

ORDER
(DATE OF HEARING: 8.5.2008)

The application has been made under 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-B:

- (i) Parli (New)-Pune 400 kV D/C transmission line;
- (ii) Pune-Aurangabad 400 kV D/C transmission line;
- (iii) Parli (New)-Solapur (Limbi Chincholi) (New) 400 kV D/C transmission line;
- (iv) Solapur (Limbi Chincholi) (New)-Kolhapur 400 kV D/C transmission line;
- (v) LILO of Lonikhand-Kalwa 400 kV D/C transmission line at Pune; and
- (vi) LILO of Solapur (MSETCL)-Karad 400 kV D/C transmission line at Solapur (Limbi Chincholi) (New).

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-B (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 concession period.

5. Acting on the advice of Ministry of Power, the CTU discussed the aspects of 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:

- (a) Project format be changed from BOOT to BOO.
- (b) The 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.
- (d) Buy-out price on transfer of the project on expiry of licence was agreed to be nil.

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 (IA) and the Power Transmission Agreement (PTA) forming part of the bid documents and sought approval of the Commission for modifications in IA and PTA, 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 (“IA”) with the CTU, while requesting that the IA be executed without meeting the pre-condition of initialling of the Transmission Service Provider Agreement (“TSPA”)/Power Transmission Agreement (“PTA”). 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 beneficiaries of the project were intimated by RETL of its selection and the need for signing the PTA (within 60 days) through its communication dated 16.11.2007. The issue is said to have been pursued thereafter but the PTA is not yet 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 PTA need to be discussed at a common platform, namely WRPC so that a general consensus could be reached on the 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).

9. Gujarat Urja Vikas Nigam Ltd. (GUVNL) sought certain clarifications from the CTU and RETL/RPTL who furnished the clarifications through the letter dated 12.2.2008. The meeting of the applicant with the beneficiaries was held on 26.2.2008 at WRPC office. The meeting was also attended by the CTU. While various issues were discussed during the meeting, no decisions could be arrived at since the beneficiaries indicated that further discussions on PTA should take place only after the bid proposal of RETL/RPTL was made available to them.

10. The application has been made while the discussion on signing of PTA are going on. The applicant sent a copy of its application to the Central Transmission Utility in accordance with sub-section (3) of Section 15 of the Act. The applicant has also published notices of the application in the following newspapers:

- (a) Times of India : Mumbai, Pune, Nagpur, Ahmedabad
- (b) Lokmat : Aurangabad, Mumbai, Pune, Nagpur, Kolhapur, Sangli, Satara, Nashik, Solapur, Akola
- (c) Gujarat Samachar : Ahmedabad, Surat, Vadodara, Rajkot, Bhavnagar
- (d) Nvhind Times : Panaji
- (e) Tarun Bharat : Panaji
- (f) Central Chronicle : Bhopal
- (g) Nab Bharat : Bhopal, Jabalpur, Gwalior, Indore, Raipur
- (h) Indian Express : Baroda
- (i) Divya Bhaskar : Surat

11. We are informed that no objections have been received in response to the public notices. The Central Transmission Utility, vide its letter dated 30.4.2008, has recommended grant of licence to the applicant.

12. Based on the proceeding held on 8.5.2008, the applicant vide its affidavit dated 27.5.2008, has clarified certain issues. The applicant has submitted that it is a separate legal entity and shall abide by the applicable law and arrange its affairs to be in compliance with Section 41 of the Act. It has been stated that neither the applicant nor its holding company would enter into any contract or otherwise engage in the business of trading of electricity.

13. It is noted that the execution of the project was decided to be by RETL/RPTL, but the application for licence has been made by its subsidiary. On perusal of the bid documents, copies of which have been submitted by the applicant and the clarification furnished, execution of the project through wholly owned subsidiary of RETL/RPTL is allowed. It is noted that along with bid, two joint undertakings were submitted by RETL, out of which one was bank guarantee by Reliance Energy Ltd. for RETL and other was by RETL for the shell company to be constituted by it. On these considerations we find that the present application is in order.

14. The representative of GUVNL at the hearing and through its subsequent affidavit dated 22.5.2008, has submitted that as per clause No.2.2.7 of request for selection (RfS) of bidding document, the applicant is required to sign PTA with the beneficiaries before filing the application before the Commission for the grant of transmission licence. It has been urged that pending finalization and signing of

PTA, consideration of the application be held in abeyance. We are not inclined to accept the submission. As was earlier indicated by CEA, the project is to be completed by the end of current financial year. When seen in the light of this fact, it appears that the project is already delayed. Therefore, in our opinion the matter does not brook any delay.

15. Based on the material on record and above discussion, we are *prima facie* of the view that applicant can be issued licence for construction and maintenance of the transmission lines associated with the project and given in first para above. 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 suggestion, if any, be filed by any person before the Commission.

16. List for further directions on 29.7.2008, when a final view on grant of licence shall be taken.

17. The copy of this order shall also be sent to the respondents, the State utilities in the Western Region.

Sd/-
(R.KRISHNAMOORTHY)
MEMBER
New Delhi Dated, the 27th June 2008

sd/-
(BHANU BHUSHAN)
MEMBER

Annexure

(Rs in million)

RETL												
Year	Parli – Pune 400 kV D/C transmission line		Pune – Aurangabad 400 kV D/C transmission line		Parli – Solapur 400 kV D/C transmission line		Solapur – Kolhapur 400 kV D/C transmission line		LILO of Lonikhand – Kalwa 400 kV D/C transmission line at Pune		LILO of Solapur - Karad 400 kV D/C transmission line at Solapur	
Transmission Line Element Length	322.7		236.300		135.100		218.700		17.400		105.600	
	Non Escl.	Escl.	Non Escl.	Escl.	Non Escl.	Escl.	Non Escl.	Escl.	Non Escl.	Escl.	Non Escl.	Escl.
1	495.130	1.940	369.080	1.440	193.860	0.760	293.940	1.150	26.700	0.100	154.980	0.610
2	470.620		350.810		184.260		279.390		25.380		147.310	
3	447.330		333.440		175.140		265.560		24.130		140.020	
4	425.190		316.940		166.470		252.420		22.930		133.090	
5	404.140		301.250		158.230		239.920		21.800		126.500	
6	384.130		286.340		150.400		228.050		20.720		120.240	
7	365.120		272.170		142.950		216.760		19.690		114.290	
8	347.050		258.690		135.880		206.030		18.720		108.630	
9	329.870		245.890		129.150		195.830		17.790		103.250	
10	313.540		233.720		122.760		186.140		16.910		98.140	
11	298.020		222.150		116.680		176.920		16.070		93.280	
12	283.270		211.150		110.910		168.170		15.280		88.670	
13	269.250		200.700		105.420		159.840		14.520		84.280	
14	255.920		190.760		100.200		151.930		13.800		80.100	
15	243.250		181.320		95.240		144.410		13.120		76.140	
16	231.210		172.350		90.520		137.260		12.470		72.370	
17	219.760		163.810		86.040		130.470		11.850		68.790	
18	208.890		155.710		81.780		124.010		11.270		65.380	
19	198.550		148.000		77.740		117.870		10.710		62.150	
20	188.720		140.670		73.890		112.040		10.180		59.070	
21	179.380		133.710		70.230		106.490		9.670		56.150	
22	170.500		127.090		66.750		101.220		9.200		53.370	