

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 4/ADP/2016

Coram:

Shri Gireesh B.Pradhan, Chairperson

Shri A.K. Singhal, Member

Shri A.S.Bakshi, Member

Dr. M.K. Iyer Member

Date of Hearing: 17.3.2016

Date of Order: 22.3.2016

In the matter of

Application under Section 63 of the Electricity Act, 2003 for adoption of transmission charges with respect to the Transmission System established by the Alipurduar Transmission Limited.

And

In the matter of

Alipurduar Transmission Limited
408, 4th Floor, Som Datt Chambers-II,
9, Bhikaji Cama Place, New Delhi-110 016

..... **Petitioner**

Vs

1. South Bihar Power Distribution Company Limited
2nd Floor, Vidyut Bhawan, Bailey Road,
Patna-800 001
2. Assam Electricity Grid Corporation Limited
1st Floor, Bijulee Bhawan, Paltan Bazar,
Guwahati-781 001.
3. Manipur State Power Distribution Company Limited
Electricity Complex, Patta No. 1293 under 82 (2),
Khawal Bazar, Keishampat,
District-Imphal West, Manipur-795 001

4. Department of Power, Govt of Nagaland
New Sectt. Complex,
Kohima-797 001, Nagaland
5. North Bihar Power Distribution Company Limited
2nd Floor, Vidyut Bhawan, Bailey Road,
Patna-800 001.
6. Gridco Limited
Grid Corporation of Orissa Limited, Janpath,
Bhubneshwar-751 011
7. West Bengal State Electricity Distribution Company Limited
Bidyut Bhawan, (A-Block, 3rd Floor) Bidhannagar,
Kolkata-700 091
8. Energy and Power Department, Govt. of Sikkim
House No. 1, Power Secretariat, Sonam Gyatso Marg,
Gangtok, Sikkim-737 101
9. Jharkhand Bijli Vitran Nigam Limited
Engineer`s Building,
Dhurwa, Ranchi-834 004.

..... Respondents

The following was present:

Shri Ankit Prasoon, Advocate for the petitioner

ORDER

The petitioner, Alipurduar Transmission Limited (ATL), has filed the present petition under Section 63 of the Electricity Act, 2003 (hereinafter referred to as the 'Act') for adoption of transmission charges in respect of "Transmission System strengthening in Indian system for transfer of power from new HEPs in Bhutan" (hereinafter referred to as "Transmission System") on Build, Own, Operate and Maintain (BOOM) basis.

2. The Section 63 of the Electricity Act, 2003 provides as under:

"Section 63. Determination of tariff by bidding process: *Notwithstanding anything contained in section 62, the Appropriate Commission shall adopt the*

tariff if such tariff has been determined through transparent process of bidding in accordance with the guidelines issued by the Central Government.”

3. Government of India, Ministry of Power has notified the Guidelines under Section 63 of the Act vide Resolution No. 11/5/2005-PG(i) dated 17.4.2006. The salient features of the Guidelines are discussed in brief as under:

(a) The Guidelines are applicable for procurement of transmission services for transmission of electricity through tariff based competitive bidding and for selection of transmission service provider for new transmission lines and to build, own, maintain and operate the specified transmission system elements.

(b) For procurement of transmission services, required for inter-State transmission, the Central Government shall notify any Central Government Organization or any Central Public Sector Undertakings the Bid Process Coordinator (BPC) who would be responsible for coordinating the bid process.

(c) The BPC shall prepare the bid documentation in accordance with the Guidelines and obtain approval of the Appropriate Commission or alternatively, the BPC can use the standard bid documents notified by the Ministry of Power. Approval of the Appropriate Commission would be necessary if any material deviation is proposed to be made in the Standard Bid Documents. Intimation about the initiation of the bid process shall be sent by the BPC to the Appropriate Commission.

(d) For procurement of transmission charges under the Guidelines, the BPC may adopt at its option either a two-stage process featuring separate Request for Qualifications (RfQ) and Request for Proposal(RFP) or adopt a single stage two envelope tender process combining both RFQ and RFP processes.

(e) RfQ or combined RfQ and RfP notice shall be issued in at least two national newspapers, website of the BPC and the appropriate Government and preferably in the trade magazines also to provide wide publicity. For the purpose of issue of RfQ minimum conditions to be met by the bidder shall be specified in RfQ notice. The bidding shall be by way of International Competitive Bidding.

(f) Standard documentations to be provided in the RFQ stage shall include definitions of requirements including the details of location and technical qualifications for each component of the transmission lines, construction milestones, and financial requirements to be met by the bidders; proposed Transmission Service Agreement; period of validity of offer of bidder; conditions as specified by the Appropriate Commission for being eligible to obtain transmission licence and other technical and safety criteria to be met by the bidder/TSP including the provisions of Indian Electricity Grid Code (Grid Code).

(g) Standard documentations to be provided by BPC in the RFP shall include specified target dates/months for commissioning and commercial operations and start of providing transmission services. TSA proposed to be entered with the selected bidder; bid evaluation methodology to be adopted by the BPC; Discount

Factor to be used for evaluation of the bids; specification regarding the bid bond and project completion guarantee to be furnished by the bidders, proposed indemnification agreement between the TSP and the utilities, amount of contract performance guarantee as percentage of the project cost; and the liquidated damages that would apply in the case of delay in start of providing the transmission services.

(h) To ensure competitiveness, the minimum number of qualified bidders shall be two. The BPC shall constitute a committee for evaluation of the bids with at least one member from Central Electricity Authority (CEA) and the concerned Regional Power Committees. The member from CEA shall have expertise in the cost engineering of transmission projects. The bids shall be opened in public and the representative of the bidders shall be allowed to remain present. The technical bids shall be scored to ensure that only the bids that meet the minimum technical criteria set out in the RFQ shall be considered for further evaluation on the transmission charge bids. The transmission charge bid shall be rejected if it contains any deviation from the tender conditions for submission of the same. The bidder who has quoted the lowest transmission charge as per the evaluation procedure shall be considered for the award.

(i) The Guidelines provide for suggested time tables for the bid process. The timeline suggested for a two stage bid process is 240 days and single stage two envelope bid process is 180 days. The BPC is empowered to give extended

time-frame based on the prevailing circumstances and such alterations shall not be construed as the deviation from the Guidelines.

(j) The selected bidder shall make an Application for grant of transmission licence to the Appropriate Commission within ten days from the date of issue of Lol subject to further extension of time as provided under para 2.4 of the RFP. The TSA shall be signed with the selected bidder in accordance with the terms and conditions as finalized in the bid document before the RFP stage.

(k) The BPC shall make evaluation of the bid public by indicating the terms of the winning bid and anonymous comparison of all other bids. All contracts signed with the successful bidder shall also be made public. The final TSA along with the certification of BPC shall be forwarded to the Appropriate Commission for adoption of tariff in terms of section 63 of the Act.

4. In the light of the above provisions of the Guidelines, we have to examine whether the transparent process of international competitive bidding has been adopted in the present case for arriving at the lowest levelized transmission charges and for selection of the successful bidder.

5. Central Electricity Authority, Government of India vide its Notification No. 100/1/EC (33)/SP&PA/2014 dated 6.2.2015 notified the REC Transmission Projects Company Ltd. (RECTPCL) as the Bid Process Coordinator (BPC) for the purpose of selection of bidder as Transmission Service Provider (TSP) to establish the project on

Build, Own, Operate and Maintain (BOOM) basis through tariff based competitive bidding process.

6. Alipurduar Transmission Limited was incorporated on 13.4.2015 under the Companies Act, 2013 as a wholly owned subsidiary of RECTPCL with the objective to establish the “Transmission System strengthening in Indian system for transfer of power from new HEPs in Bhutan” on BOOM basis and to act as the Transmission Service Provider after being acquired by the successful bidder. The main objectives of the petitioner company in its Memorandum of Associations are as under:

“To plan, promote and develop an integrated and efficient power transmission system network in all its aspects including planning, investigation, research, design and engineering, preparation of preliminary, feasibility and definite project reports, construction, operation and maintenance of transmission lines, sub-stations, load dispatch stations and communication facilities and appurtenant works, coordination of integrated operation of regional and national grid system, execution of turn-key jobs for other utilities/organizations and wheeling of power in accordance with the policies, guidelines and objectives laid down by the Central Government from time to time”.

7. RECTPCL as the BPC prepared the bidding documents such as RfQ and RfP in accordance with the Standard Bid Documents issued by the Ministry of Power, Government of India. The BPC started the process of selection of TSP with the publication of Global Invitation for Qualification on 16.4.2015 for selection of developer on BOOM basis for the project. The notice for RfQ was published on 16.4.2015 in all the editions of Hindustan Times, Hindustan (Hindi), Mint and Hindustan Times (Global Editions) with the last date of submission of response to RfQ as 18.5.2015. Intimation regarding the initiation of the bid process was given to the Central Commission in

accordance with para 4.2 of the Guidelines vide letter No. RECPTCL/P-22/Bhutan-HEP/RFQ/2015-16/698, dated 16.4.2015.

8. The key milestones in the bidding process were as under:

S. No.	Events	Date
1.	Global Invitation for Tender	16.4.2015
2.	Submission of Request for Qualification	15.5.2015
3.	Issuance of Request for Proposal	8.7.2015
5.	Opening of financial bid	21.10.2015
6.	Issuance of Letter of Intent to successful bidder	29.10.2015
8.	Submission of Contract Performance Guarantee in favour of LTTCs	4.1.2016
9.	Signing of Share Purchase Agreement	6.1.2016

9. The scope of the Project as per the Request for Proposal (RfP) and the Transmission Service Agreement is as under:

S. No.	Name of the Transmission Element	Conductor Phase	per	Completion Target
Transmission System Strengthening in Indian System for transfer of power from new HEPs in Bhutan				
1	Alipurduar (POWERGRID)-Siliguri (POWERGRID) 400 kV D/C line (2 nd) with quad moose conductor	Quad Moose ACSR or equivalent	AAAC	38 months
3	Kishanganj (POWERGRID)-Darbhanga (DMTCL) 400 kV D/C line with quad moose conductor Sub-station Extn: - 2 nos 400 kV line bays at Darbhanga for termination of Kishanganj-Dharbhanga 400 kV D/C (quad) line - 80 MVAr switchable line reactors (with 400 ohm NGR) in each circuit	Quad Moose ACSR or equivalent	AAAC	

10. The identified Long Term Transmission Customers (LTTCs) of the project are as under:

S. No.	Name of the Long Term Transmission Customers
1	Manipur State Power Distribution Company Limited
2	Department of Power, Government of Nagaland
3	Assam Electricity Grid Corporation Limited
4	North Bihar Power Distribution Company Limited
5	South Bihar Power Distribution Company Limited
6	GRIDCO Limited
7	West Bengal State Electricity Distribution Company Limited
8	Energy and Power Department, Govt. of Sikkim
9	Jharkhand Bijili Vitran Nigam Limited

11. As per the decision of the Empowered Committee on Transmission, the Bid Evaluation Committee (BEC) comprising of the following was constituted:

- | | |
|---|------------------|
| (a) Shri Padam Kumar K. Nair, Head, SBI Capital Markets | .Chairman |
| (b) Shri M.M.Kumar, Executive Director (System), DVC | .Member |
| (c) Shri Pankaj Batra, Chief Engineer (F&CA), CEA | .Member |
| (d) Shri Goutam Roy, Director (SP&PA), CEA | .Member |
| (e) Shri Somnath Bhattacharya, Director (Projects), WBSETCL | .Member |
| (f) Shri P.Baburaj, Chairman, Alipurduar Transmission Ltd. | |
| | Convener- Member |

12. Responses to RfQ were received from seven bidders by 18.5.2015 as per details given below:

S.No.	Name of Bidders
1.	Adani Transmission Ltd.
2.	Power Grid Corporation of India Ltd.
3.	Essel Infraprojects Limited
4.	Sterlite Grid 3 Ltd
5.	Kalpataru Power Transmission Ltd.

13. The responses to the RfQ were opened on 25.5.2015 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 consortium with M/s Rajani Singhania and Partners (Bid Process Consultant) and

presented to the Bid Evaluation Committee which recommended six bidders as qualified at RfP stage.

14. The following five bidders submitted RfP:

S.No.	Name of Bidders
1.	Essel Infraprojects Limited
2.	Adani Transmission Limited
3.	Sterlite Grid 3 Ltd
4.	Power Grid Corporation of India Ltd.
5.	Kalpataru Power Transmission Limited

15. RfP (Financial) bids were opened on 21.10.2015 in the presence of Bid Evaluation Committee and the representatives of the bidders. The evaluation of the RfP (Financial) bids was carried out by Bid Process Consultant and presented to the Bid Evaluation Committee on 21.10.2015. The levelised charges for each bidder, as per the bid evaluation model and the methodology specified in RfP, were found to be in order. Based on the evaluation of the RfP, the levelised transmission charges were worked out as under:

S.No	Name of the Bidder	Levellised Transmission charges in Indian Rupees (Millions/annum)
1.	Kalptaru Power Transmission Limited	1,294.24
2.	Essel Infraprojects Ltd.	1,296.00
3.	Power Grid Corporation of India Ltd	1,383.59
4.	Sterlite Grid3 Ltd.	1,610.45
5.	Adani Transmission Limited	1,957.80

16. Based on the evaluated levelised transmission charges, the Bid Evaluation Committee recommended Kalptaru Power Transmission Limited with the lowest

evaluated annual levelised transmission charges of Rs.1294.24 million/annum as the successful bidder.

17. Letter of Intent was issued by the BPC on 29.10.2015 to the successful bidder i.e Kalptaru Power Transmission Limited. In accordance with para 12.3 of the Guidelines, the BPC has hosted on the website of RECTPCL the final results of the evaluation of the bids for selection of developer for the project.

18. In accordance with the provisions of the bid documents and Lol issued in its favour, the petitioner has prayed for adoption of the transmission charges for the project which has been discovered through the process of competitive bidding.

19. In accordance with para 2.4 of RfP, the selected bidder shall within 10 days of issue of the Letter of Intent accomplish the following tasks:

(a) Provide Contract Performance Guarantee in favour of the LTTCs;

(b) Execute the Share Purchase Agreement

(c) Acquire, for the acquisition price, one hundred percent equity shareholdings of Alipurduar Transmission Limited from RECTPCL, along with all its related assets and liabilities;

(d) Make an Application to the Central Electricity Regulatory Commission for adoption of charges under Section 63 of the Electricity Act, 2003;

(e) Apply to Central Electricity Regulatory Commission for grant of transmission licence.

20. The proviso to para 2.4 of the RfP further provides that "if for any reason attributable to the BPC, the above activities are not completed by the Selected Bidder within the above period of ten (10) days as mentioned in this clause, such period of 10 days shall be extended, on a day for day basis till the end of the Bid validity period". Though Lol was issued on 29.10.2015, BPC, vide its letter dated 31.12.2015, in terms of proviso to clause 2.4 of RfP extended the date upto 8.1.2016 for completion of all activities by the successful bidder. The selected bidder furnished the Performance Guarantee to the Long Term Transmission Customers of the project for an amount of Rs. 40.50 crore and has acquired hundred percent equity holding in the applicant company on 4.12.2015 after execution of the Share Purchase Agreement. The TSP on behalf of the selected bidder filed the application for adoption of tariff on 6.1.2016.

21. On receipt of the present petition, the staff of the Commission vide its letter dated 12.1.2015 directed the BPC to submit the relevant documents regarding complete process of competitive bidding through affidavit. The necessary details have been filed by the BPC under affidavit dated 27.1.2016.

22. Notices were issued to all the respondents who are the Long Term Transmission Customers of the project. No reply has been filed the respondents. Notice was also issued to RECTPCL in its capacity as Bid Process Coordinator. RECTPCL has filed the copies of all relevant documents pertaining to the bidding process.

23. The petition was heard on 17.3.2016. None appeared on behalf of the respondents despite notice.

24. Under the Guidelines, BPC has to certify that the tariff has been discovered through a transparent process of bidding and the tariff discovered is in line with prevailing market prices. The Bid Evaluation Committee, vide para 15 of the minutes of meeting held on 21.10.2015, has recorded as under:

“15. After detailed discussions on the evaluation report and verification of the bids, the Bid Evaluation Committee took the following decision:

(a) M/s Kalpataru Power Transmission Limited emerges as the successful Bidder with the lowest Levelised Transmission Charges of Rs. 1294.24 million.

(b) The levelised tariff for this project based on CERC norms for the same period works out to Rs. 1849.06 million, which has been computed based on the estimated cost as communicated by CEA and methodology for calculation of tariff as per CERC norms.

(c) Thus, in the light of the above, the levelised tariff computed on the basis of rates quoted is in line with the prevailing prices.

(d) The entire bid process has been carried out in accordance with the “Tariff based Competitive bidding Guidelines for Transmission Service” and “Guidelines for encouraging competition in development of the Transmission Projects” issued by Ministry of Power, Govt. of India under Section 63 of the Electricity Act, 2003 and as amended from time to time .

(e) In view of (a) to (d) above, M/s Kalpataru Power Transmission Limited may be issued Letter of Intent (LOI)”

25. Bid Evaluation Committee vide its certificate dated 21.10.2015 has certified as under:

“It is hereby certified that:

a. The entire bid process has been carried out in accordance with the "Tariff based Competitive Bidding Guidelines for Transmission Service" and "Guidelines for encouraging competition in development of the Transmission

Projects" issued by Ministry of Power, Govt. of India under Section 63 of the Electricity Act, 2003 and as amended from time to time.

- b. M/s. Kalpataru Power Transmission Limited has emerged as the successful bidder with the lowest levelised transmission charges of Rs. 1294.24 million for the above project.
- c. The rates quoted by the successful bidder are in line with the prevailing prices."

26. In the light of the discussions in the preceding paragraphs, it emerges that selection of the successful bidder and the process of arriving at the levelised tariff of the project through competitive bidding has been carried out by the Bid Process Coordinator through a transparent process in accordance with the Guidelines and Standard Bid Documents. The Bid Evaluation Committee has certified that the process is in conformity with the MOP Guidelines. The BPC in its certificate dated 21.10.2015 has certified that the rates quoted by the successful bidder are in line with the prevalent market prices. The Commission is not required to go into the cost details of the bids as per the bidding guidelines and has to adopt the tariff if the same has been discovered in accordance with the Guidelines. Based on the certification of the BEC, we approve and adopt the levelised transmission charges for the project as per the **Appendix** to this order. The sharing of the transmission charges by the LTTCs shall be governed by the provisions of the Central Electricity Regulatory Commission (Sharing of inter-State Transmission Charges and Losses) Regulations, 2010 as amended from time to time.

27. The petitioner has also prayed that the transmission system be allowed to be treated as part of the Transmission Service Agreement approved under the Central

Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses), Regulations 2010. At the pre-bid conference, it was clarified by the BPC that TSA signed by the parties would merge with the TSA as notified by this Commission under Sharing Regulations. Thus, merger of the TSA signed by the parties with the TSA notified by this Commission is a condition of the bid and binding on all concerned.

28. During the course of hearing on 17.3.2016, learned counsel for the petitioner submitted that there was a delay of two months in acquisition of SPV due to non-signing of TSA by the LTTCs and requested to grant liberty to the petitioner to approach the Commission if such delay results into cost overrun. In our view, the petitioner should make efforts to execute the project within the timeline specified in the TSA. However, if the project cannot be implemented within the specified timeline despite best efforts by the petitioner and the petitioner approaches for relief for time over-run or cost over-run, the same shall be dealt with in accordance with the provisions of the TSA.

29. Learned counsel for the petitioner during the hearing submitted that the Ministry of Power, Government of India has issued Policy dated 15.7.2015 for incentivizing early commissioning of transmission elements before Scheduled Date of Commercial Operation (SCOD) by way of commencement of transmission charges from actual COD before SCOD. The said Policy is specifically made part of the TSA and the same has been signed by all the LTTCs. He further submitted that proviso to definition of the term "Commercial Operate Date (COD) of the TSA provides that the parties are allowed to mutually agree on a date earlier than the Scheduled Commercial Operation Date

(SCOD) to be construed as the COD. Therefore, the parties can agree to any date before the SCOD as the date of COD.

30. With reference to our query as to who will be responsible for making the payment of transmission charges if the upstream and downstream transmission assets are not commissioned with the petitioner's transmission assets, learned counsel for the petitioner submitted that the LTTCs have specifically undertaken the obligation by signing the TSA to make payment of the transmission charges from the date of actual COD before the SCOD. Learned counsel further submitted that in order to achieve early commissioning, the petitioner will have to bear substantial cost for mobilization of resources in a manner which could ensure early commissioning. Therefore, the petitioner's right to receive transmission charges from the date of actual COD should be protected. On the issue of matching of timelines with upstream and downstream assets, learned counsel submitted that the petitioner being a private developer cannot exercise any control over the developers of the upstream and downstream projects and therefore, the petitioner should not be burdened with such an obligation which is best suited to be undertaken a Government entity.

31. The Commission has already dealt with the MOP Policy on incentives for early commissioning of the transmission project in order dated 29.1.2016 in Petition No.285/ADP/2015. Relevant paragraphs of the order are extracted as under:

“28. We have noted the submission of the petitioner. The Policy for incentivizing early commissioning of Transmission Projects issued by Ministry of Power vide its letter dated 15.7.2015 is extracted as under:

“The undersigned is directed to say that the Hon`ble Minister of State (IC) for Power has approved the Policy for incentivizing early commissioning of Transmission projects w.e.f.12.6.2015 as given below:

1.1 For transmission system strengthening schemes under Tariff Based Competitive Bidding (TBCB) and also for such schemes awarded to PGCIL under compressed time schedule on cost plus basis, the developer shall get the following incentive for early commissioning of transmission project(s)

- (i) Entitlement of the transmission charges from the actual date of Commercial Operation (COD) prior to the original scheduled COD. However, the number of years of applicability of tariff would remain unchanged i.e. for 25/35 years, as the case may be.

Note: The above incentive will be applicable for the transmission project(s)/element(s) which are under implementation/yet to be bid out under TBCB/yet to be assigned to CTU (PGCIL) under compressed time schedule.”

Thus, the Policy provides for grant of incentive in the form of admissibility of the transmission charges from the date of actual COD which takes place before the scheduled COD. In our view, the above Policy needs to be read in the context of the TSA. Commercial Operation Date has been defined in the TSA as “the date as per Article 6.2; provided that the COD shall not be a date prior to the Scheduled COD mentioned in the TSA, unless mutually agreed to by all parties. Scheduled COD has been defined as under:

‘Scheduled COD’ in relation to an Element(s) shall mean the date(s) as mentioned in Schedule 3 as against such Element(s) and in relation to the Project, shall mean the date as mentioned in Schedule 3 as against such Project, subject to the provisions of Article 4.4 of this Agreement, or such date as may be mutually agreed among the Parties.”

Scheduled COD has been given in Schedule 3 of the TSA with overall SCOD as 40 months from the effective date and certain elements have been pre-required for declaring the COD. At the end of the Schedule 3, the following has been mentioned:

“The payment of Transmission Charges for any Element irrespective of its successful commissioning on or before its Scheduled COD shall only be considered after successful commissioning of the Element(s) which are pre-required for declaring the commercial operation of such Element as mentioned in the above table.”

Article 6.2.1 of the TSA provides as under:

“6.2.1 An Element of the Project shall be declared to have achieved COD seventy (72) hours following the connection of the Element with the Interconnection Facilities or seven (7) days after the date on which it is declared by the TSP to be ready for charging but is not able to be charged for reasons not

attributable to the TSP or seven (7) days after the date of determent, if any, pursuant to Article 6.1.2:

Provided that the Element shall be declared to have achieved COD only after all the Element(s), if any, which are pre-required to achieve COD as defined in Schedule 3 of this Agreement, have been declared to have achieved their respective COD.”

From the above provisions, it emerges that certain elements can be considered for grant of transmission charges on completion of their successful commissioning on or before its Scheduled COD only after the successful commissioning of the pre-required elements. Therefore, the commissioning of the elements of the transmission system for the purpose of incentive should take into account the pre-required commissioning of the elements as per scheduled COD. Further there may be upstream or downstream assets which are executed by PGCIL on cost plus basis or by any other transmission licensee through competitive bidding. Since the SCOD of the transmission elements mentioned in Schedule 3 have been decided matching with the commissioning of the upstream or downstream assets, that is a requirement of matching commissioning of these upstream or downstream assets with the commissioning of the transmission system in case of early commissioning for the purpose of availing incentives as per the Policy direction of Ministry of Power. If the matching commissioning does not take place, then the transmission assets which have commissioned before the SCOD for the purpose of availing incentive will remain unutilized and in the absence of the assets being put into service, it will not be appropriate to load the DICs with the transmission charges. It is, therefore, directed that the petitioner should realistically forecast early commissioning of the element, liaise with the developer of the upstream and downstream assets and mutually decide the COD of the transmission assets matching with the COD of the upstream or downstream assets so that both can be benefited by the Policy of the Govt. for incentivizing the early commissioning of the transmission assets. In case of an element which can be put to use without the commissioning of the pre-required asset, the same can be commissioned, if the CEA certifies that the commissioning of the asset will be in the interest of the safety and security of the grid and the asset can be put to useful service after its commissioning.”

32. Learned counsel for the petitioner submitted during the hearing that as distinguished from Adani`s case, in case of the petitioner, the MOP Policy dated 15.7.2015 has been made a part of the TSA and the LTTCs having signed the same as part of the TSA have accepted the liability to pay the transmission charges from the date of actual COD before SCOD. Learned counsel further submitted that definition of

SCOD includes 'such date as may be mutually agreed among the parties'. In this case, the petitioner and the LTTCs having signed the Policy letter of MOP dated 15.7.2015 which has been made a part of the TSA, have agreed to enable the petitioner to advance the COD to any date prior to SCOD and therefore, the LTTCs have accepted the liability to pay the transmission charges to the petitioner from the date of actual COD.

33. We have considered the submission of learned counsel for the petitioner. It is noticed that BPC has included the MOP Policy dated 15.7.2015 as an annexure to the TSA which has been signed by both the TSP and LTTCs. However, no corresponding provision have been made in the TSA as per the Govt. Policy. Inclusion the MOP Policy as part of the TSA which enables the TSP to declare the COD prior to the SCOD is a major deviation from Standard Bidding Documents for which approval of the Commission is required in terms of para 4.1 of the Tariff Based Competitive Bidding Guidelines for Transmission Service issued by Ministry of Power Govt. of India. Evidently BPC has not sought the approval of the Commission before inserting the Govt. Policy dated 15.7.2015 as part of the TSA. We direct the BPC to ensure that if any material deviation is made in the TSA, the approval of the Commission should be invariably sought before incorporating the same in the TSA.

34. Article 4.2.1 (b) of the TSA provides that it is the obligation of the LTTCs to arrange and make available the inter-connection facilities to enable the TSP to connect the project. Article 6.1.1 of the TSA requires the TSP to give 60 day`s notice to LTTCs

before the intended date of connection which shall not be prior to SCOD or the extended SCOD or the date otherwise agreed by LTTCs. Article 6.1.1 reads as under:

“6.1.1. The TSP shall give the RLDC(s), CTU/STU, as the case may be, the Long Term Transmission Customers and any other agencies as required at least sixty (60) days advance written notice of the date on which it intends to connect an Element of the project, which date shall not be earlier than its Scheduled COD or Schedule COD extended as per Article 4.4.1 of this Agreement, unless the Lead Long Term Transmission Customer otherwise agrees.

Thus, as per the above provision, the TSP cannot connect its system prior to SCOD or extended SCOD unless the same is agreed to by LTTCs. Further Article 6.1.1 provides that the TSP shall give notice to “any other agency as required”. Since the developers of the upstream and downstream transmission assets are concerned with providing inter-connection facilities, the TSP is required to give notice to them regarding the date of connection. Therefore, the provisions of the TSA lead us to the conclusion that if the petitioner intends to commission the project any time prior to SCOD, it has to decide the said date in consultation with LTTCs and the developers of the upstream and downstream transmission assets. This will also enable the LTTCs for arranging and making available the inter-connection facilities to connect the project. If the TSP is allowed to unilaterally decide the SCOD of the project in order to avail the incentive under the MOP Policy, it will result in stranded capacity without being capable of any use and resultant dispute in disbursement of the transmission charges. Accordingly, we direct the petitioner to decide the revised SCOD in consultation with LTTCs and developers of upstream/downstream transmission assets if it intends to avail the benefits of the MOP Policy and inform the same to the concerned RLDCs, CTU and

CEA. In the event the inter-connection facilities are not ready by SCOD or by revised SCOD (as may be revised by the petitioner and the LTTCs for the purpose of availing incentive as per MOP Policy) on account of non-readiness of the upstream or downstream transmission assets while the petitioner`s transmission system is ready for commissioning, the COD of the transmission assets of the petitioner may be declared in accordance with the provisions of Article 6.2 of the TSA (to be known as `deemed COD`) and the LTTCs/developers of the upstream and downstream assets shall be liable to pay the transmission charges from the deemed COD till the transmission assets are put into actual use. In such event, the petitioner is directed to approach the Commission through a petition at least two months before the deemed COD by making the LTTCs, CTU, CEA, concerned RLDCs and developers of the upstream and downstream systems responsible to the delay as parties to the petition for appropriate direction.

35. A copy of this order shall be sent to CEA, CTU, concerned RLDCs and Long Term Transmission Customers of the transmission system.

36. The Petition No. 4/ADP/2016 is disposed of in terms of the above.

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

Sd/-
(A.S. Bakshi)
Member

sd/-
(A.K. Singhal)
Member

sd/-
(Gireesh B.Pradhan)
Chairperson

Appendix

Year (Term of License)	Commencement Date of Contract Year	End Date of Contract Year	Quoted Non- Escalable Transmission Charges (Rs. millions)	Quoted Escalable Transmission Charges (Rs. Millions)
1	Scheduled COD 5 th January, 2019	31-March	1115.80	0.00
2	01-April	31-March	1482.42	Nil
3	01-April	31-March	1594.00	Nil
4	01-April	31-March	1594.00	Nil
5	01-April	31-March	1530.24	Nil
6	01-April	31-March	1498.36	Nil
7	01-April	31-March	1498.36	Nil
8	01-April	31-March	1498.36	Nil
9	01-April	31-March	1482.42	Nil
10	01-April	31-March	1482.42	Nil
11	01-April	31-March	1482.42	Nil
12	01-April	31-March	1434.60	Nil
13	01-April	31-March	1354.90	Nil
14	01-April	31-March	1115.80	Nil
15	01-April	31-March	1115.80	Nil
16	01-April	31-March	1115.80	Nil
17	01-April	31-March	1115.80	Nil
18	01-April	31-March	1115.80	Nil
19	01-April	31-March	1115.80	Nil
20	01-April	31-March	1115.80	Nil
21	01-April	31-March	1115.80	Nil
22	01-April	31-March	1115.80	Nil
23	01-April	31-March	1115.80	Nil
24	01-April	31-March	1115.80	Nil
25	01-April	31-March	1115.80	Nil
26	01-April	31-March	1115.80	Nil
27	01-April	31-March	1115.80	Nil
28	01-April	31-March	1115.80	Nil
29	01-April	31-March	1115.80	Nil
30	01-April	31-March	1115.80	Nil
31	01-April	31-March	1115.80	Nil
32	01-April	31-March	1115.80	Nil
33	01-April	31-March	1115.80	Nil
34	01-April	31-March	1115.80	Nil
35	01-April	31-March	1115.80	Nil
36	01-April	35th anniversary of Scheduled COD	1115.80	Nil