

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 442/TL/2019

Coram:

**Shri P. K. Pujari, Chairperson
Shri I.S. Jha, Member**

Date of Order: 3rd of March, 2020

In the matter of:

Petition under Sections 14, 15 and 79(1)(e) 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 with respect to grant of Transmission Licence to Lakadia Banaskantha Transco Limited.

And

In the matter of

Lakadia Banaskantha Transco Limited
C 105, Anand Niketan,
New Delhi -110 021.

..... **Petitioner**

Vs

- 1) Powerica Limited
9th Floor, C Wing,
Godrej Coliseum, Sion (E),
Mumbai-400 022.
- 2) REC Transmission Projects Company Limited
Core-4, SCOPE Complex,
7, Lodhi Road, New Delhi-110 003.
- 3) Power Grid Corporation of India Limited (CTU)
Saudamini, Plot No. 2, Sector-29,
Gurgaon-122 001.

.....**Respondents**

The following was present:

Shrr Praveen Tamak, LBTL

ORDER

The Petitioner, Lakadia Banaskantha Transco Limited has filed the present Petition for grant of transmission licence under Sections 14, 15 and 79(1)(e) of the

Electricity Act, 2003 (hereinafter referred to as 'the Act') read with 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') to establish "Transmission System associated with RE Generations at Bhuj-II, Dwarka & Lakadia" (hereinafter referred to as 'the Transmission System' or 'Project') on Build, Own, Operate and Maintain (BOOM) basis comprising the following elements:

Sr. No.	Name of the Transmission Element	Completion Target
1	Lakadia PS - Banaskantha PS 765 kV D/c line	21 months (June, 21)
2	765 kV Bays at Lakadia and Banaskantha sub-stations for Lakadia PS - Banaskantha PS 765 kV D/c line	
3	2x240 MVAR switchable Line reactor along with bays at Banaskantha end of Lakadia PS-Banaskantha PS 765 kV D/c line and 1x80 MVAR, 765 kV, 1 ph switchable line reactor (Spare unit) at Banaskantha end.	

2. Based on the competitive bidding carried out by REC Transmission Projects Company Limited (hereinafter referred to as 'RECTPCL') in accordance with the Guidelines issued by Ministry of Power, Government of India under Section 63 of the Act, M/s Adani Transmission Limited (ATL) emerged as the successful bidder with the lowest levelized transmission charges of Rs. 834.62 million per annum.

3. The Commission after considering the application of the Petitioner in the light of the provisions of the Act and Transmission Licence Regulations in its order dated 23.1.2020 *prima facie* proposed to grant licence to the Petitioner. Relevant para of our order dated 23.1.2020 is extracted as under:

"11. We have considered the submissions of the Petitioner and BPC. The proviso to Clause 2.4 of the RfP provides that "if for any reason attributable to the BPC, the said 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 28.10.2019, BPC, vide its letter dated 13.11.2019, in terms of Clauses 2.4, 2.5 and 2.6 of RfP extended the date upto 21.11.2019 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. 27 crore and has acquired hundred percent equity-holding in the applicant company on 13.11.2019 after execution of the Share Purchase Agreement. The TSP on behalf of the selected bidder filed the Application through e-filing for grant of transmission licence and adoption of tariff on 18.11.2019. 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 11.2.2020"

4. A public notice under Section 15 (5) of the Act was published on 29.1.2020 in all editions of The Economic Times (English) and Hindustan (Hindi). No suggestions/objections have been received from the members of the public in response to the public notice.

5. The Petitioner, vide order dated 23.1.2020, was directed to file an affidavit to the effect that the execution of the transmission Project shall not be delayed due to time taken in obtaining statutory clearances required under RfP and the Transmission Service Agreement (TSA) or adjudication of any claim of the Petitioner arising under the TSA. In response, the Petitioner vide its affidavit dated 25.1.2020 has submitted that the claims, if any, shall be in accordance with the provisions of the RfP Project documents. The Petitioner has submitted that the bidding process was governed by the Tariff Based Competitive Bidding Guidelines for the Transmission Service and Standard Bidding Documents issued by the Ministry of Power. The tariff quoted *inter-alia* takes into consideration the rights and obligations of the developer including the provisions available to claim time and cost variations as allowed in the TSA. The Petitioner has further submitted that the terms of the TSA are binding on the parties (TSP and LTTCs).

The Petitioner has submitted that any claim for escalation in transmission charges or for extension of time that may be raised by the Petitioner in pursuance of such competitive bidding process needs to be dealt with in accordance with terms contained in the TSA. Post selection of the successful bidder and the decision to award the Project, there cannot be a review of the bidding terms including scope of implications of the clauses such as force majeure and change in law etc. specified in the TSA. The Petitioner has submitted that Section 56 of the Indian Contract Act, 1872 provides for frustration of contract and impossibility of performance, etc. and the Commission in number of cases has been giving reliefs as per the provisions of law. The Petitioner has submitted that in terms of Section 28 of the Indian Contract Act, 1872, no restraint in taking legal proceedings in future can be validly placed. The Petitioner has submitted that in terms of the TSA, it would implement the Project as per the provisions of the Article 16.4 of the TSA which is extracted as under:

"16.4. Parties to Perform Obligation: Notwithstanding the existence of any Dispute and difference referred to the Appropriate Commission or the Arbitration Tribunal as provided in Article 16.3 and save as the Appropriate Commission or the Arbitration Tribunal may otherwise direct by a final or interim order, the Parties hereto shall continue to perform their respective obligations (which are not in dispute) under this Agreement."

6. The Petitioner has submitted that claim, if any, made by the Petitioner need to be dealt with in accordance with the provisions of the RfP Project documents. We direct that the Petitioner shall remain bound by the commitment given by it under affidavit dated 25.1.2020.

7. In our order dated 23.1.2020, the following provisions of the TSA with regard to quality control and workmanship were taken note of:

(a) As per Article 5.1.1 of the TSA, the TSP at its own cost and expense, shall be responsible for designing, constructing, erecting, completing and commissioning each element of the Project by Scheduled COD in accordance with the various regulations of the Central Electricity Authority.

(b) Article 5.4 of the TSA provides that the TSP shall ensure that the Project is designed, built and completed in a good workmanlike manner using sound engineering and construction practices and using only materials and equipment that are new and of international utility grade quality such that the useful life of the Project will be till the expiry date.

(c) The design, construction and testing of all equipment, facilities, components and systems of the Project shall be in accordance with Indian Standards and Codes issued by Bureau of India Standards. Accordingly, the Petitioner was directed to submit the information with regard to quality control mechanism available or to be put in place to ensure the compliance of the requirements stipulated in Article 5.1.1 and Article 5.4 of the TSA.

8. The Petitioner, vide its affidavit dated 25.1.2020, has submitted:

“14. According to the terms of the TSA, there are two external agencies, viz CEA and Lead LTTC, which monitor the quality of the construction of the Transmission Project being constructed by the Applicant. Further, the Applicant under the TSA is entrusted with the obligation of providing on a monthly basis, a progress report to all the Long term Transmission Customer and Central Electricity Authority (CEA), with regard to the project and its execution, to enable them to monitor and co-ordinate the development of the Project. Further, it is most respectfully submitted that in terms of the TSA, the Lead LTTC is duty bound to designate, at the most 3 employees for the purpose of inspecting the progress of the Project. In addition, the CEA may carry out random inspections during the Project execution, as and when deemed necessary by it....

16. In terms of the above quoted provisions of the TSA, there are sufficient checks and balances and the quality control mechanism is already available whereby both, CEA and the Lead LTTC will monitor the overall quality of construction of the Project by the Applicant to ensure that the Applicant is complying with Article 5.1.1 and 5.4 of the TSA.

18. The Applicant being an experienced entity will ensure that the project is constructed by following the required quality standard and prudent utility practices by putting in place the following:

(i) At the procurement stage, the Qualification Requirement for short listings of a supplier/contractor is done on the basis of the technical specifications as mentioned in the TSA. The purchase order/contract mentions the technical standard and the testing requirements. Material despatch is allowed after the conformance report is validated.

(ii) For tower material, a Manufacturing Quality Plan (MQP) in line with the applicable technical standards and the one followed by CTU is followed.

(iii) For ensuring construction quality, a Field Quality Plan (in line with the standards mentioned in TSA and that followed by CTU) is specified to the contractors in advance. The conformance report to the said document is also maintained at site.

(iv) The construction and material supply quality is also validated with respect to the TSA by the Lenders Independent Engineer during its quarterly construction review.”

9. We have considered the submission of the Petitioner. In the TSA, there is provision for the lead LTTC to designate upto three employees for inspection of the progress of the Project. Further, the Petitioner is required to give a monthly progress report to the lead LTTC and the CEA about the Project and its execution. The TSA also vests a responsibility in the CEA to carry out random inspection of the Project as and when deemed necessary. We consider it necessary that CEA devises a mechanism for random inspection of the Project every three months to ensure that the Project is not only being executed as per the schedule, but the quality of equipment and workmanship of the Project conform to the Technical Standards and Grid Standards notified by CEA and IS Specifications. In case of slippage in execution of the Project within the timeline specified in the TSA or any non-conformance to the Grid Standards/Technical Standards/IS Specifications, CEA is requested to promptly bring the same to the notice of the Commission so that appropriate direction can be issued to the licensee for compliance.

10. CTU through its recommendation dated 12.11.2019 for grant of transmission licence to the Petitioner has placed documents on record regarding compliance of Regulations 9.1 and 9.2 of the Central Electricity Regulatory Commission (Planning, Coordination and Development of Economic and Efficient Inter-State Transmission System by Central Transmission Utility and other related matters) Regulations, 2018.

11. As regard the grant of transmission licence, Clauses (15) and (16) of Regulation 7 of Transmission Licence Regulations provide as under:

“(15) The Commission may after consideration of the further suggestions and objections, if any, received in response to the public notice as aforesaid, grant licence as nearly as practicable in Form-III attached to these regulations or for reasons to be recorded in writing, reject the application if such application is not in accordance with the provisions of the Act, the rules or regulations made thereunder or any other law for the time being in force or for any other valid reason.

(16) The Commission may, before granting licence or rejecting the application, provide an opportunity of hearing to the applicant, the Central Transmission Utility, the long-term customers, or the person who has filed suggestions and objections, or any other person:

Provided further that the applicant shall always be given a reasonable opportunity of being heard before rejecting the application.”

12. In our order dated 23.1.2020, we had proposed to grant transmission licence to the Petitioner company and directed for issue of public notice. In response to the public notice, no suggestions/objections have been received. CTU in its letter dated 12.11.2019 has recommended for grant of transmission licence to the Petitioner. We are satisfied that the Petitioner company meets the requirements of the Act and the Transmission Licence Regulations for grant of transmission licence for the subject Transmission System mentioned at para 1 of this order. Accordingly, we direct that Transmission Licence be granted to the Petitioner, Lakadia Banaskantha Transco Limited, to establish “Transmission System associated with RE Generations at Bhuj-II,

Dwarka & Lakadia” on Build, Own, Operate and Maintain basis as per the details given in para 1 above.

13. The grant of transmission licence to the Petitioner (hereinafter referred to as ‘the licensee’) is subject to the fulfillment of the following conditions throughout the period of licence:

(a) The transmission licence shall, unless revoked earlier, remain in force for a period of 25 years;

(b) The transmission licensee shall comply with the provisions of the Transmission Licence Regulations or any subsequent enactment thereof and the terms and condition of the TSA during the period of subsistence of the licence.

(c) Since the expiry date as per the TSA is 35 years from the scheduled COD of the Project, the licensee may make an application, two years before the expiry of initial licence period, for grant of licence for another term in accordance with Regulation 13 (2) of the Transmission Licence Regulations which shall be considered by the Commission in accordance with law;

(d) The licensee shall not enter into any contract for or otherwise engage in the business of trading in electricity during the period of subsistence of the transmission licence;

(e) The licensee shall have the liability to pay the license fee in accordance with the provisions of the Central Electricity Regulatory Commission (Payment of Fees) Regulations, 2012, as amended from time to time or any subsequent

enactment thereof. Delay in payment or non-payment of licence fee or a part thereof for a period exceeding sixty days shall be construed as breach of the terms and conditions of the licence;

(f) The licensee shall comply with the directions of the National Load Despatch Centre under Section 26 of the Act, or the Regional Load Despatch Centre under sub-section (3) of Section 28 or sub-section (1) of Section 29 of the Act, as may be issued from time to time for maintaining the availability of the transmission system;

(g) The licensee shall remain bound by the Central Electricity Regulatory Commission (Standard of Performance of inter-State transmission licensees) Regulations, 2012 or subsequent enactment thereof.

(h) The licensee shall provide non-discriminatory open access to its Transmission System for use by any other licensee, including a distribution licensee or an electricity trader, or generating company or any other person in accordance with the Act, Central Electricity Regulatory Commission (Open Access in inter-State Transmission) Regulations, 2008 and Central Electricity Regulatory Commission (Grant of Connectivity, Long-term Access and Medium-term Open Access in inter-State Transmission and related matters) Regulations, 2009 as amended from time to time and Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2010 as amended from time to time or any subsequent re-enactment thereof;

(i) The licensee shall not undertake any other business for optimum utilization of the Transmission System without prior intimation to the Commission and shall comply with the provisions of the Central Electricity Regulatory Commission (Sharing of Revenue Derived from Utilization of Transmission Assets for Other Business) Regulations, 2020;

(j) The licensee shall remain bound by the Central Electricity Regulatory Commission (Sharing of inter-State Transmission Charges and Losses) Regulations, 2010 as amended from time to time;

(k) The licensee shall remain bound by the provisions of the Act, the rules and regulations framed thereunder, in particular the Transmission Licence Regulations, the Grid Code, the Standards specified by the Central Electricity Authority, orders and directions of the Commission issued from time to time;

(l) The licensee shall ensure execution of the Project within timeline specified in the Schedule 3 of the TSA and as per the Technical Standards and Grid Standards of CEA prescribed in Article 5.1.1 and Article 5.4 of the TSA;

(m) The licensee shall as far as practicable coordinate with the licensee (including deemed licensee) executing the upstream or downstream transmission Projects and the Central Electricity Authority for ensuring execution of the Project in a matching timeline; and

(n) The licensee shall submit all such report or information as may be required under Transmission Licence Regulations, Standard of Performance Regulations, Transmission Service Agreement or any other regulation of the

Commission or as per the directions of the Commission as may be issued from time to time.

14. Central Electricity Authority shall monitor the execution of the Project and bring to the notice of the Commission any lapse on the part of the licensee to meet the schedule for further appropriate action in accordance with the provisions of the Act and Transmission Licence Regulations.

15. A copy of this order shall be sent to CEA for information and necessary action.

16. Petition No. 442/TL/2019 is disposed of in terms of the above.

Sd/-
(I.S.Jha)
Member

sd/-
(P. K. Pujari)
Chairperson