

BEFORE

THE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION

LUCKNOW

Present:

1. Shri Raj Pratap Singh, Chairman
2. Shri V.K. Srivastava, Member (Law)
3. Shri. Sanjay Kumar Singh, Member

IN THE MATTER OF:

Petition under section 14 and Section 15 and Section 86(1)(d) of Electricity Act 2003 read with UPERC (General Conditions of Distribution License) Regulation and Distribution of Electricity License (Additional Requirements of Capital Adequacy, Creditworthiness and Code of Conduct) Rules, 2005 and Amendment thereof, for grant of Distribution License for the entire geographically contiguous area of Ghaziabad Municipal Corporation (as covered under draft Master Plan - 2031) and Gautam Buddha Nagar district of State of Uttar Pradesh.

1. Adani Electricity Jewar Limited,

Adani Corporate House, Shantigram, Near Vaishno Devi Circle, Antigram, S G Highway, Ahmedabad, Gujarat – 382421

2. Adani Transmission Limited

Adani Corporate House, Shantigram, Near Vaishno Devi Circle, S.G. Highway, Khodiyar Ahmedabad, Gujarat – 382421

.....(APPLICANTS)

THE FOLLOWING WERE PRESENT:

1. Shri Sanjay Sen, Sr. Advocate AEJL
2. Shri Hemant Singh, Advocate AEJL
3. Ms. Ankita Bafna, Advocate AEJL
4. Shri Kishor Patil, Company Officer AEJL
5. Shri Saurabh Gupta, Officer NUPLLP

6. Shri Manish Kumar, Officer ATL
7. Shri VM Singh, GM ATL
8. Shri Mohit Chandra, Advocate AEJL
9. Shri Avadhesh Kumar Verma, Consumer representative and a Member of UPERC State Advisory Committee

ORDER

(Date of hearing 24.04.2023)

1. The instant parallel distribution licence application has been filed by M/s Adani Electricity Jewar Limited and M/s Adani Transmission Limited (hereinafter referred to as 'Applicant'), in the matter of *"grant of Distribution License for the entire geographically contiguous area of Ghaziabad Municipal Corporation (as covered under draft Master Plan - 2031) and Gautam Buddha Nagar district of State of Uttar Pradesh."*
2. The Applicants had earlier applied before the Uttar Pradesh Electricity Regulatory Commission for *"grant of Distribution License for the entire geographically contiguous area of Gautam Buddha Nagar District"* on 28.12.2022, under Sections 14, 15 and 86 (1) (d) of Electricity Act, 2003 read with UP Electricity Regulatory Commission (General Conditions of Distribution Licence) Regulation No. 4361 / 2004 and read with Distribution of Electricity License (Additional Requirements of Capital Adequacy, Creditworthiness and Code of Conduct) Rules, 2005 as amended thereof (2022).

The 6th proviso to section 14, which facilitates the concept of parallel license under Electricity Act 2003, is reproduced below:

"Provided also that the Appropriate Commission may grant a licence to two or more persons for distribution of electricity through their own distribution system within the same area, subject to the conditions that the applicant for grant of licence within the same area shall, without prejudice to the other conditions or requirements under this Act, comply with the additional requirements [relating to the capital adequacy, credit-worthiness, or code of conduct] as may be prescribed by the Central Government, and no such applicant, who complies with all the requirements for grant of licence, shall be refused grant of licence on the ground that there already exists a licensee in the same area for the same purpose"



3. The Commission raised a deficiency on 10th January 2023 as the proposed license area did not meet the requirement of 'minimum area of supply' as specified in The Distribution of Electricity Licence (Additional Requirements of Capital Adequacy, Creditworthiness and Code of Conduct) (Second Amendment) Rules, 2022, notified on 28th Nov 2022. The said Rules provide:

"2. In the Distribution of Electricity Licence (Additional Requirements of Capital Adequacy, Creditworthiness and Code of Conduct) Rules, 2005, in rule 3, for Explanation to sub-rule (2), the following Explanation shall be substituted, namely:-

"Explanation. - For the purposes of this sub-rule, it is hereby clarified that for grant of a license for distribution of electricity within the same area in terms of sixth proviso to section 14 of the Act, the entire area covering either a Municipal Corporation as defined in article 243Q of the Constitution or three adjoining revenue districts, or a smaller area as may be notified by the Appropriate Government shall be the minimum area of supply."

Therefore, the Applicants were directed to remove the deficiency for consideration of License application as per law.

4. The Applicants, on 10th March 2023 submitted the instant amended application by expanding the area of proposed parallel distribution license by including the area covering the entire Municipal Corporation of Ghaziabad as indicated in Draft Master Plan – 2031. It needs to be mentioned at the outset that presently the Municipal Corporation of Ghaziabad is being supplied electricity by Paschimanchal Vidyut Vitran Nigam Ltd. (PVVNL) and Gautam Buddha Nagar district is being supplied by PVVNL and Noida Power Company Limited (NPCL) in their respective areas of licence.
5. The matter was taken up for admission and the Applicant's representatives were asked to appear before the Commission in person to be able to answer all material questions related to the admissibility on 24th April 2023.

Record of Proceedings:

6. The matter was heard on 24th April 2023 in the Commission. Mr. Sanjay Sen, Sr. Advocate, represented Applicant, Adani Electricity Jewar Limited.
7. Mr. Sen initiated his submissions by quoting Section 15 (Procedure for grant of licence) of the Electricity Act and emphasized on the obligation on the applicant to publish a notice within seven days after filing the application of licence. The Commission asked whether it tantamount

to the Commission not following the Rules notified for this purpose? The Commission further observed that the instant case is first of its kind in the state of Uttar Pradesh and the Commission intends to scrutinize all the aspects in a clear and transparent manner as per law.

8. The Commission questioned why the Applicant chose to add Gautam Buddha Nagar to the proposed license area in addition to Ghaziabad Municipal Corporation, rather than limiting itself to the minimum area of supply as outlined in the 'Explanation' to Rule 3 of the Amended Distribution License Rules. The Commission further asked why the Applicant did not simply select one of the available options in the Rules for the proposed parallel distribution license area. Since Ghaziabad Municipal Corporation alone meets the minimum area of supply requirement according to the Rules, the Commission sought clarification on the Applicant's rationale for including an additional revenue district, Gautam Buddha Nagar. The Commission observed that the Applicant may be cherry-picking by adding a profitable industrial, high-revenue area to the minimum area. Additionally, they noted that all other areas added to Ghaziabad Municipal Corporation for a parallel distribution license should be contiguous for operational purposes. The Commission enquired why the Applicant divided the license area into separate entities such as NOIDA, GNIDA, YEIDA, Dadri Municipal Council, and Gram Panchayats, and whether these fragmented entities cover the entire Gautam Buddha Nagar district or if there are pockets of area left out from the license area.
9. Mr. Sen responded by citing the chronology of amendments carried out in Distribution of Electricity Licence (Additional Requirements of Capital Adequacy, Creditworthiness and Code of Conduct) Rules, 2005. He submitted that the second amendment provides the operative word 'either' in Explanation' to Rule 3, which qualifies the minimum area of supply as one of the options given in the Rule, i.e., entire area of a Municipal Corporation shall be the minimum area of supply, or entire area of three adjoining revenue districts shall be the minimum area of supply, or a smaller area as may be notified by the Appropriate Government shall be the minimum area of supply. He submitted that as such, the Applicant by applying in entirety for a Municipal Corporation, suffices the condition of minimum area of supply and therefore fulfils the qualifying requirement of applying for a distribution license within the same area, as the Rules provide that:

"for grant of a license for distribution of electricity within the same area in terms of sixth proviso to section 14 of the Act, the entire area covering either a Municipal Corporation as defined in article 243Q of the Constitution or three adjoining revenue districts, or a smaller

