

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 161/TL/2016

**Coram:
Shri A.K.Singhal, Member
Shri A.S.Bakshi, Member
Dr. M.K.Iyer, Member**

Date of Order: 27th of October, 2016

In the matter of

Application under Section 14 of the Electricity Act, 2003 read with the Central Electricity Regulatory Commission (Procedure, terms and Conditions for grant Transmission Licence and other related matters) Regulations, 2009 for grant of transmission licence to NRSS XXXVI Transmission Limited.

**And
In the matter of**

NRSS XXXVI Transmission Limited
5th Floor, 18, Ramnath House,
Community Centre, Yusuf Sarai,
New Delhi-110 049

..... **Petitioner**

Vs

1. U.P.Power Corporation Limited
Shakti Bhawan, 14, Ashok Marg,
Lucknow-226 001
2. Punjab State Power Corporation Ltd.
D-3, Shakti Bihar,
Patiala-147001
3. UTC Chandigarh, Chandigarh Secretariat,
Sector 9, Chandigarh, 160 009
4. BSES Yamuna Power Ltd.
2nd Floor, B Block, Shakti Kiran Building,
Near Karkardooma Court,
New Delhi-110032

5. BSES Rajdhani Power Ltd.
BSES Bhawan, 2nd Floor, B-Block
Nehru Place,
New Delhi-110019
6. TATA Power Delhi Distribution Ltd.
33 kV S/Stn. Building,
Hudson Lane, Kingsway Camp,
New Delhi-110019
7. New Delhi Municipal Council
Palika Kendra, Sansad Marg,
New Delhi-110001
8. Himachal Pradesh State Electricity Board Ltd.
Vidyut Bhawan,
Shimla-171004
9. Haryana Power Purchase Centre
2nd Floor, Shakti Bhawan, Sector 06,
Panchkula-134109
10. Power Development Department, Govt. of Jammu & Kashmir
Civil Sect.,
Jammu-180001
New Delhi-110019
11. Uttarakhand Power Corporation Ltd.
Urja Bhawan, Kanwali Road,
Dehradun-248001
12. Ajmer Vidyut Vitran Nigam Ltd.
Old Power House, Hathi Bhatta,
Jaipur Road, Ajmer
13. Jodhpur Vidyut Vitran Nigam Ltd.
New Power House Industrial Area,
Jodhpur-342003
14. Jaipur Vidyut Vitran Nigam Ltd.
Vidyut Bhawan, Janpath,
Jyoti Nagar, Jyoti Marg,
Jaipur-302005
15. Rajasthan Discoms Power Procurement Center
Shed No. 5/4, Vidyut Bhawan, Janpath,

The following were present:

Shri Neeraj K. Verma, NRSS
 Shri Mohit Jain, NRSS
 Shri Bhupender Gupta, RECPTCL

ORDER

The petitioner, NRSS XXXVI Transmission Limited, (NRSS XXXVITL), 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 "Transmission System Strengthening in Northern Region (NRSS-XXXVI) along with LILO of Sikar-Neemrana 400 kV DC at Babai (RRVPNL)" (hereinafter referred to as "Transmission System") on Build, Own, Operate and Maintain (BOOM) basis comprising the following element:

S. No.	Name of the Transmission Element	Conductors per phase	Scheduled COD in Months from the Effective Date*
1	Koteshwar pooling Station-Rishikesh 400 KV D/C (HTLS) Line	Twin HTLS	40 months
2	2 nos. of bays at 400 KV Rishikesh Sub-station of PTCUL		40 months
3	LILO of one Ckt. of 400 KV D/C Sikar (PG) – Neemrana (PG) line at Babai (RRVPNL)	Twin Moose ACSR or equivalent AAAC	December 2016
4	Babai (RRVPNL)- Bhiwani (PG) 400 KV D/C line	Twin Moose ACSR or equivalent AAAC	34 months
5	2 Nos. of bays at 400 KV Babai (RRVPNL) sub-station for LILO of one Ckt. of 400 KV D/C Sikar (PG)- Neemrana (PG) line at Babai (RRVPNL)		December 2016
6	2 Nos. of bays at 400KV Babai (RRVPNL) sub-station for Babai (RRVPNL)- Bhiwani (PG) 400 kV D/C line		34 months

2. The petitioner has made the following prayers:

“(a) Grant Transmission Licence to the Applicant;

(b) Allow transmission system “NRSS XXXVI Transmission Limited” to the part of the Transmission Service Agreement approved by the Commission under POC Charges Regulations CERC (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2010 ;

(c) Allow to start the Construction work on elements at Sl. No. (C) & (E) of Table 1.0 above pending grant of Transmission Licence and approval under Section 164 of the Electricity Act.

(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 "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, REC Transmission Projects Company Limited (hereinafter referred to as RECTPCL) was notified by Government of India, Ministry of Power vide Notification No. 1563, dated 24.7.2015 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 “Transmission System Strengthening in Northern Region (NRSS-XXXVI) along with LILO of Sikar-Neemrana 400 kV DC at Babai (RRVPNL)” through tariff based competitive bidding process.

4. RECTPCL in its capacity as the BPC initiated the bid process on 25.8.2015 and completed the process on 22.8.2016 in accordance with the Guidelines. M/s Essel Infraprojects Limited was selected as the successful bidder having quoted the lowest levelized transmission charges of ₹486.00 million/annum in order to establish the

Transmission System for “Transmission System Strengthening in Northern Region (NRSS-XXXVI) along with LILO of Sikar-Neemrana 400 kV DC at Babai (RRVPNL)” 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	UTC Chandigarh
2	BSES Yamuna Power Limited
3	BSES Rajdhani Power Limited
4	Tata Power Delhi Distribution Limited
5	New Delhi Municipal Council
6	Himachal Pradesh State Electricity Board Limited
7.	Haryana Power Purchase Centre
8.	Power Development Department, Govt. of Jammu and Kashmir
9.	Punjab State Power Corporation Limited
10.	Ajmer Vidyut Vitran Nigam Limited
11.	Jodhpur Vidyut Vitran Nigam Limited
12.	Jaipur Vidyut Vitran Nigam Limited
13.	Uttarakhand Power Corporation Limited
14.	U.P. Power Corporation Limited

5. The petitioner has submitted that responses to RfQ were received from six bidders. The responses to the RfQ were opened on 24.9.2015 in the presence of Bid Evaluation Committee and the representatives of the bidders. Evaluation was undertaken by Bid Process Consultant, namely M/s Mazars Advisory Private Limited, Mumbai in consortium with M/s Rajani Singhania and Partners, New Delhi (Bid Process Consultant) and presented to the Bid Evaluation Committee which recommended four bidders as qualified at RfP stage. Three bidders submitted their RfP (Financial) bids. Bid Evaluation Committee recommended all three bidders for opening the financial bids. Financial Bid was opened on 9.3.2016. After opening the financial bids, as per the Bid Evaluation Report dated 10.3.2016 M/s Essel Infraprojects Limited emerged as the

successful bidder with the lowest levelized transmission charges of ₹ 486.00 million per annum.

6. Consequent to its selection as the lowest bidder, Letter of Intent (LoI) was issued to M/s Essel Infraprojects Limited by the BPC on 28.3.2016 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 Essel Infraprojects Limited from RECPTCL 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 Essel Infraprojects Limited has acquired one hundred percent equity holding in NRSS XXXVI Transmission Limited on 22.8.2016. 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 M/s Essel Infraprojects 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 Government of India, Ministry of Power, Central Electricity Authority vide its letter No. 1/3/2015-SP&PA/189-190 dated 29.9.2015 has accorded approval to the project under Section 68 of the Electricity Act, 2003. The selection of the project developer, NRSSXXXVITL, 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 NRSS XXXVI 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 ₹ 486.00 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, vide its affidavit dated 3.10.2016, has placed on record the relevant copies of the newspapers of Hindustan Times (Uttarakhand, Haryana and Rajasthan editions), Rashtriya Sahara (Uttarakhand edition), Hari Bhoomi (Haryana edition), Dainik Nav Jyoti (Rajasthan edition).

14. Reply to the petition has been filed by Uttar Pradesh Power Corporation Limited (UPPCL). No objection has been received from the general public in response to the public notice. UPPCL in its reply dated 19.9.2016 has raised the issues on procedural requirements, etc. for grant of transmission licence which have been dealt with in succeeding paragraphs.

15. The petition was heard on 25.10.2016. The representative of the petitioner submitted that the petitioner has complied with all the requirements for grant of transmission licence and requested to grant transmission licence to the petitioner.

16. 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 30.9.2016 has recommended for grant of transmission licence to the petitioner. Relevant portion of the said letter dated 30.9.2016 is extracted is as under:

“2. The transmission scheme has been discussed and agreed in the 35th and 36th meeting of Standing Committee of Power System Planning in Northern Region held on 3.11.2014 and 13.7.2015. Further, the scheme was agreed to be executed under TBCB in the 24th meeting of Empowered Committee of Transmission held on 13.4.2015.

3. Ministry of Power, Govt. of India has identified the above transmission scheme for implementation through Tariff Based Competitive Bidding and notified M/s REC Transmission Projects Company Limited as

Bid Process Coordinator (BPC) for the purpose of selection of bidder as Transmission Service Provider (TSP) to establish the above referred project on BOOM basis.

4. For LILO of one circuit of Sikar-Neemrana 400 kV D/C line at Babai (RVPNL) S/s, CTU, while providing the inputs for RFP to BPC had informed the time frame of 34 months in line with CERC time lines. This was subsequently revised to December 2016 by CEA (Letter enclosed at Annexure-A) and same has been mentioned in the signed TSA also.

5. Bid Evaluation Committee appointed by the BPC has certified M/s Essel Infraprojects Limited as successful bidder. M/s Essel Infraproject Limited has acquired M/s NRSS XXXVI Transmission Limited after execution of the Share Purchase Agreement (SPA) on 22.8.2016.

6. In line with Section 15 (4) of the Electricity Act, 2003 and details furnished by M/s NRSS XXXVI Transmission Limited, POWERGRID as CTU recommends grants of transmission licence to M/s NRSS XXXVI Transmission Limited for scope given in Annexure-1.”

17. We have considered the submissions of the petitioner 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. Essel Infraprojects 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 Essel Infraprojects Limited by the BPC on 28.3.2016. BPC vide its various letters dated 7.4.2016, 7.5.2016, 7.6.2016, 6.7.2016, 12.7.2016 and 5.8.2016 extended the last date of completion of various activities stipulated in the RfP upto 26.8.2016. Accordingly, the petitioner filed the present petition on 26.8.2016. Essel Infraprojects Limited has acquired 100% stake in the NRSS XXXVI Transmission Limited which has been transferred to the petitioner on 22.8.2016 after execution of Share Purchase 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 17.11.2016.

18. The petitioner has requested to allow it to start the construction work on elements given at Serial Nos. 3 and 5 in para 1 above. Article 4.3 of the TSA provides that the TSP shall take necessary steps to commence work on the project from the effective date of the Agreement. Accordingly, the petitioner is required to comply with the provisions of the TSA.

19. 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 11.11.2016 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.

20. It is observed that as per Article 5.1.1 of the TSA, the TSP at its own cost and expense, shall be responsible for designing, constructing, erecting, completing and commissioning each element of the project by Scheduled COD in accordance with the

various regulations of the Central Electricity Authority regarding Technical Standards and Grid Standards, Prudent Utility Practices and other applicable laws. Further Article 5.4 of the TSA provides that the TSP shall ensure that the project is designed, built and completed in a good workmanlike manner using sound engineering and construction practices and using only materials and equipment that are new and of international utility grade quality such that the useful life of the project will be till the expiry date. Further, the design, construction and testing of all equipment, facilities, components and systems of the project shall be in accordance with Indian Standards and Codes issued by Bureau of India Standards. Accordingly, the petitioner is directed to submit the information by 11.11.2016 with regard to quality control mechanism available or to be put in place by to ensure the compliance of the requirements stipulated in Article 5.1.1 and Article 5.4 of the TSA.

21. The petition shall be listed for hearing on 22.11.2016.

Sd/-
(Dr. M.K.Iyer)
Member

sd/-
(A.S. Bakshi)
Member

(A.K. Singhal)
Member