

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 120/AT/2018

Coram:

Shri R. K. Pujari, Chairperson

Shri A. K. Singhal, Member

Dr. M.K. Iyer, Member

Date of Order: 5th of September, 2018

In the matter of:

Application under Section 63 of the Electricity Act, 2003 for adoption of transmission charges with respect to the Transmission System being established by the WR-NR Power Transmission Limited (a 100% wholly owned subsidiary of Power Grid Corporation of India Limited)

And

In the matter of:

WR-NR Power Transmission Limited
B-9, Qutab Institutional Area,
Katwaria Sarai, New Delhi 110016

.....**Petitioner**

Vs.

1. Uttar Pradesh Power Corporation Limited
14th Floor, Shakti Bhawan Extension,
14- Ashok Marg, Lucknow
2. Chhattisgarh State Power Distribution Company Limited
4th Floor, Sewa Bhawan,
Dangania, Raipur- 492013
3. Goa Electricity Department
Electricity Department, Government of Goa
3rd Floor, Vidyut Bhavan, Tiswadi, Goa- 403001
4. Maharashtra State Electricity Distribution Company Limited
5th Floor, Prakashgad, Bandra (E),
Mumbai- 400051
5. Electricity Department, Daman & Diu
Kesariya - Diu Road, Gandhipara, Diu,
Daman and Diu- 362520

6. DNH Power Distribution Corporation Limited
Vidyut Bhavan, Near Secretariat, Amla, Silvassa,
Dadra and Nagar Haveli- 396230
7. Gujarat Urja Vikas Nigam Limited
Sardar Patel Vidyut Bhavan, Race Course, Vadodara
Gujarat- 390 007
8. M.P. Power Management Company Limited
Shakti Bhavan, MPSEB Colony, Rampur, Jabalpur,
Madhya Pradesh- 482008
9. BSES Rajdhani Power Limited
BSES Bhawan, Nehru Place,
New Delhi- 110019
10. BSES Yamuna Power Limited
2nd Floor, Shakti Kiran Bldg., Karkardooma,
New Delhi- 110092
11. New Delhi Municipal Council
NDMC, New Delhi- 110001
12. TATA Power Delhi Distribution Limited
NDPL House, Hudson Lines, Kingsway Camp,
Delhi - 110009
13. Power Development Department, Jammu & Kashmir
Govt. of Jammu & Kashmir, SLDC Building,
1st Floor, Gladani Power House,
Narwal, Jammu
14. Ajmer Vidyut Vitran Nigam Limited
Vidyut Bhawan, Panchsheel Nagar, Makarwali Road,
Ajmer- 305004
15. Jodhpur Vidyut Vitran Nigam Limited
New Power House, Industrial Area,
Jodhpur - 342 003
16. Jaipur Vidyut Vitran Nigam Limited
Vidyut Bhawan, Janpath, Jaipur
Rajasthan- 302005
17. Uttarakhand Power Corporation Limited
Victoria Cross Vijeyta Gabar Singh Urja Bhawan, Kanwali Road,
Balliwala Chowk, Dehradun- 248001

18. Electricity Wing of Engineering Department, Union Territory of Chandigarh
OP Circle, 5th Floor,
New Deluxe Building,
Sector- 9, Chandigarh

19. Himachal Pradesh State Electricity Board Limited
Vidyut Bhawan,
Shimla- 171004

20. Haryana Power Purchase Centre
Shakti Bhavan Sector - 6,
Panchkula - 134 109

21. Punjab State Power Corporation Limited
Thermal Sheds, T 1-A, Patiala

22. Rajasthan Discoms Power Procurement Centre
Shed No. 5/4, Vidyut Bhawan, Janpath,
Jyoti Nagar, Jaipur- 302005

23. Rajasthan Urja Vikas Nigam Limited
Vidyut Bhawan, Jyoti Nagar, Janpath,
Jaipur – 302005

.....Respondents

1. REC Transmission Projects Company Limited,
ECE House, 3rd Floor, Annexe-II,
28A, K.G. Marg, New Delhi- 110001

2. Power Grid Corporation of India Limited
Saudamini, Plot No.2, Sector-29
Gurgaon, Haryana- 122001

.....Proforma Respondents

The following were present:

Shri B. Vamsi, WR-NR PTL
Shri Mani Kunal, WR-NR PTL
Ms. Jyoti Prasad, WR-NR PTL

ORDER

The Petitioner, WR-NR Power Transmission Limited, has filed the present petition under Section 63 of the Electricity Act, 2003 (hereinafter referred to as the 'Act') for

adoption of transmission charges in respect of transmission system for “NEW WR-NR 765 kV Inter-Regional corridor” on Build, Own, and Operate and Maintain (BOOM) basis (hereinafter referred to as “Transmission System”).

2. Section 63 of the Electricity Act, 2003 provides as under:

“Section 63: Determination of tariff by bidding process: Notwithstanding anything contained in section 62, the Appropriate Commission shall adopt the tariff if such tariff has been determined through transparent process of bidding in accordance with the guidelines issued by the Central Government.”

3. Government of India, Ministry of Power has notified the Guidelines under Section 63 of the Act vide Resolution No. 11/5/2005-PG(i) dated 17.4.2006. The salient features of the Guidelines are discussed in brief as under:

a) The Guidelines are applicable for procurement of transmission services for transmission of electricity through tariff based competitive bidding and for selection of transmission service provider for new transmission lines and to build, own, maintain and operate the specified transmission system elements.

b) For procurement of transmission services, required for inter-State transmission, the Central Government shall notify any Central Government Organization or any Central Public Sector Undertakings, the Bid Process Coordinator (BPC) who would be responsible for coordinating the bid process.

c) The BPC shall prepare the bid documentations in accordance with the Guidelines and obtain approval of the Appropriate Commission or alternatively, the BPC can use the standard bid documents notified by the Ministry of Power. Approval of the Appropriate Commission would be necessary, if any material

deviation is proposed to be made in the Standard Bid Documents. Intimation about the initiation of the bid process shall be sent by the BPC to the Appropriate Commission.

d) For procurement of transmission charges under the Guidelines, the BPC may adopt at its option either a two-stage process featuring separate Request for Qualifications (RfQ) and Request for Proposal(RFP) or adopt a single stage two envelope tender process combining both RFQ and RFP processes.

e) RfQ or combined RfQ and RfP notice shall be issued in at least two national newspapers, on websites of the BPC and the Appropriate Government and preferably in the trade magazines also to provide wide publicity. For the purpose of issue of RfQ, minimum conditions to be met by the bidder shall be specified in RfQ notice. The bidding shall be by way of International Competitive Bidding.

f) Standard documentations to be provided in the RFQ stage shall include definitions of requirements including the details of location and technical qualifications for each component of the transmission lines, construction milestones and financial requirements to be met by the bidders; proposed Transmission Service Agreement; period of validity of offer of bidder; conditions as specified by the Appropriate Commission for being eligible to obtain transmission licence and other technical and safety criteria to be met by the bidder/TSP including the provisions of Indian Electricity Grid Code (hereinafter referred to as 'Grid Code').

g) Standard documentations to be provided by BPC in the RFP shall include specified target dates/months for commissioning and commercial operations and start of providing transmission services. TSA proposed to be entered with the selected bidder; bid evaluation methodology to be adopted by the BPC; Discount Factor to be used for evaluation of the bids; specification regarding the bid bond and project completion guarantee to be furnished by the bidders, proposed indemnification agreement between the TSP and the utilities, amount of contract performance guarantee as percentage of the project cost; and the liquidated damages that would apply in the case of delay in start of providing the transmission services.

h) To ensure competitiveness, the minimum number of qualified bidders shall be two. The BPC shall constitute a committee for evaluation of the bids with at least one member from Central Electricity Authority (CEA) and the concerned Regional Power Committees. The member from CEA shall have expertise in the cost engineering of transmission projects. The bids shall be opened in public and the representative of the bidders shall be allowed to remain present. The technical bids shall be scored to ensure that only the bids that meet the minimum technical criteria set out in the RFQ shall be considered for further evaluation on the transmission charge bids. The transmission charge bid shall be rejected if it contains any deviation from the tender conditions for submission of the same. The bidder who has quoted the lowest transmission charge as per the evaluation procedure shall be considered for the award.

i) The Guidelines provide for suggested time tables for the bid process. The timeline suggested for a two stage bid process is 240 days and single stage two envelope bid process is 180 days. The BPC is empowered to give extended time-frame based on the prevailing circumstances and such alterations shall not be construed as the deviation from the Guidelines.

j) The selected bidder shall make an application for grant of transmission licence to the Appropriate Commission within ten days from the date of issue of Lol subject to further extension of time as provided under para 2.4 of the RFP. The TSA shall be signed with the selected bidder in accordance with the terms and conditions as finalized in the bid document before the RFP stage.

k) The BPC shall make evaluation of the bid public by indicating the terms of the winning bid and anonymous comparison of all other bids. All contracts signed with the successful bidder shall also be made public. The final TSA along with the certification of BPC shall be forwarded to the Appropriate Commission for adoption of tariff in terms of Section 63 of the Act.

4. Therefore, we have to examine whether the process as per provisions of the Guidelines has been followed in the present case for arriving at the lowest levelised transmission charges and for selection of the successful bidder.

5. Ministry of Power, Government of India, vide its Notification No. 2599 dated 31.10.2016 notified the REC Transmission Projects Company Limited (hereinafter referred to as RECTPCL) as the Bid Process Coordinator (BPC) for the purpose of selection of bidder as Transmission Service Provider (TSP) to establish Transmission System for "

NEW WR-NR 765 kV Inter-Regional corridor” through tariff based competitive bidding process.

6. WR-NR Power Transmission Limited was incorporated on 12.1.2017 under the Companies Act, 2013 as a wholly owned subsidiary of RECTPCL with the objective to establish the “NEW WR-NR 765 kV Inter-Regional corridor” and to act as the Transmission Service Provider after being acquired by the successful bidder. The main objectives of the petitioner company in its Memorandum of Associations are as under:

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

7. BPC prepared the bidding documents such as RfQ and RfP in accordance with the Standard Bid Documents issued by the Ministry of Power, Government of India. The BPC started the process of selection of TSP with the publication of Global Invitation for Qualification for selection of developer on BOOM basis for the project. The notice for RfQ was published on 21.11.2016 in all the editions of Hindustan Times, Hindustan (Hindi), Mint (English) with the last date of submission of response to RfQ as 28.12.2016. Intimation regarding the initiation of the bid process was given to the Central Commission in accordance with para 4.2 of the Guidelines vide letter No. RECPTCL/P-29/WR-NR/RFQ 2016-17/394 dated 22.11.2016.

8. The key milestones in the bidding process were as under:

S.No.	Events	Date
1.	Publication of RFQ	21.11.2016
2.	Submission of response to Request for Qualification	28.12.2016
3.	Issuance of Request for Proposal	27.2.2017
4.	Technical and Price bid (on line) submission	25.9.2017
5.	Technical bid opening	25.9.2017
6.	Initial offer-opening	12.2.2018
7.	e-Reverse Auction and final offer	13.2.2018
8.	Issuance of Letter of Intent to successful bidder	1.3.2018
9.	Signing of Share Purchase Agreement and transfer of Special Purpose Vehicle	27.3.2018

9. The scope of the Project as per the Request for Proposal (RfP) and the Transmission Service Agreement is as under:

Scheme/ Transmission Works	Completion Target
New WR-NR 765 kV Inter-Regional Corridor	
765 kV Vindhyanchal Pooling Station- Varanasi D/C line	40 months
Note:	
i. POWERGRID will provide 2 nos. 765 kV line bays at Vindhyanchal 765/400 kV PS for termination of Vindhyanchal Pooling Station – Varanasi 765 kV D/c line.	
ii. POWERGRID will provide 2 nos. 765 kV GIS line bays at Varanasi 765/400 kV GIS Substation along with 2 nos. 1x330 MVAR line reactor for termination of Vindhyanchal PS – Varanasi 765 kV D/c line.	

10. The identified Long Term Transmission Customers (LTTCs) of the project are as under

S.No	Name of the Long Term Transmission Customer
1.	Chhattisgarh State Power Distribution Company Limited
2.	Goa Electricity Department
3.	Maharashtra State Electricity Distribution Company Limited
4.	Electricity Department, Daman and Diu
5.	DNH Power Distribution Corporation Limited
6.	Gujarat Urja Vikas Nigam Limited

7.	M.P.Power Management Company Limited
8.	BSES Rajdhani Power Limited
9.	BSES Yamuna Power Limited
10.	New Delhi Municipal Council
11.	Tata Power Delhi Distribution Limited
12.	Power Development Department, Jammu and Kashmir
13.	Rajasthan Urja Vikas Nigam Limited
	(i) Ajmer Vidyut Vitran Nigam Limited
	(ii) Jodhpur Vidyut Vitran Nigam Limited
	(iii) Jaipur Vidyut Vitran Nigam Limited
14.	Uttarakhand Power Corporation Limited
15.	Uttar Pradesh Power Corporation Limited
16.	Electricity Wing, Engineering Department, Union Territory of Chandigarh
17.	Himachal Pradesh State Electricity Board Limited
18.	Haryana Power Purchase Centre
19.	Punjab State Power Corporation Limited

11. As per the decision of the Empowered Committee on Transmission, the Bid Evaluation Committee (BEC) comprising of the following was constituted:

- a) Region Head, SBI Capital Markets, New Delhi - Chairman
- b) Chief Engineer, (PSETD), CEA Member
- c) Director (PSPA-I), CEA. Member
- d) Shri S.P.Gupta, Additional Chief Engineer (IT) MPPTCL Member
- e) Shri Suman Guchchh, Chief Engineer (Transmission project) UPPTCL, Member
- f) Ms. Valli Natarajan Chairman (WR-NR Power Transmission Limited), Convener – Member

12. Responses to RfQ were received from the ten bidders as per details given below

S.NO	Name of Bidders
1.	Power Grid Corporation of India Limited
2.	Adani Transmission Limited

3.	Essel Infraprojects Limited
4.	Sterlite Grid 5 Limited
5.	Kalpataru Power Transmission Limited
6.	L&T Infrastructure Development Projects Limited
7.	GMR Energy Limited
8.	The Tata Power Company Limited
9.	Mytrah Energy (India) Pvt. Ltd
10.	CLP India Pvt. Ltd. (LM) Consortium with China Southern Power Grid International (HK) Co., Ltd (CM)

13. The responses to the RfQ were opened 28.12.2016 in the presence of Bid Evaluation Committee and the representatives of the bidders. Evaluation was undertaken by Bid Process Consultant, namely M/s Pary & CO. Chartered Accountants LLP in consortium with M/s Link Legal India Law Services, New Delhi (Bid Process Consultant) appointed by BPC and after clarifications presented to the Bid Evaluation Committee which recommended all ten bidders as qualified at RfP stage.

14. Out of ten qualified bidders, nine bidders purchased the RfP documents. The following six bidders submitted RfP:

S.No.	Name of Bidders
1.	Power Grid Corporation of India Limited
2.	Adani Transmission Limited
3.	Essel Infraprojects Limited
4.	Sterlite Grid 5 Limited
5.	CLP India Pvt. Ltd. (LM) Consortium with China Southern Power Grid International (HK) Co., Ltd (CM)
6.	L&T Infrastructure Development Projects Limited

15. The Non-Financial Bids of all the six bidders were opened on 25.9.2017 in the presence of the representatives of the bidders. The BEC met on 4.10.2017, 16.10.2017 and 3.11.2017 to discuss the Bid Process Consultant's report on the evaluation of the Non-Financial Bids submitted by the Bidders. Based on the recommendations of the Bid Evaluation Committee, the initial offer of all the six bidders were opened on 12.2.2018 in

the presence of Bid Evaluation Committee. In BEC meeting held on 12.2.2018, it was noted that the lowest Levelised Transmission Charges from the Initial Offer submitted by the bidders was Rs. 999.41 Million per annum for participating in the e-Reverse bidding process. As per the provisions of RfP documents, BEC recommended the following four bidders to participate in the electronic reverse auction stage and to submit their final offers:

S.No.	Name of Bidders	Levelised transmission charges from the initial offer	Rank
1.	Power Grid Corporation of India Limited	999.41	L-1
2.	L&T Infrastructure Development Projects Limited	1183.92	L-2
3.	Essel Infraprojects Limited	1503.06	L-3
4.	Adani Transmission Limited	1539.34	L-4

16. The e-Reverse Auction was carried out on 13.2.2018 in the presence of members of BEC. After 28 rounds of bidding, the following levelised transmission tariff for each bidder (in ascending order) emerged:

S.No.	Name of Bidders	Levelised transmission charges from the initial offer	Rank
1.	Power Grid Corporation of India Limited	927.33	L-1
2.	Essel Infraprojects Limited	932.05	L-2
3.	L&T Infrastructure Development Projects Limited	1183.92	L-3
4.	Adani Transmission Limited	1539.34	L-4

17. Based on e-Reverse bidding, Bid Evaluation Committee in its meeting held on 13.2.2018 recommended Power Grid Corporation of India Limited with the lowest

Levelised Transmission Charges of Rs. 927.33 million per annum as the successful bidder.

18. Letter of Intent was issued by the BPC on 1.3.2018 to the successful bidder i.e. Power Grid Corporation of India Limited. In accordance with para 12.3 of the Guidelines, the BPC has hosted on the website of RECTPCL, the final result of the evaluation of the bids for selection of developer for the project.

19. In accordance with the provisions of the bid documents and Lol issued in its favour, the petitioner has prayed for adoption of the transmission charges for the project which has been discovered through the process of competitive bidding.

20. In accordance with para 2.4 of RfP, the selected bidder shall within 10 days of issue of the Letter of Intent, accomplish the following tasks:

- a) Provide Contract Performance Guarantee in favour of the LTTCs;
- b) Execute the Share Purchase Agreement;
- c) Acquire, for the acquisition price, one hundred percent equity shareholdings of WR-NR Power Transmission Limited along with all its related assets and liabilities;
- d) Make an Application to the Central Electricity Regulatory Commission for adoption of charges under Section 63 of the Electricity Act, 2003; and
- e) Apply to Central Electricity Regulatory Commission for grant of transmission licence.

21. The proviso to para 2.4 of the RfP further provides that "if for any reason attributable to the BPC, the above activities are not completed by the Selected Bidder

within the above period of ten (10) days as mentioned in this clause, such period of 10 days shall be extended, on a day to day basis till the end of the Bid validity period". Though Lol was issued on 1.3.2018, BPC, vide its letters dated 12.3.2018 and 23.3.2018, in terms of proviso to clause 2.4 of RfP extended the date upto 6.4.2018 for completion of all activities by the successful bidder. The selected bidder furnished the Contract Performance Guarantee to the Long Term Transmission Customers of the project for an amount of Rs. 30 crore and has acquired hundred percent equity-holding in the applicant company on 27.3.2018 after execution of the Share Purchase Agreement. The TSP on behalf of selected bidder filed the application through e-filing portal for adoption of tariff on 6.4.2018.

22. The Petitioner has submitted that BPC vide its email dated 15.6.2017 informed the bidders that the acquisition price payable by the selected bidder for acquisition of one hundred percent of equity shareholding of WR-NR Power Transmission Limited along with all its related assets and liabilities is Rs. 14.0243 crore. However, subsequent to the bidding and during acquisition, BPC vide its letter dated 19.3.2018 informed the successful bidder i.e. the Petitioner that the acquisition price has been revised from Rs. 14.0243 crore to Rs. 15,12,49,571/-. The Petitioner has requested to consider the increase in acquisition price as part of transmission charges in terms of Article 12.2.1 of the TSA.

23. On receipt of the present petition, BPC, vide letter dated 1.5.2018, was directed to submit the relevant documents regarding complete process of competitive bidding. The necessary details have been filed by the BPC under affidavit dated 14.5.2018.

24. Notices were issued to all the respondents who are the Long Term Transmission Customers of the project. Reply to the Petition has been filed by Uttar Pradesh Power Corporation Limited and M.P. Power Management Company Limited.

25. Uttar Pradesh Power Corporation Limited (UPPCL), vide its reply dated 8.5.2018 has submitted that PGCIL is the successful bidder and therefore, PGCIL should move an application for adoption of tariff, and not the NR-WR Power Transmission Limited. Therefore, the prayers of the Petitioner for adoption of tariff for considering the transmission system under PoC and to allow the increase in acquisition price should be rejected as it has no *locus-standi* to file the petition for adoption of tariff.

26. M.P. Power Management Company Ltd. vide its reply dated 28.5.2018 has submitted that the Petitioner has not submitted any reason regarding increase in acquisition price by Rs. 110 lakh. MPPMCL has further submitted that the Petitioner in its petition has indicated that the excess amount claimed by the BPC has been paid on 27.3.2018. However, neither this issue was discussed with the LTTCs nor the Petitioner has taken approval from the Commission in this regard. Therefore, the increase in acquisition cost should be borne by the bidder and the same should not be passed upon the beneficiaries.

27. The Petitioner, vide its rejoinder dated 21.5.2018 to the reply of UPPCL has submitted that as per Clause 2.4 of the RfP, the TSP is required to acquire the SPV and apply to the Commission for adoption of transmission tariff and for grant of transmission licence. Therefore, it is clear that the Petitioner is not a transmission licensee yet and after

the acquisition, it has to apply for adoption of transmission tariff and transmission licence. The Petitioner has submitted that after acquisition of WR-NR Power Transmission Limited by the selected bidder, it is no longer a subsidiary of the BPC. The Petitioner has submitted that TSA was signed prior to acquisition and all the LTTCs including the Respondents have signed the TSA. Therefore, all the activities have been undertaken by the Petitioner in accordance with the provisions of the bidding documents.

28. The Petitioner vide its rejoinder dated 30.7.2018 to the reply of MPPMCL has submitted that it has no control on the acquisition price as demanded by the BPC. The initial acquisition price as notified by the bidder before the bid deadline was subsequently revised by the BPC during the acquisition of WR-NR Power Transmission Limited. The Petitioner has submitted that the increased amount of acquisition price qualifies under Change in Law provisions of the TSA and is required to be considered as Change in Law event or alternatively, the BPC should be directed to refund the additional acquisition price to the Petitioner along with carrying cost.

29. BPC vide Record of Proceeding for the hearing dated 5.7.2018, was directed to give its comments with regard to increase in acquisition price. BPC vide its affidavit dated 6.8.2018 has submitted as under:

“4. Further, as per provisions of RFP Documents, BPC has to intimate the bidders, 30 days prior to the Bid deadline, the Acquisition Price payable by Selected Bidder to the RECTPCL for the acquisition of 100% of the equity shareholding of the project specific SPV i.e. WR-NR Power Transmission Limited. Accordingly, the tentative Acquisition Price was intimated to the bidders on 14.6.2017, based on scheduled date of bid submission is 12.7.2017 and estimating August, 2017 as the SPV transfer date to the selected bidder based on previous experience of bidding.

5. Subsequent to the intimation of tentative Acquisition Price, Goods & Services Tax (GST) was introduced by Government of India. Accordingly, on account of introduction of new tax regime, most of the bidders requested RECTPCL to extend the bid deadline to understand the implication of new tax regime on transmission sector. Based on the request of the bidders, RECTPCL extended bid submission date upto 25.9.2017. Accordingly, the Non-Financial bids were opened on 25.9.2017.
6. Subsequently, some issue was reported by one of the bidder during e-reverse auction process conducted by PFC Consulting Limited (other BPC for transmission projects) for Additional 400 kV feed to Goa and Additional System for Power Evacuation from Generation projects pooled at Raigarh (Tamnar) Pool” transmission project. Accordingly, to find out the problem, PFCCL initiated the audit of MSTC portal. During this period, it was decided by the Bid Evaluation Committee, which has some common members for both the BPC’s projects, that the bid shall be opened only after the audit of the portal and necessary changes if required to avoid any problem during e-reverse auction.
7. Subsequent to audit report & necessary comment of CEA, MSTC made the necessary changes in the e-RA portal and this complete activity took almost 5 months.
8. After making necessary changes on the e-RA portal, all the bidders were invited to check the portal and after their satisfaction & confirmation, BEC advised to open the Initial Offer & conduct the e-RA.
9. Immediately thereafter, RECTPCL opened the Initial Offer of the bidders on 12.2.2018 and e-RA was conducted on 13.2.2018. It is to mention here that after 28 rounds of bidding, M/s Power Grid Corporation of India Limited emerged as the selected bidder for the subject project.
10. After completion of all the formalities, subsequent to conclusion of e-RA, final acquisition price of the SPV was intimated to PGCIL. The SPV was handed over to M/s Power Grid Corporation of India Limited on 27.3.2018 after payment of acquisition price by PGCIL.
11. From above, it can be concluded that the reasons for the increase in Acquisition Price are as follows:-
 - (a) The tentative Acquisition Price was given under Service Tax regime which at that time attracts the rate of 15% i.e. basic @14% plus Swachh Bharat Cess @0.5% plus Krishi Kalyan Cess @ 0.5% whereas the final Acquisition Price was given the new tax regime i.e. Goods and Services Tax (GST) which is applicable from 1st July, 2017 at the rate 18%. Hence there was an increase of 3% of tax liability which come to Rs. 32,28,630/- on professional fees and Rs. 13,78,147/- on the administrative and establishment cost. Accordingly, the total implication due to change in tax regime is to a tune of Rs. 46.07 Lakh.

(b) The completion of bidding process delayed from scheduled date of completion due to following reasons:-

- i. Request of bidder for submission of RFP due to GST regime (Delay of about 2 months).
- ii. To resolve issue of portal faced during e-RA in bidding conducted by PFCCL (Delay of about 4 months).

Both the above factors are beyond the control of RECTPCL and this results increase in Acquisition Price on account of administrative & establishment charges to the tune of Rs. 54,30,018/- & rise in interest cost of Rs. 9,69,776/- amounting to total Rs. 64 Lakh.

12. Hence, the final Acquisition Price had been increased by Rs. 110 lakhs in total.”

30. The petition was heard on 21.8.2018. During the course of hearing, the representative of the Petitioner reiterated the submissions made in the petition and requested to adopt the transmission tariff of the transmission system. None was present on behalf of the LTTCs.

31. Before we proceed to deal with the adoption of tariff, we intend to deal with the objection of UPPCL that the Petitioner has no locus standi to file the petition for adoption of tariff. It is noticed that as per the Bidding Guidelines, PGCIL was declared as the successful bidder and therefore, PGCIL, it acquired the SPV namely, WR-NR Power Transmission Limited which become the 100% subsidiary of PGCIL. TSP has been defined in the TSA as under:

“Transmission Service Provider” or “TSP” shall mean the WR-NR Power Transmission Limited, which has executed this Transmission Service Agreement and has been/shall be acquired by the Selected Bidder.”

Under Article 3.1.3 of the TSA, the TSP is required to obtain the transmission licence for the project from the Appropriate Commission and obtain the order for adoption of transmission charges by the Appropriate Commission, as required under Section 63 of the Act. Therefore, in terms of the definition of TSP read with Article 3.1.3 (b), the TSP i.e. NR-WR Power Transmission Limited has correctly approached the Commission for adoption of tariff. Accordingly, the objection of UPPCL is over ruled.

32. Section 63 of the Act provides as under:

“63. Determination of tariff by bidding process: Notwithstanding anything contained in section 62, the Appropriate Commission shall adopt the tariff if such tariff has been determined through transparent process of bidding in accordance with the guidelines issued by the Central Government.”

In accordance with the Competitive Bidding Guidelines, BPC has to certify that the tariff has been discovered through a transparent process of bidding and the tariff discovered is in line with prevailing market prices. In the minutes of Bid Evaluation Committee held on 13.2.2018, the following has been recorded:

“2. The Bid Evaluation Committee had met earlier on 12th February, 2018 after opening of Initial Offer and recommended the following:

As per provisions of RFP documents, following 4 bidders out of 6 are qualified to participate in the electronic reverse auction stage and submit their final offer:

S.No.	Name of Bidders	Levelised transmission charges from the initial offer	Rank
1.	Power Grid Corporation of India Limited	999.41	L-1
2.	L&T Infrastructure Development Projects Limited	1183.92	L-2
3.	Essel Infraprojects Limited	1503.06	L-3
4.	Adani Transmission Limited	1539.34	L-4

* The lowest levelised Transmission Charges from the Initial Offer submitted by the bidders is Rs. 999.41 Million which shall be the initial ceiling for quoting the Final Offers during e-Reverse Auction.

* To start the e-reverse auction on 13th February, 2018 at 1200 Hrs (IST) after intimation to all the 4 qualified bidders regarding lowest initial price offer.

3. Pursuant to the above, RECTPCL confirmed to BEC that letters had been issued to above four (4) bidders on 12th February, 2018 intimating the e-reverse Auction start time and lowest initial offer for start of e-Reverse Auction.

4. The e- Reverse auction was started on 13th February, 2018 at 1200 (Ist) hrs and Bid Evaluation Committee members were also present. After 28 rounds of bidding, following levelised Transmission Tariff for each bidder (in ascending order) emerged:

S.No.	Name of Bidders	Levelised transmission charges from the initial offer	Rank
1.	Power Grid Corporation of India Limited	927.33	L-1
2.	Essel Infraprojects Limited	932.05	L-2
3.	L&T Infrastructure Development Projects Limited	1183.92	L-3
4.	Adani Transmission Limited	1539.34	L-4

5. As per the above table, M/s Power Grid Corporation of India Limited emerges as the successful bidder after the conclusion of e-Reverse Auction with the lowest Levelised Transmission Charges of Rs. 927.33 Million which is also the Final Offer.

7. After detailed discussions on the evaluation report and verification of the bids, wherever required, the Bid Evaluation Committee decided the following:

a) M/s Power grid Corporation of India Limited is the successful Bidder after the conclusion of the e-reverse Auction with the lowest Levelised Transmission Charges of Rs. 927.33 Million.

b) The levelised tariff for this project based on CERC norms for the same period works out to Rs. 1409.59 million, which has been computed based on the estimated cost as communicated by CEA and methodology for calculation of tariff as per CERC norms.

c) Thus, in light of the above, the levelised tariff computed on the basis of rates quoted by the successful Bidder is in line with prevailing prices.

d) The entire bid process has been carried out in accordance with the "Tariff based Competitive-bidding Guidelines for Transmission Service" and "Guidelines for encouraging competition in development of the Transmission

projects” issued by Ministry of Power, Govt. of India under Section 63 of the Electricity Act, 2003 and as amended from time to time.

e) In view of (a) to (d), above, M/s Power Grid Corporation of India Limited may be issued Letter of Intent (LOI).”

33. Bid Evaluation Committee vide its certificate dated 13.2.2018 has certified as under:

“(a) The entire bid process has been carried out in accordance with the "Tariff based Competitive Bidding Guidelines for Transmission Service" and "Guidelines for encouraging competition in development of the Transmission Projects" issued by Ministry of Power, Govt. of India under Section 63 of the Electricity Act, 2003 and as amended from time to time.

(b) M/s Power Grid Corporation of India Limited has emerged as successful bidder after the conclusion of e- reverse Auction with the Lowest Levelised Transmission charges of Rs. 927.33 Million.

(c) The rates quoted by the successful bidder are in line with the prevailing prices.”

34. In the light of the discussions in Paras 31, 32 and 33, it emerges that selection of the successful bidder and the levelised tariff of the project has been carried out by the Bid Process Coordinator through a transparent process of competitive bidding in accordance with the Guidelines issued by the MoP, GoI under Section 63 of the Act. The Bid Evaluation Committee has certified that the process is in conformity with the MOP Guidelines. The BEC in its certificate dated 13.2.2018 has certified that PGCIL has emerged as the successful bidder after conclusion of e-auction with lowest levelised transmission charges of Rs. 927.33 million. BEC has further certified that the levelised tariff for the project based on CERC norms for the period works out to Rs. 1409.59 million based on the estimated cost communicated by CEA and methodology for calculation of tariff as per the CERC norms. The BEC has certified that the rates quoted by successful

bidder are in line with the prevailing prices. The Commission is not required to go into the cost details of the bids as per the bidding guidelines and has to adopt the tariff if the same has been discovered in accordance with the Guidelines. Based on the certification of the BEC, we approve and adopt the levelised transmission charges for the project as per the Appendix to this order which shall remain valid throughout the period covered in the TSA. The sharing of the transmission charges by the LTTCs shall be governed by the provisions of the Central Electricity Regulatory Commission (Sharing of inter-State Transmission Charges and Losses) Regulations, 2010 as amended from time to time.

35. The Petitioner has clarified that the increase in acquisition price (Rs. 110 lakh) is covered under Change in Law. MPPMCL has submitted that increase in acquisition price should not be allowed in tariff and the same should be borne by the Petitioner. The Petitioner has submitted that increase in acquisition price from Rs. 14.0243 crore to Rs. 15.1249 crore qualifies as change in law events in terms of the TSA. BPC has contended that the tentative acquisition price was intimated to the bidders one month prior to the bid deadline which was based on the prevailing Service Tax regime. The prevailing service tax at that time was 15% i.e. basic @14% plus Swachh Bharat Cess @0.5% plus Krishi Kalyan Cess @ 0.5%. However, the final acquisition price was given under the new tax regime i.e. Goods and Services Tax (GST) @ 18% which became applicable from 1st July, 2017. Therefore, there was an increase of 3% of tax liability which come to Rs. 32,28,630/- on professional fees and Rs. 13,78,147/- on the administrative and establishment cost. Accordingly, the total implication due to change in tax regime was to a tune of Rs. 46,06,777/-. Further, delay of about two months took place on account of request of bidders for submission of RfP due to GST Regime and delay of four months took place

on account of resolution of the issue of portal faced during e-RA bidding which resulted in increase in administrative and establishment charges for an amount of Rs. 54,30,018/- and rise in interest cost for an amount of Rs. 9,69,776/- amount to Rs. 64 lakh. Thus, a total of Rs. 110 lakh was paid by the Petitioner on account of increase in acquisition price to BPC. Article 12.1.1 of the TSA provides as under:

“12.1.1 Change in law means the occurrence of any of the following after the date, which is seven (7) days prior to the Bid Deadline resulting into any additional recurring/non-recurring expenditure by the TSP or any income to the TSP:

* * * * *

- Any change in the Acquisition price; or”.

As per Article 12.1.1 of the TSA, ‘Change in Law’ means the occurrence of any of the events after the date which is seven days prior to the Bid Deadline resulting into any additional recurring/non-recurring expenditure by the Transmission Service Provider or any income to the Transmission Service Provider. Any change in the acquisition price which took place after 7 days prior to the bid deadline is covered under Change in Law. Therefore, the Petitioner is entitled for relief for the increased amount of acquisition price under Change in Law.

36. Article 12.2.1 of the TSA provides as under:

“12.2 Relief for Change in Law

12.2.1 During Construction Period

During the Construction Period, the impact of increase/decrease in the cost of the Project in the Transmission Charges shall be governed by the formula given below:

For every cumulative increase/decrease of each Rupees Two Crore Eighty Seven Lakh Only (Rs. 2.87 crore) in the cost of the Project up to the

Scheduled COD of the Project, the increase/decrease in Non-Escalable Transmission Charges shall be an amount equal to Zero Point Three One Three percent (0.313%) of the Non-Escalable Transmission Charges.”

As per the above provision, the relief is admissible @ 0.313% for every cumulative increase of Rs. 2.87 crore in the cost of the project. Though, the Petitioner is eligible to recover the additional acquisition price of Rs. 110 lakh from the LTTCs under Change in Law, the same falls short of Rs. 2.87 crore and cannot be allowed at this stage. As and when the impact of change in law including increase in the acquisition price reaches or exceeds Rs. 2.87 crore, the Petitioner shall be entitled to claim the relief in terms of Article 12.2.1 of the TSA. Accordingly, the Petitioner is at liberty to claim the relief at appropriate point of time in accordance with law.

37. A copy of this order shall be sent to CTU and Long Term Transmission Customers of the transmission system.

38. The Petition No. 120/AT/2018 is disposed of in terms of the above.

Sd/-
(Dr. M. K. Iyer)
Member

sd/-
(A.K. Singhal)
Member

sd/-
(P. K. Pujari)
(Chairperson)

Appendix

Year (Term of Licence)	Commencement Date of Contract Year	End Date of Contract Year	Quoted Non- Escalable Transmission Charges (Rs. Millions)	Quoted Escalable Transmission Charges (Rs. Millions)
1	Scheduled COD 27 July, 2021	31-Mar-22	1169.73	0.00
2	1-Apr-22	31-Mar-23	1169.73	Same as Above
3	1-Apr-23	31-Mar-24	1169.73	Same as Above
4	1-Apr-24	31-Mar-25	1169.73	Same as Above
5	1-Apr-25	31-Mar-26	1169.73	Same as Above
6	1-Apr-26	31-Mar-27	1169.73	Same as Above
7	1-Apr-27	31-Mar-28	1169.73	Same as Above
8	1-Apr-28	31-Mar-29	1169.73	Same as Above
9	1-Apr-29	31-Mar-30	1169.73	Same as Above
10	1-Apr-30	31-Mar-31	821.73	Same as Above
11	1-Apr-31	31-Mar-32	821.73	Same as Above
12	1-Apr-32	31-Mar-33	821.73	Same as Above
13	1-Apr-33	31-Mar-34	821.73	Same as Above
14	1-Apr-34	31-Mar-35	821.73	Same as Above
15	1-Apr-35	31-Mar-36	821.73	Same as Above
16	1-Apr-36	31-Mar-37	821.73	Same as Above
17	1-Apr-37	31-Mar-38	821.73	Same as Above
18	1-Apr-38	31-Mar-39	821.73	Same as Above
19	1-Apr-39	31-Mar-40	821.73	Same as Above
20	1-Apr-40	31-Mar-41	821.73	Same as Above
21	1-Apr-41	31-Mar-42	821.73	Same as Above
22	1-Apr-42	31-Mar-43	821.73	Same as Above
23	1-Apr-43	31-Mar-44	821.73	Same as Above
24	1-Apr-44	31-Mar-45	821.73	Same as Above
25	1-Apr-45	31-Mar-46	821.73	Same as Above
26	1-Apr-46	31-Mar-47	821.73	Same as Above
27	1-Apr-47	31-Mar-48	821.73	Same as Above
28	1-Apr-48	31-Mar-49	821.73	Same as Above
29	1-Apr-49	31-Mar-50	821.73	Same as Above
30	1-Apr-50	31-Mar-51	821.73	Same as Above
31	1-Apr-51	31-Mar-52	821.73	Same as Above
32	1-Apr-52	31-Mar-53	821.73	Same as Above
33	1-Apr-53	31-Mar-54	821.73	Same as Above
34	1-Apr-54	31-Mar-55	821.73	Same as Above
35	1-Apr-55	31-Mar-56	821.73	Same as Above
36	1-Apr-56	26-July-56	821.73	Same as Above