

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 104/TL/2015

Coram:

**Shri Gireesh B.Pradhan, Chairperson
Shri A.K. Singhal, Member
Shri A.S.Bakshi, Member**

Date of Order: 26.5.2015

In the matter of

Application under Section of the Electricity Act, 2003 read with Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of Transmission Licence and other related matters) Regulations, 2009 for grant of transmission license to DGEN Transmission Company Limited.

And

In the matter of

DGEN Transmission Company Limited
305-306, 3rd Floor, Eros Corporate Tower,
Nehru Place,
New Delhi-110 019

...Petitioner

Vs

Torrent Energy Limited
Off Ashram Road,
Ahmedabad-380 009

...Respondent

The following were present:

Shri Sachin Gupta, DTCL
Shri Lalit Kumar, TEL
Shri S.Negi, TEL
Shri Rajash Shahi, PFC
Shri Sanjay Nayak, PFC



ORDER

The petitioner, DGEN Transmission Company 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 associated with DGEN TPS (1200 MW) of Torrent Power Limited" (hereinafter referred to as "Transmission System") on Build, Own, Operate and Maintain (BOOM) basis comprising the following element:

S.No.	Scheme/ Transmission Works	Completion Target	Conductors per Phase
1.	DGEN TPS-Vadodara 400 kV D/C line-114 kms	38 months from the effective date	Twin ACSR Moose or equivalent AAAC be designed for a maximum operating conductor temperature of 85 ⁰ C
2.	Navsari-Bhestan 220 kV D/C line-21 kms	38 months from the effective date	ACSR Zebra or equivalent AAAC be designed for a maximum operating conductor temperature of 85 ⁰ C

2. The petitioner has made the following prayers:

“(a) Grant Transmission Licence to DGEN Transmission Company Ltd. with respect to the Transmission System described at para 1 of this application;

(b) Allow the “Transmission System associated with DGEN TPS (1200 MW) of Torrent Power Limited” to be part of Transmission Service Agreement approved by the Hon’ble Commission under PoC Charges Regulations (Sharing of Inter-state Transmission Charges and Losses) Regulations, 2010; and

(c) Pass such other order/ orders, as may be deemed fit and proper in the facts & circumstances of the case.”



3. The petitioner has submitted that Ministry of Power, Government of India initiated a scheme for development of Independent Transmission Projects through private sector participation for evacuation of power from the generating stations and transmission of power from pooling station to other grid stations up to load centers and system strengthening in India. The said projects were to be awarded to developers selected on the basis of tariff based competitive bidding process. Government of India, Ministry of Power, vide its Resolution No.11/5/2005-PG(i) dated 17.4.2006 notified the "Guidelines for encouraging competition in development of Transmission Projects and competitive bidding for Transmission Service" and "Tariff based competitive bidding guidelines for Transmission Service" (hereinafter referred to as "the Guidelines") under Section 63 of the Act. In accordance with Guidelines, PFC Consulting Limited (hereinafter referred to as PFCCL) was notified by Government of India, Ministry of Power vide Notification No. 15/1/2011-Trans dated 29.8.2011 and 16.10.2012 as the Bid Process Coordinator (hereinafter referred to as "BPC") for the purpose of selection of bidder as Transmission Service Provider (TSP) to establish the 'Transmission System associated with DGEN TPS (1200 MW) of Torrent Power Limited' (hereinafter referred to as 'Project') through tariff based competitive bidding process.

4. PFCCL in its capacity as the BPC initiated the bid process on 30.10.2012 and completed the process on 17.3.2015 in accordance with the Guidelines. M/s Instalaciones Inabensa, SA, Spain was selected as the successful bidder having quoted the lowest levelized transmission charges of ₹ 584.01 million/annum in order to establish the 'Transmission System associated with DGEN TPS (1200 MW) of Torrent



Power Limited' on BOOM basis and provide transmission service to the identified long-term transmission customer (LTTC) of the project, namely Torrent Energy Limited.

5. The petitioner has submitted that two bidders submitted their offers at RfP stage. Bid Evaluation Committee carried out the responsiveness check of the non-financial bids in accordance with conditions of RfP and recommended all two bidders as responsive for opening the financial bids. After opening the financial bids, as per the Bid Evaluation Report dated 13.5.2014, Instalaciones Inabensa, SA Spain emerged as the successful bidder with the lowest levelized transmission charges of ₹ 584.01 million.

6. Consequent to its selection as the lowest bidder, Letter of Intent (LoI) was issued to Instalaciones Inabensa, SA Spain by the BPC on 19.5.2014 which was accepted by it. Under the terms of Request for Proposal (RfP) and the Letter of Intent, the successful bidder is obligated to accomplish the following tasks:

(a) Provide contract performance guarantee in favour of Long Term Transmission Customers (LTTCs);

(b) Execute Share Purchase Agreement;

(c) Acquire, for the Acquisition Price, 100% share equity share holding of DGEN Company Transmission Limited from PFCCCL along with all its related assets and liabilities;

(d) To execute RfP project document including Transmission Service Agreement (TSA) with LTTC;



(e) Make an application to the Central Commission for adoption of transmission charges, as required under Section 63 of the Electricity Act, 2003

(f) To apply to the Central Commission for grant of transmission licence.

7. The petitioner has submitted that Instalaciones Inabensa, SA Spain has acquired one hundred percent equity holding in DGEN Company Transmission Limited on 17.3.2015. The petitioner has further submitted that the TSA executed between the TSP and the LTTC who is the beneficiary of the transmission project has become effective on the date of acquisition of the petitioner by Instalaciones Inabensa, SA Spain

8. Section 14 of the Act provides that the Appropriate Commission may, on an application made under Section 15 of the Act, grant a licence to any person to transmit electricity as a transmission licensee in any area as may be specified in the licence. The word “person” has been defined in Section 2(49) of the Act to include any company or body corporate or association or body of individuals whether incorporated or not or artificial juridical person. The petitioner has been incorporated under the Companies Act, 1956. The main object of the petitioner company is as under:

“ To plan, promote and develop an integrated and efficient power transmission system network in all its respects including planning, investigations, research, design and engineering, preparation of preliminary, feasibility and definite project reports, construction, operation and maintenance of transmission lines, sub-station, load dispatch stations and communication facilities and appurtenant works, coordination of integration operation of regional and national grid system, execution of turn-key jobs for other utilities/organizations, wheeling of power, purchase and sale of power in accordance with the policies, guidelines and objectives laid down by the Central Government from time to time”.



9. Section 15 (1) of the Act provides that every application under Section 14 shall be made in such manner and in such form as may be specified by the Appropriate Commission and shall be accompanied by such fees as may be prescribed. The Central Commission has specified the Central Electricity Regulatory Commission (Procedure, Terms and Conditions of Transmission License and other related matters) Regulations, 2009 (hereinafter referred to as “Transmission Licence Regulations”). Regulation 3 of the Transmission Licence Regulations provide that the Empowered Committee shall identify the projects included in the transmission plan to be developed under the guidelines for competitive bidding. Regulation 4 of Transmission License Regulations provides that in case of projects identified by the Empowered Committee for development under the guidelines for competitive bidding, selection of the project developer shall be made in accordance with the procedure laid down in the guidelines. The transmission project under consideration has been identified by the Empowered Committee. The Ministry of Power, Government of India, vide its letter dated 30.1.2014, has accorded approval to the project under Section 68 of the Electricity Act, 2003. The selection of the project developer, PGCIL, has been made in accordance with the guidelines for competitive bidding.

10. Regulation 7 of the Transmission Licence Regulations provides for the procedure for grant of transmission licence as under:

“(1) The application for grant of transmission licence shall be made to the Commission in Form-I appended to these regulations and shall be accompanied by such fees as may be prescribed by the Central Government from time to time.



(2) In case of the person selected for implementation of the project in accordance with the guidelines for competitive bidding, the application shall also contain such additional information, as may be required under these guidelines.

(3) The application shall be supported by affidavit of the person acquainted with the facts stated therein.

(4) Before making an application, the applicant shall serve a copy of the application on each of the long-term customers of the project and shall submit evidence to that effect along with the application and shall also post the complete application along with annexures and enclosures on its website, the particulars of which shall be given in the application.

(5) The application shall be kept on the website till such time the licence is issued or the application is rejected by the Commission.

(6) Immediately on making the application, the applicant shall forward a copy of the application to the Central Transmission Utility.

(7) The applicant shall, within 7 days after making the application, publish a notice of its application in Form-II attached to these regulations, in at least two daily newspapers, one in English language and one in vernacular language, having circulation in each State or Union Territory where an element of the project or a long-term customer is situated, in the same language as of the daily newspaper in which the notice of the application is published.

(8) As far as possible, within 7 days of receipt of the application the Secretariat of the Commission shall convey defects, if any, if noticed on preliminary scrutiny of the application for rectification and the defects conveyed shall be rectified by the applicant in such time as may be indicated in the letter conveying the defects.

(9) In the notice published in the newspapers under clause (7) it shall be indicated that the suggestions and objections, if any, on the application, may be filed before the Secretary, Central Electricity Regulatory Commission, Third Floor, Chanderlok Building, Janpath, New Delhi-110001 (or the address where the office of the Commission is situated) with a copy to the applicant, by any person, including the long-term customers, within 30 days of publication of the notice,

(10) The applicant shall within 15 days from the date of publication of the notice as aforesaid submit to the Commission on affidavit the details of the notice published, indicating the newspapers in which the notice has been published and the date and place of their publication and shall also file before the Commission the relevant copies of the newspapers, in original, in which the notice has been published.

(11) The Central Transmission Utility shall send its recommendations, if any, to the Commission on the proposal made in the application within a period of thirty



days from the date of receipt of application by it. Provided that copy of the recommendations, if any, made by the Central Transmission Utility shall always be forwarded to the applicant; Provided further that these recommendations of the Central Transmission Utility shall not be binding on the Commission.

(12) The applicant may file its comments, duly supported by an affidavit, on the recommendations made by the Central Transmission Utility and the suggestions and objections, if any, received in response to the public notice published by him, within 45 days of serving copy of the application on the Central Transmission Utility or the person who has filed the suggestions and objections on the proposal made in the application, as the case may be.

(13) The Commission after considering the suggestions and objections received in response to the public notice published by the applicant and the recommendations, if any, of the Central Transmission Utility may, propose to grant transmission licence or for reasons to be recorded in writing, reject the application.”

11. The petitioner has approached the Commission by a separate application for adoption of transmission charges in respect of the transmission system which is presently under consideration of the Commission and order in that petition will be issued separately. The petitioner has filed the present application for grant of transmission licence in accordance with the Transmission Licence Regulations. The petitioner has submitted proof of service of the copies of the application on the LTTC and Central Transmission Utility and proof of web posting of the complete application. The petitioner has further undertaken to pay the applicable licence fee upon the grant of Transmission Licence in terms of Central Electricity Regulatory Commission (Payment of Fees) Regulations, 2012. The petitioner has prayed for grant of transmission licence to DGEN Transmission Company Transmission Limited with respect to the transmission system as per details given in para 1 above.



12. The petitioner has made the application as per Form-1 and paid the fee of ₹ one lakh as prescribed by the Government. On perusal of the application, it is noted that the petitioner has served copy of the application on the Long Term Transmission Customer (LTTC) for the project. The levelised tariff charges quoted by the petitioner which have been recommended by the Bid Evaluation Committee for acceptance, is ₹ 584.01 million/annum. The petitioner has also enclosed copies of the recommendations of the Bid Evaluation Committee and proof of making the evaluation report public by the BPC as per the Guidelines.

13. The petitioner has, vide its affidavit dated 8.4.2015, placed on record the relevant copies of the newspapers in original in which the notice of its application has been published. The petitioner has published the notices on 31.3.2015 in Business Standard and The Financial Express (Gujarati) having publication from Gujarat.

14. No reply has been filed by the respondents. No objection has been received from the general public in response to the public notice.

15. The petition was heard on 12.5.2015. The representative of the petitioner submitted that tariff of the petitioner company has been discovered through the process of competitive bidding conducted in accordance with Section 63 of the Act and same may be adopted by the Commission. He further requested to grant transmission licence accordingly. The representative of the BPC submitted that while selecting the petitioner



for execution of the transmission project, all the provisions of the competitive bidding guidelines have been complied with.

16. The petitioner has served a copy of the application on the Central Transmission Utility (CTU) on 27.3.2015 as required under Section 15(3) of the Act and Regulation 7(6) of the Transmission Licence Regulations. However, CTU is required to submit its recommendations in terms of Section 15 (4) of the Act and Regulation 9 (11) of the Transmission Licence Regulations within thirty days after receipt of the copy of the application. In the present case, the recommendations of CTU have not been received so far. Section 15 (4) of the Act provides as under:

“(4) The Central Transmission Utility or the State Transmission Utility , as the case may be, shall, within thirty days after the receipt of the copy of the application referred to in sub-section (3), send its recommendations, if any, to the Appropriate Commission:

Provided that such recommendations shall not be binding on the Commission.”

A reading of the above provision reveals that the CTU is under a statutory obligation to send its recommendations, if any, within 30 days. However, non-submission of the recommendations by CTU cannot be a ground for not granting licence. In any case, the recommendations of CTU are not binding on the Commission. However, the Commission expects that CTU faithfully discharges its statutory responsibility under Section 15 (4) of the Act, so that the Commission gets the advantage of considering the recommendations of CTU before granting the licence.



17. We have considered the submissions of the petitioner and BPC 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. Instalaciones Inabensa S.A., Spain 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 Instalaciones Inabensa S.A., Spain by the BPC and Instalaciones Inabensa S.A., Spain has acquired 100% stake in the DGEN Transmission Company Limited which has been transferred to the petitioner on 17.3.2015 after execution of Share Purchase Agreement. Thus, the petitioner has complied with the requirements of RfP and Transmission Service 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 11.6.2015.

18. Time is essence for implementation of the transmission projects and the licensee should not approach the Commission for extension of time for execution of the project or for increase in the transmission charges over and above what is admissible under the provisions of the TSA. Accordingly, the petitioner is directed to file an affidavit by



5.6.2015 to the effect that the execution of the transmission project shall not be delayed solely due to time taken in obtaining statutory clearances required under the RfP and Transmission Service Agreement or adjudication of any claim of the petitioner arising under the TSA.

19. The petition shall be listed for hearing on 18.6.2015.

**Sd/-
(A.S.Bakshi)
Member**

**Sd/-
(A.K.Singhal)
Member**

**Sd/-
(Gireesh B.Pradhan)
Chairperson**

