

CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI

Petition No .162/MP/2011

Sub: Petition under Section 62 read with Section 63 of the Electricity Act, 2003 for determination of transmission charges for additional scope of work and corresponding amendment of transmission charges approved by the Commission vide its order dated 28.10.2010 for transmission system being established by petitioner as there is a change/addition in the scope of work of the project.

Date of hearing : 7.2.2012

Coram : Dr. Pramod Deo, Chairperson
Shri S.Jayaraman, Member
Shri V.S.Verma, Member
Shri M.Deena Dayalan, Member

Petitioner : East-North Interconnection Company Limited

Respondents : Punjab State Transmission Corporation Limited and Others

Parties present :

1. Miss Meenakshi Arora, Advocate for the petitioner
2. Miss Ambica Garg, Advocate for the petitioner
3. Shri T.A.Reddy, ENICL
4. Shri R.K.Shahi, PFCCL
5. Shri Sanjay Rai, PFCCL
6. Shri Pankaj Kumar, PGCIL
7. Shri Yogesh Mishra, PGCIL
8. Shri Rakesh Prasad, PGCIL
9. Shri Ashok Pal, PGCIL

Record of Proceedings

The learned counsel for the petitioner submitted that as per the tender documents for the transmission system, there were certain specific coordinates which were given to the bidders regarding the transmission lines to be set up by the selected bidder. The invitation to the bidders provided for start point and end point of the transmission lines together with specific coordinates. Additionally, a Survey Report was also provided regarding the area through which the

transmission lines would pass. In the Survey Report, three alternative routes were provided through which the bidders can take the transmission lines. In the survey reports, the start and end points were specific through express GPS coordinates. During the course of the bidding, a clarification was sought from the Bid Process Coordinator regarding the interconnection points of the transmission lines. It was categorically clarified to the bidders that the termination or inter-connection would be the responsibility of PGCIL in terms of the agreement that would be executed. The petitioner submitted its bid and was selected as the most suitable bidder and was awarded the contract. After the work on the transmission lines commenced, the petitioner asked PGCIL for the exact location of gantry for inter-connection of the transmission lines being constructed by it. The petitioner was informed that as compared to the specific kilometers specified in the Commission's order adopting the tariff, there is a difference of about 80 kms i.e. 50.5 kms on one line and 30 kms on another line.

2. The learned counsel for the petitioner submitted that in so far as route survey is concerned, there is a disclaimer in the Request for Proposal (RfP) document and the petitioner cannot have a claim that as compared to the route on the basis of which the bids were submitted, the actual route is passing through high mountains or deep valleys or volcanic regions. So far as the start point and end points of the transmission lines are concerned, that is not within the domain of the petitioner. That is entirely the policy decision taken at that point of time when the bids were invited. The Petitioner cannot check out the specific start and end points as it was not within the purview of the petitioner to verify. The petitioner has to execute the works on the basis of the start points and end points which were notified at the time of bidding. However, the petitioner has been informed that the transmission lines would be terminated at the existing substations of PGCIL which are located at a distance of 80 kms from the gantry points given in the survey report.

3. Learned counsel submitted that as per the Request for Qualification (RfQ) document, the petitioner was required to bid for Bongaigaon-Siliguri and Purnea-Biharsariff Transmission lines. The learned counsel referring to page 100 of the petition submitted that the RfP document contains the following disclaimer:

“The RfP document is not an agreement or an offer to the bidders or any parties. The purpose of this RfP is to provide the interested parties with the information to assess the

formulation of the bids. The RfP is based on materials and information available in the public domain.

3. The RfP has been prepared in good faith. Neither the BPC or its employees or advisors or consultant make any representation, or warranty, express or implied as to the accuracy or reliability or completeness of information in RfP. Bidders shall satisfy themselves that the RfP document is complete in all respect and intimate any discrepancy.”

4. Learned counsel submitted that the Survey Report has been defined to mean “the report containing initial information regarding the project and other details provided as per the provisions of para 1.5(a) of this RfP”. Para 1.5(a) of the RfP provides about the survey report as under:

“1.5 (a) Survey Report shall contain information regarding the transmission line, that is, voltage level, line configuration ,indicative route alignment, conductor type, conductor configuration and type of terrain likely to be encountered;

provided that neither the BPC, it s authorized representative , any of the Long Term Transmission Customer (s), nor their directors, employees or advisors/ consultants make any representation or warranty, express or implied, or accept any responsibility or liability whatsoever, in respect of any statements or omissions made in the Survey Report, or the accuracy, completeness or reliability of information contained therein, and shall incur no liability under any law, statute, rules, or regulations as to the accuracy, reliability or completeness of such Survey Report, even if any loss or damage is caused to the bidder by any act or omission on their part.”

The learned counsel submitted that the survey report at best gives the details of the transmission lines, route alignment, conductor type and configuration etc. and may go wrong in these respects. The survey report is based on specific start and end points and there can be no dispute about that. The disclaimer would apply to all activities between start and end points such as route alignment, terrain and conductor type etc. The learned counsel submitted that the disclaimer has to be read alongwith paras 2.14.2.1, 2.14.2.3, 2.14.2.4 and 2.14.2.5 of the RfP and these provisions require the bidders to inform themselves about the various aspects which do not include the start and end points of the transmission lines. The learned counsel submitted that the Commission may consider whether the bidder is required under para 2.14.2.1 of the RfP to examine the start and end points of the transmission lines. In the respectful submission of the petitioner, this falls outside the responsibility of the bidders.

5. Learned counsel for the petitioner submitted that the BPC vide its letter dated 22.4.2009 has clarified among other things that there are no forest stretches in the route alignment as per the Survey Report and initiation of process of seeking forest clearance is not required. However, it is now found that as per the new coordinates provided for the start and end points, there is a forest stretch of 1.5 km for the Bongaigaon sub-station for which the petitioner is required to obtain forest clearance. The learned counsel for the petitioner further submitted that in the pre-bid meeting held on 12.5.2009, the issue of “start” and “end” points of the transmission lines was raised which was clarified by the Bid Process Coordinator (BPC) as under:

Query: Please provide the details of the Inter-Connection Points for the transmission lines. The details should be provided by the BPC at least 30 days prior to Bid dead line. Designing of the transmission system depends on the technology used at the origin and termination points.

Reply: The “start” and “end” points will be the sub-stations of PGCIL at the respective locations and the obligation of arranging for inter-connection points shall be as per the provisions of Article 4.2.1 of the TSA.

The learned counsel submitted that as per the clarification of the BPC, PGCIL will have its sub-stations at the respective locations. The response does not say that these are the existing sub-stations of PGCIL. The petitioner is not obligated to set up the sub-stations at the inter-connection point. The obligation for arranging the inter-connection is as per the Article 4.2.1 of the TSA which provides as under:

“4.2.1 Subject to the terms and conditions of this Agreement, Long Term Transmission Customers, at their own cost and expense, undertake to be responsible;

- (a) For assisting and supporting the TSP in obtaining the Consents, Clearances and Permits required for the Project and in obtaining any applicable concessions for the Project, by providing letters of recommendation to the concerned Indian Government Instrumentally, as may be requested by the TSP from time to time;
- (b) For arranging and making available the interconnection Facilities to enable the TSP to connect the Project;”

The learned counsel submitted that as per above clause of TSA, providing inter-connection was not under the obligation of the Transmission Service Provider. Based on the coordinates of the “start” and “end” points in the RfP, bidding price was quoted by the petitioner. Three alternative routes for laying the transmission lines provided in the Survey Report had the same specific coordinates of start and end points. Moreover, the Commission while passing the order

adopting the transmission charges of the transmission lines also noted the length of the transmission lines as 217.41 km for Bongaigaon-Siliguri 400 kV Transmission line and 209.893 km for Purnea-Biharshariff 400 kV Transmission Line. The learned counsel also drew attention of the Commission to the angle point survey data provided at the time of bidding (Pages 215 to 223 of the petition) and submitted that the report gives the exact coordinates of the gantry points, the name of the village and the type of land. The learned counsel referred to the map at page 440 of the petition and submitted that as per the coordinates given, the end point at Siliguri side was at village Tirasotela whereas the actual location of the PGCIL sub-station is at Binaguri at a distance of 29.4 km. In the Bongaigaon side, though the distance has decreased by 0.8 km, the particular sub-station is inside the forest area whereas the BPC has in its clarification dated 29.4.2009 stated that there are no forest stretches in the route alignment. The learned counsel further submitted that as per the Methodology for Survey and Data Collection (filed at page 22 of the rejoinder), the accuracy of the survey report is less than 3 meters. Therefore, as per the GPS coordinates, the location can be exactly pinpointed. But the accuracy cannot go wrong by 29.4 km. The learned counsel made a brief presentation before the Commission highlighting the change in coordinates on the toposheets of the satellite image of the Final Route Alignment Report. The Commission enquired whether the BPC had marked the coordinates on these toposheets to which the learned counsel sought leave to clarify the query after seeking instructions from the petitioner.

6. The Commission enquired from the learned counsel as to whether the petitioner brought to the notice of the BPC when the petitioner after its own survey did not find sub-stations at the given coordinates. Learned counsel submitted that in the pre-bid conference, this clarification was sought from the BPC and it was clarified that the start and end points would be the sub-stations of PGCIL. BPC has never clarified that the start and end points would be the existing sub-stations of PGCIL. The learned counsel further submitted that the petitioner was under the expectation that sub-stations would be set up as per the coordinates of the start and end points indicated in the RfP. Accordingly, the construction activities of the transmission lines were undertaken and are expected to be completed by the month of December, 2012. The learned counsel submitted that the petitioner has approached the Commission for appropriate directions for provision of the inter-connection points at the location indicated in the RfP; otherwise the petitioner would be nowhere after completion of the transmission line.

7. The representative of BPC clarified that the letter dated 22.4.2009 was issued not in response to the query of any bidder but as per the requirement of para 1.5(a) of the RfP. With regard to GPS coordinates for the start and end points mentioned in the detailed Survey Report, the representative of the BPC submitted that M/s Advance Micronic Devices Ltd. was engaged for carrying out the route survey of the transmission lines through hand-held GPS instruments. In reply to a query of the Commission whether the coordinates of the sub-stations provided by the consultant were verified from PGCIL, the representative of the BPC replied in the negative. He further submitted that the petitioner has considered the distance as per the angle points and not as per the specification given in the RfP. The representative of the BPC further submitted that as per the RfP, the total length of the transmission lines is 427 km and any change in length has to be measured with respect to the length indicated in the RfP documents between the start and end points and not between angle tower to angle tower on which the petitioner is relying.

8. The Commission enquired whether the BPC went by the report of the consultant and whether any clarification was given to the bidders in this regard in the pre-bid meeting. The representative of BPC clarified that verbal clarification was given to the bidders in the pre-bid meeting and no written record has been kept. In response to Commission's query with regard to distance between the coordinates of the start and end points given in the Survey Report and the present position of the sub-stations of the PGCIL, the representative of the BPC submitted that it has to be worked out and submitted before the Commission.

9. The Commission observed that Bongaigaon sub-station of PGCIL is located in the forest area whereas BPC had categorically clarified that there are no forest stretches on the transmission line route. The Commission enquired from the representative of the BPC whether the BPC meant that the sub-station would be in another location. The representative of BPC replied that necessary submission would be made after verification.

10. The representative of CTU submitted that CTU was not consulted at the time of bidding. In reply to the query of the Commission as regards the location of Bongaigan sub-station in the

forest area, he submitted that usually sub-stations are not located within reserve forest. However, he would verify as to whether the sub-station area was declared as forest area on the date of inviting the bids.

11. Learned counsel for the petitioner referring to the submission of the representative of BPC regarding the total line length of 427 km submitted that the BPC had provided a covering sheet of the survey report alongwith three sets of alternative route alignment and report of schedule angle points. While the same coordinates have been given in all documents except the covering sheet, the petitioner as any other prudent person has relied upon the specified coordinates given in the said documents. Learned counsel submitted that the coordinates provided by BPC in the covering sheet cannot be accepted. In reply to query of the Commission as to whether petitioner had sought clarification from BPC with regard to the variation between the coordinates given in covering sheet and other documents, learned counsel submitted that the same was raised in the pre-bid meeting but vague reply was given by BPC.

12. The Commission directed:

(a) the petitioner to submit the copy of the query made by the petitioner to BPC regarding the location of the sub-stations for the purpose of interconnection of the transmission lines.

(b) the BPC to clarify on the basis of the documents in their possession to show that start and end point coordinates supplied by the BPC to the bidders are the same as the coordinates of the existing sub-stations of PGCIL and if not, what is the distance between the existing sub-stations of PGCIL and coordinates of start and end points of the survey reports and the covering sheet, clearly indicating the same on a diagram.

(c) the CTU to submit its views on the actual locations of the sub-stations, the length of the transmission lines from the substations till the end/start points claimed by the petitioner and BPC separately, and involvement of forest area along the route of Bongaigaon-Siliguri transmission line, on affidavit, with an advance copy to the petitioner.

(d) the CEA to submit its views as to whether the transmission lines were planned for inter-connection with existing sub-stations of PGCIL or new sub-stations were planned at the end/start coordinates given in the survey report.

13. The above information shall be submitted by 30.3.2012 with copy to the petitioner. Subject to the above, the order in the petition was reserved.

By order of the Commission

Sd/-
(T. Rout)
Joint Chief (Law)