

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 80/TL/2017

Coram:

Shri Gireesh B. Pradhan, Chairperson

Shri A.K.Singhal, Member

Shri A.S.Bakshi, Member

Dr. M.K.Iyer, Member

Date of Order: 20th of June, 2017

In the matter of

Application under Section 14 read with Section 15(1) of the Electricity Act, 2003 for grant of Transmission Licence to NER-II Transmission Limited.

And

In the matter of

NER-II Transmission Limited
F-1, The Mira Corporate Suites 1 & 2 Ishwar Nagar,
Okhla Crossing, Mathura Road,
New Delhi-110 065

..... **Petitioner**

Vs

1. Assam Electricity Gird Corporation Limited
4th Floor, Bijulee Bhawan, Paltan Bazar,
Guwahati-I, Assam-781 001

2. Tripura State Electricity Corporation Limited
Bidyut Bhawan, Banamalipur,
Agartala, Tripura

3. Meghalaya State Power Distribution Company Limited
Lum Jingshai, Sort Round Road,
Shillong, Meghalaya-793 001

4. Manipur State Power Distribution Company Limited
Electricity Complex, Patta No. 1293 under 87(2), Khwai Bazar,
Keishampat, District-Imphal West, Manipur-795 001

5. Department of Power,
Government of Arunachal Pradesh
Vidyut Bhawan, Itanagar,
Arunachal Pradesh-791 111

6. Department of Power
Government of Nagaland
A.G.Colony, Kohima, Nagaland-797 005

7. Power and Electricity Department
Government of Mizoram
Mizoram Secretariat, Annexure-II,
Treasury, Square Aizwal,
Mizoram

...Respondents

The following were present:

Shri TAN Reddy, NERTL
Shri Pulkit Sharma, NERTL
Ms. S.Sahai, NERTL
Shir Ankit Kumar, RECPTCL

ORDER

The Petitioner, NER-II Transmission Limited, 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 "NER System Strengthening Scheme-II (Part-B) and V" (hereinafter referred to as "Transmission System") on Build, Own, Operate and Maintain (BOOM) basis comprising the following elements:

Sr.No.	Scheme/ Transmission Works	Scheduled COD in months from effective date
NERSS-II (Part-B)		
1.	Biswanath Chariyalli (POWERGRID)- Itanagar 132 kV D/c (Zebra Conductor) line Line Bays: <ul style="list-style-type: none">• Itanagar S/S (Arunachal Pradesh): 2 nos. 132 kV line bays for termination of Biswanath Chariyalli (POWERGRID)-Itanagr 132 kV D/c (Zebra conductor) line	36 months
2.	Silchar (POWERGRID)- Misa (POWERGRID) 400 kV D/c (Quad) line	44 months
3.	LILO of one circuit of Biswanath Chariyalli (POWERGRID)- Itanagar 132 kV D/C line at Gohpur (AEGCL)	36 months
NERSS V		

1.	<p>Establishment of 400/132 kV, 7x105 MVA Single phase (including one spare) S/S at Surajmaninagar</p> <p>400 kV</p> <ul style="list-style-type: none"> • ICTs: 400/132 kV, 7x105 MVA single phase (including one spare) • ICTs bays: 2 no. • Line bays: 4 no. [2 no. for Palatana- Surajmaninagar and 2 no. for Surajmaninagar- P.K. Bari 400 kV D/C Line] • Bus reactor: 2x125 MVAR • Bus reactor bays: 2 no. • Space for future line bays (incl. Space for sw, line reactor): 6 no. • Space for ICT bays: 1 no. <p>132 kV</p> <ul style="list-style-type: none"> • ICTs bays: 2 no. • Line bays: 2 no. [2 no. for Surajmaninagar (TSECL)- Surajmaninagar (TBCB) 132 kV line with high capacity/HTLS (Equivalent to single moose)] • Space for future line bays: 6 no. • Space for ICT Bays; 1 no. <p>Space for future 400/132 kV, 315 MVA ICT TSP is free to choose the location of Surajmaninagar S/s within a radius of 10 km from the Surjamaninagar (TSECL) S/s.</p>	40 months
2.	<p>Establishment of 400/132 kV, 7x105 MVA Single phase (including one spare) S/s at P.K. Bari</p> <p>400 kV</p> <ul style="list-style-type: none"> • ICTs: 400/132 kV, 7x105 MVA single phase (including one spare) • ICTs bays: 2 no. • Line bays: 4 no. [2 no. for Surajmaninagar- P.K. Bari and 2 no. for P.K. Bari-Silchar 400 kV D/c Line] • Bus reactor: 2x125 MVAR • Bus reactor bays: 2 no. • Space for future line bays (incl. Space for sw, line reactor): 6 no. • Space for ICT bays: 1 no. <p>132 kV</p> <ul style="list-style-type: none"> • ICTs bays: 2 no. • Line bays: 2 no. [2 no. for P.K. Bari (TSECL) – P.K. Bari (TBCB) 132 kV D/c Line with high capacity/ HTLS (Equivalent of single moose)] • Space for future line bays: 6 no. • Space for ICT Bays; 1 no. <p>Space for future 400/132 kV, 315 MVA ICT</p>	40 months
3.	Surajmaninagar- P.K. Bari 400 kV D/C line with Twin ACSR Moose	40 months
4.	AGTPP (NEEPCO)- P.K. Bari (TSECL) 132 kV D/C line with high capacity HTLS Conductor (equivalent to single moose ampacity at 85°C)	36 months
5.	2 no. 132 kV line bays each at AGTPP (NEEPCO) and	36 months

	P.K. Bari (TSECL)	
6.	2 no. 400 kV line bays at Palatana GBPP switchyard for termination of Palatana- Surajmaninagar 400 kV D/C Line	40 months

2. Based on the competitive bidding carried out by REC Transmission Projects Company Limited (hereinafter referred to as RECTPCL) in accordance with the Guidelines issued by Ministry of Power, Govt. of India under Section 63 of the Act, M/s Sterlite Grid 4 Limited emerged as the successful bidder with the lowest levelized transmission charges of ₹ 4316.53 million/annum.

3. The Commission after considering the application of the Petitioner in the light of the provisions of the Act and the 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 23.5.2017 is extracted as under:

“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. M/s Sterlite Grid 4 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 M/s Sterlite Grid 4 Limited by the BPC on 22.2.2017. BPC vide letter dated 25.3.2017 extended the last date of completion of various activities up to 6.4.2017. Accordingly, the Petitioner filed the present petition on 5.4.2017. M/s Sterlite Grid 4 Limited has acquired 100% stake in the NER II Transmission Limited which has been transferred to the Petitioner on 31.3.2017 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 9.6.2017.”

4. A public notice under Section 15 (5) of the Act was published on 31.5.2017 in all editions of Times of India and Dainik Jagran. No suggestions/objections have been received from the members of the public in response to the public notice.

5. The Petitioner, vide order dated 23.5.2017, 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 30.5.2017 has submitted that all claims, if any, shall be in accordance with the provisions of the RfP documents. The Petitioner has further submitted that the terms of the TSA are binding on the parties (TSP and LTTCs). The Petitioner has submitted that Section 56 of the Indian Contract Act, 1872 provides for frustration of contract and impossibility of performance, etc. and the Commission in number of cases has been giving reliefs in terms of the above provision of Indian Contract Act, 1872. The Petitioner has submitted that in terms of Section 28 of the Indian Contract Act 1872, no restraint in taking legal proceedings in future can be validly placed. 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 submitted that claim, if any, made by the Petitioner need to be dealt with in accordance with the provisions of the RfP documents and the TSA. We direct that the Petitioner shall remain bound by the commitment given by it under affidavit dated 30.5.2017.

7. In our order dated 23.5.2017, 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 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 30.5.2017, has submitted as under:

“12. In compliance to the terms of the TSA, the petitioner has deployed external agencies which monitor the quality of the construction of the Transmission Project being constructed by the petitioner as per the standards set out in the TSA. Further, the petitioner under the TSA is entrusted with the obligation of providing on a monthly basis a progress report to all the Long term Transmission Customer and Central Electricity Authority (CEA), with regard to the project and its execution, to enable them to monitor and co-ordinate the development of the Project. Further, it is most respectfully submitted that in terms of the TSA, the Lead LTTC is duty bound to inspecting the progress of the Project in addition to the progress reviews by MOP. In addition, the CEA may carry out random inspections during the Project execution, as and when deemed necessary by it.

13. The TSA further provides that TSP i.e. the Petitioner must ensure that the design and construction of the project is in accordance with Indian Standards and Codes issued by the Bureau of Indian Standards and in case they are not applicable, other equivalent internationally recognized Standards and Codes shall be followed. Further, in terms of the TSA, the petitioner is also responsible for constructing and commissioning the Project in accordance with the norms prescribed in various Regulations issued by the CEA Prudent Utility Practices and other applicable Laws.

14. In terms of above quoted provisions of the TSA, there are sufficient check and balances by which both the CEA and the Lead LTTC will monitor the overall quality of construction of the Project by the Petitioner.”

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. 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.”

11. In our order dated 23.5.2017, 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, NER-II Transmission Limited, to establish the transmission system for “NER System Strengthening Scheme-II (Part-B) and V” on Build, Own, Operate and Maintain basis as per the details given in para 1 above.

12. The grant of transmission licence to the Petitioner (hereinafter ‘licensee’) 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 licensee 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 licensee 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 licensee 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 licensee 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 licensee 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 licensee 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 licensee 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 licensee 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 licensee 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 licensee 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 licensee 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.
13. 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.
14. A copy of this order shall be sent to CEA for information and necessary action.
15. Petition No. 80/TL/2017 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