

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 3/TL/2024

**Coram:
Shri Jishnu Barua, Chairperson
Shri Arun Goyal, Member
Shri P.K. Singh, Member**

Date of order: 25th April 2024

In the matter of:

Application under Section 14 of the Electricity Act, 2003 read with the Central Electricity Regulatory Commission (Procedure, Terms and Conditions for Grant of Transmission License and other related matters) Regulations, 2009 for grant of Transmission License to Butwal-Gorakhpur Cross Border Power Transmission Limited (BGCPTL) for implementation of Indian portion of New Butwal- Gorakhpur 400 kV Double Circuit Cross-border interconnection transmission line and associated bay extension work.

And

In the matter of

**Butwal-Gorakhpur Cross Border
Power Transmission Limited (BGCPTL)**

Through its Chief Executive Officer
Plot No. 2, Sector 29, Gurugram-122001,
Haryana

...Petitioner

Vs

1. Central Transmission Utility of India Limited

Through its COO
Plot No. 2, Sector 29, Saudamini
Gurugram, Haryana-122001

2. Nepal Electricity Authority

Through its Coordinator/Liaison Officer – BGCPTL & MCA Nepal

3. Central Electricity Authority

Through its Chief Engineer (PSPM)
Sewa Bhawan, Ramakrishna Puram,
Sector-1, New Delhi-110 066

...Respondents

The following were present:

Shri Shubham Arya, Advocate, BGCPTL
Ms. Pallavi Saigal, Advocate, BGCPTL
Shri Devanshu Sharma, Advocate, BGCPTL
Shri V C Sekhar, BGCPTL
Shri Prashant Kumar, BGCPTL
Shri Akshyvat Kislay, Representative, CTUIL

ORDER

The Petitioner, Butwal-Gorakhpur Cross Border Power Transmission Limited (in Short 'BGCPTL'), has filed the present Petition under Section 14 of the Electricity Act, 2003 (in short 'the Act') read with the Central Electricity Regulatory Commission (Procedure, Terms, and Conditions for Grant of Transmission License and other related matters) Regulations, 2009 (in short Transmission Licence Regulations') for the grant of a transmission licence to Butwal-Gorakhpur Cross Border Power Transmission Limited (BGCPTL) for the "implementation of the Indian portion of New Butwal Gorakhpur 400 kV Double Circuit Cross-Border interconnection transmission line and associated bay extension work" (in short 'the Transmission Project') consisting of the following elements:

S. No.	Name of the Transmission Element	Scheduled COD (as per ITSA between M/s BGCPTL and NEA)
1	New Butwal (NEA, Nepal)-Gorakhpur (POWERGRID, India) 400kV D/c (Quad Moose) transmission line (Indian portion): about 94km	30.5.2026
2	Extension works at 400/220kV Gorakhpur (POWERGRID) substation: <ul style="list-style-type: none">• 400 kV (GIS) line bays-2 nos.	

2. BGCPTL is a company incorporated under the provisions of the Companies Act, 2013, having its registered office at Plot No. 2, Saudamini, Sector 29, Gurugram 122001, Haryana. BGCPTL is a joint venture company of Power Grid Corporation of India Limited (in short, 'PGCIL') and Nepal Electricity Authority (in short, 'the NEA') with 50:50 equity participation.

3. The Petitioner has submitted that on completion of the 'Indian portion of New Butwal- Gorakhpur 400 KV Double Circuit Cross-border interconnection transmission line and 2 nos. GIS bays at Gorakhpur, BGCPTL shall claim the monthly transmission service charges from the Nepal Electricity Authority (NEA) w.e.f. the Commercial Operation Date (COD) as per the terms and conditions stipulated under the Implementation and Transmission Service Agreement (ITSA) dated 1.6.2023.

4. The Commission, after considering the application of the Petitioner in light of the provisions of the Act and the Transmission Licence Regulations, vide its order dated 30.3.2024, *prima facie* proposed to grant a transmission licence to the Petitioner to implement the transmission projects detailed in paragraph 1 of the order. The relevant extracts of the order dated 30.3.2024 are extracted as under:

24. In the present case, the Petitioner does not fulfil any of the eligibility conditions for the grant of a transmission licence. However, an agreement, "Electric Power Trade, Cross Border Transmission Interconnections and Grid Connectivity" was signed between the Government of Nepal and the Government of the Republic of India on 21.10.2014. Under this agreement, a Joint Working Group (JWG) has been set up, which is co-chaired by Joint Secretaries of the Power/ Energy Ministries of the two countries. In the 7th Meeting of JWG held on 14.10.2019, it was decided that the new Butwal- Gorakhpur 400 kV Double Circuit Cross-Border interconnection transmission line and associated bays at Gorakhpur shall be implemented by a Joint Venture ('JV') between POWERGRID

and Nepal Electricity Authority ('NEA') with a 50:50 equity participation. Subsequently, the Ministry of Power has issued a letter to POWERGRID enclosing the letter dated 16.03.2020 from NITI Ayog wherein NITI Ayog has concurred with the formation of a 50:50 Joint Venture between POWERGRID and NEA. Accordingly, the BGCPTL has been formed as a joint venture company of POWERGRID and Nepal Electricity Authority with 50:50 equity participation incorporated under the provisions of the Companies Act 2013.

25. Therefore, BGCPTL has been formed after approval of the Ministry of Power and NITI Ayog to implement the Indian portion of New Butwal- Gorakhpur 400 KV Double Circuit Cross-border interconnection transmission line and 2 nos GIS bays at Gorakhpur. We are of the view that, for the said Transmission Project, agency has been nominated by the Government authorities of both India and Nepal and considering the importance of the Transmission Project in promoting exchange of power between India and Nepal and the policy decision of the Government, it is a fit case for a relaxation of the provisions of Regulation 6 by invoking the power vested under Regulation 24 of the Transmission Licence Regulations.

...

27. It is an established principle of law that the power to relax has to be strictly construed and is to be exercised judiciously and with caution. Further, the power to relax is to be exercised only when undue hardship is caused by the application of the rules or regulations. Since, the Petitioner is a joint venture company of POWERGRID and Nepal Electricity Authority with a 50:50 equity participation incorporated under the provisions of the Companies Act, 2013 formed after due approval of Ministry of Power and NITI Ayog, the Commission, in the exercise of power under Regulation 24, hereby relaxes the provision of Regulation 6 of the Transmission Licence Regulations and holds that the Petitioner is eligible for the grant of a separate transmission licence. We hereby 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 a transmission licence aforesaid. The objections or suggestions, if any, shall be filed by any person before the Commission, by 17.4.2024.

5. A public notice under sub-section (5) of Section 15 of the Act was published on 5.4.2024 in all editions of the Times of India (English) and Hindustan (Hindi). No suggestions/objections have been received from members of the public in response to the public notice.

6. The case was called out for a hearing on 19.4.2024. The learned counsel for the

Petitioner submitted that, in response to a public notice published by the Commission, no objection has been received.

7. As regards the grant of the transmission licence, Clauses (15) and (16) of Regulation 7 of the 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.”

8. In our order dated 30.3.2024, we had proposed to grant a transmission licence to the Petitioner company and directed for the issuance of public notice. In response to the public notice, no suggestions/ objections have been received. CTUIL, vide its letters dated 20.12.2023, has recommended the grant of a transmission licence to the Petitioner company. The Commission, in its order dated 30.3.2024, had observed that the Petitioner does not fulfil the eligibility conditions for the grant of a transmission licence. Since, in the present case, the Petitioner has been formed after approval of the Ministry of Power and NITI Ayog and the Petitioner has been nominated by the Government authorities of both India and Nepal to implement the transmission Project, the Commission, vide said order dated 30.3.2024 relaxed the provision of Regulation 6

of the Transmission Licence Regulations and held that the Petitioner is eligible for the grant of a transmission licence. Considering the importance of the Transmission Project in promoting the exchange of power between India and Nepal and the policy decision of the Government, we, accordingly, direct that a transmission licence be granted to the Petitioner, Butwal-Gorakhpur Cross Border Power Transmission Limited (BGCPTL) for implementation of Indian portion of New Butwal- Gorakhpur 400 kV Double Circuit Cross-border interconnection transmission line and associated bay extension work as per the details given in paragraph 1 above.

9. The grant of the transmission licence to the Petitioner (hereinafter referred to as “the licensee”) is subject to the fulfilment 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 from the date of issue;

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

(c) The licensee may make an application, two years before the expiry of the initial licence period, for the grant of the transmission 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 a 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 provisions of Central Electricity Regulatory Commission (Standard of Performance of inter-State transmission licensees) Regulations, 2012 or subsequent enactment thereof;

(h) The licensee shall provide the 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; the Central Electricity Regulatory Commission (Open Access in inter-State Transmission) Regulations, 2008; the Central Electricity Regulatory Commission (Connectivity and General Network Access to the inter-

State Transmission System) Regulations, 2023; the Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2023, as amended from time to time or any subsequent re-enactments 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 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;

(k) The licensee shall ensure the execution of the Project as per the Technical Standards and Grid Standards of CEA and

(l) The licensee shall submit all such report or information as may be required under Transmission Licence Regulations, Standard of Performance Regulations or any other regulation of the Commission or as per the directions of the Commission as may be issued from time to time.

10. Let an extract copy of this order be sent to the CTUIL, Central Government in the Ministry of Power, and the Central Electricity Authority in terms of sub-section (7) of Section 15 of the Electricity Act, 2003, for their information and record.

11. The Petitioner shall claim the monthly transmission service charges from the

Nepal Electricity Authority (NEA) w.e.f. the Commercial Operation Date as per the terms and conditions stipulated under ITSA dated 1.6.2023.

12. Petition No. 3/TL/2024 is allowed in terms of the above.

Sd/-
(P.K. Singh)
Member

sd/-
(Arun Goyal)
Member

sd/-
(Jishnu Barua)
Chairperson