

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Coram

1. Dr. Pramod Deo, Chairperson
2. Shri Bhanu Bhushan, Member
3. Shri R. Krishnamoorthy, Member
4. Shri S.Jayaraman, Member

Petition No. 28/2008

With

I.A.No. 38/2008

In the matter of

Application for grant of transmission licence for Western Region System Strengthening Scheme-II (Project-C) to Western Region Transmission (Gujarat) Pvt. Ltd.

And in the matter of

Western Region Transmission (Gujarat) Pvt.Ltd., Mumbai **Petitioner**
Vs

1. Power Grid Corporation of India Limited, Gurgaon
 2. Maharashtra State Electricity Distribution Company Limited, Mumbai
 3. Gujarat Urja Vikas Nigam Ltd., Vadodra
 4. Chattisgarh State Electricity Board, Raipur
 5. Electricity Department, Govt. of Goa, Panaji
 6. Electricity Department, Admn. of Daman and Diu, Daman
 7. Electricity Department, Dadra and Nagar Haveli, Silvassa
 8. Madhya Pradesh Audyogik Kendra Vikas Nigam Ltd., Indore
 9. M. P. Power Trading Co. Ltd., Jabalpur
-Respondents**

The following were present

1. Shri J.J.Bhatt, Senior Advocate for applicant
2. Shri Venkatesh, Advocate for the applicant
3. Shri Kiran Alla, REPTL
4. Shri Amit Rawal, REPTL
5. Shri Alok Roy, WRT(M)PL
6. Shri L.N.Mishra, WRT(M)PL
7. Shri Rohit Singh, RETL
8. Shri C.Sudhakar, RETL
9. Shri V.M.Kaul, PGCIL
10. Shri B.A.Chandhan, PGCIL
11. Shri A.K.Dixit, PGCIL
12. Ms. Anjana Dhar, PGCIL
13. Ms. Ranjana Gaddu, PGCIL

14. Shri Vijay Kumar, PGCIL
15. Shri G.S.Trimukhe, MSEDCL
16. Shri Ravi Sharma, Advocate, MSEDCL
17. Shri P.J.Jani, GUVNL
18. Shri Sitesh Mukherjee, Advocate, Intervener, TPCL
19. Shri Vishal Anand, Advocate, intervener, TPCL
20. Shri Sakya Singh Chaudhuri, Advocate, TPCL
21. Shri Parmod Chaudhery, MPPTCL

**ORDER
(DATE OF HEARING: 27.11.2008)**

The application has been made under sub-section (2) of Section 15 of the Electricity Act, 2003 (hereinafter to be referred to as ‘the Act’) for grant of transmission licence for construction, commissioning, operation and maintenance of the following transmission lines falling under the Western Region System Strengthening Scheme-II (hereinafter referred to as “the scheme”), Package-C:

- (i) Rajgarh-Karamsad 400 kV D/C transmission line;
- (ii) Limbdi (Chorania)-Vadavi (Ranchodpura) 400 kV D/C transmission line; and
- (iii) Vadavi (Ranchodpura)-Zerda (Kansari) 400 kV D/C transmission line;

2. Reliance Energy Transmission Limited (RETL), a subsidiary of Reliance Energy Ltd. had filed a petition, being Petition No. 85/2004 for grant of transmission licence for construction, maintenance and operation of the transmission lines and sub-stations forming part of the scheme. The Commission by its order dated 29.7.2005 had split up the scheme in four packages, named as ‘A’, ‘B’, ‘C’ and ‘D’. The Commission directed that

packages of the scheme identified as `A` and `D` would be implemented by the first respondent as the Central Transmission Utility (CTU) either on its own or by forming JV companies. Implementation of packages identified as `B` and `C` of the scheme were directed to be through private participation, through the process of tariff-based competitive bidding, and the responsibility of selection of the private parties was assigned to the CTU.

3. In accordance with procedure approved by the Commission for tariff based-competitive bidding, RETL (which emerged as the lowest bidder in the competitive bidding on 20.11.2006) was said to have qualified on the basis of qualifications of its holding company, Reliance Energy Ltd., which furnished the backup guarantee, and also undertook to provide the financial, technical and managerial support to RETL for execution of Package-C (hereinafter referred to as “the project”). The charges quoted by RETL on the basis of which it was declared successful, are contained in Annexure attached to this order.

4. Meanwhile, the CTU had pointed out that it had certain contingent liabilities in the project on account of “buy-out” provisions in the bidding documents, in the construction and operation phases and at the end of licence period. It was further stated that in view of the clarifications issued by Ministry of Finance vide letter dated 31.1.2007 on the applicability of Public Private Partnership Appraisal Committee (“PPPAC”) guidelines, PPPAC approval was needed before entrusting the project to the successful bidder for execution. The guidelines, as clarified, require PPPAC approval in case of the projects where the

assets created as public asset would revert to Government or public sector entity at the end of the concession period.

5. Acting on the advice of Ministry of Power, the CTU discussed the different aspects for modification of various project agreements proposed to be entered into between the CTU and the successful bidder, to comply with PPPAC guidelines and also in the light of recommendation of the A.K Khurana Committee constituted by the Ministry. In the meeting held on 29.8.2007, the following was agreed to:

- (a) Project format be changed from BOOT to BOO.
- (b) Buy-out provisions be deleted, for the reason of change of the project format.
- (c) Recommendations of Khurana Committee with respect to the Payment Security Mechanism be adopted.

6. As a consequence of the above decision to delete, `buy-out` provisions, the CTU through its letter dated 4.10.2007 addressed to the Secretary of the Commission, suggested modifications in the Implementation Agreement and the Power Transmission Agreement forming part of the bid documents and sought approval of the Commission for modifications, dispensing with `buy-out` provisions. Also, based on the recommendations of the Khurana Committee, the CTU recommended incorporation of Payment Security Mechanism in the agreements. The Commission in its order dated 29.10.2007 in Petition No. 8/2007 (suo motu) decided as under.

“4. As a consequence of the agreement to delete the “buy-out” provisions, PGCIL has suggested modifications in the Implementation Agreement (IA) and the Power Transmission Agreement (PTA), earlier termed as Transmission Service Provider Agreement (TSPA), forming part of the bid documents. PGCIL has sought concurrence/approval of the Commission to the modification in IA and PTA and dispensing with “buy out” arrangement. Similarly, based on the report of the A.K. Khurana Committee, PGCIL has recommended incorporation of Payment Security Mechanism in the agreements.

5. We note from the minutes of meeting taken by Secretary (Power) on 6.8.2007 that the question as to whether the deletion of the buy-out provisions would warrant any re-tendering was duly deliberated in the meeting, and it was concluded that “since no relaxation from the notified conditions was being made, and only a hardening of the contract conditions for the L1 bidder would take place by removal of the buy-out provision, re-tendering would not be required.

In view of the above, and the fact that the projects have already been delayed considerably, we direct the concerned parties to proceed further expeditiously.”

7. Subsequently, the CTU by its letter dated 12.11.2007, notified RETL as the prospective IPTC to establish the transmission lines associated with the project. Further, RETL, in the capacity of prospective IPTC initialled the draft Implementation Agreement with the CTU, while requesting that the Implementation Agreement be executed without meeting the pre-condition of initialling of the Transmission Service Provider Agreement/Power Transmission Agreement. The CTU issued letter of selection dated 22.11.2007 to RETL. The applicant, promoted by RETL as its wholly owned subsidiary company, to act as special purpose vehicle to implement the project has accordingly made the application.

8. The Central transmission Utility, vide its letter dated 30.4.2008, has recommended grant of licence to the applicant.

9. The applicant published public notices in the newspapers as required under sub-section (2) of Section 15 of the Act. In response to public notice published by the applicant, no objections were received.

10. The beneficiaries of the project were intimated by RETL of its selection and the need for signing the Power Transmission Agreement (within 60 days) through its communication dated 16.11.2007. The issue is said to have been pursued thereafter but the Power Transmission Agreement was not signed by the beneficiaries. On 15.1.2008 and 16.1.2008, the applicant is said to have held meetings with some of the beneficiaries, wherein it was suggested that the Power Transmission Agreement needed to be discussed at a common platform, namely WRPC so that a general consensus could be reached on various issues. Meanwhile, as per the fresh certificate of incorporation dated 22.1.2008, copy of which is available on record, name of the Reliance Energy Transmission Ltd. (RETL) has been changed to Reliance Power Transmission Ltd. (RPTL).

11. After consideration of the replies filed by the respondents and views of the Central Transmission Utility, the Commission by its order dated 27.6.2008 had proposed to grant licence to the applicant for construction and maintenance of the transmission lines associated with the project as given in opening para above.

12. A notice under clause (a) of sub-section (5) of Section 15 of the Act was published by the Commission, inviting suggestions/objections to the proposal of

the Commission. In response to the public notice, no objections and suggestions have been received

13. The applicant vide its affidavit dated 28.7.2008 had emphasized the difficulty arising out of non-signing of Power Transmission Agreement by the beneficiaries. At the hearing on 12.8.2008, the applicant pointed to the contents of letter dated 8.8.2008 addressed on behalf of the applicant to the first respondent, in which it was stated that since execution of the Implementation Agreement on 23.11.2007, the applicant had been pursuing with the beneficiaries to sign the Power Transmission Agreement but in spite of all efforts, the beneficiaries, the respondents herein, had been reluctant to engage in the process of finalization of Power Transmission Agreement. The applicant further pointed out that as per Article 3 of the Implementation Agreement, the Power Transmission Agreement should have been signed by 23.1.2008 and financial closure should have been achieved by 23.4.2008, but even after nearly 8 months from the date of signing of the Implementation Agreement, there was no sign or possibility of signing of the Power Transmission Agreement because of the consistent refusal by the beneficiaries to agree to the terms, though the project was stipulated to be completed by 31.3.2010.

14. At further hearing on 14.10.2008, learned senior counsel for the applicant had submitted that with delay of nearly 9 months in signing of PTA, it was not

possible to achieve the commercial operation within the agreed time schedule and sought:

- (a) extension of time in completion of the project, and
- (b) appropriate upward revision of transmission service charges by considering the escalation formula applied by first respondent.

15. Subsequent to the hearing held on 14.10.2008, and in terms of the liberty granted, the applicant has filed on 30.10.2008, a detailed affidavit, verified on 24.10.2008. The applicant in the said affidavit has sought extension of time by 9 months to complete the project. It has also sought approval for tariff as given in Annexure 7 (pages 93-94) of the affidavit.

16. Replies to this affidavit have been filed by the first, second and third respondents. These respondents in their replies have opposed both the proposals made by the applicant. The first respondent has submitted that re-determination of tariff independent of the tariff arrived at through the process of competitive bidding is unjustified, being contrary to the conditions specified in the bid documents. As regards extension of time for completion of the project, it has been stated that delay in execution of the project will seriously affect the commissioning of other inter-linked projects being executed by the first respondent itself. According to the second and third respondents, any change in the conditions, such as increase in tariff or extension of time for execution will impinge upon the sanctity of the bidding process.

17. When the matter was taken up, learned senior counsel for the applicant did not press for any direction for increase in tariff. He left this matter to be decided by the Commission, based on facts on record. He, however, strenuously argued in favour of extension of time for execution of the project.

18. Shri P.J.Jani, representative of the third respondent informed that issues related to the Power Transmission Agreement had been settled and it would take around 10 days to complete the procedural requirement such as approval of the Board before the Power Transmission Agreement was signed. He opposed the requests of the applicant, particularly that for upward revision of transmission service charges. It was argued that the applicant should approach the Commission for adoption of tariff already arrived at through the selection process under Section 63 of the Act. The representative of the third respondent stated that the applicants should build the assets as per tariff and timeframe contained in the bidding documents, else the project should be handed over to the first respondent so as to coincide with other elements of the scheme being developed by it. Learned counsel for the second respondent and representative of ninth respondent supported the views of the third respondent.

19. In response to the above submissions of the respondents, learned senior counsel for the applicant stated that considering the delay of 9 months, they had calculated the revised tariff after applying the escalation rates as specified by the first respondent for its own purposes, and tariff so calculated was still the lowest. As regards adoption of tariff, learned senior counsel stated that tariff

determination in the instant case did not fall strictly under Section 63 of the Act and accordingly, tariff was to be determined by the Commission under sub-section (1) of Section 62 read with sub-section (1) of Section 79 of the Act.

20. The representative of the first respondent submitted that bidders were selected based on tariff quoted, but it had no objection to the tariff being decided by the Commission. She submitted that under the bid documents, the first respondent could grant extension of time, and, therefore, this should not be really an issue at this stage. She urged that the licence be granted in favour of the applicant immediately so as to enable it to proceed with execution of the project, as timely completion of the project is of the greatest concern.

21. We have considered the submissions made on behalf of the parties. The present proceedings relate to grant of transmission licence. It is neither advisable nor possible for us to consider the question of determination/escalation of the transmission service charges in these proceedings. These proceedings were not under Section 63 of the Act. The regulations specified by the Commission lay down an elaborate process for approval of the transmission service charges. Therefore, we are not considering the enhancement of the transmission service charges, projected by the applicant in the affidavit filed on 30.10.2008, particularly when the enhancement was not insisted upon at the hearing.

22. The next question relates to extension of time for execution of the project. Normally, the Commission does not like to venture into the domain governed by the contractual arrangement between the parties. As per the procedure approved

by the Commission, selection of private parties was assigned to the Central Transmission Utility and appropriately, the first respondent as the Central Transmission Utility should consider the request by the applicant. It is, however, observed from the material available on record that immediately after signing of the Implementation Agreement, the applicant took up the matter with the respondents for signing of the Power Transmission Agreement. It took necessary steps to persuade the respondents who were reluctant to sign the Power Transmission Agreement because of certain concerns expressed by them. It is not necessary for us to pin-point the reasons or responsibility for delay in signing of the agreements. Nevertheless, time has been lost in the process. Under these circumstances, the applicant's prayer for extension of time cannot be said to be wholly unjustified. Again, if it is left to the first respondent to grant extension of time, it may get further delayed due to the internal processing and approvals that are required. The Commission considers that the commencement of the work and implementation of the project should not be allowed to be delayed further. In terms of the Implementation Agreement, the required commercial operation date of the project is 31.3.2010. However, in terms of clause 4.4.1 of the Implementation Agreement, the required commercial operations date may be extended up to 180 days by reason of one or more *force majeure* events and in case of further delay on account of *force majeure*, the required commercial operation date may be extended further beyond 180 days with the mutual consent of the parties. *Force majeure* events are defined in Section 9 of the Implementation Agreement. In our opinion, delay in signing of the Power

Transmission Agreement in the present case is of the nature of and analogous to *force majeure* events. Against this background, the Commission is satisfied that it will be in the interest of justice to grant extension of nine months from the date of completion contemplated in the Implementation Agreement so that the project gets implemented without further delay but the applicant shall not be entitled to increase in the transmission service charges by virtue of extension of time being allowed. We order accordingly.

23. We take this opportunity to call upon the respondents to expedite signing of the Power Transmission Agreement, if not already done, with a sense of urgency to avoid any further loss of time in commencement of construction of the project, and in any case complete the signing within the next 15 days from the date of issue of this order.

24. In view of the above and on consideration of the material on record, we direct that licence for transmission of electricity in favour of the applicant, Western Region Transmission (Gujarat) Pvt. Ltd. for the assets noted in the opening para above be issued. The licence granted shall be subject to the terms and conditions as contained in the Act, the rules prescribed by the Central Government and the Regulations specified by the Commission from time to time, including statutory amendment and re-enactment thereof as also the order dated 27.6.2008 *ibid*. The payment of licence fee during the validity of the licence shall be regulated in terms of fee notified by the Commission separately under the Central Electricity Regulatory Commission (Payment of Fees) Regulations, 2008.

The licence shall be valid for a period of 25 years, unless revoked earlier. The applicant is granted extension of time of nine months for completion of the project. The applicant shall co-ordinate its efforts with the first respondent so that critical elements of project having bearing on the packages being developed by the latter are taken up on urgent basis and the project is completed as early as possible. The applicant shall, however, not be entitled to any enhancement of tariff on account of extension of time allowed, as already decided.

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25. Tata Power Company Ltd. has filed this application with request for impleadment as intervenor to file substantive objections against any revision of the transmission service charges payable to the petitioner, by considering the escalation formula applied by the first respondent or otherwise. For the view we have taken on this issue, we feel that the application has become infructuous and is disposed of accordingly.

Sd/- **sd/-** **sd/-** **sd/-**
(S.JAYARAMAN) (R KRISHNAMOORTHY) (BHANU BHUSHAN) (DR. PRAMOD DEO)
MEMBER MEMBER MEMBER CHAIRPERSON
New Delhi dated 30th December 2008

ANNUAL TRANSMISSION CHARGES

Annexure

(Rs. in million)

RETL						
Year	Rajgarh – Karamsad 400 kV D/C transmission line		Limbdi – Vadavi 400 kV D/C transmission line		Vadavi – Zerda 400 kV D/C transmission line	
	Non Escalable	Escalable	Non Escalable	Escalable	Non Escalable	Escalable
1	394.450	1.980	150.040	0.750	252.120	1.270
2	374.920		142.610		239.640	
3	356.360		135.550		227.770	
4	338.720		128.840		216.500	
5	321.960		122.460		205.780	
6	306.020		116.400		195.600	
7	290.870		110.640		185.910	
8	276.470		105.160		176.710	
9	262.790		99.960		167.960	
10	249.780		95.010		159.650	
11	237.420		90.310		151.750	
12	225.660		85.840		144.240	
13	214.490		81.590		137.100	
14	203.880		77.550		130.310	
15	193.780		73.710		123.860	
16	184.190		70.060		117.730	
17	175.070		66.590		111.900	
18	166.410		63.300		106.360	
19	158.170		60.160		101.100	
20	150.340		57.190		96.090	
21	142.900		54.360		91.340	
22	135.830		51.660		86.810	