

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 94/TL/2018

Coram:

Shri P.K.Pujari, Chairperson

Shri A.K.Singhal, Member

Dr. M.K.Iyer, Member

Date of Order: 27th of August, 2018

In the matter of

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

And

In the matter of

Fatehgarh-Bhadla Transmission Limited
First Floor, Urjanidhi,
1, Barakhamba Road, Connaught Place,
New Delhi 110001

..... **Petitioner**

Vs

1. Adani Renewable Energy Park Rajasthan Limited
Achalraj Building, Opp Mayor Bungalow,
Law Garden, Ahmedabad-380 006

2. Shri C. Gangopadhyay, CEO
PFC Consulting Limited,
First Floor, Urja Nidhi,
1, Barakhamba Road, Connaught Place,
New Delhi 110001

3. Chief Executive Officer, CTU Planning,
Power Grid Corporation of India Limited,
Saudimini, Plot No. 2, Sector-29,
Gurgaon-122 001

.....**Respondents**

The following were present:

Shri Tanmay Vyas, FBTL
Miss Joyti Prasad, CTU
Shri Swapnil Verma, CTU

ORDER

The Petitioner, Fatehgarh-Bhadla 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 Ultra Mega Solar Park in Fatehgarh, District Jaisalmer, Rajasthan (hereinafter referred to as "Transmission System") on Build, Own, Operate and Maintain (BOOM) basis comprising the following elements:

S.No.	Name of the Transmission Element	Completion Target	Conductor per phase
1.	Establishment of 400 kV Pooling Station at Fatehgrah	30.9.2019	
2.	Fatehgarh Pooling station-Bhadla (PG) 765 kV D/C line (to be operated at 400 kV).		Hexa Zebra ACSR The transmission lines shall have to be designed for a maximum operating conductor temperature of 85 deg C for ACSR.
3.	2 Nos. of 400 kV line bays at Fatehgarh Pooling Station		
4.	1X125 MVAR Bus reactor at 400 kV Fatehgarh Pooling Station along with associated bay		
5.	Space for future 220 kV (12 Nos.) line bays		
6.	Space for future 400 kV (8 Nos.) line bays along with line reactors at Fatehgarh Pooling Station		
7.	Space for future 220/400 kV transformers (05 Nos.) along with associated transformer bays at each level.		
8.	Space for future 400 kV bus		

	reactor (2 Nos.) along with associated bays.		
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2. Based on the competitive bidding carried out by PFC Consulting Limited (hereinafter referred to as 'PFCCL') in accordance with the Guidelines issued by Ministry of Power, Govt. of India under Section 63 of the Act, M/s Adani Transmission Limited emerged as the successful bidder with the lowest levelised transmission charges of Rs 380.15 Million per annum in order to establish the transmission system for "Ultra Mega Solar Park in Fategarh" and to provide transmission service to the long term transmission customer of the project, namely Adani Renewable Energy Park Rajasthan.

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 transmission licence to the Petitioner. Relevant para of our order dated 4.6.2018 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 Adani 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 Adani Transmission Limited by the BPC on 21.2.2018. BPC vide letter dated 14.3.2018 extended the last date of completion of various activities up to 24.3.2018. Accordingly, the Petitioner filed the present petition on 16.3.2018. M/s Adani Transmission Limited has acquired 100% stake in the Fatehgarh-Bhadla Transmission Limited which has been transferred to the Petitioner on 14.3.2018 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 25.6.2018.”

4. A public notice under Section 15 (5) of the Act was published on 16.6.2018 in all editions of Hindustan Times (English) and Dainik Jagran (Hindi). No suggestions/objections have been received from the member of the public in response to the public notice.

5. The matter was listed for hearing on 5.7.2018. During the course of hearing, the representative of the CTU submitted that pursuant to the recommendation of CTU for grant of transmission licence to the Petitioner, LTTC, namely Adani Renewable Energy Park Rajasthan Limited (AREPRL) has issued force majeure notice to the Petitioner, which has been denied by the Petitioner. Therefore, the implementation of the project may be delayed. The representative of AREPRL submitted that as per the scope of work, AREPRL was required to provide land for pooling station to the Petitioner. However, land acquisition has been delayed due to stay order of the Hon`ble High Court of Rajasthan. Therefore, AREPRL is not able to provide land to the Petitioner.

6. Vide Record of Proceedings for the hearing dated 5.7.2018, CTU was directed to file its submission on the issue of force majeure notice issued by AREPRL and submit its recommendation once again in consultation with BPC in the light of the recent developments.

7. CTU Vide its affidavit dated 27.7.2018 has submitted that a meeting was held at CEA on 26.7.2018 in which the representatives of the Petitioner, Respondent, CEA, CTU and BPC were present. In the said meeting, the issue of force majeure was taken and it was agreed that CTU may recommend to the Commission for grant of transmission licence to the Petitioner. Relevant portion of the minutes of meeting dated 27.7.2018 is extracted as under:

“Chief Engineer PSPA-I, CEA informed that the scheme “Transmission system for Ultra Mega Solar Park in Fatehgarh, distt, Jaisalmer Rajasthan” is to be implemented through TBCB, for which SPV has already been transferred to the TSP “Fatehgarh-Bhadla Transmission Limited’ by BPC. The Solar Park developer i.e AREPRL vide their letter dated 4.6.2018 had given an intimation of Force Majeure event to M/s Fatehgarh-Bhadla Transmission Limited, CEA and CTU. In response, M/s Fatehgarh-Bhadla Transmission Limited has written to AREPRL to withdraw the notice and perform obligations as per the terms of the TSA.

In regard to above, CTU informed that hearing for grant of transmission licence to Fatehgarh-Bhadla Transmission Limited by CERC was held on 5.7.2018. During the hearing, representative of CTU had informed CERC about the Force Majeure issue raised by AREPRL. CERC in ROP has directed to CTU to submit its submissions on the issue of force majeure notice issued by AREPRL on an affidavit by 20.7.2018 and to submit its recommendation once again in consultation with BPC light of recent developments. To discuss the issue the present meeting has been convened.

AREPRL vide their letter dated 14.7.2018 has informed that the force majeure station come to an end resulting into delay of 59 days.

To a query about latest commissioning schedule of generation project, representative of AREPRL informed that they would make best efforts to commission the project by Sept 2019 as indicated in the TSA. In case, there is any delay, the relevant provisions of TSA shall be applicable.

Based on the above, it was agreed that CTU may recommend to CERC for grant of transmission licence to Fatehgarh-Bhadla Transmission Limited.”

8. CTU in its letter dated 27.7.2018 has further recommended for grant of transmission licence to the Petitioner. Relevant portion of the said letter dated 27.7.2018 is extracted is as under:

“1. This is in continuation to CTU recommendations vide letter dated 20.04.2018 on the above subject wherein it was informed that recommendations are subject

to approval of the scheme in Standing Committee for Power System Planning of NR.

2. M/s Fatehgarh- Bhadla Transmission Limited (FBTL) had filed an application dated 16th March 2018 to Hon'ble CERC seeking grant of Transmission License on Build, Own, Operate and Maintain (BOOM) basis, in accordance with the Hon'ble CERC Regulations, 2009 - Procedure, Terms and Conditions for grant of Transmission License and other related matters for "Transmission System for Ultra Mega Solar Park in Fatehgarh, Distt. Jaisalmer, Rajasthan" which includes the following elements:

- Establishment of 400kV Pooling Station at Fatehgarh
- Fatehgarh Pooling Station-Bhadla(PG) 765kV D/c line (to be operated at 400 kV)
- 2 nos. of 400kV line bays at Fatehgarh Pooling Station
- 1x125MVAr Bus reactor at 400kV Fatehgarh Pooling Station along with associated bay
- Space provision for future 220kV (12 nos.) line bays
- Space provision for future 400kV (8 nos.) line bays along with line reactors at Fatehgarh Pooling station
- Space provision for future 400/220 kV transformers (05 nos.) along with associated transformer bays at each level

3. A copy of the application for grant of transmission license was forwarded to POWERGRID, the Central Transmission Utility, whose recommendations are required U/S 15(4) of the Electricity Act, 2003 for the above transmission system.

4. Based on the application and subsequent discussion in 38th and 39th Standing Committee Meeting on Power System Planning of Northern Region held on 30.05.2016 and 29th-30th May 2017, CEA meeting held on 27.06.2017 and 37th Empowered committee meeting held on 20.09.2017, finalized scope of works is as given below:

- i. Establishment of 400kV pooling Station at Fatehgarh;
- ii. Fatehgarh Pooling Station-Bhadla (PG) 765kV D/c line (to be operated at 400kV)
- iii. 2 Nos. of 400kV line bays at Fatehgarh Pooling station.
- iv. 1x125 MVAR Bus reactor at 400kV Fatehgarh Pooling station along with associated bay.
- v. Space provision for future 220kV (12Nos.) line bays.
- vi. Space provision for future 400kV (8Nos.) line bays along with line reactors at Fatehgarh Pooling Station.
- vii. Space provision for future 220/400kV transformer (04 Nos.) along with associated transformer bays at each level.
- viii. Space provision for future 400kV bus reactor (2Nos.) along with associated bays.

5. The above scope has also been agreed in 40th Standing Committee Meeting on Power System Planning of Northern Region held on 22.06.2018 (Minute of Meeting awaited).

6. Further, vide ROP dated 5.07.2018, the Hon'ble CERC had directed CTU to submit its recommendations once again in consultation with BPC.

7. In this regard, a meeting was held at CEA on 26.07.2018, with participation from CEA, CTU, BPC - PFFCL, the Petitioner - Fatehgarh-Bhadla Transmission Limited and the Respondent - Adani Renewable Energy Park Rajasthan Limited, wherein the said issue of force majeure was taken up and the following emerged:

“AREPRL vide their letter dated 14.7.2018 has informed that the force majeure situation has come to an end resulting into delay of 59 days.

To a query about latest commissioning schedule of generation project, representative of AREPRL informed that they would make best efforts to commission the project by September, 2019 as indicated in the TSA. In case, there is any delay, the relevant provisions of TSA shall be applicable.

Based on the above, it was agreed that CTU may recommend to CERC for grant of transmission licence to Fatehgarh- Bhadla Transmission Limited.”

8. In line with Section 15(4) of the Electricity Act, 2003, keeping above facts in view, based on the details furnished by MIs Fatehgarh-Bhadla Transmission Limited and CERC directions vide ROP dated 05.07.2018, POWERGRID as CTU recommends grant of transmission license to MIs Fatehgarh-Bhadla Transmission Limited for "Transmission System for Ultra Mega Solar Park in Fatehgarh, Distt. Jaisalmer, Rajasthan."

9. The Petitioner, vide order dated 4.6.2018, 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 the RfP and or adjudication of any claim of the petitioner arising under the TSA. In response, the Petitioner vide its affidavit dated 18.6.2018 has submitted that the claims, if any, shall be in accordance with the provisions of the RfP project documents. The Petitioner has submitted that bidding process was governed by the Tariff Based Competitive Bidding Guidelines for the Transmission Services and Standard Bidding Documents issued by the Ministry of Power. The tariff quoted inter-alia takes into consideration the rights and obligations of the developer including the provisions available to claim time and cost variations as allowed in the TSA. The Petitioner has further submitted that the terms of the TSA are binding on the parties (TSP and LTTCs). The Petitioner has submitted that any claim for

escalation in transmission charges or for extension of time that may be raised by the Petitioner in pursuance of such competitive bidding process need to be dealt with in accordance with terms contained in the TSA. 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 as per the provisions of law. 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."

10. The Petitioner has submitted that claims, if any, made by the Petitioner shall be in accordance with the provisions of the RfP Project. We direct that the Petitioner shall remain bound by the commitment given by it under affidavit dated 25.6.2018.

11. In our order dated 4.6.2018, 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.

12. The Petitioner, vide its affidavit dated 18.6.2018 has submitted as under:

“12. According to the terms of the TSA, there are two external agencies, viz CEA and Lead LTTC, which monitor the quality of the construction of the Transmission Project being constructed by the Applicant. Further, the Applicant 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 designate, at the most 3 employees for the purpose of inspecting the progress of the Project. In addition, the CEA may carry out random inspections during the Project execution, as and when deemed necessary by it....

16. ... In terms of the above quoted provisions of the TSA there are sufficient checks and balances and the quality control mechanism is already available whereby both, CEA and the Lead LTTC will monitor the overall quality of construction of the Project by the Applicant to ensure that the Applicant is complying with Article 5.1.1 and 5.4 of the TSA.

18. .. The Applicant being an experienced entity will ensure that the project is constructed by following the required quality standard and prudent utility practices by putting in place the following:

(i) At the procurement stage, the Qualification Requirement for short listing's of a supplied/contractor is done on the basis of the technical specifications as mentioned in the TSA. The purchase order/contract mentions the technical standard and the testing requirements. Material despatch is allowed after the conformance report is validated.

(ii) For tower material, a Manufacturing Quality Plan (MQP) in line with the applicable technical standards and the one followed by CTU is followed.

(iii) For ensuring construction quality, a Field Quality Plan (in line with the standards mentioned in TSA and that followed by CTU) is specified to the contractors in advance. The conformance report to the said document is also maintained at site.

(iv) The construction and material supply quality is also validated with respect to the TSA by the Lende4rs Independent Engineer during its quarterly construction review.”

13. 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.

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

“7. (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.”

15. In our order dated 4.6.2018, 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. CTU vide its letter dated 27.7.2018 has again recommended for grant of transmission licence to the Petitioner. 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, Fatehgarh-Bhadla Transmission Limited to establish “Transmission System for Ultra Mega Solar Park in Fatehgarh, Distt

Jaisalmer, Rajasthan.” on Build, Own, Operate and Maintain (BOOM) basis comprising the elements as mentioned in para 1 above.

16. The grant of transmission licence to the Petitioner (hereinafter referred to as the “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 and the terms and conditions of the TSA 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 thereto;

(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 or any subsequent re-enactment thereof;

(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 and para 9 of this order.

(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.

(n) The licensee shall submit all such report or information as may be required under Transmission Licence Regulations, Standard of Performance Regulations, Transmission Service Agreement or any other regulation of the Commission or as per the directions of the Commission as may be issued from time to time.

17. 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.

18. A copy of this order shall be sent to CEA for information and necessary action.

19. Petition No. 94/TL/2018 is disposed of in terms of the above.

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

sd/-
(A.K. Singhal)
Member

sd/-
(P.K.Pujari)
Chairperson