

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 102/TL/2022

Coram:

**Shri I. S. Jha, Member
Shri Arun Goyal, Member
Shri P. K. Singh, Member**

Date of order: 16th June, 2022

In the matter of

Application under Section 14, Section 15, 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 License to Karur Transmission Limited.

And

In the matter of

Karur Transmission Limited,
C 105, Anand Niketan,
New Delhi-110021.

..... Petitioner

Versus

1. JSW Renew Energy Limited
JSW Centre,
Bandra Kurla Complex,
Bandra (E), Mumbai – 400051
2. PFC Consulting Limited,
First Floor, Urja Nidhi,1, Barakhamba Lane,
Connaught Place, New Delhi-110 001
3. Chief Executive Officer, CTUIL Planning,
Power Grid Corporation of India Limited,
Saudamini, Plot No.2, Sector-29,
Gurgaon-122 001

.....Respondents

Parties present:

Shri Bhavesh Kundalia, KTL
Shri Afaq Pothiawala, KTL
Shri Naresh Desai, KTL
Shri Siddharth Sharma, CTUIL
Shri Ranjeet Singh Rajput, CTUIL
Shri Anil Kr. Meena, CTUIL
Shri Sanjay Nayak, PFCCL

ORDER

The Petitioner, Karur 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 “Transmission Scheme for evacuation of power from RE sources in Karur/Tiruppur Wind Energy Zone (Tamil Nadu) (1000 MW) under Phase-I” (hereinafter referred to as “Transmission System” or “Project”) on Build, Own, Operate and Maintain (BOOM) basis comprising of the following elements:

	<i>Name of the Transmission Element</i>	<i>Scheduled COD in months from Effective Date</i>
1.	<p><i>Establishment of 2x500 MVA, 400/230 kV Karur Pooling Station (at a location in between Karur Wind zone and Tiruppur wind zone)</i></p> <p><i>4 Nos. of 230 kV line bays for interconnection of wind projects</i></p> <ul style="list-style-type: none">• <i>2x500MVA, 400/230 kV ICTs</i>• <i>400kV ICT bay – 2 nos.</i>• <i>230kV ICT bay – 2 nos.</i>• <i>400kV line bay – 4 nos.</i>• <i>400kV reactor bay – 2 nos.</i>• <i>230kV line bays – 4 nos.</i>• <i>230kV Bus coupler bay- 1 no.*</i>• <i>230kV Transfer Bus Coupler (TBC) bay - 1 no.*</i> <p><i>Space provision for Phase-II:</i></p> <p><i>i. 400/230kV ICTs along with bays: 3 nos.</i></p>	<p><i>Matching with schedule of RE developers or 18 months from the date of transfer of SPV whichever is later</i></p>

	Name of the Transmission Element	Scheduled COD in months from Effective Date
	ii. 230kV line bays: 5 nos. iii. 230 kV Bus Sectionaliser bays: 2 nos. <i>Future provisions (Additional Space for):</i> i. 400/230kV ICTs along with bays: 3 nos. ii. 400kV line bays: 6 nos. iii. 230kV line bays: 7 nos.	
2.	LILO of both circuits of Pugalur - Pugalur (HVDC) 400 kV D/c line (with Quad Moose ACSR Conductor) at Karur PS	
3.	2x125 MVAR, 400 kV Bus reactors at Karur PS	

Note:

* To fulfil the requirement of bus switching scheme.

2. Based on the competitive bidding carried out by PFC Consulting Limited (PFCCL) 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, Karur Transmission Limited (KTL) emerged as the successful bidder with the lowest levelized transmission charges of Rs. 183.54 million per annum.

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 13.5.2022, *prima facie* proposed to grant transmission licence to the Petitioner. Relevant extract of order dated 13.5.2022 is extracted as under:

"18. 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 22.12.2021, BPC, vide its letter dated 18.1.2022, in terms of Clauses 2.4, 2.5 and 2.6 of RfP extended the date upto 28.1.2022 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.

7.13 crore and has acquired hundred percent equity-holding in the applicant company on 10.1.2022 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 27.1.2022. 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 27.5.2022.”

4. A public notice under Sub-section (5) of Section 15 of the Act was published on 18.5.2022 in all editions of the Times of India (English) and Dainik Jagran (Hindi). No suggestions/ objections have been received from the members of the public in response to the public notice.

5. The Petitioner, vide order dated 13.5.2022, was directed to file an affidavit to the effect that the execution of the transmission project shall not be delayed due to time taken in obtaining statutory clearances required under Request for Proposal (RfP) and the Transmission Service Agreement (TSA) or adjudication of any claim of the Petitioner arising under the TSA.

6. In response, the Petitioner vide its affidavit dated 16.5.2022 has submitted that the claims, if any, shall be in accordance with the provisions of the RfP Project documents. The Petitioner has submitted that the bidding process was governed by the Tariff Based Competitive Bidding Guidelines for the Transmission Service and Standard Bidding Documents issued by the Ministry of Power. The tariff quoted inter-alia takes into consideration the rights and obligations of the developer including the provisions available to claim time and cost variations as allowed in the TSA. The Petitioner has further submitted that the terms of the TSA are binding on the parties (TSP and LTTCs). The Petitioner has submitted that any claim for escalation in transmission charges or for extension of time that may be raised by the Petitioner in

pursuance of such competitive bidding process needs to be dealt with in accordance with terms contained in the TSA. Post selection of the successful bidder and the decision to award the Project, there cannot be a review of the bidding terms including scope of implications of the clauses such as force majeure and change in law etc. specified in the TSA. 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 been giving 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 in terms of the TSA, it would implement the Project as per the provisions of the 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."

7. The Petitioner has submitted that claim, if any, made by the Petitioner shall be in accordance with the provisions of the RfP Project documents. We direct that the Petitioner shall remain bound by the commitment given by it under affidavit dated 16.5.2022.

8. In the order dated 13.5.2022, the following provisions of the TSA with regard to quality control and workmanship were taken note of:

(a) As per Article 5.1.1 of the TSA, the TSP at its own cost and expense, shall be responsible for designing, constructing, erecting, completing and