

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 316/TL/2022

Coram:

Shri I. S. Jha, Member

Shri Arun Goyal, Member

Shri P. K. Singh, Member

Date of order: 4th February, 2023

In the matter of

Application under Section 14 & 15 of the Electricity Act, 2003 read with Central Electricity Regulatory Commission (Procedure, Terms and Conditions for Grant of Transmission License and other related matters) Regulations, 2009 with respect to Transmission License to ER NER Transmission Limited

And

In the matter of

ER NER Transmission Limited,
(Now known as 'POWERGRID ER NER Transmission Limited')
B-9, Qutab Institutional Area,
Katwaria Sarai, New Delhi 110 016

....Petitioner

Vs

1. Chief Operating Officer,
Central Transmission Utility of India Limited,
Saudamini, Plot No.2,
Sector-29, Gurugram-122001, Haryana

2. Chief Executive Officer,
REC Power Development and Consultancy Limited,
REC Corporate Head Quarter,
D Block, Plot no. I-4,
Sector 29, Gurgaon-122001, Haryana

...Respondents

Parties present:

Shri D Sudharshan, ERNERTL
Shri V. C. Sekhar, ERNERTL
Shri Prashant Kumar, ERNERTL
Shri Mani Kumar, ERNERTL
Shri Shyam Sunder Goyal, CTUIL
Shri Swapnil Verma, CTUIL
Shri Amit Kumar, CTUIL
Ms. Muskan Agarwal, CTUIL



ORDER

The Petitioner, ER NER Transmission Limited, has filed the present Petition for grant of transmission licence under Section 14 and Section 15 of the Electricity Act, 2003 (hereinafter referred to as “the Act”) read with the Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of Transmission Licence and other related matters) Regulations, 2009 (hereinafter referred to as “Transmission Licence Regulations”) to establish "Inter-State Transmission System for System Strengthening Scheme for Eastern and North Eastern Regions" (hereinafter referred to as “Project”) on Build, Own, Operate and Transfer (BOOT) basis comprising of the following elements:

Sl. No.	Name of the Transmission Element	Scheduled COD in months from Effective Date	Element(s) which are pre-required for declaring the commercial operation (COD) of the respective Element
1.	Creation of 220kV GIS bus at Banka (POWERGRID) S/s	24	Elements at Sl. No. 1, 2, 3 & 4 are required to be commissioned simultaneously as their utilization is dependent on commissioning of each other
2.	400kV bus extension works at Banka (POWERGRID) 400/132 kV Sub-station		
3.	400/220kV, 2x500MVA ICTs along with associated bays (220kV bays in GIS and 400kV bays in AIS)		
4.	2 nos. of 220kV GIS line bays at Banka (POWERGRID) for termination of Banka (POWERGRID) – Goradih (Sabour New) 220 kV D/C line of BSPTCL Future provision: Space for future 220 kV GIS bays: 6 no.		



Sl. No.	Name of the Transmission Element	Scheduled COD in months from Effective Date	Element(s) which are pre-required for declaring the commercial operation (COD) of the respective Element
5.	Upgradation of existing 132 kV Namsai(POWERGRID) S/s to 220 kV (with 220 kV side as GIS)	36	Elements at S. No.5, 6 & 7 are required to be commissioned simultaneously as their utilization is dependent on commissioning of each other.
6.	Kathalguri (NEEPCO) – Namsai (POWERGRID) 220kV D/c line		
7.	Extension at Kathalguri (NEEPCO) switchyard: 2 nos. of GIS line bays for termination of Kathalguri (NEEPCO) – Namsai		

2. Based on the competitive bidding carried out by REC Power Development and Consultancy Limited (RECPDCL) in its capacity as the Bid Process Coordinator (BPC) in accordance with the Guidelines issued by Ministry of Power, Government of India under Section 63 of the Act, Power Grid Corporation of India Limited (PGCIL) was declared the successful bidder with the lowest quoted annual transmission charges of Rs. 350.00 million.

Order dated 8.1.2023

3. The Commission after considering the application of the Petitioner in the light of the provisions of the Act and the Transmission Licence Regulations, in its order dated 8.1.2023, *prima facie* proposed to grant transmission licence to the Petitioner.

Relevant extract of order dated 8.1.2023 is extracted as under:

“25. 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 20.1.2023.”



4. A public notice under Sub-section (5) of Section 15 of the Act was published on 11.1.2023 in all editions of the Times of India (English) and Hindustan (Hindi). No suggestions/ objections have been received from the members of the public in response to the public notice.

Hearing dated 24.1.2023

5. Case was called out for hearing on 24.1.2023. It was submitted by the representative of the Petitioner that in response to public notice published by the Commission, no objection has been received. The representative of the Petitioner further resubmitted that the Scheduled Commercial Operation Date of the Project is 24 months from the effective date for elements in Eastern Region and 36 months from the effective date for elements in North-Eastern Region and on the basis of the same, the Petitioner has placed the necessary EPC contracts. The representative of the Petitioner further submitted that it shall construct the project within timeline stipulated in TSA for which necessary EPC contracts have been placed accordingly.

6. In response to the specific query of the Commission during the course of hearing as to whether BSPTCL was approached for construction of downstream transmission line matching with the implementation schedule of this TBCB Project, the representative of the Petitioner submitted that a meeting (coordinated by CTUIL) was held between CTUIL, BSPTCL and the Petitioner. BSPTCL, during the meeting, stated that it will construct the transmission line in matching time frame. BSPTCL also informed that as per the TSA, the Petitioner is required to construct the elements within 24 months for Eastern Region scheme and shall be entitled for receiving payment of transmission charges on completion of such transmission



elements. During the course of hearing, the Commission observed that as per revised Standard Bidding Documents, the TSA is signed between the TSP on one side and CTUIL on the other side as Nodal Agency. Therefore, CTUIL ought to forward the signed TSA for forthcoming TBCB Projects to all the beneficiaries of the region including the concerned utilities (upstream/downstream) related to the project within a week of signing of TSA. Their comments/ observations, if any, be appraised to the Commission while recommending for grant of transmission licence. The Commission also observed that in future all the beneficiaries of the region including the concerned utilities (upstream/downstream) related to the project, should be implemented as respondents in the petitions relating to grant of transmission licence/ adoption of tariff.

7. Vide Record of Proceedings for the hearing dated 24.1.2023, CTUIL was directed to submit the copy of minutes of meeting dated 18.1.2023 held between CTUIL, BSPTCL and the Petitioner. CTUIL vide affidavit dated 1.2.2023 has placed on record the minutes of meeting in this regard. Relevant portion of minutes of meeting is extracted as under:

“(4) CTU apprised PENTL and BSPTCL that the liabilities for mismatch in the commissioning schedules of the concerned transmission elements vis-à-vis its Interconnection Facility (downstream transmission elements) shall be as per the applicable provisions of Sharing Regulations, 2020 including Regulation 13 and Orders of CERC issued from time to time. Both the parties were requested to apprise themselves of the regulatory position in this regard.

(5) CTU also impressed upon the TSP to ensure the compliance of the obligations in the terms of Transmission Service Agreement (TSA) dated 10.10.2022, including but not limited to liability to update monthly progress report provided under clause 5.3 of the TSA.

(6) CTU informed that the draft of the Implementation Agreement is in process and upon finalization, same shall be shared with PENTL and BSPTCL got signing.

(8) BSPTCL enquired whether the Force Majeure clause is available in TSA. CTUIL clarified that the TSA is independent to BSPTCL's scope of works and any Force



Majeure provisions available in TSA is not applicable. CTUIL also informed that time frame of the above project was decided on the basis of schedule given by BSPTCL for implementation of associated Interconnection Facility to BPC (M/s RECPDCL).

(9) POWERGRID ER NER Transmission Limited stated that they had signed TSA with CTUIL under TBCB route with completion schedule of 24 Months and they are progressing as per schedule and shall commission the project within aforesaid timeline. PENTL reiterated that in case of any delay in commissioning of interconnection facilities under the scope of BSPTCL beyond above schedule, PENTL shall be entitled to recover transmission charges as per TSA/Sharing Regulations.

(10) In this regard, the parties were informed that the matter of liability in case of corresponding delays by any of the concerned entities shall be governed by the provisions of CERC Sharing Regulations, 2020 and CERC Orders issued from time to time. Further, the minutes of present meeting shall be filed on Affidavit before the Hon'ble Central Electricity Regulatory Commission in Petition No. 316/TL/2022."

8. As regards 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."

9. In our order dated 8.1.2023, 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. CTUIL in its letter dated 7.11.2022 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 paragraph 1 of this order. Accordingly, we direct that transmission licence be granted to the Petitioner,



'POWERGRID ER NER Transmission Limited', to establish "Inter-State Transmission System for System Strengthening Scheme for Eastern and North Eastern Regions" (hereinafter referred to as "Project") on Build, Own, Operate and Transfer (BOOT) basis as per the details given in paragraph 1 above.

10. The grant of 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 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; the Central Electricity Regulatory Commission (Open Access in inter-State Transmission) Regulations, 2008; the Central Electricity Regulatory Commission (Grant of Connectivity, Long-term Access and Medium-term Open Access in inter-State Transmission and related matters) Regulations, 2009; the Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2010, as amended from time to time or any subsequent re-enactments thereof; and the Central Electricity Regulatory



Commission (Connectivity and General Network Access to the inter-State Transmission System) Regulations, 2022;

(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 provisions of the Central Electricity Regulatory Commission (Sharing of inter-State Transmission Charges and Losses) Regulations, 2020 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 coordinate with the licensees (including deemed licensees) executing the upstream or downstream transmission projects, the Central Electricity Authority and CTUIL for ensuring smooth execution and commissioning of the Project; 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.

11. CTUIL / its appointed Independent Engineer and 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 Transmission Service Agreement executed between the licensee & Nodal Agency, the Act and the Transmission Licence Regulations.

12. CTUIL is directed to coordinate commissioning of the Petitioner's transmission project matching with implementation of Interconnection facilities/ downstream assets, if any, so as to avoid liability arising out of mis-match.

13. Let an extract copy of this order be sent to CTUIL and CEA for information and necessary action.

14. Petition No. 316/TL/2022 is allowed in terms of the above.

Sd/-
(P. K. Singh)
Member

sd/-
(Arun Goyal)
Member

sd/-
(I.S. Jha)
Member

