

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 33/TL/2022

Coram:

Shri I. S. Jha, Member

Shri Arun Goyal, Member

Shri P. K. Singh, Member

Date of order: 23rd May, 2022

In the matter of

Application under Section 14, Section 15 and Section 79 (1) (e) 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 with respect to grant of transmission licence to Nangalbibra - Bongaigaon Transmission Limited.

And

In the matter of

Nangalbibra - Bongaigaon Transmission Limited
F-1, The Mira Corporate Suites, 1 & 2
Ishwar Nagar, Okhla Crossing,
Mathura Road,
New Delhi – 110065

... Petitioner

VERSUS

1. Assam Power Distribution Company Limited,
4th Floor, Bijulee Bhawan,
Paltan Bazar,
Guwahati – 781001, Assam
2. Meghalaya Energy Corporation Limited,
Lumjingshai, Short Round Road,
Shillong – 793001, Meghalaya
3. Tripura State Electricity Corporation Limited,
Bidyut Bhaban, Banamalipur,
Agartala – 799001, Tripura
4. Department of Power, Arunachal Pradesh,
Power Department Office, Kharsang,
Arunachal Pradesh – 792122
5. Manipur State Power Distribution Corporation Limited,
3rd Floor, New Directorate Building,

Near 2nd MR Gate, Imphal-Dimapur Road,
Imphal – 795001, Manipur

6. Department of Power, Nagaland,
Electricity House, A.G Colony,
Kohima – 797001, Nagaland

7. Department of Power & Electricity, Mizoram,
Power & Electricity Department,
Kawlpheta Building,
New Secretariat Complex, Khatla
Aizawl – 796001, Mizoram

8. HVDC BNC Powergrid,
Power Grid Corporation of India Limited,
Biswanath Ghat Road, Biswanath Chariali,
P.O: Burigang,
Sonitpur – 784176, Assam

9. PFC Consulting Limited,
First Floor, Urjanidhi, 1, Barakhamba Lane,
Connaught Place,
New Delhi- 110001

10. Central Electricity Authority,
Seva Bhawan, R.K. Puram,
New Delhi- 110066

11. Central Transmission Utility of India Limited,
Saudamini, Plot No.2, Sector 29,
Near IFFCO Chowk,
Gurgaon - 122001, India

... Respondents

Parties present:

Shri Deep Rao, Advocate, NBTL
Ms. Harneet Kaur, Advocate, NBTL
Shri TAN Reddy, NBTL
Shri Balaji Sivan, NBTL
Shri Pulkit Sharma, Advocate, NBTL
Shri Manish Ranjan Keshari, CTUIL
Shri Swapnil Verma, CTUIL
Shri Siddharth Sharma, CTUIL
Shri Ranjeet Singh, Rajput, CTUIL
Shri Akshayavat Kislav, CTUIL

ORDER

The Petitioner, Nangalbibra-Bongaigaon Transmission Limited, has filed the present Petition for grant of transmission licence under Section 14, Section 15 and

Section 79(1)(e) 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 “new 220/132 kV substation at Nangalbibra (hereinafter referred to as “Project”) on Build, Own, Operate and Maintain (BOOM) basis comprising of the following elements:

Sr. No.	Name of the Element	Scheduled COD in months from Effective Date
1.	<p><i>Establishment of new 220/132 kV, 2x160 MVA substation at Nangalbibra:</i></p> <ul style="list-style-type: none"> <i>i. 220/132 kV, 160 MVA ICT - 2 No.</i> <i>ii. 220 kV ICT bays - 2 No.</i> <i>iii. 132 kV ICT bays - 2 No.</i> <i>iv. 220 kV Line bays: 2 No. [for termination of Bongaigaon (POWERGRID) - Nangalbibra 400 kV D/c line (initially operated at 220 kV) - under this scheme]</i> <i>v. 132 kV Line bays: 2 No. [for termination of Nangalbibra - existing Nangalbibra (MePTCL) 132 kV D/c (Single Moose) line of MePTCL]</i> <i>vi. Bus reactor 245kV, 31.5 MVA - 2 No.</i> <i>vii. 220 kV Bus reactor bays - 2 No.</i> <p>Additional space for future expansion:</p> <ul style="list-style-type: none"> <i>- 220/132 kV, 200 MVA ICT - 1 No. (along with associated bays at both levels)</i> <i>- 400/220 kV, 500 MVA ICT - 3 No. (along with associated bays at both levels)</i> <p>Space for 400 kV upgradation:</p> <ul style="list-style-type: none"> <i>- Line bays along with space for switchable line reactor: 8 No. [2 No. for 400 kV operation of Bongaigaon (POWERGRID) - Nangalbibra 400 kV D/c line (initially operated at 220 kV) and 6 No. for other lines]</i> <i>- Bus reactor 420 kV, 125 MVA - 3 No.</i> <i>- 400 kV Bus reactor bays - 3 No.</i> <p>Space for future 220 kV line bays: 6 No. (2 No. for termination of Mawngap (Meghalaya) – Nangalbibra 220 kV D/c line of MePTCL and 4 No. for future lines)</p> <p>Space for future 132 kV line bays: 6 No. (for future lines)</p>	24 Months
2.	<p><i>Extension at 220 kV GIS in Bongaigaon (POWERGRID) 400/220 kV S/s:</i></p>	

	2 No. of GIS line bays for termination of Bongaigaon (POWERGRID) - Nangalbibra 400 kV D/c line (initially operated at 220 kV) 220 kV line bays - 2 No.	
3.	Extension at Hatsinghmari (Assam) S/s: 2 No. of 132 kV line bays for termination of Hatsinghmari (Assam) - Ampati (Meghalaya) 132 kV D/c line 132 kV line bays – 2 No.	
4.	Extension at Ampati (Meghalaya) S/s: 2 No. of 132 kV line bays for termination of Hatsinghmari (Assam) - Ampati (Meghalaya) 132 kV D/c line 132 kV line bays - 2 No.	
5.	Bongaigaon (POWERGRID) - Nangalbibra 400 kV D/c (Twin ACSR Moose) line (initially operated at 220 kV)	
6.	Hatsinghmari (Assam) - Ampati (Meghalaya) 132 kV (Single ACSR Panther) D/c line	

Note:

- i. *POWERGRID to provide space for extension at Bongaigaon (POWERGRID) S/s: 2 No. of 220 kV line bays for termination of Bongaigaon (POWERGRID) - Nangalbibra 400 kV D/c line (initially operated at 220kV).*
- ii. *AEGCL/Assam, to provide space for extension at Hatsinghmari (Assam) S/s: 2 No. of 132 kV line bays for termination of Hatsinghmari (Assam) - Ampati (Meghalaya) 132 kV D/c line.*
- iii. *MePTCL/Meghalaya to provide space for extension at Ampati (Meghalaya) S/s: 2 No. of 132kV line bays for termination of Hatsinghmari (Assam) - Ampati (Meghalaya) 132 kV D/c line.*
- iv. *To be implemented by MePTCL, Meghalaya under intra-state scheme in matching time frame of this ISTS scheme*
 - a. *Mawngap (Meghalaya) - Nangalbibra (ISTS) 220 kV D/c line alongwith 220 kV line bays at both ends (space for construction of 2 No. 220 kV line bays at Nangalbibra (ISTS) to be provided by licensee to MePTCL)*
 - b. *Nangalbibra (ISTS) - existing Nangalbibra (MePTCL) 132 kV D/c (Single Moose) line (2 No.132kV line bays at Nangalbibra (MePTCL) is to be implemented by MePTCL, however, 2 No.132 kV line bays at Nangalbibra (ISTS) is under the scope of this ISTS scheme)”*

2. The Petitioner has made the following prayers:

- (a) *Issue the transmission license to the Petitioner for establishing, operating and maintaining the Project as provided in the TSA;*
- (b) *Allow the Project to be part of the Inter-State Transmission System and direct that the recovery of transmission charges shall be in accordance with the terms of the CERC (Sharing of Inter-state Transmission Charges and Losses) Regulations, 2020;*
- (c) *Condone any inadvertent errors omissions/ errors / shortcomings and permit the Petitioner to add/change/modify/alter these filings and make further submissions as may be required at a future date.*

(d) Pass any such other order / orders, as may be deemed fit and proper in the facts and circumstances of the case.”

Hearing dated 21.3.2022

3. The matter was called out for virtual hearing on 21.3.2022. Notice was issued to the respondents to file their reply. However, no reply has been filed by the Respondents. The Petitioner, vide Record of Proceedings for the hearing dated 21.3.2022 was directed to confirm that the route of transmission line or location of sub-station selected by the Petitioner factors into its own survey and field investigation as specified in clause 2.5.7.4 of RfP.

4. The Petitioner vide its affidavit dated 8.4.2022 mainly has submitted as under:

“8. SGL26, the successful bidder who later acquired the Petitioner Company, undertook preliminary surveys and preliminary field investigations before submission of its bid in compliance with Clause 2.5.7.4 of the RfP.

9. TBCB process for award of the Project commenced with the issuance of the RfP on 4.2.2021. BPC issued its Survey Report on 5.4.2021 in terms of Clause 1.6.2.1 (a) of the RfP. The said report contained initial information regarding the Project including on the transmission line, indicative route alignment, conductor type configuration and type of terrain likely to be encountered. After queries raised by the bidders including on the boundary limits of the substation, final clarifications on the bidding documents were issued by the BPC on 28.6.2021. The RfP technical and financial bids were submitted by the bidders on 18.8.2021, post which SGL26 emerged as the successful bidder in the e-reverse auction process held on 30.9.2021

10. 51 days between the date of issuance of clarifications by the BPC i.e., 28.6.2021 and the date of submission of bid i.e., 18.8.2021, SGL26 undertook its pre-bid survey which included desktop study of the route indicated by the BPC in its Survey Report followed by preliminary ground survey, geo-technical analysis and bid estimation. However, exhaustive, empirically precise survey cannot be feasibly completed in 51 days, and it is not standard market practise for an exhaustive survey to be conducted at the pre-bid stage.

11. In view of the limited time available with the bidders in general, a prima facie survey is done during the pre-bid stage followed by a detailed survey post-bid which takes close to 180 days to complete. The self-survey conducted by the bidders at the pre-bid stage relies substantially on the Survey Report. It

is imperative for the bidders to be able to place reliance on the Survey Report as limited time is available with them before submitting their bids to examine the bidding documents, undertake surveys, field investigations, and commercial/technical studies. During such limited time, the bidders cannot be expected to undertake a detailed survey/investigation of the entire area where the Project is required to be implemented. In fact, this is the precise reason BPC as a specialised agency undertakes such detailed survey/investigation, prepares survey reports and provides them to the bidders for their reference.

12. In terms of Clause 5.1.4 of the TSA, after the award of the Project, the Petitioner is *inter alia* responsible for final selection of the substation site including its geo-technical investigation, and survey and geo-technical investigation of the line route in order to determine the final route of the transmission lines. Therefore, the final route of the transmission line and location of the sub-station selected by the Petitioner factors into its own survey and field investigation. The perimeter coordinates/peripheral limitations in terms of radius from the substation coordinates and termination points for transmission lines are fixed in the BPC Report and all bidders are bound by them.”

5. It is noticed the Petitioner has considered and factored in its own survey and field survey investigation in terms of clause 2.5.7.4 of RfP. The Petitioner will comply with the provisions of bidding documents and TSA for commissioning of the Project within SCOD.

Hearing dated 20.5.2022

6. During the course of hearing, learned counsel for the Petitioner submitted that the Petitioner has filed additional affidavit in compliance with the direction of the Commission vide Record of Proceedings for the hearing dated 21.3.2022 and thus, appropriate order(s) may be passed in the matters expeditiously.

7. The Petitioner has submitted that in accordance with the “Guidelines for Encouraging Competition in Development of Transmission Projects” and “Tariff Based Competitive Bidding Guidelines for Transmission Service” (hereinafter referred to as “the Guidelines”) issued by Ministry of Power, Government of India,

under Section 63 of the Act, PFC Consulting Limited (hereinafter referred to as “PFCCL”) was notified as the Bid Process Coordinator (hereinafter referred to as “BPC”) by Ministry of Power, Government of India vide Notification dated 25.9.2020 for the purpose of selection of bidder as Transmission Service Provider (hereinafter referred to as “TSP”) to establish “new 220/132 kV substation at Nangalbibra” through tariff based competitive bidding process on BOOM basis.

8. PFCCL in its capacity as the BPC initiated the bid process on 4.2.2021 and completed the same on 16.12.2021 in accordance with the Guidelines. Sterlite Grid 26 Limited (SGL 26) was selected as the successful bidder having quoted the lowest levelized transmission charges of Rs. 558.59 million per annum in order to provide transmission service to the identified Long-Term Transmission Customers (LTTCs) of the Project, namely, Assam Power Distribution Company Limited, Meghalaya Energy Corporation Limited, Tripura State Electricity Corporation Limited, Department of Power, Arunachal Pradesh, Manipur State Power Distribution Corporation Limited, Department of Power, Nagaland, Department of Power & Electricity, Mizoram and HVDC BNC Powergrid, as specified in the TSA.

9. At the stage of RfP (non-financial) stage, four bidders, namely, Power Grid Corporation of India Limited, Sterlite Grid 26 Limited, Adani Transmission Limited and Megha Engineering & Infrastructure Limited submitted their offers. The RfP (Non-Financial) bids of the four bidders were opened in the presence of representatives of the bidders on 18.8.2021 and all four bidders qualified at RfP (non-financial) stage. Based on the recommendation of the Bid Evaluation Committee (BEC), the RfP (Financial) Bids-Initial Price Offer of the four bidders were opened on 29.9.2021. Lowest Initial Price Offer discovered (Best Deal) at MSTC portal was Rs. 1030.00 million per annum. Based on the recommendation of BEC, all

four bidders were qualified to participate in the e-reverse auction stage. The e-reverse auction was carried out at MSTC portal on 11.10.2021 and the following levelised transmission tariff for each bidder (in ascending order) emerged:

Sr. No.	Name of Bidder	Levelised Transmission Charges from the Final Offer (Rs.in Million)	Rank
1	Sterlite Grid 26 Limited	558.59	L-1
2	Megha Engineering & Infrastructure Limited	560.00	L-2
	Power Grid Corporation of India Limited	797.90	L-3
3	Adani Transmission Limited	802.57	L-4

10. As per the Bid Evaluation Report dated 11.10.2021, Sterlite Grid 26 Limited emerged as the successful bidder with the lowest levelised transmission charges of Rs. 558.59 million per annum. BEC vide its certificate dated 11.10.2021 has certified that entire bid process has been carried out in accordance with the Guidelines issued by the Ministry of Power under Section 63 of the Act. BEC has further certified that the levelised tariff computed on the basis of rates quoted by the successful bidder during e-reverse auction is lower than the levelised tariff calculated based on CERC norms. Therefore, the levelised tariff discovered through e-reverse auction is acceptable.

11. Consequent to its selection as the lowest bidder, Letter of Intent (LoI) was issued to Sterlite Grid 26 Limited by the BPC on 14.10.2021 which was accepted by SGL 26. Under the terms of Request for Proposal (RfP) and the Letter of Intent, the successful bidder is obligated to accomplish the following tasks:

- (a) Provide Contract Performance Guarantee in favour of Long Term Transmission Customers (LTTCs);

- (b) Execute Share Purchase Agreement and all other RfP documents;
- (c) Acquire, for the Acquisition Price, 100% share equity share holding of Nangalbibra - Bongaigaon Transmission Limited from PFCCCL along with all its related assets and liabilities;
- (d) Make an application to this Commission for adoption of transmission charges, as required under Section 63 of the Act; and
- (e) Apply to this Commission for grant of transmission licence;

12. The Petitioner has furnished the Contract Performance Guarantee (CPG) for an aggregate value of Rs. 10.37 crore on 16.12.2021 and has acquired hundred percent equity holding in Nangalbibra - Bongaigaon Transmission Limited on 16.12.2021. Accordingly, the Transmission Service Agreement (TSA) dated 6.7.2021 executed between the TSP and the LTTCs became effective from 16.12.2021.

13. Section 14 of the Act provides that the Appropriate Commission may, on an application made under Section 15 of the Act, grant a licence to any person to transmit electricity as a transmission licensee in any area as may be specified in the licence. The word "person" has been defined in Section 2(49) of the Act to include any company or body corporate or association or body of individuals, whether incorporated or not, or artificial juridical person. The Petitioner has been incorporated under the Companies Act, 2013. The main object of the Petitioner Company is as under:

"To plan, promote and develop an integrated and efficient power transmission system network in all its aspects including planning, investigation, research, design and engineering, preparation of preliminary, feasibility and definite project reports, construction, operation and maintenance of transmission lines, sub-stations, load dispatch stations and communication facilities and appurtenant works, coordination of integrated operation of regional and

national grid system, execution of turn-key jobs for other utilities/organizations, wheeling of power in accordance with the policies, guidelines and objectives laid down by the Central Government from time to time”.

14. Section 15 (1) of the Act provides that every application under Section 14 of the Act shall be made in such manner and in such form as may be specified by the Appropriate Commission and shall be accompanied by such fees as may be prescribed. The Central Commission has specified Transmission Licence Regulations in this regard. Regulation 3 of the Transmission Licence Regulations provides that the Empowered Committee shall identify the Projects included in the transmission plan to be developed under the Guidelines issued under Section 63 of the Act. Regulation 4 of Transmission Licence Regulations provides that in case of projects identified by the Empowered Committee for development under the Guidelines for competitive bidding, selection of the project developer shall be made in accordance with the procedure laid down in the Guidelines. The Project under consideration has been identified by the Empowered Committee. Central Electricity Authority, vide its letter No. CEA-PS-12-16/4/2018-PSPA-II Division dated 5.4.2021 had issued prior approval to the Project under Section 68 of the Act. The selection of the project developer, Nangalbibra - Bongaigaon Transmission Limited, has been made in accordance with the Guidelines for competitive bidding.

15. Regulation 7 of the Transmission Licence Regulations read with the order dated 22.1.2022 passed in Petition No.1/SM/2022 [whereby the Commission, in the exercise of ‘Power to Relax’ under Regulation 24 of the Transmission Licence Regulations, modified/amended Clauses (4), (7), (9) and (12) and dispensed with Clause (10) of Regulation 7] provide for the procedure for grant of transmission licence as under:

“(1) The application for grant of licence shall be made to the Commission in

Form-I appended to these regulations and shall be accompanied by such fees as may be prescribed by the Central Government from time to time.

(2) In case of the person selected for implementation of the project in accordance with the guidelines for competitive bidding, the application shall also contain such additional information, as may be required under these guidelines.

(3) The application shall be supported by affidavit of the person acquainted with the facts stated therein.

(4) Before making an application, the applicant shall submit the original application in electronic form along with annexures and enclosures on the e-filing portal of the Commission so that the same is served electronically on all the long-term customers of the project registered on the e-filing portal of the Commission. Also, a copy of the same be served through e-mail on the long-term customers of the project not registered on the e-filing portal of the Commission. Further, the applicant shall also post the complete application along with annexures and enclosures in English and in the vernacular language, on its website.

(5) The application shall be kept on the website till such time the licence is issued or the application is rejected by the Commission.

(6) Immediately on making the application, the applicant shall forward a copy of the application to the Central Transmission Utility.

(7) The applicant shall, within 7 days after filing the application, post the application on the e-filing portal of the Commission and on its website in Form-II attached to these regulations in English language and in Vernacular language of the State or Union Territory where an element of the project or a long-term customer is situated, inviting comments from the general public

(8) As far as possible, within 7 days of receipt of the application the Secretariat of the Commission shall convey defects, if any, if noticed on preliminary scrutiny of the application for rectification and the defects conveyed shall be rectified by the applicant in such time as may be indicated in the letter conveying the defects.

(9) In the notice published on the e-filing portal of the Commission and on the applicant's website under clause (7) it shall be indicated that the suggestions and objections, if any, on the application, may be filed before the Secretary, Central Electricity Regulatory Commission, Third Floor, Chanderlok Building, Janpath, New Delhi-110001 (or the address where the office of the Commission is situated), with a copy to the applicant, by any person, including the long-term customers, within 30 days of publication of the notice

(10).....

(11) The Central Transmission Utility shall send its recommendations, if any, to the Commission on the proposal made in the application within a period of thirty days from the date of receipt of application by it:

Provided that copy of the recommendations, if any, made by the Central Transmission Utility shall always be forwarded to the applicant:

Provided further that these recommendations of the Central Transmission Utility shall not be binding on the Commission.

(12) The applicant may file its comments, duly supported by an affidavit, on the recommendations made by the Central Transmission Utility and the suggestions and objections, if any, received in response to the notice posted on the e-filing portal of the Commission and on the applicant's website by him, within 45 days of service of copy of the application on the Central Transmission Utility or publication of notice posted on the e-filing portal of the Commission and on the applicant's website, with an advance copy to the Central Transmission Utility or the person who has filed the suggestions and objections on the proposal made in the application, as the case may be.

(13) The Commission after considering the suggestions and objections received in response to the public notice published by the applicant and the recommendations, if any, of the Central Transmission Utility may, propose to grant transmission licence or for reasons to be recorded in writing, reject the application."

16. The Petitioner has approached the Commission by a separate application for adoption of transmission charges in respect of the Transmission System which is presently under consideration of the Commission and order in that Petition will be issued separately. The Petitioner has filed the present Application for grant of transmission licence in accordance with the Transmission Licence Regulations. The Petitioner has submitted proof of service of the copies of the application on the LTTC and Central Transmission Utility and proof of web posting of the complete application. The Petitioner has further undertaken to pay the applicable licence fee upon the grant of Transmission Licence in terms of Central Electricity Regulatory Commission (Payment of Fees) Regulations, 2012. The Petitioner has prayed for grant of transmission licence to Nangalbibra - Bongaigaon Transmission Limited with respect to the Project as per details given in para 1 above.

17. The Petitioner has made the Application as per Form-I and has paid fee of Rs. one lakh prescribed by the Central Government. On perusal of the Application, it is noted that the Petitioner has served copy of the Application on the LTTCs for the Project. The levelised tariff charges quoted by the Petitioner which have been recommended by the Bid Evaluation Committee for acceptance, is Rs. 558.59 million per annum. The Petitioner has also enclosed copies of the recommendations of the Bid Evaluation Committee and proof of making the evaluation report public by the BPC as per the Guidelines.

18. The Petitioner vide its affidavit dated 15.1.2022 has placed on record the relevant copies of the newspapers wherein notices were published. The Petitioner has published the notices on 28/29.12.2021 in "Assam Rising (English edition), The Shillong Times (English edition), Salantini Janera (Vernacular edition), Batori Kakot (Vernacular edition) and Dainik Jugasanka (Vernacular edition). No objection has been received from the general public in response to the public notices.

19. The Petitioner has served the copy of the Application on the Central Transmission of Utility of India Limited (CTUIL) as required under Section 15(3) of the Act and Regulation 7(6) of the Transmission Licence Regulations. CTUIL in its letter dated 17.3.2022 has recommended for grant of transmission licence to the Petitioner. Relevant portion of the said letter dated 17.3.2022 is extracted as under:

"This has reference to Petition No. 33/TL/2022 filed by M/s Nanglabibra-Bongaigaon Transmission Limited (NBTL) before CERC under Sections 14,15, and 79 (1) (e) of the Electricity Act, 2003 and CERC (Procedure, Terms and Conditions for grant of Transmission Licence and other related matters) Regulations, 2009 for grant of transmission licence to establish subject ISTS scheme on Build, Own, Operate and Maintain (BOOM) basis. In this regard, following is submitted:

1. Presently, the State of Meghalaya has one 400/220 kV s/s at Bymihat (MePTCL) and one 132 kV S/S at Khilerhat (POWERGRID) to meet its power requirement from ISTS network. The both ISTS -STU interconnection points are on eastern part of Meghalaya. Due to increasing power demand and for providing reliable power supply in the Western part of Meghalaya, necessity of

a 220 kV sub-station in the East Garo Hills district of Western Meghalaya was felt. Accordingly, the subject scheme envisages establishment of a new 220/132 kV sub-station at Nangalbibra in Western part of Meghalaya through Bongaigaon-Nangalbibra 400 kV D/C line (operated at 220 kV) with the provision to upgrade the system to 400 kV level in future. The Detailed scope of the transmission scheme is enclosed at Annexure-I

2. The transmission scheme was agreed in the 1st meeting of North Eastern Regional Power Committee (Transmission Planning) (NERPCTP), held on 8.11.2019.

3. The transmission system was discussed and agreed in the 3rd meeting of the National Committee on Transmission (NCT) (re-constituted vide MOP office order dated 4.11.2019) meeting held on 26.5.2020 & 28.5.2020.

4. Ministry of Power, Government of India vide Gazette notification dated 25.9.2020 had appointed PFC Consulting Ltd. (PFC) as the Bid Process Coordinator (BPC) for selection of Bidder as Transmission Service Provider (TSP) to establish the subject ISTS scheme through Tariff Based Competitive Bidding (TBCB) process.

5. The ISTS scheme was also agreed in the 21st North Eastern Region Power Committee (NERPC) meeting held on 4.2.2021.

6. BPC incorporated M/s Nangalbibra-Bongaigaon Transmission Limited (NBTL), a Special Purpose Vehicle (SPV) as its wholly owned subsidiary, to initiate various activities for execution of the ISTS scheme and to subsequently act as the TSP. Pursuant to the process of competitive bidding conducted by the BPC, M/s Sterlite Grid 26 Limited on 14.10.2021. Subsequently, M/s Sterlite Grid 26 Limited acquired 100% equity shareholding of M/s NBTL on 16.12.2021, upon execution of the Share Purchase Agreement and after completion of all procedural requirements as specified in the bid documents. Thereafter, PFC vide email dated 22.12.2021 informed CTU regarding transfer of the SPV namely, M/s NBTL to M/s Sterlite Grid 26 Limited. The scheduled COD for the proposed ISTS scheme is 24 months from the effective date.

7. During the course of the bidding, the 220 kV downstream system to be implemented M/s Meghalaya Power Transmission Corporation Limited (MePTCL) from Nangalbibra (ISTS) S/s was modified in 3rd meeting of NERPC-TP held on 19.7.2021 from "Nangalbibra (ISTS)-Mawngap (Meghalaya) 220 kV D/C line along with 220 kV line bays at both ends". The same was also noted in the 6th meeting of NCT held on 29.10.2021, wherein it was recorded that this would have no implication on the scope of works of the already notified ISTS scheme to be implemented through TBCB route.

8. In line with Section 15(4) of the Electricity Act, 2003, based on details furnished by M/s Nangalbidra-Bongaigaon Transmission Limited (NBTL), CTU recommends the grant of transmission licence to M/s Nangalbidra-Bongaigaon Transmission Limited for executing the ISTS scheme, namely "Establishment of new 220/132 kV sub-station at Nangalbibra." as mentioned in Para-1 above."

20. We have considered the submissions of the Petitioner and BPC. The proviso to Clause 2.4 of the RfP provides that "if for any reason attributable to the BPC, the

said activities are not completed by the selected bidder within the above period of ten (10) days as mentioned in this clause, such period of 10 days shall be extended, on a day to day basis till the end of the Bid validity period". Though Lol was issued on 14.10.2021, BPC, vide its letter dated 16.12.2021, in terms of Clauses 2.4, 2.5 and 2.6 of RfP extended the date upto 27.12.2021 for completion of all activities by the successful bidder. The selected bidder furnished the Contract Performance Guarantee to the Long Term Transmission Customers of the Project for an amount of Rs. 10.37 crore and has acquired hundred percent equity-holding in the applicant company on 16.12.2021 after execution of the Share Purchase Agreement. The TSP on behalf of the selected bidder filed the Application through e-filing for grant of transmission licence and adoption of tariff on 22.12.2021. 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 9.6.2022.

21. With regard to delay in execution of the transmission system due to time taken in obtaining statutory clearances required under RfP and or adjudication of any claim of the Petitioner arising under the TSA, the Petitioner has submitted that bidding process was governed by the bidding Guidelines and the standard bidding documents issued by the Ministry of Power, Government of India. The tariff quoted by Sterlite Grid 26 Limited *inter alia* takes into consideration the rights and obligations of the TSP under the TSA including the provisions available to it to claim

time and cost variations. The Petitioner has further submitted that the terms of the TSA are binding on the parties and any claim for force majeure, escalation in transmission charges, extension of time for commissioning of the Project and exemption from payment of liquidated damages that may be raised by the Petitioner is required to be dealt with in accordance with terms contained thereunder. The Petitioner has submitted that Section 56 of the Indian Contract Act, 1872 provides for frustration of contract and impossibility of performance, etc. and the Commission in number of cases has granted reliefs as per the provisions of law. The Petitioner has submitted that in terms of Section 28 of the Indian Contract Act, 1872, no restraint in taking legal proceedings in future can be validly placed. The Petitioner has submitted that it would implement the project as per provisions of Article 16.4 of the TSA which is extracted as under:

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

22. The Petitioner has submitted that claim, if any, made by the Petitioner needs to be dealt with in accordance with the provisions of the RfP documents and the TSA.

23. With regard to quality control mechanism available or to be put in place, compliance is to be ensured with the requirements stipulated under Article 5.1.1 and Article 5.4 of the TSA, the Petitioner has submitted as under:

(a) In compliance to the terms of the TSA, the Petitioner shall deploy an external agency to monitor the quality of the Project being constructed by the Petitioner and to ensure that it is as per the standards set out in the TSA. Under the TSA, the Petitioner is entrusted with the obligation to provide monthly progress reports to all the LTTCS and Central Electricity Authority ("CEA") with regard to the Project and its execution, so as to enable them to monitor and co-ordinate the development of the

Project. In terms of the TSA, the Lead LTTC is duty bound to inspect the progress of the Project and the CEA may carry out random inspections during the execution of the Project, as and when it is deemed necessary by it. It is further submitted that the TSP is required to take all necessary actions for remedying shortfall in achievement of timely progress in execution of the Project, if any, as intimated by the CEA.

(b) The TSA further provides that TSP i.e. the Petitioner must ensure that the design and construction of the project is in accordance with Indian Standards and Codes issued by the Bureau of Indian Standards and in case they are not applicable, other equivalent internationally recognized Standards and Codes shall be followed. Further, in terms of the TSA, the Petitioner is also responsible for constructing and commissioning the Project in accordance with the norms prescribed in various Regulations issued by the CEA, Prudent Utility Practices and other Applicable Laws.

(c) In terms of above mentioned provisions of the TSA, there are sufficient check and balances in terms of which both the CEA and the Lead LTTC may monitor the overall quality of construction of the Project by the Petitioner.”

24. The Petition shall be listed for hearing in due course for which separate notice will be issued.

Sd/-
(P. K. Singh)
Member

sd/-
(Arun Goyal)
Member

sd/-
(I.S. Jha)
Member