

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Coram

1. **Shri Ashok Basu, Chairman**
2. **Shri K.N. Sinha, Member**
3. **Shri Bhanu Bhushan, Member**
4. **Shri A.H. Jung, Member**

Petition No. 85/2004

In the matter of

Application for grant of transmission licence to Reliance Energy Transmission Limited (RETL).

And in the matter of

Reliance Energy Transmission Limited (RETL)

Applicant

The following were present:

1. Shri Amit Kapur, Advocate, RETL
2. Shri Akshay Nagpal, Advocate, RETL
3. Shri Alok Roy, Chief Executive, RETL
4. Shri C. Sudhakar, VP, RETL
5. Shri S.K. Negi, AVP, RETL
6. Shri L.N. Mishra, RETL
7. Shri Hemant Sahai, Advocate, PGCIL
8. Shri Aparajit Bhattacharya, Advocate, PGCIL
9. Shri Arvind Manglik, ED, PGCIL
10. Shri Sanjeev Singh, PGCIL
11. Shri Akhil Kumar, DGM, PGCIL
12. Shri Vijay Kumar, PGCIL
13. Shri A.K. Sinha, PGCIL
14. Shri S. Sen, PGCIL
15. Shri N.R. Gupta, Manager (Fin), PGCIL
16. Dr. Pawan Singh, PGCIL
17. Shri Ashwini Jain, AGM, PGCIL
18. Shri S. Garg, DGM, PGCIL
19. Ms. Manu Gupta, PGCIL
20. Shri S.B. Khyalia, GEB

**ORDER
(DATE OF HEARING : 26.5.2005)**

The application has been made under sub-section (1) of section 15 of the

Electricity Act , 2003 (hereinafter referred to as "the 2003 Act") for grant of licence for construction, maintenance and operation of the following elements of the inter-state transmission system, forming part of Western Region System Strengthening Scheme II (hereinafter referred to as "the Scheme"):-

Transmission Lines

- (i) Korba STPP–Damoh 400 kV D/C line,
- (ii) Damoh–Bhopal 400 kV D/C line,
- (iii) Rajgarh–Karamsad 400 kV D/C line,
- (iv) LILO of Gandhar-Dehgam 400 kV D/C line at Karamsad,
- (v) Limdi–Ranchodpura 400 kV D/C line,
- (vi) Ranchodpura-Zerda 400 kV D/C line,
- (vii) LILO of Korba STPP-Damoh 400 kV D/C at Birsingpur,
- (viii) Seoni-Wardha 765 kV 2nd S/C line (initially to be operated at 400 kV),
- (ix) Seoni-Bina 765 kv S/C line (initially to be operated at 400 kV),
- (x) Bina-Gwalior 765 kV 2nd S/C line (initially to be operated at 400 kV),
- (xi) Raipur-Wardha 400 kV D/C line,
- (xii) Wardha-Parli (New) 400 kV D/C (Quad.) line,
- (xiii) Bhadravati-Parli (New) 400 kV D/C line,
- (xiv) Parli(Mah)-Parli (New) 400 kV D/C line,
- (xv) Parli (New)-Pune 400 kV D/C line,
- (xvi) Pune-Aurangabad 400 kV D/C line,
- (xvii) Parli (New)-Pandharpur 400 kV D/C line,
- (xviii) Pandharpur-Kolhapur 400 kV D/C line,
- (xix) LILO of Lonikhand-Kalwa 400 kV D/C line at Pune, and
- (xx) LILO of Sholapur-Karad 400 kV S/C at Pandharpur.

Sub-stations

- (i) 400 kV Bay Extn. at Korba STPP, Birsinghpur (MP), Bhopal (MP), Rajgarh (PG), Seoni (PG), Wardha (PG), Bina (PG), Gwalior (PG), Karamsad (Guj), Limdi (Guj), Ranchodpura (Guj) and Zerda (Guj) for above lines,
- (ii) 25% fixed series compensation at Rajgarh on Rajgarh – Karamsad 400 kV D/C line,
- (iii) Establishment of 400/220 kV, 2x315 MVA sub-station at Damoh,
- (iv) Installation of 1x63 MVAR, 420 kV bus reactor at Damoh sub-station,
- (v) Installation of 1x50 MVAR, 420 kV bus reactor at Gwalior sub-station,
- (vi) 400 kV Bay Extn. at Wardha (PG), Bhadravati (PG), Parli (Mah), Aurangabad (Mah), Raipur (PG) and Kolhapur (Mah) for above lines,
- (vii) 25% fixed series compensation at Wardha on Raipur – Wardha 400 kV D/C line,
- (viii) Establishment of 400 kV switching station at Parli (New),
- (ix) Establishment of 400/220 kV, 2x315 MVA sub-station each at Pune and Pandharpur,
- (x) Installation of 1x50 MVAR, 420 kV bus reactor at Kolhapur (Mah) sub-station,
- (xi) Installation of 1x63 MVAR, 420 kV bus reactor at Parli (New) sub-station,
- (xii) Installation of 1x50 MVAR, 420 kV bus reactor at Pune sub-station, and
- (xiii) Installation of 1x63 MVAR, 420 kV bus reactor at Pandharpur sub-station.

The Scheme

2. The Scheme has been formulated considering the long-term transmission

requirements of Western Region and to allow inter-regional exchanges of power. It is considered to be vital to facilitate import and export of bulk power to and from the Western Region that may ultimately lead to the formation of the National Grid by integrating the existing regional grids.

3. The Standing Committee of Power System Planning of Western Region in its meeting held on 23.1.2004 has agreed on the necessity of taking up the Scheme. This decision of the Standing Committee was ratified in its subsequent meeting held on 5.7.2004, with certain modifications. The matter was further discussed in the 124th meeting of Western Regional Electricity Board on 9.7.2004 when the Board approved execution of the Scheme by Power Grid Corporation of India Ltd, the Central Transmission Utility (hereinafter referred to as "the CTU"). The Scheme entails about 800 circuit kms of 765 kV lines, 6300 circuit kms of 400 kV lines, augmentation of 17 existing sub-stations and setting up of four new sub-stations.

The Applicant

4. The applicant is a 'Special Purpose Vehicle' incorporated to undertake the business of establishing, commissioning, setting up, operating and maintaining electric power transmission systems and networks, and is a group company of Reliance Industries Ltd./Reliance Energy Ltd. It has the authorised and paid-up share capital of Rs 5 lakh. In support of its technical and financial capabilities, the applicant has heavily relied upon the expertise of Reliance Energy Ltd as its "associate" or "affiliate". According to the applicant, Reliance Energy Ltd with its rich experience of more than seven decades in power sector, coupled with multi-industry and multi-functional experience has strong in-house experience to support the applicant in its

pursuit for construction, operation and maintenance of the transmission assets forming part of the Scheme. In support of its application, the applicant has cited the following transmission lines and sub-stations developed in February 1995 by Reliance Energy Ltd. for evacuation of power from 2x250 MW Thermal Power Generating Station at Dahanu in the State of Maharashtra:

- (a) 220 kV Transmission Line from Dahanu to Ghodbunder and Versova receiving stations;
- (b) 220 kV D/C Transmission Line from Borivali to Versova and Aarey receiving stations; and
- (c) Construction of Versova and Aarey receiving stations.

5. The applicant has submitted the further details of the transmission lines and the sub-stations operated and maintained by Reliance Energy Ltd, as under:

Transmission Lines

- (a) 220 kV D/C Transmission Line from Dahanu to Ghodbunder and Versova receiving stations;
- (b) 220 kV D/C Transmission Line from Dahanu to Versova;
- (c) 220 kV multi-circuit tower Transmission Line from Borivali to Versova and Aarey; and
- (d) 220 kV D/C Transmission Line from Ghodbunder to Versova.

Sub-stations

- (a) 220 kV Versova, 3 Nos 100 MVA 220/33 kV transformers with 11 bays;
- (b) 220 kV Aarey, 4 Nos 100 MVA 220/33 kV transformers with 10 bays;
and
- (c) 220 kV Ghodbunder, 3 Nos 100 MVA 220/33 kV transformers with 9 bays.

6. The applicant has also placed on record a letter dated 19.3.2005, from Reliance Energy Limited, to commit increase in the shareholding to the extent of 26% or more of the paid up share capital against the current holdings of 3.8% of the presently paid up share capital of Rs.5 lakh, depending upon the requirement of funds to implement the Scheme. Reliance Energy Limited has further committed to extend the necessary technical and manpower support to the applicant for planning and implementation of the Scheme.

Publication of Notice

7. The manner of making of application for grant of transmission licence under sub-section (1) of Section 15 and the particulars, manner of publication of notice under sub-section (2) of Section 15 of the 2003 Act and other terms and conditions for grant of transmission licence have not yet been specified through any general order or regulations. Therefore, as an interim measure, the applicant was advised on the manner of publication of notices. The applicant was also advised to serve copy of the petition on the beneficiaries in the Western Region as they are to bear the transmission charges for the Scheme. These directions have generally been complied with by the applicant. The public notices with the particulars decided by the Commission and conveyed to the applicant have been duly published by the applicant. In the public notices, the estimated cost of construction of the Scheme has been indicated as Rs. 4704 crore. No objection has been received from the members of the public to the notice published by the applicant. The replies to the application have been filed on behalf of some of the beneficiaries in the Western Region.

8. The Commission is conscious of the fact that the present application opens up the very important issue of entry of private sector in the transmission business, which so far has been the exclusive preserve of the Central and State Government Companies and Boards. The Commission also recognises the fact that there are several important players whose inputs are of vital importance for deciding the issue that the present application has opened up. The most important of these players is the Central Government who apart from formulating the policy regarding private entry has also the responsibility to frame the guidelines for competitive bidding of transmission. The second important player is the CTU who is statutorily required to advise the Commission under sub-section (4) of section 15 of the Act on any application made for grant of transmission licence. The other important functions of the CTU as laid down in section 38 of the Act are to undertake transmission of electricity through inter-state transmission system, to discharge all functions of planning and co-ordination relating to inter-state transmission system and also to ensure development of an efficient and co-ordinated and economical system of inter-state transmission lines for smooth flow of electricity from generating stations to the load centres. Then comes the Central Electricity Authority (CEA) whose functions, *inter alia*, include rendering technical advice under clause (n) of section 73 of the Act. The last but no less important than other players are the beneficiaries and consumers using the inter-state transmission system and paying the transmission charges therefor. It is also to be noted that the detailed framework in the form of rules or regulations is also not yet available. Taking into account the different aspects and the competing interests, we are attempting to arrive at a fair and just conclusion on consideration of the inputs made available to us by the stakeholders. We now

proceed to analyse the inputs placed on record by different stakeholders in order to arrive at a definite opinion.

Recommendations of the Central Transmission Utility (CTU)

9. The CTU has filed its recommendations as required under sub-section (4) of section 15 of the 2003 Act. It has been submitted that certain essential steps in the direction of implementation and execution of the Scheme have already been taken by the CTU in consultation with the Central Electricity Authority (CEA) and the constituents of Western Region. These steps are being taken note of in the later part of this order, in detail. It is stated that the Central Government in Ministry of Power by its letter dated 8.6.2004 has conveyed its approval to the CTU for advance expenditure of Rs 9.59 crore for detailed survey of the transmission lines associated with the Scheme. Based on the approval, the CTU has stated that it has commenced survey of land and line-route, technical studies and design, etc for execution of the Scheme. The CTU has further stated that the Central Government in Ministry of Power, by its letter dated 8.7.2004 has also accorded prior approval for laying of the overhead lines, in accordance with sub-section (1) of section 68 of the 2003 Act. The Board of Directors of the CTU in its meeting held on 6.7.2004 reportedly decided that the Scheme would be implemented through the Joint Venture (JV) route and in the event of inadequate response to the efforts to form a JV, the CTU itself would execute the Scheme. Thus, the Scheme is to be executed either by the CTU or JV company (s) with the CTU as a partner.

10. The CTU in its response has also submitted that the Central Government in Ministry of Power has constituted a Group for accelerating private investment in the

transmission sector. The Group, *inter alia*, has been asked to identify the transmission projects to be implemented by a government-owned company or the private sector, based on the criteria to be decided by the Group. The Group has not yet finalised its recommendations. Therefore, according to the CTU, processing of the application for grant of licence would be pre-mature.

Preliminary Objections by the CTU

11. The CTU has made certain preliminary submissions on the maintainability of the application. Firstly, it is stated that the implementation of the Scheme already stands vested in the CTU by virtue of Ministry of Power letters dated 8.6.2004 and 8.7.2004 *ibid* and certain advance actions already initiated by it. It has been further stated that the applicant is not qualified for grant of transmission licence since it does not possess the necessary qualifications specified by the Commission under the Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of Transmission Licence and other related matters) Regulations, 2003 (hereinafter referred to as 'the 2003 Regulations'), which, according to the CTU, are still in force and the application for grant of transmission licence needs to be processed under these Regulations. The CTU has further submitted that by reason of third proviso to section 41 of the 2003 Act, the applicant is ineligible for grant of licence for inter-state transmission of electricity for the reason that the Reliance Energy Ltd, on whose strength the applicant has based its claim for grant of licence, is engaged in distribution of electricity and one of the Group companies, namely, Reliance Energy Trading Limited is engaged in the business of trading in electricity for which it has been granted licence by the Commission. It is further stated that the applicant under its Memorandum and Articles of Association has also provided for

trading in electricity as one of its objects. In the light of the above submissions, the CTU has urged that the applicant cannot be granted the transmission licence for construction, maintenance and operation of the Scheme, for which the present application has been made. The CTU has submitted that in accordance with the 2003 Regulations, the manner of implementation of the Scheme is to be decided by it, in its sole discretion.

Advance Action by the CTU for Implementation of the Scheme

12. The CTU had initially proposed to construct the Scheme as two projects through the formation of project-specific joint venture (JV) companies, who were to develop the scheme on Build, Own, Operate and Transfer basis. A two-part solicitation process for selection of JV partner(s), consisting of Request for Qualification (RfQ) and Request for Proposal (RfP) was initiated by the CTU and for this purpose a notice inviting tenders was published on 16.8.2004 to issue RfQ document to invite bids for shortlisting of the persons for formation of JV companies for execution of the two projects identified by the CTU, with the following scope of work:

Project-A : Strengthening in upper part of Western Region

Transmission Lines	Approx. line length
(i) Korba STPP – Damoh 400 kV D/C line	481 Kms
(ii) Damoh-Bhopal 400 kV D/C line	234 Kms
(iii) Rajgarh-Karamsad 400 kV D/C line	240 Kms
(iv) LILO of Gandhar-Dehgam 400 kV D/C line at Karamsad	49 Kms
(v) Limdi-Ranchodpura 400 kV D/C line	95 Kms
(vi) Ranchodpura-Zerda 400 kV D/C line	155 Kms
(vii) LILO of Korba STPP – Damoh 400 kV D/C at Birsinghpur, (line length included in i) above)	
(viii) Seoni-Wardha 765 kV 2 nd S/C line (initially to be separated at 400 kV)	268 Kms
(ix) Seoni-Bina 765 kV S/C line (initially to be	

	operated at 400 kV)	292 Kms
(x)	Bina-Gwalior 765 kV 2 nd S/C line (initially to be operated at 400 kV)	235 Kms

Sub-stations

- (i) 400 kV Bay Extn., at Korba STPP (NTPC), Birsinghpur (MPSEB), Bhopal (MPSEB), Rajgarh (POWERGRID), Seoni (POWERGRID), Wardha (POWERGRID), Bina (POWERGRID), Gwalior (POWERGRID), Karamsad* (GEB), Limdi (GEB), Ranchodpura (GEB) and Zerda (GEB) for above lines.
- (ii) 25% fixed series compensation at Rajgarh on Rajgarh – Karamsad 400 kV D/C line.
- (iii) Establishment of 400/220 kV, 2x315 MVA sub-station at Damoh.
- (iv) Installation of 1x63 MVAR, 420 kV bus reactor at Damoh sub-station.
- (v) Installation of 1x50 MVAR, 420 kV Bus reactor at Gwalior sub-station

Project-B: Strengthening in lower part of Western Region

Transmission lines

	Approx. line length
(i) D/C line Kms	Raipur-Wardha 400 kV 363
(ii) kV D/C (Quad.) line	Wadha-Parli (New) 400 363 Kms
(iii) 400 kV D/C line	Bhadravati-Parli (New) 380 Kms
(iv) 400 kV D/C line	Parli (MSEB) – Parli (New) 7 Kms
(v) D/C line Kms	Parli (New)-Pune 400 kV 308
(vi) D/C line	Pune-Aurangabad 400 kV 225 Kms
(vii) 400 kV D/C line	Parli (New)-Pandharpur 196 Kms
(viii) kV D/C line	Pandharpur-Kolhapur 400 189 Kms
(ix) 400 kV D/C line at Pune	LILO of Lonikhand-Kalwa 24 Kms
(x)	Lilo OF Sholapur-Karad 400 kV S/C line at Pandharpur 25 Kms D/C + 2 Kms S/C

Sub-stations

- (i) 400 kV Bay Extn. at Wardha (POWERGRID), Bhadravati (POWERGRID), Parli (MSEB), Aurangabad (MSEB), Raipur (POWERGRID), and Kolhapur (MSEB) for above lines
- (ii) 25% fixed series compensation at Wardha on Raipur – Wardha on Raipur – Wardha 400 kV /C line
- (ii) Establishment of 400 kV switching station at Parli (new)
- (iii) Establishment of 400/200 kV, 2x315 MVA sub-station at Pandharpur
- (iv) Establishment of 400/220 kV, 2x315 MVA sub-station at Pune
- (v) Installation of 1x50 MVAR, 420 kV bus reactor at Kolhapur (MSEB) sub-station
- (vi) Installation of 1x63 MVAR, 420 kV bus reactor at Parli (New) sub-station
- (viii) Installation of 1x50 MVAR, 420 kV bus reactor at Pune sub-station
- (ix) Installation of 1x63 MVAR, 420 kV bus reactor at Pandharpur sub-station

13. CEA vide its letter dated 18/22.3.2005 advised that the Scheme needed to be divided into four sets to facilitate its smooth implementation, the details of which were broadly indicated. On consideration of the advice of CEA and in consultation with the beneficiaries in the Western Region, the CTU has now divided the transmission lines portion of the Scheme into four sets as per details given hereunder:

Set-A: For absorbing import in Eastern and Central part of WR Grid

Approx. line length

- | | |
|---|---------|
| (i) Raipur – Wardha 400 kV D/C line | 363 Kms |
| (ii) Seoni- Wardha 765 kV 2 nd S/C line (initially to be operated at 400 kV) | 268 Kms |
| (iii) Wardha-Parli (New) 400 kV D/C (Quad) line | 363 Kms |
| (iv) Bhadravati-Parli (New) 400 kV D/C line | 380 Kms |
| (v) Parli (MSEB) – Parli (New) 400 kV D/C line | 7 Kms |

Set B: For Regional Strengthening in Southern Maharashtra

- | | |
|--|---------|
| (i) Parli (New) –Pune 400 kV D/C line | 308 Kms |
| (ii) Pune – Aurangabad 400 kV D/C line | 225 Kms |
| (iii) Parli (New) – Pandharpur 400 kV D/C line | 196 Kms |
| (iv) Pandharpur – Kolhapur 400 kV D/C line | 189 Kms |

(v) LILO of Lonikhand – Kalwa 400 kV D/C line at Pune	24 Kms
(vi) LILO of Sholapur – Karad 400 kV S/C line at Pandharpur	25 Kms D/C + 2 Kms
S/C	

Set C: Regional Strengthening in Gujarat

(i) Rajgarh – Karamsad 400 kV D/C line	240 kms
(ii) Limdi (Chorania) – Ranchodpura 400 kV D/C line	95 kms
(iii) Ranchodpura – Zerda (Kansari) 400 kV D/C line	155 kms

Set D: For Regional Strengthening in Northern Madhya Pradesh

(i) Korba STPP – Birsinghpur 400 kV D/C line	227 kms
(ii) Birsinghpur – Damoh 400 kV D/C line	254 kms
(iii) Damoh – Bhopal 400 kV D/C line	234 kms
(iv) Bina – Gwalior 765 kV 2 nd S/C line (initially to be	235 kms

operated at 400 kV)

14. The CTU has invited fresh bids and has issued revised RfQ document during May 2005 for selection of JV partner. In the revised RfQ document sub-stations have been kept outside the scope of JV and are to be developed by the CTU, which, according to the CTU will lead to better control in system operation and flexibility in providing open access to long-term customers and traders. The CTU has also claimed that development of sub-stations by it will also facilitate future augmentation of power handling capacity by installing series capacitors etc as well as development of additional infrastructure. The sets for execution of the transmission lines forming part of the Scheme are stated to have been so formed that the transmission lines in specific area of the region/state are covered under the same package and these are also attractive from the viewpoint of private sector participation. The four sets as identified by the CTU in the revised RfQ document are referred to as sets A, B, C and D.

Advice of Central Electricity Authority (CEA)

15. We had sought the technical advice of CEA under clause (n) of section 73 of the 2003 Act. CEA has opined that each of the sets, namely A, B, C and D identified by the CTU, is basically a combination of two sub-sets. The eight sub-sets so formed by CEA have been identified as A-1, A-2, B-1, B-2, C-1, C-2, D-1 and D-2. CEA has advised inclusion of sub-stations, which are part of Scheme in these sub-sets. The classification of the sub-sets as advised by CEA is shown below:

S. No.	Sub-set	Scope	
		Transmission Lines	Sub-stations
i.	A-1	(i) Raipur – Wardha 400 kV D/C line - 363 kms (ii) Seoni- Wardha 765 kV 2 nd S/C line (initially to be operated at 400 kV) - 268 kms (iii) Wardha-Parli (New) 400 kV D/C (Quad) line - 363 kms (iv) Parli (MSEB) – Parli(New) 400 kV D/C line - 7 kms	Parli (new) 400 kV
ii.	A-2	Bhadravati-Parli (New) 400 kV D/C line - 380 kms	
iii.	B-1	(i) Parli (New) –Pune 400 kV D/C line - 308 kms (ii) Pune – Aurangabad 400 kV D/C line - 225 kms (iii) LILO of Lonikhand – Kalwa 400 kV D/C line at Pune - 24 kms	Pune 400 kV
iv.	B-2	(i) Parli (New) – Pandharpur 400 kV D/C line - 196 kms (ii) Pandharpur – Kolhapur 400 kV D/C line - 189 kms (iii) LILO of Sholapur – Karad 400 kV S/C line at Pandharpur - 25 kms + D/C S/C 2 kms	Pandharpur 400 kV
v.	C-1	(i) Limdi (Chorania) – Ranchodpura 400 kV D/C line - 95 kms (ii) Ranchodpura – Zerda (Kansari) 400 kV D/C line - 155 kms	-
vi.	C-2	Rajgarh – Karamsad 400 kV D/C line - 240 kms	-

vii.	D-1	Bina – Gwalior 765 kV 2 nd S/C line (initially to be operated at 400 kV) kms	- 235	-
viii.	D-2	(i) Korba STPP – Birsinghpur 400 kV D/C line kms (ii) Birsinghpur – Damoh 400 kV D/C line (iii) Damoh – Bhopal 400 kV D/C line	- 227 - 254 kms - 234 kms	Damoh 400 kV

16. CEA has stated that the Scheme is substantially large, involving critical transmission elements and also some 765 kV lines and 400 kV Quad D/C lines. CEA has advised that it might not be desirable to entrust implementation of whole of the Scheme to any private developer who is a new entrant in the field of 400 kV transmission. CEA has further opined that it may also not be desirable to wait for the CTU to select JV partner since the work needs to be executed on urgent basis so that the Scheme is ready during 2008-09. In this background, CEA has advised that grant of licence to the applicant be considered, limiting to those sub-sets where there are no 765 kV or 400 kV Quad elements and also where time matching with other regional / inter-regional schemes is less critical. Based on this criterion, CEA has advised implementation and execution of the sub-sets at A-1, B-1, C-1 and D-1 above should be done by the CTU and the applicant could be considered for grant of transmission licence for sub-sets A-2, B-2, C-2 and D-2. CEA has also advised that for a firm commitment of the project cost (presumably for sub-sets A-2, B-2, C-2 and D-2), the applicant and the CTU be asked to quote base price and project cost could be arrived at based on their quoted base price by escalating it in accordance with a pre-specified formula.

Views of the beneficiaries in Western Region

17. The beneficiaries in Western Region at the 124th WREB meeting held on 9.7.2004 had decided that the construction of the Scheme should be undertaken by the CTU. At the hearing on 1.3.2005, it was noticed that the CTU, instead of itself undertaking construction of the Scheme proposed to float JV companies for the purpose. In view of this, it was pointed out on behalf of the beneficiaries that the earlier WREB decision arrived at on 9.7.2004 called for a review. Consequently, a meeting of WREB was held on 15.3.2005 when the following deliberations were noted:

- “(a) The dual functions of PGCIL as CTU and as Transmission Licensee is to be clearly understood.
- (b) As the WR constituents are to pay the transmission tariff for these Schemes, as finally approved by the CERC, the execution of Transmission Schemes should be cost effective by competitive bidding and should be completed in time.
- (c) As WRSSS-II envisages number of transmission lines and new stations, it should be broken into identifiable groups and should be executed in fixed time-frame.”

18. A fresh meeting of WREB was held on 20.4.2005 to reconsider the matter. At this meeting, the beneficiaries of Western Region had agreed that the part of the Scheme which is to be taken up immediately should be executed by the CTU either through joint venture route or otherwise. The excerpts from the relevant minutes are reproduced hereunder:

“A meeting was held in the office of WREB, Mumbai on 20-04-2005 to discuss the Joint Venture route being pursued by the CTU for the execution of WRSSS-II project. The list of participants is enclosed at Annexure-I. All the major beneficiaries viz. MSEB, GEB, MPSEB, CSEB and Goa were represented in the meeting. The Daman & Diu and Dadra & Nagar Haveli did not attend the meeting.

In the meeting, POWERGRID gave presentation on the route by which they proposed to execute the WRSSS-II project. POWERGRID clarified that they are pursuing to execute the project through Joint Venture based on techno-commercial, project cost, and financing package proposals. Based on the eligible bid with lowest evaluated project cost & financial package, Joint Venture will be formed by POWERGRID with the successful bidder. The completed cost will be the basis for the determination of the tariff.

The beneficiaries of WR observed that Hon'ble CERC in their Order dated 28.3.2005 have stated that the Ministry of Power may advise on the time frame within which guidelines for procurement of transmission services through Competitive bidding are likely to be finalized by the Central Government. Further, the Hon'ble CERC have stated that CEA may advise by 20.4.2005, whether execution of WRSSS-II could be held in abeyance till finalisation of guidelines for competitive bidding by the Central Government for procurement of transmission services, without detriment to the interest of beneficiaries in the Western Region.

It was decided by the beneficiaries that based on the advice to be given by Ministry of Power and CEA, the beneficiaries of WR were agreeable that the schemes which are to be taken up immediately shall be executed by POWERGRID either through Joint Venture route or otherwise.”

During their oral submissions, the beneficiaries repeatedly stressed that licence to the private parties should be granted through the process of competitive bidding.

19. As to which of the lines of the Scheme needed to be taken up immediately, these are to be identified by CEA in keeping with the overall planning perspective. CEA by its letter dated 18.5.2005 has conveyed that the various components of the Scheme are required to be completed before 2008-09 and no time is left for deferment of activities and the works pertaining to the Scheme need to be taken up at the earliest.

Need for Private Investment

20. We first consider the imperatives of associating private sector in development of the transmission projects. A number of steps have been taken by the Central Government to attract private investment in generation, including allowing 100% Foreign Direct Investment (FDI). Under the 2003 Act, no licence is needed for setting up generating station. The guidelines for competitive bidding in generation have also

been issued by the Central Government. Today, about 10% of generation capacity in the country is in private hands. The Government is taking further steps to encourage private investment in generation. Some of the generation projects presently conceived may achieve financial closure in near future. Certain concrete steps towards privatisation of distribution function have also been taken. The instances of setting up of private distribution companies in the State of Orissa and the National Capital Territory of Delhi can be quoted in support of this. However, transmission is far behind as regards private investment. Almost the entire transmission network is in the hands of public sector companies and Boards, Central and States.

21. Based on the assessment made by Ministry of Power, to cater to the needs of the vibrant economy, there is an ambitious plan to add nearly 1,00,000 MW of additional capacity in 10th and 11th Five Year Plans. Out of this, for the 10th Five Year Plan, the target is to add over 41,000 MW. Perspective Plan for 11th Five Year Plan and beyond is being prepared by the Central Government (Ministry of Power) and the Planning Commission. Advance action has been taken to identify 60,000 MW worth projects, to be executed during 11th Five Year Plan.

22. According to preliminary estimates, to create the 1,00,000 MW of additional generating capacity and associated transmission/distribution infrastructure, about Rs.9,00,000 crore will have to be pumped into the power sector by the end of the 11th Five Year Plan Period.

23. The country's transmission perspective plan for 10th and 11th Five Year Plans focuses on the creation of a National Grid in a phased manner by adding over 60,000

ckm of transmission network by 2012, the end of 11th Five Year Plan. Such an integrated grid shall evacuate additional 1,00,000 MW by the year 2012 and is estimated to carry 60% of the power generated in the country. The existing inter-regional power transfer capacity is 9,000 MW, which is to be further enhanced to 30,000 MW by 2012 through creation of “Transmission Super Highways”. For creation of such a grid, an investment of about Rs.70,000 crore is envisaged. Out of this, an amount of about Rs.50,000 crore is planned to be mobilised through the Government companies in Central and State sectors, and remaining about Rs.20,000 crore is envisaged through private sector participation.

24. The National Electricity Policy notified by the Central Government by virtue of powers under Section 3 of the 2003 Act also envisages that a sizeable part of the investments will need to be brought in from the private sector. The relevant extract from the Policy are reproduced below:

“To meet the objective of rapid economic growth and “power for all” including household electrification, it is estimated that an investment of the order of Rs.9,00,000 crores at 2002-03 price level would be required to finance generation, transmission, sub-transmission, distribution and rural electrification projects. Power being most crucial infrastructure, public sector investments, both at the Central Government and State Governments, will have to be stepped up. Considering the magnitude of the expansion of the sector required, a sizeable part of the investments will also need to be brought in from the private sector.”

25. The above facts underscore the need for private sector participation in the development of transmission sector. We shall be guided by this factor while taking a view on the issues arising out of consideration of views expressed by the parties in the present proceedings.

Role and Responsibility of the Central Government in attracting private investment

26. After the 2003 Act came into force, the Regulations on terms and conditions for grant of licence in connection with inter-state transmission of electricity have not been notified, though the draft Regulations in this regard were published by the Commission. The finalisation of draft Regulations was held in abeyance as the Commission was awaiting finalisation of the guidelines by the Central Government for competitive bidding for procurement of transmission services. Also, during the course of hearing of the present application, it transpired that the primary role for attracting private investment in transmission rests with the Central Government, and issue of guidelines on competitive bidding in transmission sector could be one step in that direction. Therefore, the Commission by its order dated 28.3.2005 had requested Ministry of Power to intimate the timeframe within which guidelines were likely to be finalised. The Ministry was also requested to detail its representative at the hearings to assist the Commission as it could prove beneficial in taking a view on the private investment. The matter was followed up by the Chairman through his DO letters dated 12.4.2005 and 21.4.2005 to Secretary (Power). Initially, the Ministry sought more time to respond to the issue raised. However, subsequently, the Ministry by its letter dated 26.5.2005 has informed that the matter was under consideration, and finalisation of the guidelines was likely to take at least three months. No outer time limit for finalisation of the guidelines has been indicated and thus, the matter has been left open-ended. No representative from the Ministry attended any of the hearings, and accordingly, no assistance has become available to us. Nevertheless, we cannot keep the present application pending for an indefinite period, and continue to wait for finalisation of the guidelines. Therefore, we are disposing of the present

application based on the information available on record and according to our best judgment, in the best interest of the sector. We, however, through this order, take this opportunity to urge upon the Central Government to take urgent steps for expeditious finalisation of the guidelines for procurement of transmission services through competitive bidding.

Findings on preliminary objections

27. We now proceed to consider the preliminary submissions made on behalf of the CTU.

28. As we have already noted, according to the CTU, by virtue of Ministry of Power letters dated 8.6.2004 and 8.7.2004 according sanction for pre-investment expenditure and laying of overhead lines respectively, the Scheme stood vested in it and, therefore, the present application could not be entertained.

29. The Commission by its order dated 28.3.2005 had sought advice of the Central Government whether the sanctions accorded were intended to vest in the CTU the power and authority to undertake execution of the Scheme, by itself or through JV route. This order was followed up by the Chairman through his two DO letters dated 12.4.2005 and 21.4.2005, addressed to the Secretary, Ministry of Power. An interim reply dated 27.4.2005 was received from Ministry of Power pleading for more time for conveying the Ministry's views. Ministry of Power subsequently under its letter dated 26.5.2005 after referring to two preliminary sanctions accorded, added that the Feasibility Report-cum-Detailed Project Report for the Scheme was submitted by the CTU, which envisaged implementation of a part of the Scheme by the CTU and a part

through joint venture. It has been stated that Feasibility Report-cum-Detailed Project Report was submitted to the Planning Commission for 'in principle' approval, and that within the overall framework of the transmission system, the exact scope of schemes to be executed by CTU or with private sector, will have to be kept flexible, depending upon the requirements. According to the Ministry, these issues will be discussed from time to time between the CTU, CEA and the Central Government. An examination of the Ministry of Power letter dated 26.5.2005 reveals that there is no categorical statement that by virtue of the preliminary sanctions conveyed by the Central Government, the implementation of the Scheme was vested in the CTU. It becomes obvious that the Ministry has refrained from making any firm commitment on the issue.

30. We proceed to analyse the issue ourselves. Under Section 38 of the 2003 Act, the CTU is assigned the function, among others, of planning for inter-state transmission. The pre-investment expenditure incurred by the CTU based on the sanction conveyed by Ministry of Power by its letter dated 8.6.2004, in connection with survey of the transmission lines associated with the Scheme may be construed to be necessary for discharge of function of planning relating to the inter-state transmission system. The surveys conducted by the CTU can be used by the licensee for construction of the transmission lines. The expenditure incurred by the CTU for conducting surveys may be reimbursed by the person who ultimately is assigned the responsibility of construction, maintenance and operation of the transmission lines and sub-station associated with the Scheme. Ministry of Power letter dated 8.6.2004 which conveys approval of the Central Government for incurring pre-investment expenditure of Rs.9.59 crore for detailed survey of the transmission

lines associated with the Scheme, when so construed, does not confer any right on the CTU to undertake construction of the transmission lines associated with the Scheme. The expenditure is essentially for the purpose of discharging the planning and coordination functions of the CTU.

31. The letter dated 8.7.2004 is stated to have been issued under Section 68 (1) of the 2003 Act, according to which, an overhead line can be installed above ground in accordance with the provisions of sub-section (2) with the prior approval of the Appropriate Government. Sub-section (3) of Section 68 lays down that the Government while granting approval under sub-section (1) shall impose such conditions (including conditions as to the ownership and operation of the line) as appear to it to be necessary. Sub-section (4) further authorises the Government to vary or revoke approval at any time after the end of such period as may be stipulated in the approval granted. The provisions of Section 68 *ibid* reveal that the Government while according approval for laying of overhead lines has necessarily to impose the conditions as to ownership and operation of these lines. Further, the approval would be valid for a specified period, after which, the Government has power to vary or revoke the approval at any time. Ministry of Power letter dated 8.7.2004 stipulates neither the conditions regarding ownership and operation of the overhead lines to be laid nor the duration for which the sanction would be valid. The provisions of sub-section (3) of Section 68 which empower the Government to impose the conditions as to ownership and operation of the overhead line are considered to be crucial and significant for deciding the issue whether by virtue of letter dated 8.7.2004, the implementation of the Scheme was vested in the CTU. In the absence of any such conditions in Ministry of Power letter dated 8.7.2004, it is not possible to conclude that

the Central Government while conveying its approval for laying of overhead lines had intended that the ownership of the overhead lines or their operation was to be vested in the CTU. In fact, the decision on implementation of an element of the transmission system by any person is to be made by the appropriate authority in the discharge of regulatory functions, and in the present case by the Commission in the discharge of the function of regulation of inter-state transmission of electricity.

32. Next we consider the issue whether the 2003 Regulations are presently in operation. According to the CTU, by virtue of clause (a) of sub-section (2) of Section 185 of the 2003 Act, the 2003 Regulations, are not inconsistent with the provisions of the 2003 Act, and continue to be applicable. The CTU has argued that the Commission as a statutory authority cannot go into the validity of the 2003 Regulations or review these Regulations. In support of its contention, the CTU has relied upon the judgment of the Hon'ble Supreme Court in *Indian National Congress (I) Vs Institute of Social Welfare and others* (AIR 2002 SC 2158, 2170).

33. The 2003 Regulations were notified by the Commission keeping in view of the basic framework of Section 27C of the Indian Electricity Act, 1910 (hereinafter referred to "the 1910 Act") (since repealed). Sub-section (1) of Section 27C of the 1910 Act authorised the Commission to grant a transmission licence based on an application to that effect. As laid down under sub-section (4) of Section 27C, no application for grant of transmission licence could be considered unless the applicant had obtained approval of the CTU. The 1910 Act thus envisaged prior approval of the CTU for grant of transmission licence by the Commission and thereby assigned it the role of primacy in the matter. However, after repeal of the 1910 Act, and with the

enactment of the 2003 Act, there is a complete change in the procedure and framework prescribed for grant of transmission licence. Under the procedure laid down under the 2003 Act, an application is to be made directly to the Commission, a copy of which is to be forwarded to the CTU who is to send its recommendations, if any, to the Commission, on such application. It is further laid down that the recommendations of the CTU shall not be binding on the Commission when the application for grant of transmission licence is considered. It would thus be seen that role assigned to the CTU under the 1910 Act is no longer applicable. While under the 1910 Act, the prior approval of CTU was necessary before processing the application for grant of transmission licence, under the 2003 Act, the recommendations of the CTU are not binding on the Commission. The provisions of the 1910 Act and the 2003 Act on the procedure for grant of licence cannot be reconciled and made to stand together, the provisions of Section 27C of the 1910 Act being repugnant to the corresponding provisions of the 2003 Act. When so viewed, the 2003 Regulations framed by considering the statutory framework of Section 27C of the 1910 Act, being inconsistent with the scheme of the 2003 Act, are no longer in operation. In our opinion the law laid down by the Hon'ble Supreme Court in Indian National Congress (I) (supra) does not support the CTU's contention. In that case it was held that the provisions of Section 21 of the General Clauses Act cannot be invoked where a statutory authority is required to act quasi-judicially and that Section 21 has application to an order only which is either executive or legislative in nature. No such issue arises in the present proceedings. In the present case, the 2003 Regulations notified under the repealed law are found to be inconsistent with the repealing law and it does not involve consideration of their validity otherwise. Therefore, the

application for grant of transmission licence cannot be considered under 2003 Regulations.

34. The CTU in its recommendations has stated that the applicant is not qualified for grant of transmission licence since its paid up capital of Rs. 5 lakh against the projected cost of Rs.4704 crore for the Scheme, is wholly inadequate. It is further submitted that by reason of third proviso to Section 41 of the 2003 Act, the applicant cannot act as a transmission licensee as other Reliance group companies, of which the applicant is a part, are engaged in distribution and trading of electricity. For the view we are taking in the present application in later part of this order, we are not inclined to consider these issues and leave them to be considered at some other stage, if it arises in future.

Findings on Merits

35. We find that the CTU has already started action for implementing the transmission lines forming part of the Scheme through JV route and has travelled a considerable distance in that direction. In September 2004, the CTU had issued the first RfQ document for selection of JV partner, by dividing the Scheme in two packages, each to be implemented through a separate JV company. Subsequently, the CTU, in May 2005 revised the RfQ document. A copy of the revised RfQ document was received in the Commission's office under letter dated 25.5.2005. A copy of the revised RfQ document has also been placed on record by the applicant along with its written submissions. In the revised RfQ document, transmission lines forming part of the Scheme have been divided into four separate sets, stated to be based on the suggestions of CEA and WREB. As per the revised RfQ document, in

each of the JV Companies, the JV partners shall be owning equity in the range of 51% to 74% whereas the balance equity shall be owned by the CTU. The time schedule proposed in the revised RfQ document envisaged 15.6.2005 as the closing date for sale of RfQ document (this date seems to have been extended), and 15.9.2005 is the date for short-listing of the qualified applicants and issuance of RfP documents to the qualified applicants. We do not intend to reverse this process since it would delay the implementation of the Scheme. For this same reason, we are making a departure from the advice of CEA that the new sub-stations should form part of packages identified for implementation of the Scheme.

36. Under the law, we are mandated to encourage competition, efficiency and economy of resources, good performance and optimum investment, as these are the factors to be considered for determination of tariff. This is the concern expressed by the beneficiaries of the Scheme and in the facts and circumstances of the present case, we are guided by their views as explained at para 18 above since they have the liability to pay the transmission charges. We feel that the purpose will be achieved if the bidding process initiated by the CTU is continued, since in our opinion the process adopted by the CTU has the characteristics of the competitive bidding process.

37. We agree with CEA that execution of 765 kV lines and even in the field of 400 kV Quad lines, should be entrusted to the CTU, particularly when the packages of the Scheme with 765 kV and 400 kV Quad lines are critical and delay in their completion can adversely affect delivery of power or may lead to insecure operation of the Western Regional Grid which may finally integrate into the National Grid. Besides having experience of construction of 765 kV Kishenpur-Moga line, the CTU has

developed extensive network of 400 kV transmission lines in the country. Therefore, in our considered view the CTU should continue with the selection of JV partner for execution of sets A and D, involving 765 kV lines and 400 kV Quad lines, either of its own or through JV route where its expertise will be available to the advantage of the JV. In arriving at this decision we are also guided by the fact that any further sub-division of the four sets identified by the CTU would require complete revision of RfQ document, and this will only delay the execution of the Scheme. This may render it impossible to complete the construction of the Scheme by 2008-09 as indicated by the CEA. We do not consider this to be desirable as most of the elements of the Scheme are critical. Accordingly, Sets A and D identified by the CTU may be implemented by the CTU itself or through its active involvement.

38. As a corollary of the above, for the present, the Sets B and C, which do not involve 765 kV line or 400 kV Quad line, can be entrusted to private parties, with adequate past experience in the field. For this purpose, we do not consider it to be practicable to ask the applicant and the CTU to quote project cost, as suggested by CEA, without a common bidding document. Further, this will amount to restricting the competition to these two entities. Therefore, on this aspect we have departed from the advice of CEA.

39. On consideration of the factors noted above, we feel that a stage has been reached, where transmission projects can be developed by 100% equity contribution from private sector for the Sets B and C. This will release precious equity resources of the CTU for deployment in other vital projects and will be in tune with the broad policy of the Government, to attract private investment in transmission. Therefore, we take

this opportunity to advise the CTU to modify its bidding documents for Sets B and C accordingly. CTU may define qualifying requirement etc so as to elicit maximum interest and participation of the private sector and enable 100% equity participation by the private sector players.

40. The applicant is at liberty to participate in the selection process by the CTU and if selected, may approach the Commission for grant of transmission licence.

Responsibility for Selection of Private Party for 100% equity participation for Sets B and C

41. The next issue to be considered is the authority to be made responsible to take the necessary steps for selection of private party. Under clause (b) of sub-section (2) of Section 38 of the 2003 Act, the CTU is to discharge all functions of planning and co-ordination relating to inter-state transmission. Further, under clause (c) the CTU is to ensure development of an efficient, co-ordinated and economical system of inter-state transmission lines for smooth flow of electricity from the generating stations to the load centres. These functions attributed to the CTU are considered significant. The expression “co-ordination” has been construed by the Hon’ble Supreme Court in the context of interpretation of entry 66 of the Union List of Seventh Schedule of the Constitution of India in State of Tamil Nadu Vs. Adhiyaman Edu. Research Institute [(1995) 4 SCC 104, 134]. It is held that co-ordination should mean harmonising or bringing into proper relation which all the things co-ordinated participate. The power to co-ordinate is, therefore, held to be power to harmonise or secure relationship for concerted action. It also means harmonisation with a view to forge a uniform pattern for a concerted action according to a certain design, scheme or plan of development.

It would, therefore, include power to do all things which are necessary to prevent what would make co-ordination either impossible or difficult. In this view of the matter and interpretation of the statutory provisions given by the Hon'ble Supreme Court, we are of the opinion that the selection of private party for implementation of Sets B and C of the Scheme falls within the functions of the CTU under the 2003 Act.

42. For the purpose of selection of private party, the CTU shall further devise the process to ensure the co-ordinated development of efficient and economical transmission lines (Sets B and C) in connection with the Scheme. For this purpose, the CTU may approach the Commission for its approval of the processes and procedures for implementation of the Scheme by private party.

Caveat

43. The view that has been taken in the present application is in the absence of any well-defined procedures specified by the competent authority. For this reason, the procedure being decided in this order shall not be quoted as a precedent for any future case. The cases arising in future will be governed by the Regulations to be framed by the Commission on the terms and conditions for construction of inter-state transmission of electricity, and guidelines to be issued by the Central Government.

Conclusion

44. The present petition is disposed of with the following observations:

- (a) No interference with the process of selection of private parties initiated by the CTU and presently in advanced stage is warranted, except the advice as per para 39 above.
- (b) The Scheme shall be commissioned by 2008-09, as advised by CEA.
- (c) The implementation of Sets A and D shall be by the CTU either of its own or by forming JV companies, in which case the CTU will be one of the JV partners, with adequate equity contribution so that the past experience of the CTU is available to the joint venture companies for execution of Sets A and D of the Scheme .
- (d) The implementation of Sets B and C of the Scheme shall be through 100% private participation.
- (e) Selection of private party for construction of Sets B and C shall be responsibility of the CTU.
- (f) The applicant shall be at liberty to participate in the selection process initiated or to be initiated by the CTU for one or more Sets.
- (g) JV companies formed for implementing Sets A and D and the private party selected for implementing Sets B and C shall approach the Commission for grant of transmission licence for the respective Set. The Commission shall decide the issue on merit.
- (h) In the interest of active participation of private sector in transmission, the Central Government is once again requested to expedite finalisation of guidelines for competitive bidding in transmission.

**Sd/-
(A.H. JUNG)
MEMBER**

**Sd/-
(BHANU BHUSHAN)
MEMBER**

**SD/-
(K.N. SINHA)
MEMBER**

**SD/-
(ASHOK BASU)
CHAIRMAN**

New Delhi dated the 29th July 2005