

Bihar Electricity Regulatory Commission, Patna

Suo-Motu Proceeding No. 17/2020

In the Matter of :

The Government of Bihar's letter Dated 27/4/2020 under Section 108 of the Electricity Act, 2003 to Bihar Electricity Regulatory Commission in respect of Development of Intra-state transmission projects under Tariff Based Competitive Bidding;

And

In the matter of:

The Commission on its own Motion

Vs

1 Government of Bihar through its Principal Secretary, Energy Department,

2 Bihar State Power (Holding) Company Limited through its CMD,

3 Bihar State Transmission Company Limited through its MD,

4 Bihar Grid Company Limited through its Chairman, and

5 Other Stakeholders.Respondents

QUORUM:-

Shri S. K. Negi, Chairman,

Shri Rajeev Amit, Member,

Shri R. K. Choudhary, Member

Dated: 19.06.2020

ORDER

The instant suo-motu proceedings has been initiated by the Commission to deliberate and act upon the direction received under section 108 of the Electricity Act, 2003 from the Government of Bihar with regard to

development of intra-state transmission projects under Tariff based competitive bidding (TBCB).

The contents of the state government letter which has been sent by the Principal Secretary, Department of Energy, Government of Bihar vide its letter No. 702/CERC Regulation-08/2010-925 dated 27.04.2020 are reproduced below:

“From,

Pratyaya Amrit,
Principal Secretary.

To,

The Secretary,
Bihar Electricity Regulatory Commission,
Vidyut Bhawan-II,
JawaharLal Nehru Marg
Patna-800021

Sub:- Policy decision taken by the Government of Bihar in the public interest regarding development of intra-state transmission projects.

I am hereby directed to communicate under the section 108 of the Electricity Act, 2003 that the Government of Bihar in the larger public interest and considering Bihar specific scenario has taken the policy decision of not opting Tariff Based Competitive Bidding (TBCB) mode for development of intra-state transmission projects as of now.

Yours faithfully,

(Pratyaya Amrit)
Principal Secretary”

In order to understand the proper perspective behind the issuance of the state government's aforesaid letter, it will be appropriate to narrate brief background of the issue.

The National Tariff Policy issued by the Ministry of Power, Government of India vide its Resolution No. 23/2/2005-R&R (Vol-IX) dated 28th January, 2016 provides development of intra-state transmission projects costing above a threshold limit through tariff based competitive bidding and obligates the SERCs to determine such threshold limit of the project cost. The relevant provision as mentioned in clause no 5.3 of the Tariff Policy is reproduced below:-

“5.3 The tariff of all new generation and transmission projects of company owned or controlled by the Central Government shall continue to be determined on the basis of competitive bidding as per the Tariff Policy notified on 6th January, 2006 unless otherwise specified by the Central Government on case to case basis.

*Further, intra-state transmission projects shall be developed by State Government through competitive bidding process for projects costing above **a threshold limit which shall be decided by the SERCs.**”*

Accordingly, the Bihar Electricity Regulatory Commission (hereinafter referred to as Commission), in the light of the aforesaid policy directive had incorporated an enabling provision for Tariff Based Competitive Bidding (TBCB) mode for development of intra-state transmission projects above a threshold limit (to be separately notified later by the Commission) in the BEREC (Multiyear Transmission Tariff and SLDC Charges), Regulations, 2018

(hereinafter referred to as Tariff Regulations). The regulation 5.3(a) of the Said Tariff Regulations is as under:

“5.3(a) The Transmission Licensee or SLDC, as the case may be, shall make assessment of infrastructure requirement and prepare capital investment plan in accordance with BERC (Procedure for Filing Capital Investment and Capitalization Plan) Regulations, 2018 that will spill into the year(s) under review and new projects that will commence and may be completed within or beyond the tariff period.

Provided that all the new intra-state transmission projects costing above a threshold limit to be notified separately, shall be developed through Tariff Based Competitive Bidding.”

In pursuance to the aforesaid regulation 5.3(a), the Commission after preparing a consultative paper initiated a suo-motu proceedings vide Case No.SMP-04/2019 to determine the threshold limit of the projects which would be taken up under TBCB route. The consultative paper was sent to the State Transmission Companies namely BSTPCL and BGCL as well as the Bihar state Power Holding Company limited (BSPHCL) asking them to file their submissions/objections/comments/suggestions to the Commission. The consultative paper was also put on the public domain for information of the general public and other stakeholders inviting their comments/objections/suggestions on the subject. The state transmission companies and BSPHCL filed their replies and certain other stakeholders also filed their written submissions. The Commission after detailed public hearing on several dates and examining the written submissions of the

respondents and public, decided that the intra-state transmission projects costing above Rs. 100 crores would be executed under TBCB route. Accordingly the Commission issued a notification fixing this threshold limit for TBCB mode vide its notification No. BERC-SMP-04/2019-07 dated 23.12.2019. Through the same notification the Commission also directed the STU and BSPHCL to come up with detailed guidelines for operationalisation of regulatory provisions within 3 months from the date of notification i.e. 23rd March, 2020.

The state of Bihar along with entire nation was engulfed in COVID-19 pandemic and normal functioning of the office was severely affected due to lock down situation. The Commission did not receive any guidelines from the STU in time. Meanwhile, a directive from the State Government u/s 108 to this respect which has been discussed above was received in the office of the Commission.

As discussed above, the Commission had framed the enabling Regulation for taking transmission projects costing above the threshold limit under TBCB mode and had notified the threshold limit through a detailed consultative process as laid down under the Electricity Act, 2003 in order to ensure participation of stakeholders and general public in the decision making process for the sake of transparency and objectivity.

The Commission, therefore, in the interest of equity and transparency deems it proper to deliberate and act upon the aforesaid directive of the State government issued under section 108 of the Act by giving opportunity of being heard to the State Government, Intra-State Transmission Licensees (BSPTCL & BGCL), BSPHCL and other stakeholders. **Moreover, the Hon'ble**

APTEL, in appeal no 41, 42, & 43 of 2010 has also held that the directive of the state government under section 108 of the Act should be considered only after hearing of the stakeholders. Accordingly, the Commission has decided to initiate a suo-motu proceedings to hear all the stakeholders including respondents State Transmission Utility (BSPTCL), Bihar Grid Company Ltd., Holding Company (BSPHCL) and the State Government.

Let a notice be issued to all the respondents for filing their replies. The contents of this order and notice shall also be put in public domain for the information of general public and other stakeholders inviting them to file their written comments to the office of the Commission **by 10.07.2020. All the replies should be filed in written form and submitted to the Commission through by post or by email only at bercpat@berc.co.in so as to reach the office of the commission on or before 10.07.2020.**

Further due to Covid-19 pandemic isolation protocol and social distancing norms are to be observed, there will not be any open court public hearing of this case.

Based on the written objections/comments/suggestion received from the respondents and other stakeholders Commission will decide the issue.

Sd/-
(R. K. Choudhary)
Member

Sd/-
(Rajeev Amit)
Member

Sd/-
(S. K. Negi)
Chairman