territory of Chandigarh
19.	Power Grid Corporation of India Limited, HVDC Dadri and HVDC Rihand,
20.	U.P. Power Corporation Limited
21.	PTC (Budhil), PTC India Limited
22.	PTC (Everest), PTC India Limited,
23.	Uttarakhand Power Corporation Limited
24.	Himachal Pradesh State Electricity Board Limited

5. The petitioner has submitted that three bidders submitted their offers at Request for Proposal (RfP) stage. Bid Evaluation Committee carried out the responsiveness check of the non-financial bids in accordance with conditions of RfP and recommended all three bids as responsive for opening of financial bids. After opening the financial bids, as per the Bid Evaluation Report dated 18.2.2014 M/s Essel Infraprojects Limited (EIL) emerged as the successful bidder with the lowest levelized transmission charges of ₹ 886.50 million/annum.

6. Consequent to its selection as the lowest bidder, Letter of Intent (LoI) was issued to EIL by the BPC on 26.2.2014 which has been accepted by EIL. 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 favour of Long Term Transmission Customers (LTTTC);
- (b) Execute Share Purchase Agreement;
- (c) Acquire, for the Acquisition Price, 100% share equity share holding of NRSS XXXI (B) Transmission Limited from RECTPCL along with all its related assets and liabilities;
- (d) To execute RfP project document including Transmission Service Agreement (TSA) with LTTTCs;
- (e) Make an application to the Central Commission for adoption of transmission charges, as required under Section 63 of the Electricity Act, 2003; and
- (f) To apply to the Central Commission for grant of transmission licence.

7. The petitioner has submitted that EIL has acquired one hundred percent equity holding in NRSS XXXI (B) Transmission Limited on 12.5.2014. The petitioner has further submitted that TSA executed between the TSP and the LTTTCs who are the beneficiaries of the transmission project has become effective on the date of acquisition of the petitioner by EIL.

8. 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".

9. 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 16 September, 2013 has accorded approval to the project under Section 68 of the Electricity Act, 2003. The selection of the project developer, M/s Essel Infraprojects Limited, has been made in accordance with the guidelines for competitive bidding.

10. 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.”

11. The petitioner has approached the Commission by a separate petition 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 petition for grant of transmission licence in accordance with the Transmission Licence Regulations.

The petitioner has submitted proof of service of the copies of the petition on the LTTCs and Central Transmission Utility and proof of web posting of the complete petition. 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 NRSS XXXI (B) Transmission Limited with respect to the transmission system as per the details given in para 1 above.

12. 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 petition, it is revealed that the petitioner has served copies of the petition on each of the Long Term Transmission Customers (LTTCs) of the project as per the TSA. The levelized tariff charges quoted by the petitioner which have been recommended by the Bid Evaluation Committee for acceptance are ₹.886.50 million/annum. The petitioner has also enclosed copy of recommendations of the Bid Evaluation Committee and proof of making the evaluation report public by the Bid Process Coordinator as per the Guidelines.

13. The petitioner, vide its affidavit dated 19.5.2014, 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 in the Indian Express (English edition), Jansatta (Hindi edition) and Punjabi Tribune (Punjabi edition) on 16.5.2014. The petitioner has complied with the requirement of Regulation 7 (7) of Transmission Licence Regulations.

14. In response to the petition, Ajmer Vidyut Vitran Nigam Ltd., Jaipur Vidyut Vitran Nigam Ltd. and Jodhpur Vidyut Vitran Nigam Ltd in their common reply have submitted that the petitioner shall ensure execution of the project as per timelines specified in the TSA and shall remain bound by the provisions of the TSA.

15. No objection has been received from the general public in response to the public notice.

16. The petition was heard on 24.6.2014. None was present on behalf of the respondents. The representative of the petitioner submitted that tariff of the petitioner company has been discovered through the process of competitive bidding conducted in accordance with Section 63 of the Act and requested to grant transmission licence accordingly. The representative of the BPC submitted that while selecting the petitioner for execution of the transmission project, all the provisions of the competitive bidding guidelines have been complied with.

17. The Commission, vide Record of Proceedings of hearing dated 24.6.2014 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 RfP and the Transmission Service Agreement or adjudication of any claim of the petitioner arising under the TSA. The BPC was also directed to clarify the variance between estimated cost of ₹ 370 crore approved in 31st Standing Committee's meeting held on 2.1.2013 and the estimated cost of ₹ 550 crore as estimated by Central Electricity Authority.

18. The petitioner, vide its affidavit dated 1.7.2014, has submitted that it shall not approach the Commission for extension of time for execution of the project or for increase in the transmission charges, except for the extension of time and increase the transmission charges which are permissible and allowed under the TSA. The petitioner has further submitted that the execution of the project shall not be delayed due to time taken in obtaining statutory clearances required under the provisions of RfP and the TSA. We direct that the petitioner shall remain bound by the commitment given by it under affidavit dated 1.7.2014.

19. RECTPCL, vide its affidavit dated 7.7.2014, has submitted the variance between estimated cost of ₹ 370 crore approved in 31st Standing Committee's meeting held on 2.1.2013 and the estimated cost of ₹ 550 crore as estimated by Central Electricity Authority. The relevant portion is extracted as under:

"i. In the earlier estimate of Rs. 370 crore and line length assumed by CTU was 305 kms with the following breakup:

- (i) Kurukshetra-Malerkotal- 125 kms
- (ii) Malerkotal-Amritsar-180 kms

ii. In the earlier estimate of Rs. 370 crore, the project cost was without consideration of heads like entry tax, cost of river crossing, IDC, centages, cost for future anticipated escalation PTCC & crop compensation, forest compensation etc.

iii. After survey of line by BPC the line length was revised to 282 kms with following breakup:

- (i) Kurukshetra-Malerkotal- 135 kms
- (ii) Malerkotal-Amritsar-147 kms

Further, as per decision of Empowered Committee in its 32nd Meeting held on 17.1.2014, a committee was constituted with the representatives from CEA, POWERGRID/CTU and BPCs to work out a matrix for different type of Transmission lines which would include factors for different types

of variables for estimating the cost (e.g. type of terrains, wind zones etc.) (minutes of meeting is placed at Annexure-1). Subsequently, it was decided by committee that as large variations in cost estimate were observed in some of the TBCB projects, therefore, item like entry tax, cost of river crossing, IDC, centages, cost for future anticipated escalation, PTCC and crop compensation, forest compensation etc. should be considered while preparing the cost estimate. Therefore, the cost was reworked with line length as per survey including additional heads as mentioned above and cost was revised from Rs. 370 crore to Rs. 550 crore. E-mail dated 4th July 2014 in this regard as received from CEA/CTU is placed at Annex-2."

20. The petitioner has indicated the line length of Kurukshetra – Malerkotla 400 kV D/c transmission line is 135.15 kms and Malerkota – Amritsar 400 kV D/c transmission line is 147.01 kms. The same line length has been considered for grant of transmission licence. It is clarified that any deviation from the mentioned line length of these lines due to any locational issues shall not be the basis for claiming additional transmission charges by the petitioner.

21. We have considered the submissions of the petitioner and BPC and perused documents on record. 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. After being declared as the successful bidder, Lol was issued to EIL on 26.2.2014 and pursuant thereto, EIL has acquired hundred percent equity holding in NRSS XXXI (B) Transmission Limited on 12.5.2014. Thereafter, the petitioner has filed the present application for grant of transmission licence.

22. 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. CTU in its letter dated 30.5.2014 has recommended for grant of transmission licence to the petitioner.

Relevant portion is as under:

"3. 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 (TPS) to establish the above referred project on BOOM basis. Bid Evaluation Committee appointed by the BPC has certified M/s Essel Infra Projects Limited as successful bidder. M/s Essel Infra Projects Limited as acquired NRSS XXXI-(B) Transmission Limited after execution of the Share Purchase Agreement (SPA) on 12.5.2014.

4. Accordingly, in line with Section 15 (4) of the Electricity Act, 2003 and details furnished by M/s NRSS XXXI (B) Transmission Limited, POWERGRID as CTU recommends grant of transmission license to M/s NRSS XXXI (B) Transmission Limited for the scope as described below:

- * 400 kV Kuruskhetra-Malerkotla D/C line
- * 400 kV Malerkotla-Amritsar D/C line"

23. The petitioner has also prayed that the transmission system be allowed to be part of the Transmission Service Agreement approved under the Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses), Regulations 2010 (Sharing Regulations). The BPC vide its clarification dated 23.1.2014 has clarified that the transmission charges shall be shared and recovered as per the Sharing Regulations. Accordingly, the sharing of transmission charges shall be governed in accordance with the provisions of the Sharing Regulations.

24. Essel Infraprojects Limited (EIL) has been selected on the basis of the tariff based competitive bidding as per the Guidelines issued by Government of India, Ministry of Power. Lol has been issued to EIL by the BPC and EIL has acquired 100% stake in the NRSS XXXI (B) Transmission Limited which has been transferred to the petitioner on 12.5.2014 after execution of Share

Purchase Agreement. CTU has also recommended for grant of transmission licence to the petitioner. 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 14.8.2014.

25. The petition shall be listed on 21.8.2014 for further directions.

Sd/-

(A.K.Singhal)
Member

sd/-

(M. Deena Dayalan)
Member

sd/-

(Gireesh B.Pradhan)
Chairperson