

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 6/TL/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: 21.3.2016**

**In the matter of**

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

**And**

**In the matter of**

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

..... **Petitioner**

**Vs**

1. South Bihar Power Distribution Company Limited  
2<sup>nd</sup> Floor, Vidyut Bhawan, Bailey Road,  
Patna-800 001
2. Assam Electricity Grid Corporation Limited  
1<sup>st</sup> 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  
2<sup>nd</sup> 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, 3<sup>rd</sup> 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 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 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 comprising the following element:

S. No.	Name of the Transmission Element	Conductor specifications/configuration	Completion target
1	Alipurduar (POWERGRID)-Siliguri (POWERGRID) 400 kV D/C line (2 <sup>nd</sup> ) with quad moose conductor	Quad Moose ACSR or equivalent AAAC Conductor	

2.	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 Conductor	38 months
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2. Based on the competitive bidding carried out by REC Transmission Projects Company Limited (RECTPCL) in accordance with the Guidelines issued by Ministry of Power, Govt. of India under Section 63 of the Act, M/s Kalpataru Power Transmission Limited (KPTL) emerged as the selected bidder with the lowest levelized transmission charges of ₹ 1294.24 million/annum.

3. The Commission after considering the application of the petitioner in the light of the provisions of the Electricity Act, 2003 and Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of Transmission Licence and other related matters) Regulations, 2009 (hereinafter referred to as “the Transmission Licence Regulations”) *prima facie* proposed to grant licence to the petitioner. Relevant para of our order dated 29.2.2016 is extracted as under:

“16. 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. Kalpataru Power Transmission 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 Kalpataru Power Transmission Limited by the BPC on 29.10.2015. BPC vide letter dated 31.12.2015 extended the last date of completion of various activities up to 8.1.2016. Accordingly, Kaplataru Power Transmission Limited has

acquired 100% stake in the Alipurduar Transmission Limited which has been transferred to the petitioner on 6.1.2016 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 15.3.2016.”

4. A public notice under Section 15 (5) of the Act was published on 8.3.2016 in all editions of Hindustan Times and Hindustan. No suggestions/objections have been received from the members of the public in response to the public notice.

5. The petitioner, vide order dated 29.2.2016, was directed to file an affidavit to the effect that the execution of the transmission project shall not be delayed due to time taken in obtaining statutory clearances required under RfP and the TSA or adjudication of any claim of the petitioner arising under the TSA. In response, the petitioner vide its affidavit dated 9.3.2016 has submitted that the terms of the TSA are binding on the parties (TSP and LTTCs). The petitioner has submitted that in terms of the TSA, it would implement the project 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 a final or interim order, the Parties hereto shall continue to perform their respective obligations (which are not in dispute) under this Agreement."

6. The petitioner has further submitted that it shall not approach the Commission for extension of time for execution of the project or for increase in transmission charges, except for the extension of time and the increase in the transmission charges which are permissible and allowed under the TSA. The petitioner has submitted that time overrun and cost overrun, if any, made by it, shall be in accordance with the applicable provisions of the TSA read with provisions of the Electricity Act, 2003 and relevant regulations. We direct that the petitioner shall remain bound by the commitment given by it under affidavit dated 9.3.2016.

7. In our order dated 29.2.2016, the following provisions of the TSA with regard to quality control and workmanship were taken note of:

(a) 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.

(b) 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.

(c) 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 was directed to submit the information 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.

8. The petitioner, vide its affidavit dated 9.3.2016, has submitted as under:

“4. That at the outset, it is pertinent in this regard to submit that the petitioner being the TSP is committed to implement the project in letter and spirit as per the terms of the TSA and will adhere to the specifications and technical requirements set out in the TSA for setting up the project/Transmission System. In any event, there are sufficient check and balances which are already built into the TSA whereby external agencies like CEA and lead LTTC (as well as other LTTCs) can monitor the quality of the construction of the project to be set up by the petitioner.

5. That the petitioner in terms of Article 4.1 (g) read with Article 5.3 of the TSA, is entrusted with the obligation of providing on monthly basis, a progress report to the LTTCs and CEA with regard to the project and its execution, to enable them to monitor and coordinate the development of the project.

6. That the Lead LTTC in terms of Article 5.5 is duty bound to designate, at the most 3 employees from any of the LTTCs for the purpose of inspecting the progress of the project. In addition, the CEA in terms of Article 5.8 may carry out random inspection during the project execution, as and when deemed necessary by it.

7. In terms of Article 4.1 (g), 5.3, 5.5 and 5.8 of the TSA, the quality control mechanism is already available whereby both the CEA and lead LTTC (as well as the other LTTCs) will be able to monitor the overall quality control of construction of the project by the petitioner to ensure that the petitioner is complying with Article 5.1.1 and 5.4 of the TSA. Thus, it is apparently clear that there are sufficient checks and balances by which both the CEA and Lead LTTC while acting as the external agencies will monitor the overall progress of construction of the project.

8. That in addition to above submissions, the petitioner has already commissioned various inter-State and intra-State transmission system including about 1200 Kilometers of 765 kV transmission line and more than 7000 km of 400 kV transmission line. In addition, the petitioner has also completed the first transmission project based on Viability Gas Funding Scheme on the Planning Commission based Transmission Agreement [i.e. public private partnership based project (PPP)] in the State of Haryana. Further, the petitioner also completed the second PPP transmission project based on viability gas funding scheme for development of 400 kV Satpura-Astha DCDS

transmission line which involves 240 KM 400 kV line including 23 KM of forest area, 3 Railway crossings, 26 EHT crossing and same has been completed within the stipulated timeframe. That the petitioner being an experienced entity will ensure that the project is constructed by adhering to the required quality standards and prudent practices by way of putting in place the following:

(a) At the procurement stage, the qualification requirement for short listing of a supplier/contractor is done on the basis of the technical specification as mentioned in TSA. The purchase order/contract specifically mentions the technical standards and the testing requirement specified under the TSA. It is humbly submitted that the material dispatch is allowed after the conformance report is validated.

(b) To ensure quality of tower material, a Manufacturing Quality Plan (MQP) in line with the applicable technical standards and the standards followed by CTU is ensured.

(c) To ensure construction quality of the project, a Field Quality Plan (in line with the standards mentioned in TSA and that followed by CTU) is specified to the contractor in advance. The conformance report to the said documents is also mentioned at site.

(d) The construction and material supply is also validated with respect to the TSA by the Lenders Independent Engineer during its quarterly construction review.

(e) That in terms of the provisions of the TSA discussed above and the internal quality control checks to be implemented by the petitioner as also mentioned above, there would be sufficient quality control mechanism to ensure that the standards as required under law in construction of project are maintained at all times during implementation of the project.

9. That as mentioned above, the safeguards and steps proposed by the petitioner in conjunction with the independent monitoring mechanism by CEA and the Lead LTTC (along with other LTTCs) with respect to the construction of the Project under the TSA are going to ensure that the requirement of Articles 5.1.1 and Article 5.4 of the TSA are appropriately complied with.”

9. We have considered the submission of the petitioner. In the TSA, there is provision for the lead procurer to designate at least three employees for inspection of the progress of the project. Further, the petitioner is required to give a monthly progress report to the lead procurer and the CEA about the project and its execution. The TSA also vests a responsibility in the CEA to carry out random inspection of the project as and when deemed necessary. We consider it necessary to request CEA to devise a

mechanism for random inspection of the project every three months to ensure that the project is not only being executed as per the schedule, but the quality of equipment and workmanship of the project conforms to the Technical Standards and Grid Standards notified by CEA and IS Specifications. In case of slippage in execution of the project within the timeline specified in the TSA or any non-conformance to the Grid Standards/Technical Standards/IS Specifications. CEA is requested to promptly bring the same to the notice of the Commission so that appropriate direction can be issued to the licensee for compliance.

10. During the hearing, the learned counsel for the petitioner submitted that the lender's engineer also monitor the implementation of the transmission system. However, there is no material on record which clarifies that the scope of the monitoring by the lender's engineer includes monitoring the quality of materials used and the workmanship in accordance with CEA Grid Standards and Technical Standards and the various IS specifications. We suggest that the petitioner engages a reputed engineering firm to monitor the execution of the project from the point of view of quality control of the materials used and the standard of workmanship. The report of the Engineering firm may be shared with the CEA and LTTCs for their information and feedback.

11. As regard the grant of transmission licence, Clauses (15) and (16) of Regulation 7 of Transmission Licence Regulations provide as under:

“(15) The Commission may after consideration of the further suggestions and objections, if any, received in response to the public notice aforesaid, grant licence as nearly as practicable in Form-III attached to these regulations or for reasons to be recorded in writing, reject the application if such application is not in accordance with the provisions



of the Act, the rules or regulations made thereunder or any other law for the time being in force or for any other valid reasons.

(16) The Commission may, before granting licence or rejecting the application, provide an opportunity to the applicant, the Central Transmission Utility, the Long-term customers, or the person who has filed suggestions and objections, or any other person:

Provided further that the applicant shall always be given a reasonable opportunity of being heard before rejecting the application.”

12. In our order dated 29.2.2016, we had proposed to grant transmission licence to the petitioner company and directed for issue of public notice. In response to the public notice, no suggestions/objections have been received. We are satisfied that the petitioner company meets the requirements of the Act and the Transmission Licence Regulations for grant of transmission licence for the subject transmission system mentioned at para 1 of this order. Accordingly, we direct that transmission licence be granted to the petitioner, Alipurduar Transmission Limited, to establish the transmission system for “Transmission System strengthening in Indian system for transfer of power from new HEPs in Bhutan” on Build, Own, Operate and Maintain basis as per the details given in para 1 above.

13. The grant of transmission licence to the petitioner is subject to the fulfillment of the following conditions throughout the period of licence:

(a) The transmission licence shall, unless revoked earlier, remain in force for a period of 25 years;

(b) The transmission licensee shall comply with the provisions of the Transmission Licence Regulations or any subsequent enactment thereof during the period of subsistence of the licence.

(c) Since the expiry date as per the TSA is 35 years from the scheduled COD of the project, the petitioner may make an application, two years before the expiry of initial licence period, for grant of licence for another term in accordance with Regulation 13 (2) of the Transmission Licence Regulations which shall be considered by the Commission in accordance with law;

(d) The petitioner shall not enter into any contract for or otherwise engage in the business of trading in electricity during the period of subsistence of the transmission licence;

(e) The petitioner shall have the liability to pay the license fee in accordance with the provisions of the Central Electricity Regulatory Commission (Payment of Fees) Regulations, 2012, as amended from time to time or any subsequent enactment thereof. Delay in payment or non-payment of licence fee or a part thereof for a period exceeding sixty days shall be construed as breach of the terms and conditions of the licence;

(f) The petitioner shall comply with the directions of the National Load Despatch Centre under Section 26 of the Act, or the Regional Load Despatch Centre under sub-section (3) of Section 28 or sub-section (1) of Section 29 of the

Act, as may be issued from time to time for maintaining the availability of the transmission system;

(g) The petitioner shall remain bound by the Central Electricity Regulatory Commission (Standard of Performance of inter-State Transmission Licensees) Regulations, 2012 or subsequent enactment thereof.

(h) The petitioner shall provide non-discriminatory open access to its transmission system for use by any other licensee, including a distribution licensee or an electricity trader, or generating company or any other person in accordance with the Act, Central Electricity Regulatory Commission (Open Access in inter-State Transmission) Regulations, 2008 and Central Electricity Regulatory Commission (Grant of Connectivity, Long-term Access and Medium-term Open Access in inter-State Transmission and related matters) Regulations, 2009 as amended from time to time and Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2010 as amended from time to time;

(i) The petitioner shall not undertake any other business for optimum utilization of the transmission system without prior intimation to the Commission and shall comply with the provisions of the Central Electricity Regulatory Commission (Sharing of revenue derived from utilization of transmission assets for other business) Regulations, 2007, as amended from time to time;

(j) The petitioner shall remain bound by the Central Electricity Regulatory Commission (Sharing of inter-State Transmission Charges and Losses) Regulations, 2010 as amended from time to time;

(k) The petitioner shall remain bound by the provisions of the Act, the rules and regulations framed thereunder, in particular the Transmission Licence Regulations, the Grid Code, the Standards specified by the Central Electricity Authority, orders and directions of the Commission issued from time to time; and

(l) The petitioner shall ensure execution of the project within timeline specified in the Schedule 3 of the TSA and as per the Technical Standards and Grid Standards of CEA prescribed in Article 5.1.1 and Article 5.4 of the TSA.

(m) The petitioner shall as far as practicable coordinate with the licensee (including deemed licensee) executing the upstream or downstream transmission projects and the Central Electricity Authority for ensuring execution of the project in a matching timeline.

14. Central Electricity Authority shall monitor the execution of the project and bring to the notice of the Commission any lapse on the part of the licensee to meet the schedule for further appropriate action in accordance with the provisions of the Act and Transmission Licence Regulations.

15. A copy of this order shall be sent to CEA for necessary action.

16. Petition No. 6/TL/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