

**BEFORE HARYANA ELECTRICITY REGULATORY COMMISSION,
BAYS NO. 33-36, SECTOR – 4, PANCHKULA, HARYANA**

No. HERC / PRO 11 of 2010

DATE OF HEARING: 01.10.2010

DATE OF ORDER: 26.10.2010

In the matter of application filed by M/S Jhajjar KT Transco Private Limited having its registered office at 101, Part-III, GIDC Estate, Sector – 28, Gandhinagar – 382028 (Gujarat) for grant of Transmission Licence for evacuation of power from the proposed 2x660 MW thermal power plant at Jhajjar through 400 KV Jhajjar Power Transmission System in the State of Haryana.

PARTIES:

- | | |
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| 1. M/S Jhajjar KT Transco Private Limited | Petitioner |
| 2. Haryana Vidyut Prasaran Nigam Limited (HVPN), Panchkula | Intervener |
| 3. Uttar Haryana Bijli Vitran Nigam Limited, Panchkula | Intervener |
| 4. Dakshin Haryana Bijli Vitran n Nigam Limited, Hisar | Intervener |

PRESENT:

- | | |
|----------------------------|----------|
| 1. Shri Bhaskar Chatterjee | Chairman |
| 2. Shri Rohtash Dahiya | Member |

For the petitioner / interveners:

1. Shri Sanjeev Kothari, JKTPL
2. Shri Avijeet Kumar Lala, JKTPL
3. Shri Biplab Debnath, JKTPL
4. Shri R. K. Arora, Chief Engineer / Planning, HVPNL
5. Shri C. K. Sharma, Chief Engineer / Commercial, DHBVNL
6. Shri Farukh Aamir, Consultant, UHBVNL

ORDER:

Brief history and background:

M/S Jhajjar KT Transco Private Limited, having its registered office at 101, Part-III, GIDC Estate, Sector – 28, Gandhinagar – 382028 (Gujarat) filed a petition dated 16th June, 2010 in accordance with the HERC (Transmission and Distribution Licensing) Regulations, 2004 for grant of Transmission Licence for evacuation of power from 2x660 MW thermal power plant at Jhajjar through 400 KV Jhajjar Power Transmission System in the State of Haryana. Brief history and background of the case is given below.

M/S CLP is setting up a 2x660 MW thermal power plant at Jhajjar under Case – 2 competitive bidding guidelines issued by the Ministry of Power, government of India. Power from this power plant is to be purchased by Uttar Haryana Bijli Vitran Nigam Limited (UHBVNL) and Dakshin Haryana Bijli Vitran Nigam Limited (DHBVNL) for which Haryana Power Purchase Centre (HPPC), the Nodal Agency for both the distribution licensees, has signed agreement with M/S CLP, the tariff for which has been adopted by the Commission in accordance with section 63 of the Electricity Act, 2003. For the purpose of evacuation of power from this power plant, Haryana Vidyut Prasaran Nigam Limited (HVPNL) invited bids for construction of 400 KV Jhajjar Power Transmission System on Design, Build, Finance, Operate and Transfer (DBFOT) basis through Public Private Participation (PPP) mode.

The Ministry of Finance, Government of India notified guidelines for pre-qualification of bidders for PPP projects vide notification dated 5th December, 2007. These guidelines were made applicable to all Ministries and Departments of the Central government, all statutory entities under the control of Central government and all CPSUs. According to these guidelines pre-qualification of bidders has to be done in two stages i.e. (i) Request for Qualification (RFQ) or Expression of Interest (EoI) stage and (ii) Request for Proposal (RPF) stage. Subsequently Planning Commission, Government of India informed vide letter dated 2nd March, 2009 that the

guidelines, model RFQ and RFP documents formulated for transmission projects by Ministry of Finance, Government of India, shall also be placed by Ministry of Power, Government of India on its website, which can be adopted by the States if they so desired.

The tariff based bidding guidelines notified by Ministry of Power, Government of India vide notification dated 17th April, 2006 stipulated that bidding documents shall be prepared in accordance with these guidelines with the approval of the Appropriate Commission. Alternatively, the Standard Bid Documents notified by the Ministry of Power, Government of India shall be used and if any material deviation is proposed to be made from the Standard Bid documents then the same may be done with the approval of the Appropriate Commission. The guidelines further stipulated that intimation shall be sent by the Bid Processing Committee to the Appropriate Commission about initiation of the bidding process.

HVPNL initiated the bidding process on 13th January, 2009 on the basis of the model bidding documents prepared by Ministry of Finance, Government of India without prior intimation to the Commission. When the matter came to the notice of the Commission, HVPNL was directed vide letter No. HERC / Tariff (E) / Transmission – PPP / 842 dated 19th June, 2009 to explain the reason for not following the procedure laid down in the Ministry of Power guidelines.

HVPNL vide its letter No. Ch – 01 / SE / RAU / F – 66 / Vol – III dated 16th July, 2009 informed that the Standard Bid Documents prepared by Ministry of Power are suitable for the projects in which agreement is to be signed between the transmission service provider and the distribution licensees, whereas the Government of Haryana has decided to adopt a business model whereby the agreement is to be signed between State Transmission Utility and the transmission service provider. Due to this basic difference in the two business models the Government of Haryana requested the Planning Commission, Government of India to formulate Standard Bid Documents for project specific cases to cater to the requirements of the new business model. HVPNL submitted copies of RFQ issued to bidders for ratification and approval of the Commission. The RFQ

and modification proposed by HVPNL were approved by the Commission vide letter No. 1610 / HERC / SV – Tariff / 2009 dated 7th September, 2009.

HVPNL further proposed a few modifications to the model RFP documents of Ministry of Finance, Government of India vide letter No. Ch – 17 / 305 / PPP / 100 dated 15th September, 2009. Approval to the same was granted by the Commission vide letter No. HERC / Tariff (E) / Transmission – PPP / 2055 dated 11th November, 2009.

As the successful bidder would require transmission licence from the Commission under section 14 of the Electricity Act, 2003 for transmission of electricity from the 2x660 MW thermal power plant at Jhajjar, HVPNL filed a petition vide letter No. Ch – 2 / F – 76 / Vol – II dated 29th December, 2009 seeking amendments to be made in the Haryana Electricity Regulatory Commission (Conditions of Transmission Licence) Regulations, 2008 in order to provide for project specific licence along with area specific transmission licence that the existing regulations provided for. HVPNL submitted a copy of draft transmission agreement, to be signed with the successful bidder, along with the petition.

As it was first of its kind transmission project in India in the power sector to be constructed on DBOFT basis on PPP mode and in which transmission agreement is to be signed by the STU with the transmission service provider, the Commission felt that it would be appropriate to have a separate form for issuance of a separate class of licence catering to the needs of project specific cases along with the existing area specific provisions i.e. Form – 1 of the existing regulations.

HVPNL finalised the bids, accordingly the consortium of M/S Kalaptaru Power Transmission Limited Mumbai and M/S Techno Electric & Engineering Company Limited was declared as the successful bidder. Letter of Award was issued by HVPNL to M/S Kalaptaru Power Transmission Limited Mumbai, the lead member; vide letter No. 32 / 305 / PPP / 102 / Vol – II dated 15th April, 2010. As a follow up HVPNL signed a transmission agreement with M/S Jhajjar KT Transco Private Limited, a Special Purpose Vehicle formed by the consortium of M/S Kalaptaru Power

Transmission Limited Mumbai and M/S Techno Electric & Engineering Company Limited on 28th May, 2010 for execution of the transmission project. A copy of the same was submitted by HVPNL vide letter no. Ch – 43 / 305 / PPP / 100 dated 4th June, 2010 for approval of the Commission. The Commission approved the Transmission Service Agreement alongwith viability gap funding.

Legal Status:

The relevant sections of the Electricity Act, 2003 provides as under:-

86 (1) The State Commission shall discharge the following functions namely:

Section 86 (d): issue licence to persons seeking to act as transmission licensees, distribution licensees and electricity traders with respect to their operations within the State. Further, section 15 of the Act lays down the detailed procedure for grant of licence.

Regulations 3 (2) of Haryana Electricity Regulatory Commission (Conditions of Transmission Licence) (1st Amendment) Regulations, 2010 provides as under:

“The terms and conditions applicable to the licence classified as ‘project specific’, with effect from the notified date, shall be as set out in Form – 2 appended to these regulations.

In accordance with statutory provisions and in order to take the process forward on the petition for grant of licence filed by the petitioner the Commission vide letter No. HERC / Tariff (E) / Transmission Licence / Jhajjar KT / 1473-74 dated 13th August, 2010 directed M/S Jhajjar KT Transco Private Limited to issue notice in accordance with provisions of

regulation 10 of Haryana Electricity Regulatory Commission (Transmission and Distribution Licensing) Regulations, 2004, in Form – 3 of the regulations, for inviting objections / suggestions on its application for grant of transmission licence. M/S Jhajjar, KT Transco Private Limited were specifically directed to provide copies of the public notice to CERC, CEA, NRLDC, Ministry of Power, Government of India, Power Department, Government of Haryana and Haryana Power Utilities. In response M/S Jhajjar KT Transco Private Limited informed vide letter No. HERC / 4 /201 dated 16th August, 2010 that notice has already been issued on 12th July, 2010 in The Tribune (English) and Dainik Tribune (Hindi). Copies of newspaper clippings were also submitted by them.

On scrutiny the Commission observed that the public notice was issued by M/S Jhajjar KT Transco Private Limited in accordance with the provisions of section 164 of the Act inviting observations / representation on the proposed transmission system and not on their application for grant of transmission licence per se as per the requirement of regulation 10 of the HERC (Transmission and Distribution Licensing) Regulations, 2004. hence, the Commission vide letter No. HERC/ Tariff (E) / Transmission Licence / Jhajjar KT / 1734 – 35 dated 8th September, 2010 directed M/S Jhajjar KT Transco Private Limited to issue requisite public notice inviting objections and suggestions on their application submitted to the Commission for grant of project specific transmission licence.

M/S Jhajjar KT Transco Private Limited vide their letter No. HERC / 5 / 2010 dated 10th September, informed that requisite notice has been issued on 10th September, 2010 in Tribune (English) and Dainik Tribune (Hindi). Copies of newspaper clippings were also submitted by them. Copies of the public notice were also sent by them to CERC, CEA, NRLDC, Ministry of Power, Government of India, Power Department, Government of Haryana and Haryana Power Utilities vide letter No. HERC / 6 / 2010 dated 10th September, 2010. The last date for submission of objections and suggestions as per public notice was 24th September, 2010.

As per provisions of section 15 (4) of the Electricity Act, 2003 and regulations 10 (5) of Haryana Electricity Regulatory Commission

(Transmission and Distribution Licensing) Regulations, 2004, State Transmission Utility (HVPNL) vide letter No. Ch – 8 / F – 76 / Vol – II dated 11th August, 2010, recommended grant of transmission licence to M/S Jhajjar KT Transco Private Limited.

Public Proceedings

The Commission finalised draft 1st amendment to the Haryana Electricity Regulatory Commission (Conditions of Transmission Licence) Regulations, 2008 by adding Form – 2 for grant of project specific transmission licence. For the purpose of completion of prior publication process, the Commission issued a public notice on 16th August, 2010 in Times of India (English) and Dainik Bhaskar (Hindi) inviting objections and suggestions on the proposed amendment. The last date for submission of objections and suggestions by the stakeholders / interested persons was 31st August, 2010.

In response to the public notice HVPNL vide letter No. Ch – 64 / SE / RAU / F – 57 / Vol – V dated 10th September, 2010 submitted their comments on the proposed amendment for the consideration of the Commission. No objections / suggestions were received from public or any other stakeholder.

Before taking a final view on the draft 1st amendment to Haryana Electricity Regulatory Commission (Conditions of Transmission Licence) Regulations, 2008 and also for issuing order on the application of M/S Jhajjar KT Transco Private Limited for grant of transmission licence, the Commission scheduled a public hearing in its Conference Hall on 1st October, 2010 at 11.30 AM.

The hearing was held as per schedule notified by the Commission. M/S Jhajjar KT Transco Private Limited and representatives from HVPNL, UHBVNL and DHBVNL were present in the hearing. In the hearing M/S Jhajjar KT Transco Private Limited informed the Commission that no objections or suggestions have been received either from public or any other stakeholder on their application for grant of transmission licence in

response to the public notice inserted in the newspapers inviting objections / suggestions from the interested parties.

HVPNL reiterated its written objections / suggestions and requested the Commission to consider the same while finalizing the 1st amendment to the regulations.

Representative of distribution licensees requested the Commission that sharing of open access charges for the utilisation of 400 KV Jhajjar Transmission System by HVPNL may not be allowed as distribution licensees have already paid HVPNL charges for total transformation capacity of the transmission system.

Commission's order

After taking into account the written and oral submissions made by HVPNL and the distribution licensees, the Commission finalised the 1st amendment to Haryana Electricity Regulatory Commission (Conditions of Transmission Licence) Regulations, 2008 and sent the final draft for publication in the Gazette of Government of Haryana vide letter No. HERC / Tariff (E) / Regulations / Transmission – 2018 dated 6th October, 2010. The notification was published on 6th October, 2010 in the Gazette of Government of Haryana copies of which were sent to all the concerned vide letter No. 2134-39 dated 14th October, 2010.

Since, no comments were received in response to the public notice issued by the petitioner as well as the Commission on the application of M/S Jhajjar KT Transco Private Limited either from the power utilities of Haryana or from public and also in view of the fact that the application was submitted in accordance with the provisions of HERC (Transmission and Distribution Licensing) Regulations, 2004, the Commission is of the considered view that transmission licence may be granted to M/S Jhajjar KT Transco Private Limited after incorporating a few suggestions of HVPNL that the commission feels justifiable on merit in view of the transmission agreement already approved by the Commission and project specific nature of the licence. As far as submissions of the distribution licensees

on the issue of sharing of open access charges are concerned the Commission is of the view that sharing of such charges as already agreed between the parties as per the Transmission Agreement is justifiable for providing some incentive to the State Transmission Utility which is the crucial link in the entire scheme of things under the PPP mode besides discharging their functions as provided under section 30 of the Act. Thus, the Commission finds it difficult to agree with the submission of the distribution licensees and reject the same.

Licence Order

In the light of the above, the Commission grants the following licence, enclosed with this order, in accordance with the provisions of the Electricity Act, 2003 on the terms and condition specified therein.

Jhajjar KT Transmission License [License No. JKTTL / Trans / 4 of 2010]

The applicant has not produced the no objection certificate referred to in condition No. 20 of the Form – 2 of Haryana Electricity Regulatory Commission (Conditions of Transmission Licence) (1st Amendment) Regulations, 2008. Hence in an event of any cantonment, aerodrome, fortress, arsenal, dockyard or camp or any building or place in occupation of the Central Government for defence purpose, falls in the project specific area of the applicant, the licence will be effective only upon production of a no objection certificate from the Central Government.

This order is signed, dated and issued by Haryana Electricity Regulatory Commission on **26th October, 2010.**

Date: 26.10.2010

Place: Panchkula

(Rohtash Dahiya)
Member

(Bhaskar Chatterjee)
Chairman

