

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 89/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: 12th 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 Kohima-Mariani Transmission Limited.

And

In the matter of

Kohima-Mariani Transmission Limited
A-63, FIEE Complex,
Okhla Industrial Area Phase-II
New Delhi-110 020

..... **Petitioner**

Vs

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

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

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

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

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

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

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

.....Respondents

The following were present:

Shri Rishi Agarwal, Advocate, KMTL
Shri K.Choudhery, KMTL
Shri Sanjay Nayak, PFCCL
Shri N.C.Gupta, PFCCL
Shri Ritu Raj, PFCCL

ORDER

The Petitioner, Kohima-Mariani Transmission Limited (KMTL), 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 of electricity for North Eastern Region Strengthening Scheme-VI (NERSS-VI)" (hereinafter referred to as "Transmission System") on Build, Own, Operate and Maintain (BOOM) basis comprising the following elements:

S.No.	Scheme/ Transmission Works	Conductor Specifications/ Configuration	Completion Target
(a)	Establishment of 400/220 kV, 7X167 MVA (Single Phase including one spare) S/S at New Kohima 400KV <ul style="list-style-type: none">• ICTs: 400/220 kV, 7X167 MVA Single Phase (including one spare)• ICT Bays: 2 No.• Line Bays: 4 No.• Bus Reactor: 2X125 MVAR• 400 kV bus reactor bays: 2 No.• Space for Future Bays: 4 No. (along with space for switchable line reactor)		40 months from the effective date

	<p>220 KV</p> <ul style="list-style-type: none"> • ICTs bays: 2 No. • Line Bays: 2 No. • Space for Future Bays: 6 No. <p>Space for 400/220 kV, 3X167 MVA ICT along with associated bays</p>		
(b)	Imphal-New Kohima 400 kV D/C line	Twin Moose ACSR The transmission lines shall have to be designed for a maximum operating conductor temperature of 85 Deg C for ACSR	40 months from the effective date
(c)	New Kohima-New Mariani 400 kV D/C line	Twin Moose ACSR The transmission lines shall have to be designed for a maximum operating conductor temperature of 85 Deg C for ACSR	40 months from the effective date

2. The Petitioner has made the following prayers:

- “(a) Grant transmission licence to Kohima-Mariani Transmission Ltd. with respect to the transmission system described at para 1 of this application;
- (b) Allow Transmission System for “transmission of electricity for North Eastern Region Strengthening Scheme-VI (NERSS-VI)” to be part of Transmission Service Agreement approved by the Commission under POC Charges Regulations CERC (Sharing of Inter State Transmission Charges and Losses) Regulations, 2010; and
- (c) Pass such other order/orders, as may be deemed fit and proper in the facts & 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, PFC Consulting Limited (hereinafter referred to as PFCCL) was notified by Government of India, Ministry of Power vide Notification No. 2454, dated 17.11.2015 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 of electricity for North Eastern Region Strengthening Scheme-VI (NERSS-VI)" through tariff based competitive bidding process.

4. PFCCL in its capacity as the BPC initiated the bid process on 14.1.2016 and completed the process on 31.3.2017 in accordance with the Guidelines. M/s Kalpataru Power Transmission Limited was selected as the successful bidder having quoted the lowest levelized transmission charges of Rs. 2027.43 million/annum in order to establish the Transmission System for transmission of electricity for North Eastern Region Strengthening Scheme-VI (NERSS-VI)" and to 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.	Department of Power, Government of Arunachal Pradesh
2.	Assam Electricity Grid Corporation Limited
3.	Manipur State Power Distribution Company Limited
4.	Meghalaya Energy Corporation Limited
5.	Department of Power and Electricity, Government of Mizoram
6.	Department of Power, Government of Nagaland
7.	Tripura State Electricity Corporation Limited

5. The Petitioner has submitted that three bidders submitted their offers at RfP stage through MSTC portal. RfP (non-financial) bids of all the three bidders were opened online through MSTC portal by the Bid Evaluation Committee (BEC) and the hard copies of the same alongwith the bid bond were opened on 25.11.2016 in the presence of Bid Evaluation Committee and the representatives of the Bidders. Bid Evaluation Committee recommended all three bidders for opening the financial bids. RfP (Financial) Bids Initial Price Offer of the three bidders was opened online by the BEC on 12.1.2017. The lowest Initial Price Offer (IPO)

discovered (Best Deal) at MSTC portion was Rs. 2148.21 million/annum which was communicated to all three bidders for participating in the e-reverse bidding process. The e-reverse bidding was carried out at MSTC portion on 13.1.2017. All three bidders participated in the e-reverse bidding. Based on the e-reverse bidding, BEC declared M/s Kalpataru Power Transmission Limited as the successful bidder with the lowest levelized transmission charges of Rs. 2027.43 million per annum.

6. Consequent to its selection as the lowest bidder, Letter of Intent (LoI) was issued to M/s Kalpataru Power Transmission Limited by the BPC on 17.1.2017 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 Kohima Mariani Transmission Limited from PFCCL along with all its related assets and liabilities;
- (d) To execute RfP project document including Transmission Service Agreement (TSA) with LTTCs;
- (e) Make an application to the Central Commission for adoption of transmission charges, as required under Section 63 of the Electricity Act, 2003;
- (f) To apply to the Central Commission for grant of transmission licence.

7. The Petitioner has submitted that M/s Kalpataru Power Transmission Limited (KPTL) has acquired one hundred percent equity holding in Kohima Mariani Transmission Limited on 31.3.2017. 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 Kalpataru Power Transmission Limited.

8. Section 14 of the Act provides that the Appropriate Commission may, on an application made under Section 15 of the Act, grant a licence to any person to transmit electricity as a transmission licensee in any area as may be specified in the licence. The word "person" has been defined in Section 2(49) of the Act to include any company or body corporate or association or body of individuals whether incorporated or not or artificial juridical person. The Petitioner has been incorporated under the Companies Act, 1956. The main object of the Petitioner company is as under:

"To plan, promote and develop an integrated and efficient power transmission system network in all its aspects including planning, investigations, research, design and engineering, preparation of preliminary, feasibility and definite project reports, construction, operation and maintenance of transmission lines, substation, 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 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 provides 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 dated 8.2.2016 had issued prior approval to the project under Section 68 of the Act. The selection of the project developer, KMTL 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 Kohima Mariani Transmission Limited with respect to the transmission system as per the details given in para 1 above.

12. The Petitioner has made the application as per Form-1 and paid the fee of Rs. 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 M/s Kalpataru Power Transmission Limited which have been recommended by the Bid Evaluation Committee for acceptance, is Rs. 2027.43 million/annum. The Petitioner has also enclosed copies of the

recommendations of the Bid Evaluation Committee and proof of making the evaluation report public by the BPC as per the Guidelines.

13. The Petitioner has published the notices of its application for grant of transmission licence in terms of Regulation 7 (7) of the Transmission Licence Regulations. The Petitioner, vide its affidavit dated 16.5.2017, has placed on record the relevant copies of the newspapers published on 11/12.5.2017 in 'Sangai Express' (Imphal and Manipur Editions) and 'The Telegraph' (Assam, Nagaland, Manipur, Mizoram, Meghalaya and Tripura editions) along with their corrigendum dated 15.5.2017.

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

15. The petition was heard on 25.5.2017. Learned counsel for 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 18.4.2017 has recommended for grant of transmission licence to the Petitioner. Relevant portion of the said letter dated 18.4.2017 is extracted is as under:

“The scheme was agreed in the 5th NER Standing Committee Meeting held on 8.8.2015, 15th NERPC meeting held on 21.8.2015 and 35th meeting of Empowered Committee on Transmission held on 14.9.2015. Subsequently, CEA vide letter dated 7.10.2016 incorporated certain modifications in the scope of works of the scheme. The revised scope has been included in the RfP documents however, the same is to be ratified in the forthcoming NER-SCMNERPC/Empowered Committee meetings. The scope of works mentioned in the application is the revised scope approved by CEA.

As per the application, subsequent to certification by the Bid Evaluation Committee as successful bidder in the Tariff Based Competitive Bidding (TBCB) process, M/s Kalpataru Power Transmission Limited emerged has acquired M/s KMTL on 31.3.2017 after execution of the 100% Share Purchase Agreement (SPA).

Based on the details furnished by M/s KMTL and in line with Section 15(4) of the Electricity Act, 2003, POWERGRID as CTU, recommends grant of transmission licence to M/s KMTL for the above scope of work with the commissioning schedules as mentioned in the RfP documents.”

17. We have considered the submissions of the Petitioner and perused the 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 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 M/s Kalpataru Power Transmission Limited by the BPC on 17.1.2017. BPC vide letter dated 31.3.2017 extended the last date of completion of various activities up to 10.4.2017. The Petitioner filed petition for grant of transmission licence on 12.4.2017. However, the Petitioner filed the petition through e-filing portal on 7.4.2017. M/s Kalpataru Power Transmission Limited has acquired 100% stake in the Kohima-Mariani Transmission Limited which has been transferred to the KPTL 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 transmission licence aforesaid. The objections or suggestions, if any, be filed by any person before the Commission by 3.7.2017.

18. It is pertinent to mention that the Commission in Petition No. 90/AT/2017 has directed the BPC to explain the reasons for the wide variation between the tariff discovered through competitive bidding and tariff worked out as per the tariff norms of the Regulations of the Commission. Issue of public notice under Section 15 (5) of the Act and subsequent decision in this petition shall be subject to the outcome of the decision in Petition No. 90/AT/2017.

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 30.6.2017 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 workman like 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 Indian Standards. Accordingly, the Petitioner is directed to submit the information by 30.6.2017 with regard to quality control mechanism available or to be put in place by it to ensure the compliance of the requirements stipulated in Article 5.1.1 and Article 5.4 of the TSA.

20. The petition shall be listed for hearing on 6.7.2017.

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

sd/-
(A.S. Bakshi)
Member

sd/-
(A.K. Singhal)
Member

sd/-
(Gireesh B.Pradhan)
Chairperson