

CENTRAL ELECTRICITY REGULATORY COMMISSION

Record of Proceedings

PETITION NO. 27/2008

Sub: Application for grant of transmission licence for Western Region System Strengthening Scheme-II (Project-B) to Western Region Transmission (Maharashtra) Pvt. Ltd.

PETITION NO. 28/2008

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

Date of hearing : 12.8.2008

Coram : Dr. Pramod Deo, Chairperson
Shri Bhanu Bhushan, Member, and
Shri R.Krishnamoorthy, Member

Applicants : Western Region Transmission (Maharashtra) Pvt. Ltd
Western Region Transmission (Gujarat) Pvt. Ltd

Respondents : Power Grid Corporation of India Limited, Gurgaon
Maharashtra State Electricity Distribution Company Limited, Mumbai
Gujarat Urja Vikas Nigam Ltd., Vadodra
Madhya Pradesh Power Transmission Company Ltd., Jabalpur
Chhattisgarh State Electricity Board, Raipur
Electricity Department, Govt. of Goa, Panaji
Electricity Department, Admn. of Daman and Diu, Daman
Electricity Department, Dadra and Nagar Haveli, Silvassa
Madhya Pradesh Audyogik Kendra Vikas Nigam Ltd., Indore
Central Electricity Authority, New Delhi
Western Regional Power Committee, Mumbai

Parties present : Shri Amit Kapoor, Advocate for applicants
Shri Venkatesh, Advocate for applicants
Shri Mansoor Ali Shakot advocate for applicants
Shri Alok Roy for applicants
Shri L.N.Mishra for applicants
Shri V.M.Kaul, PGCIL
Shri Vijay Kumar, PGCIL
Shri P.J.Jani, GUVNL
Shri Deepak Srivastava, MPPTCL

The Commission by its separate orders dated 27.6.2008 in these applications directed as under:

“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.”

2. Thereafter, the applications were heard on 29.7.2008. In the above hearing, none of the beneficiaries was present. Therefore, the Commission decided to adjourn the hearing of these applications to give another opportunity to the beneficiaries to hear their views.

3. Learned counsel for the applicants pointed to the contents of letter dated 8.8.2008 addressed on behalf of the applicants to Shri V.M. Kaul, Executive Director (BDD&PI) of Power Grid, a copy of which was also sent to the Secretary of the Commission on 11.8.2008. It was stated that since execution of Implementation Agreement (IA) with Power Grid on 23.11.2007, the applicants had been pursuing with the beneficiaries to sign the Power Transmission Agreement (PTA) but in spite of all efforts, the beneficiaries, the respondents herein, had been reluctant to engage in the process of finalization of PTA. Learned counsel pointed out that as per Article 3 of the IA, the PTA should have been signed by 23.1.2008 and financial closure should have been achieved by 23.4.2008. But even after nearly 8¹/₂ months from the date of signing of IA, there was no sign or possibility of signing of the PTA because of the consistent refusal by the beneficiaries to come to an agreement. He submitted that the beneficiaries continued to raise issue of determination of tariff by the Commission for the

period consequent to expiry of the validity of licence, based on asset value, which, the beneficiaries were insisting, must be pre-determined and reflected in the PTA. According to the learned counsel, the construction period post-signing of IA and PTA, was envisaged to be 30 months. However, with the prevailing conditions, the required date of commercial operation of 31.3.2010 which was just 19 months away, was not possible to achieve in the absence of signing of PTA, financial closure etc. He submitted that the delays were not attributable to the applicants. The learned counsel for the applicants stated that to salvage the project, the intervention of Power Grid was essential. He brought to the Commission's notice following issues raised in the letter dated 8.8.2008:

(a) Execution of the PTA with the beneficiaries consistent with the "BOO" project structure and Khurana Committee's recommendations on payment security mechanism;

(b) Extension of time of COD, by making available project implementation time of at least 30 months from the date of financial closure as was envisaged under original bid documents because of the delay by relaxing the vigours of negative consequences arising out of the delay; and

(c) Appropriate upward revision of transmission service charges to reflect the actual increase in prices on account of abnormal delay, occasioned for the reasons beyond the control of the applicants.

4. The representative of GUVNL stated that they were prepared to sign PTA as per the original bid documents, with modifications proposed in the Annexure-IX to the Power Grid's letter dated 4.10.2007, referred to by the Commission in its order dated 29.10.2007. Annexure-IX indicates comparison of Power Transmission Agreement (PTA)'s earlier version and modified version based on

recommendations of Khurana Committee and clarification dated 31.1.2007 of PPPAC guidelines. The representative of MPPTCL endorsed the views of GUVNL.

5. Shri V.M. Kaul, ED (BDD and PI), Power Grid stated that RETL has prepared a draft TSPA (now called PTA) for signing with the beneficiaries. This draft agreement was not as per Annexure-IX of Power Grid's letter dated 4.10.2007, even though contents of Annexure-IX were within the knowledge of the applicants. He pointed out that the revised draft PTA, had incorporated some more changes like transfer of LC to lenders etc., which were not being agreed to by the beneficiaries and the beneficiaries also wanted changes to accommodate their views in the PTA. He further stated that beneficiaries were not earlier agreeable to Payment Security Mechanism (PSM) recommended by the Khurana Committee. This had resulted into impasse. Shri Kaul pointed out that there was no question of agreeing, beyond the bidding framework, to the issues raised by the applicants in the letter dated 8.8.2008, the substance of which is given at para 3 above. He said that Power Grid was proceeding on schedule in execution of WR strengthening component it was entrusted with and any delay in the projects for which licenses have been sought by the applicant, would lead to serious difficulties.

6. It was clarified that issue of PSM had been dealt with in the Commission's order dated 11.7.2008 in Petition No.32/2008 regarding application for grant of transmission licence to Parbati Koldam Transmission Co. Ltd. The relevant portion is as under:

“21. During the hearing on 8.5.2008, a question had been raised regarding payment security mechanism. In the order dated 29.10.2007 in Petition No.8/2007 (suo motu), the Commission has stated as follows:

“We are reserving our views on the payment security mechanism (PSM) recommended in para 4 (iv) of the A.K. Khurana Committee’s report. While the parties may presently proceed with finalization of implementation agreement and power transmission agreement as per the modifications proposed in the annexure-VIII and IX of the PGCIL’s letter dated 4.10.2007, we expect a more appropriate PSM to emerge before the projects get commissioned. This should not hold up the progress on these projects, since the question of PSM can arise only after the projects get to the commercial operation stage”

22. We reiterate our views with a further clarification that till such time, a better mechanism is agreed to and placed in position, the payment security mechanism as per A.K. Khurana Committee’s recommendations shall be adopted for proceeding with the projects. It would be totally counter productive to delay taking up of a transmission system for want of a better mechanism which is yet to be evolved.”

7. The better PSM, if it evolves in due course, would be a general dispensation under the Commission’s regulations. PSM as concurred to in the order dated 29.10.2007 shall be the applicable PSM for the projects under question till the time any alternative PSM is provided in the CERC’s regulations.

8. The learned counsel stated that the applicants had not received copy of Annexure IX of the PGCIL’s letter dated 4.10.2007 and requested for three weeks adjournment to firm up its response after studying its contents. A copy of Annexure IX was handed over to the learned counsel in the court room. Request made by the learned counsel for the applicants was allowed. The Commission also expressed its surprise and anguish at such a lapse on part of PGCIL and lack of co-ordination between the concerned parties which is delaying the project.

9. These applications will be listed for hearing on 18.9.2008 for further directions.

Sd/-
(K.S.Dhingra)
Chief (Legal)

