

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 318/MP/2019

Coram:
Shri P.K. Pujari, Chairperson
Dr. M.K. Iyer, Member
Shri I.S. Jha, Member

Date of Order: 22nd January, 2020

In the matter of

Petition under Section 79(1)(c), Section 18 and Section 17(3) of the Electricity Act, 2003, read with Regulation 19 of the Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of Transmission Licence and other related matters) Regulations, 2009, and invoking all other enabling powers of the Central Electricity Regulatory Commission permitting the amendment of the Transmission Licence dated 23.5.2017 granted to the NER-II Transmission Limited for establishing Transmission System for NER System Strengthening Scheme-II (Part-B) and V, (NER-II B & V) on Build, Own, Operate and Maintain basis and accordingly allowing carving out of Silchar-Misa 400 kV D/C (quad) transmission line from the purview of the aforesaid Transmission Licence and to vest the same in the favour of a separate entity i.e. Sterlite Grid 12 Limited (Respondent No. 1/ SGL12).

**And
In the matter of**

NER-II Transmission Limited
F-1, Mira Corporate Suits, 1 & 2
Mathura Road, Ishwar Nagar,
New Delhi -110 065

...Petitioner

Vs

1. Sterlite Grid 12 Limited
F-1, Mira Corporate Suits, 1 & 2
Mathura Road, Ishwar Nagar,
New Delhi -110 065
2. Assam Electricity Grid Corporation Limited
4th Floor, Bijlee Bhawan, Paltan Bazar,
Guwahat-1, Assam-781 001
3. Tripura State Electricity Corporation Limited
Bidyut Bhawan, Banamalipur, Agartala,
Tripura



4. Meghalaya State Power Distribution Company Limited
Lum Jingshai, Sort Round Road, Shillong,
Meghalaya-793 001

5. Manipur State Power Distribution Company Limited
Electricity Complex, Patta No. 1293 under 87 (2),
Khwai Bazar, Keishampat, District-Imphal West,
Manipur-795 001

6. Department of Power
Government of Arunachal Pradesh
Vidyut Bhawan, Itanagar,
Arunachal Pradesh-791 111

7. Department of Power
Government of Nagaland
A.G.Colony, Kohima, Nagaland-797 005

8. Power and Electricity Department
Government of Mizoram
Mizoram Secretariat, Annexure-II, Treasury,
Square Aizwal, Mizoram

9. Sterlite Grid 4 Limited
F-1, Mira Corporate Suits, 1 & 2
Mathura Road, Ishwar Nagar,
New Delhi -110 065

.....Respondents

Parties Present:

Shri Sanjay Sen, Senior Advocate, NER -II
Shri Abhishek Kumar, Advocate, NER -II
Ms. Harneet Kaur, Advocate, NER-II
Shri T.A.N Reddy, NER-II
Ms. Anisha Chopra Batra, NER-II
Shri Agam Kumar, NER-II

ORDER

Background

The Petitioner, NER-II Transmission Limited (NTL) is a fully owned subsidiary of Sterlite Grid 4 Limited (SGL) which was selected as a successful bidder through the International tariff based competitive bidding process under Section 63 of the Electricity Act, 2003 (hereinafter referred to as the "Act") to establish transmission system for "NER System Strengthening Scheme-II (Part-B) and V" on Build, Own,



Operate and Maintain (BOOM) basis comprising the following elements and to provide transmission service to the Long Term Transmission Customers (LTTCs) of the Project:

Sr.No.	Scheme/ Transmission Works	Scheduled COD in months from effective date
NERSS-II (Part-B)		
1.	Biswanath Chariyalli (POWERGRID)- Itanagar 132 kV D/c (Zebra Conductor) line Line Bays: <ul style="list-style-type: none"> • Itanagar S/S (Arunachal Pradesh): 2 nos. 132 kV line bays for termination of Biswanath Chariyalli (POWERGRID)-Itanagr 132 kV D/c (Zebra conductor) line 	36 months
2.	Silchar (POWERGRID)- Misa (POWERGRID) 400 kV D/c (Quad) line	44 months
3.	LILO of one circuit of Biswanath Chariyalli (POWERGRID)- Itanagar 132 kV D/C line at Gohpur (AEGCL)	36 months
NERSS V		
1.	Establishment of 400/132 kV, 7x105 MVA Single phase (including one spare) S/S at Surajmaninagar 400 kV <ul style="list-style-type: none"> • ICTs: 400/132 kV, 7x105 MVA single phase (including one spare) • ICTs bays: 2 no. • Line bays: 4 no. [2 no. for Palatana- Surajmaninagar and 2 no. for Surajmaninagar- P.K. Bari 400 kV D/C Line] • Bus reactor: 2x125 MVAR • Bus reactor bays: 2 no. • Space for future line bays (incl. Space for sw, line reactor): 6 no. • Space for ICT bays: 1 no. 132 kV <ul style="list-style-type: none"> • ICTs bays: 2 no. • Line bays: 2 no. [2 no. for Surajmaninagar (TSECL)- Surajmaninagar (TBCB) 132 kV line with high capacity/HTLS (Equivalent to single moose)] • Space for future line bays: 6 no. • Space for ICT Bays; 1 no. <p>Space for future 400/132 kV, 315 MVA ICT TSP is free to choose the location of Surajmaninagar S/s within a radius of 10 km from the Surjamaninagar (TSECL) S/s.</p>	40 months



2.	<p>Establishment of 400/132 kV, 7x105 MVA Single phase (including one spare) S/s at P.K. Bari</p> <p>400 kV</p> <ul style="list-style-type: none"> • ICTs: 400/132 kV, 7x105 MVA single phase (including one spare) • ICTs bays: 2 no. • Line bays: 4 no. <p>[2 no. for Surajmaninagar- P.K. Bari and 2 no. for P.K. Bari-Silchar 400 kV D/c Line]</p> <ul style="list-style-type: none"> • Bus reactor: 2x125 MVAR • Bus reactor bays: 2 no. • Space for future line bays (incl. Space for sw, line reactor): 6 no. • Space for ICT bays: 1 no. <p>132 kV</p> <ul style="list-style-type: none"> • ICTs bays: 2 no. • Line bays: 2 no. <p>[2 no. for P.K. Bari (TSECL) – P.K. Bari (TBCB) 132 kV D/c Line with high capacity/ HTLS (Equivalent of single moose)]</p> <ul style="list-style-type: none"> • Space for future line bays: 6 no. • Space for ICT Bays; 1 no. <p>Space for future 400/132 kV, 315 MVA ICT</p>	40 months
3.	Surajmaninagar- P.K. Bari 400 kV D/C line with Twin ACSR Moose	40 months
4.	AGTPP (NEEPCO)- P.K. Bari (TSECL) 132 kV D/C line with high capacity HTLS Conductor (equivalent to single moose ampacity at 85°C)	36 months
5.	2 no. 132 kV line bays each at AGTPP (NEEPCO) and P.K. Bari (TSECL)	36 months
6.	2 no. 400 kV line bays at Palatana GBPP switchyard for termination of Palatana- Surajmaninagar 400 kV D/C Line	40 months

2. NTL approached the Commission for grant of transmission licence in Petition No. 80/TL/2017 and for adoption of tariff of the transmission system in Petition No. 81/AT/2017. The Commission in its order dated 20.6.2017 in Petition No. 80/TL/2017 granted licence to NTL for inter-State transmission of electricity and in order dated 12.6.2017 in Petition No. 81/AT/2017 adopted the tariff of the transmission system.

3. As per the TSA dated 27.12.2016, Scheduled Date of Commissioning of the Project is 1.12.2020. According to the Petitioner, Silchar-Misa 400 kV D/C (quad) transmission line (hereinafter referred to as “SM Line”) would be commissioned by January 2020 and other elements would be commissioned as per scheduled date.



SM Line is situated in the State of Assam and its operation is distinguishable and separate from the other transmission elements. On account of better commercial and operational efficiency of SM Line, the Petitioner has filed the present Petition with the following prayers:

“(a) Permit the amendment of Transmission Licence, together with all related contractual documents, to the effect that only the Elements 1-3 and 5-11, as provided in the table in Paragraph No. 13 (f) hereinabove, are retained with the Transmission Licence held by the Petitioner;

(b) Grant a fresh transmission licence to the Respondent No. 1 for constructing, commissioning, operating, and recovering the transmission charges in respect of the SM Line/Element 4;

(c) Permit the transfer of SM Line/Element 4, as provided in the table in Paragraph No. 13 (f) hereinabove, in favour of a separate entity i.e Respondent No. 1 under Section 17 (3) of the Act;

(d) In terms of and consequent to the prayer (a) above, grant permission to amend the TSA in terms of the fresh transmission licence;

(e) Direct the LTTCS to enter into a fresh transmission service agreement with Respondent No. 1 in relation to the SM Line; and

(f) In the interim and without prejudice to the prayers hereinabove, grant an in-principle approval for a temporary licence to Respondent No. 1 for operating the SM Line till the time a new permanent transmission licence is issued for SM Line and for such interim period grant permission for continuation of tariff as per the Commission`s order dated 12.6.2017 in Petition No. 81/AT/2017.”

Submission of the Petitioner

4. The Petitioner has mainly submitted as under:

(a) As a part of the re-organisation of business in order to achieve utmost synergy and operational efficiency of operations and management of the power transmission business and for the better regulatory compliance of the said business, the Petitioner is seeking amendment to the transmission licence.

(b) SM Line is under construction and the commercial operation date is likely to be in January 2020 ahead of the Scheduled Commercial Operation Date (SCOD) i.e. 1.12.2020. Other transmission elements are still under construction and would achieve COD as per Schedule 3 of the TSA. All the



elements being part of the same transmission licence need to be reorganised for better operational efficiency of the Project, and effectively managing the operation and maintenance of the Project.

(c) Out of 12 elements, SM Line is situated in the State of Assam and other 11 elements are situated in different States of the North-East Region of India, and operation of SM Line is distinguishable and separable from other transmission elements. Therefore, in order to attain utmost synergy within the Project and to bring out maximum operational efficiency, it is most appropriate and reasonable to separate SM Line and its associated transmission assets from the purview of the transmission licence and thereby, transfer one element of the Project i.e. SM Line to a separate entity with a new licence.

(d) In the present scenario, the commissioned element is to be maintained by the licensee and whereas the elements which are under construction are to be maintained by EPC contractor. Therefore, it is viable to maintain different books of accounting for all the lines (which includes business undertakings, profit and loss statements, balance sheet, etc.) which captures the amount of any revenue, cost, assets, liabilities, reserves, or provisions associated with each of the elements separately.

(e) As per the TSA, no element is required to be commissioned before the COD of SM Line can be declared and neither is the commissioning of the SM Line a pre-requisite for declaring the COD of any other element. Within the Scheme of TSA (Schedule 3), SM Line is completely distinguishable and operationally autonomous, and the tariff as well as SCOD for the said line is clearly demarcated. Therefore, in the best interest of the Project, it is appropriate to draw out such a mechanism wherein the said lines operate separately and independently without affecting the operation and recovery of transmission charges for any other element.

(f) In order to ensure further investments within the Project, it is expedient and necessary to amend the transmission licence so that SM Line can be segregated from the rest of the elements and thereby, enable the Petitioner to transfer one part of the Project i.e. SM Line into a separate entity i.e.



Respondent No. 1, Sterlite Grid 12 Ltd. Since the Respondent No. 1 is a new entity, it shall require fresh transmission licence in terms of the provisions of the extant regulatory framework to operate and conduct its functions.

(g) Board of Directors of the Petitioner have passed the Resolutions dated 9.8.2019, wherein it has approved the splitting of Project assets and transfer of SM Line in favour of Respondent No. 1. Board of Directors of Respondent No. 1 through its Resolution dated 9.8.2019 have approved the acquisition of the SM Line of the Project subject to the approval of the Commission. The Petitioner vide Resolution dated 21.8.2019 has also obtained the consent from its members regarding the proposed transfer of the SM Line into a separate entity subject to the approval of the Commission.

5. The matter was heard on 18.12.2019 on admission. During the course of hearing, learned senior counsel for the Petitioner reiterated the submissions made in the Petition. After hearing the learned senior counsel for the Petitioner, order in the Petition was reserved.

Analysis and Decision

6. We have considered the submissions of the Petitioner. The present Petition has been filed under Section 18 of the Electricity Act, 2003 read with Regulation 19 of the Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of Transmission Licence and other related matters) Regulations, 2009 (hereinafter referred to as 'Transmission Licence Regulations') for amendment of the transmission licence granted to the Petitioner vide order dated 20.6.2017 to split the SM Line from the purview of the transmission licence and transfer of the licence with respect to SM Line to a separate entity.

7. Section 18 of the Electricity Act, 2003 deals with the circumstances and procedure for amendment of transmission licence as under:



“(1) Where in its opinion the public interest so permits, the Appropriate Commission, may, on the application of the licensee or otherwise, make such alterations and amendments in the terms and conditions of his licence as it thinks fit:

Provided that no such alterations or amendments shall be made except with the consent of the licensee unless such consent has, in the opinion of the Appropriate Commission, been unreasonably withheld.

(2) Before any alterations or amendments in the licence are made under this section, the following provisions shall have effect, namely: -

(a) where the licensee has made an application under sub-section (1) proposing any alteration or modifications in his licence, the licensee shall publish a notice of such application with such particulars and in such manner as may be specified;

(b) in the case of an application proposing alterations or modifications in the area of supply comprising the whole or any part of any cantonment, aerodrome, fortress, arsenal, dockyard or camp or any building or place in the occupation of the Government for defence purposes, the Appropriate Commission shall not make any alterations or modifications except with the consent of the Central Government;

(c) where any alterations or modifications in a licence are proposed to be made otherwise than on the application of the licensee, the Appropriate Commission shall publish the proposed alterations or modifications with such particulars and in such manner as may be specified;

(d) the Appropriate Commission shall not make any alterations or modification unless all suggestions or objections received within thirty days from the date of the first publication of the notice have been considered.

8. Further, Regulation 19 of the Transmission Licence Regulations provides as under:

“19. Amendment to Licence

(1) The Commission may of its own motion or on an application made by the licensee or otherwise make such alterations and amendments in the terms and conditions of licence if the Commission is of the opinion that the public interest so requires:

Provided that before ordering any alterations and amendments in the terms and conditions of the licence, proposed to be made otherwise than on the application of the licensee, the Commission shall publish a notice in two such daily newspapers as it considers necessary with the following particulars, namely:-

(a) name and address of the licensee;

(b) alterations and modifications proposed to be made;

(c) grounds for such alterations and modifications; and

(d) statement inviting suggestions, if any, on the proposal for consideration of the Commission within the time specified in the notice.



(2) The procedure specified in regulation 7 shall *mutatis mutandis* be applicable in case the licensee makes an application for any alteration of or modification to the terms and conditions of the licence. (3) Where the licensee has made an application proposing any alteration and modification of its licence, it shall publish a notice of such application, with the following particulars, namely:-

- (a) name of the applicant;
- (b) that an application for alteration and modifications has been made before the Commission;
- (c) details of alteration and modifications proposed in the application,
- (d) reasons for seeking such alterations and modifications;
- (e) a statement that the application made before the Commission has been posted on the web site and can also be inspected in the office of the applicant;
- (f) a statement that any suggestion to the proposal for alteration and modifications made in the application may be submitted to the Secretary of the Commission within one month of publication of the notice;

As per the above provisions, the Commission may amend the licence of the entity if public interest so requires.

9. The Petitioner has submitted that SM Line is likely to be declared under commercial operation in January 2020 and in order to achieve operational efficiency, it is seeking transfer of SM Line into the new entity, namely, Sterlite Grid 12 Limited. The Petitioner has submitted that as per the TSA, neither element is required to be commissioned before the COD of SM Line nor commissioning of the SM Line is a pre-requisite for declaring the COD of any other elements. The main grounds to split the asset and transfer the same into the new entity as stated by the Petitioner are as under:

- (a) SM Line is under construction and is expected to achieve the commercial operation in January 2020 ahead of SCOD i.e.1.12.2020;
- (b) SM Line is situated in the State of Assam and operation of SM Line is distinguishable and separable from other transmission elements.
- (c) The commissioned asset is required to be maintained by the licensee and whereas the elements which are under construction are required to be maintained by EPC contractor.



(d) In order to ensure further investment within the Project, it is necessary to amend the transmission licence so that SM Line can be segregated from the rest of the elements.

(e) Board of Directors of the Petitioner company as well as that of the Respondent No. 1, vide Resolutions dated 9.8.2019, have approved the splitting of Project assets and transfer of SM Line in favour of new entity.

10. We find that none of the grounds cited by the Petitioner satisfy the requirement of public interest as contemplated in Section 18 of the Act or the provisions of Transmission License Regulations. Also, the entire Project has been identified as one scheme during the Empowered Committee Meeting on Transmission in terms of the “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 has been awarded to Transmission Service Provider/ Petitioner to implement/ execute it pursuant to the competitive bid process. Accordingly, the Petitioner`s prayers are rejected.

11. The Petition No. 318/MP/2019 is disposed of in terms of the above.

Sd/-
(I.S. Jha)
Member

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

sd/-
(P.K. Pujari)
Chairperson

