

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 56/TL/2014

Coram:

**Shri Gireesh B.Pradhan, Chairperson
Shri M. Deena Dayalan, Member
Shri A.K Singhal, Member**

Date of Hearing: 20.5.2014

Date of Order: 20.6.2014

In the matter of

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

And

In the matter of

Unchahar Transmission Limited
C/o Chief Manager (TBCB),
Power Grid Corporation of India Limited.
Saudamini, Plot no.2, Sector -29, Gurgaon 122001

...Petitioner

Vs

1. Chairman, Uttar Pradesh Power Corporation Limited
Import Export & Payment Circle, 14th Floor,
Shakti Bhawan Extn. Building,
14, Ashok Marg, Lucknow, UP

2. Chairman, Jodhpur Vidyut Vitran Nigam Limited
New Power House, Industrial Area,
Jodhpur -342 003

3. Chairman, Jaipur Vidyut Vitran Nigam Limited
Vidyut Bhawan, Janpath,
Jaipur-302 005

4. Chairman, Ajmer Vidyut Vitran Nigam Limited



Vidyut Bhawan, Panchsheel Nagar, Makarwali Road,
Ajmer – 305004

5. Chairman & Managing Director
Himachal Pradesh State Electricity Board Limited,
Vidyut Bhawan, Kumar House
Complex Building II, Shimla

6. Executive Director (Commercial)
Uttarakhand Power Corporation Limited
Urja Bhawan, Kanwali Road,
Near Balli Wala Chowk, Dehradun

7. CEO & ED, Tata Power Delhi Distribution Limited (Formerly NDPL)
33 kV S/Station Building, NDPL House,
Hudson Lane, Kingsway Camp,
New Delhi-110019

8. Chief Engineer, Haryana Power Purchase Centre,
acting on behalf of UHBVNL and DHBVNL, (HPPC),
Shakti Bhawan, Energy Exchange, Room No. 446,
Top Floor, Sector-06, Panchkula – 134109

9. Principal Secretary (Power),
Power Development Department,
Government of Jammu & Kashmir (PDD)
SLDC Building, 1st Floor Gladani Power House, Narwal, Jammu

10. Superintending Engineer,
Electricity Wing of Engineering Department, Union Territory of Chandigarh
(EWEDUTC), Electricity OP Circle,
UT Chandigarh

.....**Respondents**

11. CEO (CTU),
Power Grid Corporation of India Limited
Saudamini, Plot No. 2, Sector - 29
Gurgaon 122 001



12. CEO
REC Transmission Projects Company Limited
Core-4, SCOPE Complex, 7, Lodi Road,
New Delhi 110 003

...Proforma Respondents

The following were present:

Shri B. Vamsi, UTL
Shri Sumod Tom Thomas, UTL
Shri Dinesh Paidusani, Advocate, RECTPCL
Shri Vivek Agarwal, RECTPCL
Shri Mayur Girdhar, RECTPCL
Shri Yogesh Malik, RECTPCL

ORDER

The petitioner, Unchahar Transmission Limited has filed this application under Section 14 read with Section 15(1) of the Electricity Act, 2003 (the Act) to establish transmission system for "ATS of Unchahar TPS" (hereinafter referred to as "Transmission system") on 'Build, Own, Operate and Maintain (BOOM) basis comprising the following elements :

Transmission Line	Conductors per phase	Completion Target
Unchahar-Fatehpur 400 kV D/C line-60 km (approx.)	Twin Moose ACSR or Twin AAAC (equivalent to twin ACSR Conductor) and Transmission line design should be corresponding to 85 ⁰ C conductor temperature operation	30 months from the effective date (24.3.2014)

2. The petitioner has made the following prayers:

‘(a) Grant Transmission License to the Applicant ;



(b) Allow the Transmission System for ATS of Unchahar TPS to be part of Transmission Service Agreement approved by the Hon'ble Commission under PoC Charges Regulations (Sharing of Inter-state Transmission Charges and Losses) Regulations, 2010; and

(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 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 Guidelines, 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 8.10.2012 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 'ATS of Unchahar TPS' (Project) through tariff based competitive bidding.

4. RECTPCL in its capacity as the BPC initiated the bid process on 26.2.2013 and completed the process on 24.3.2014 in accordance with the Guidelines. M/s Power Grid Corporation of India Limited (PGCIL) was selected as the successful bidder having quoted the lowest levelized transmission charges of ` 167.7071 million in order to establish the transmission system for 'ATS of Unchahar TPS' on



BOOM basis and provide transmission service to the following identified long-term transmission customers (LTTCs) of the project, namely:-

S.No.	Name of Long Term Transmission Customers
1.	Uttar Pradesh Power Corporation Limited
2.	Jodhpur Vidyut Vitran Nigam Limited
3.	Jaipur Vidyut Vitran Nigam Limited
4.	Ajmer Vidyut Vitran Nigam Limited
5.	Himachal Pradesh State Electricity Board Limited
6.	Uttarakhand Power Corporation Limited
7.	Tata Power Delhi Distribution Limited
8.	Haryana Power Purchase Centre, acting on behalf of UHBVNL and DHBVNL
9.	Power Development Department, Government of Jammu & Kashmir
10.	Electricity Wing of Engineering Department, Union Territory of Chandigarh

5. The petitioner has submitted that six bidders submitted their offers at RfP stage. Bid Evaluation Committee carried out the responsiveness check of the non-financial bids in accordance with conditions of RfP and recommended all six bidders as responsive for opening the financial bids. After opening the financial bids, as per the Bid Evaluation Report dated 11.2.2014, PGCIL emerged as the successful bidder with the lowest levelized transmission charges of ` 167.7071 million.

6. Consequent to its selection as the lowest bidder, Letter of Intent (Lol) was issued to PGCIL by the BPC on 14.2.2014 which was accepted by PGCIL. 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 (LTTCS);
- (b) Execute Share Purchase Agreement;
- (c) Acquire, for the Acquisition Price, 100% share equity share holding of Unchahar Transmission Limited from REC Transmission 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.

7. The petitioner has submitted that PGCIL has acquired one hundred percent equity holding in Unchahar Transmission Limited on 24.3.2014. The petitioner has further submitted that the 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 petitioner by PGCIL.

8. Section 14 of the Act provides that the Appropriate Commission may, on an application made 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 License 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 License 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 18.2.2013, has accorded approval to the project under Section 68 of the Electricity Act, 2003. The selection of the project developer, PGCIL, 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 transmission licence shall be made to the Commission in Form-I appended to these regulations and shall be accompanied by such fees 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 website, the particulars of which shall be given in the application.

(5) The application shall be kept on the website 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 these 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 serving copy of the application on 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 transmission licence or for reasons to be recorded in writing, reject the application.”



11. 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 LTTC 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 Unchahar Transmission Limited with respect to the transmission system as per 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. On perusal of the application, it is noted that the petitioner has served copy of the application on the Long Term Transmission Customer (LTTCs) of the project as per the TSA. The levelised tariff charges quoted by the petitioner which have been recommended by the Bid Evaluation Committee for acceptance, is `167.7071 million. The petitioner has also enclosed copies of the recommendations of the Bid Evaluation Committee and proof of making the evaluation report public by the BPC as per the Guidelines.

13. The petitioner has, vide its affidavit dated 8.4.2014, placed on record the relevant copies of the newspapers in original in which the notice of its application



has been published. The petitioner has published the notices on 31.3.2014 in the Pioneer (English) and the Pioneer (Hindi) having publication from Uttar Pradesh. The petitioner has complied with the requirement of Regulation 7(7) of Transmission Licence Regulations.

14. None of the respondents has filed their replies. No objection has been received from the public in response to the public notice.

15. The petition was heard on 20.5.2014. 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 same may be adopted by the Commission. 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.

16. The Commission, vide Record of Proceedings dated 20.5.2014, 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 Applicant arising under the TSA.



17. The petitioner, in its affidavit dated 26.5.2014, has submitted that it would implement the transmission system as per the provisions of the Article 16.4 of the TSA which is extracted as under:

“16.4. Parties to perform obligation: 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 final or interim order, the Parties hereto shall continue to perform their respective obligation (which are not in dispute) under this Agreement.”

18. The petitioner has further submitted that the time over-run and cost over-run shall be claimed in accordance with the applicable provisions of the Act, the TSA and relevant Regulations and the exercise of power by Central Electricity Regulatory Commission under the Act and the Regulations.

19. The purpose of our direction is to ensure that the petitioner after being granted licence implements the project in the right earnest as per the time line specified and does not delay the project on account of delay in obtaining 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 commissioning scheduled.

20. The petitioner has served a copy of the application on the 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 16.5.2014 has recommended for grant of transmission license to M/s Unchahar Transmission Ltd. Relevant portion of recommendations of CTU is extracted hereunder:

"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 (TSP) to establish the above referred project on BOOM basis. Bid Evaluation Committee appointed by the BPC has certified POWERGRID as successful bidder with lowest levelised transmission charges. POWERGRID acquired Unchahar Transmission Limited after execution of the Share Purchase Agreement (SPA) on 24.3.2014.

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

21. 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. PGCIL 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 was issued on PGCIL by the BPC and PGCIL has acquired one hundred percentage stake in the Unchahar Transmission Limited which has been transferred to the petitioner on 12.5.2014 after execution of Share Purchase Agreement. Thus, the petitioner has complied with the requirements of RfP and Transmission Service Agreement. CTU has also recommended grant of transmission licence to the petitioner. Considering 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 8.7.2014.

22. The petition shall be listed for hearing on 15.7.2014.

Sd/-
(A.K.Singhal)
Member

sd/-
(M. Deena Dayalan)
Member

sd/-
(Gireesh B.Pradhan)
Chairperson

