

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 289/TL/2015

Coram:

Shri Gireesh B.Pradhan, Chairperson

Shri A.K.Singhal, Member

Shri A.S.Bakshi, Member

Dr. M.K.Iyer, Member

Date of Hearing: 19.1.2016

Date of Order: 25.1.2016

In the matter of

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

And

In the matter of

Sipat Transmission Limited
Achalraj, Opp. Mayor Bungalow, Law Garden,
Ahmedabad-380 006

..... **Petitioner**

Vs

1. Madhya Pradesh Power Management Company Limited
Block No-11, Ground floor, Shakti Bhawan, Vidhyut Nagar, Rampur,
Jabalpur-482 008, Madhya Pradesh
2. Chhattisgarh State Power Distribution Company Limited
P.O Sunder Nagar, Dangania,
Raipur-492 013, Chhattisgarh
3. Gujarat UrjaVikas Nigam limited
VidhyutBhawan, Race Course,
Vadodara-390 007
4. Maharashtra Electricity Distribution Company Limited

Prakashgad, 4th Floor, Bandra (East), Mumbai-400051

5. Goa Electricity Department (ED),
Govt. of Goa,
Aquem Alto, Margao, Goa-403 601
6. Electricity Department Dadar and Nagar Haveli
66kV, Amlilnd. Estate,
Silvassa-396 230, Dadra Nagar Haveli
7. Electricity Department, Administration of Daman and Diu,
Plot No. 35, OI DC Complex, Near Fire Station, Somnath,
Daman-39 210
8. Chief Executive Officer,
PFC Consulting Limited,
First Floor, UrjaNidhi,1, Barakhamba Lane,
Connaught Place, New Delhi-110 001
9. Chief Executive Officer, CTU Planning,
POWERGRID Corporation of India Limited,
Saudamini, Plot No.2, Sector-29,
Gurgaon-122 001

..... Respondents

The following were present:

Shri Venkatesh, Advocate for the petitioner
Shri Pratyush Singh, Advocate for the petitioner
Shri M.R.Krishna Rao, ATL
Shri Jignesh Langalia, ATL
Shri Sanjay Nayak, PFFCL
Shri Kumar Ritu Raj, PFFCL

ORDER

The petitioner, Sipat Transmission Limited (STL), has filed the present petition for grant of transmission licence under Section 14 read with Section 15 (1) of the Electricity Act, 2003 (hereinafter referred to as "the Act") to establish Transmission System for "Additional System Strengthening for Sipat STPS" (hereinafter referred to as

"Transmission System") on Build, Own, Operate and Maintain (BOOM) basis comprising the following elements:

| S No. | Name of the Transmission Element | Conductor Specifications | Completion Target |
|--------------|--|---|--------------------------|
| 1 | Sipat–Bilaspur Pooling Station 3rd 765 kV S/C - 1 no. 765 kV line bay at Sipat STPP of NTPC. | Quad Bersimis ACSR Conductor or equivalent AAAC. The transmission lines to be designed for a maximum operating conductor temperature of 85 deg C for both ACSR as well as AAAC. | 36 months |
| 2 | Bilaspur Pooling Station–Rajnandgaon 765 kV D/C | Hexa Zebra ACSR Conductor or equivalent AAAC. The transmission lines to be designed for a maximum operating conductor temperature of 85 deg C for both ACSR as well as AAAC. | 40 months |

2. The petitioner has made the following prayers:

“(a) Issue the Transmission License to the Applicant to the Applicant for establishing, operating and maintaining the Transmission System as provided for in the Transmission Service Agreement;

(b) Allow the "Additional System Strengthening Scheme for SIPAT STPS" 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).”

(c) Condone any inadvertent errors omissions/ errors / shortcomings and permit the Applicant to add/change/modify/alter these filings and make further submissions as may be required at a future date.

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

3. The petitioner has submitted that in accordance with 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") issued by Government of India, Ministry of Power under Section 63 of the Act., PFC Consulting Limited (hereinafter referred to as PFCCL) was notified by Government of India, Ministry of Power vide Notification No. 15/1/2013-Trans dated 15.7.2014 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 "Additional System Strengthening for Sipat STPS" through tariff based competitive bidding process.

4. PFCCL in its capacity as the BPC initiated the bid process on 1.1.2015 and completed the process on 23.11.2015 in accordance with the Guidelines. M/s Adani Power Limited was selected as the successful bidder having quoted the lowest levelized transmission charges of ₹792.15 million/annum in order to establish the Transmission System for "Additional System Strengthening for Sipat STPS" on BOOM basis and provide transmission service to the following identified long-term transmission customers (LTTCs) of the project:

| S No | Name of the Long Term Transmission Customer |
|-------------|---|
| 1 | Madhya Pradesh Power Trading Company Limited |
| 2 | Chhattisgarh State Power Distribution Company Limited |
| 3 | Gujarat UrjaVikas Nigam limited |
| 4 | Maharashtra Electricity Distribution Company Limited |
| 5 | Goa Electricity Department, Government of Goa |
| 6 | DNH Power Distribution Corp. Ltd., Dadar and Nagar Haveli |
| 7 | Electricity Department, Daman and Diu |

5. The petitioner has submitted that five 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 five bidders as for opening the financial bids. After opening the financial bids, as per the Bid Evaluation Report dated 15.7.2015, Adani Power Limited emerged as the successful bidder with the lowest levelized transmission charges of ₹ 792.15 million per annum.

6. Consequent to its selection as the lowest bidder, Letter of Intent (LoI) was issued to M/s Adani Power Limited by the BPC on 28.7.2015 which was accepted by it. 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 (LTTCs);

(b) Execute Share Purchase Agreement;

(c) Acquire, for the Acquisition Price, 100% share equity share holding of Sipat Transmission Limited from PFCCL along with all its related assets and liabilities;

(d) To execute RfP project document including Transmission Service Agreement (TSA) with LTTC;

(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 M/s Adani Transmission Limited the investing affiliate of M/s Adani Power Limited has acquired one hundred percent equity holding in Sipat Transmission Limited on 23.11.2015. 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 Adani Transmission Limited.

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 respects 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 turn-key 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 30.3.2015, has accorded approval to the project under Section 68 of the Electricity Act, 2003. The selection of the project developer, STL, 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 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 Sipat 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 Central 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) for the project. The levelised tariff charges quoted by the petitioner

which have been recommended by the Bid Evaluation Committee for acceptance, is ₹ 792.15 million/annum. 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 09.12.2015, placed on record the relevant copies of the newspapers of Free Press Journal, Mumbai Edition, Indian Express, Ahmedabad Edition, Central Chronicle, Bhopal, Raipur & Bilaspur Edition, Gomantak Times, Panji Edition, Navshakti, Mumbai Edition, Nava Bharat, Bhopal Edition, HariBhoomi, Raipur & Bilaspur Edition, Gomatak, Panji Edition, AsaliAzadi, Daman Edition and LoksattaJansatta, Ahmedabad Edition published in the States of Gujarat, Maharashtra, Madhya Pradesh, Chhattisgarh and in the Union Territories of Goa, Daman & Diu and Dadra and Nagar Haveli.

14. No reply has been filed by the respondents. No objection has been received from the general public in response to the public notice.

15. The petition was heard on 19.1.2016. The representative of PFCCL submitted that Adani Power Limited (APL) vide its letter dated 30.7.2015 requested PFCCL to transfer the SPV, namely Chhattisgarh-WR Transmission Limited' to and execute the Share Purchase Agreement with its investing affiliate Adani Transmission Limited instead of APL as per the provision of RfP. The representative of PFCCL further submitted that legal opinions were sought from the learned Attorney General of India and M/s Link Legal-India Law Services in this regard. The representative of PFCCL submitted that Bid Evaluation Committee in its meeting held on 17.9.2015 after

considering the opinions of the Attorney General of India and M/s Link Legal-India Law Services and recommended that the SPV for which Lol was issued can be acquired by the Adani Transmission Limited which is the investing affiliate of the selected bidder, namely Adani Power Limited. Accordingly, SPV was transferred to Adani Transmission Limited on 23.11.2015.

16. The petitioner has served a copy of the application on the Central Transmission Utility (CTU) on 26.11.2015 as required under Section 15(3) of the Act and Regulation 7(6) of the Transmission Licence Regulations. CTU in its letter dated 14.1.2015 has recommended for grant of transmission licence to the petitioner. Relevant portion of the said letter dated 14.1.2015 is extracted is as under:

“The application states that subsequent to certification by the Bid Evaluation Committee as successful bidder in the Tariff Based Competitive Bidding (TBCB) process, Adani Power Limited has acquired Sipat Transmission Limited after execution of the Share Purchase Agreement (SPA) on 23.11.2015.

In line with Section 15 (4) of the Electricity Act, 2003 and details furnished by Chhattisgarh-WR Transmission Ltd, POWERGRID as CTU recommends grant of transmission license to Sipat Transmission Limited for the scope as described as above.”

17. We have considered the submissions of the petitioner and BPC and perused documents on record. As per para 12.1 of the Guidelines as amended from time to time, finally selected bidder shall make an application for grant of transmission licence within ten days of selection. Adani Power Limited 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 Adani Power Limited by the BPC on 28.7.2015. BPC vide letter dated 30.11.2015 extended the last date of completion of

various activities up to 23.11.2015. Accordingly, Adani Transmission Limited, the investing affiliate of Adani Power Limited, has acquired 100% stake in the Sipat Transmission Limited which has been transferred to the petitioner on 23.11.2015 after execution of Share Purchase Agreement. Thus, the petitioner has complied with the requirements of RfP and Transmission Service Agreement. 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 10.2.2016.

18. In order to ensure that the project is implemented within the time schedule as provided in the TSA, the licensee should not approach the Commission for extension of time for execution of the project or for increase in the transmission charges over and above what is permissible under the provisions of the TSA. Accordingly, the petitioner is directed to file an affidavit by 29.1.2016 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 or adjudication of any claim of the petitioner arising under the TSA.

19. The petition shall be listed for hearing on 16.2.2016.

Sd/-

(Dr. M.K.Iyer)
Member

sd/-

(A.S. Bakshi)
Member

sd/-

(A.K. Singhal)
Member

sd/-

(Gireesh B. Pradhan)
Chairperson