

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 142 of 2020

In the matter of
Petition under Sections 63 of the Electricity Act, 2003 for Adoption of Transmission
Charges with respect to the Transmission System being established at Vikhroli.

Coram

Shri I. M. Bohari, Member
Shri Mukesh Khullar, Member

M/s. Kharghar Vikhroli Transmission Private Limited (KVTPL),Petitioner

v/s

- 1) Maharashtra State Electricity Distribution Co. Ltd. (MSEDCL)
- 2) Tata Power Company – Distribution (TPC-D)
- 3) Adani Electricity Mumbai Limited-Distribution (AEML-D)
- 4) Brihanmumbai Electric Supply and Transport (BEST)
- 5) Mindspace Business Park Private Limited (MBPPL)
- 6) Gigaplex Estate Private Limited (GEPL)
- 7) Nidar Utilities Panvel Limited Liability Partnership (NUPLLP)
- 8) Central Railway
- 9) Maharashtra State Electricity Transmission Co. Ltd. (MSETCL)
- 10) State Transmission Utility (STU)Respondents

Appearance:

For the Petitioner	: Shri Bhavesh Kundalia (Rep.)
	: Shri Shailesh Poria (Adv.)
For MSEDCL	: Shri Paresh Bhagwat (Rep.)
For TPC-D	: Shri Prashant Kumar (Rep.)
For AEML-D	: Shri Abaji Naralkar (Rep.)
For BEST	: Shri N N Chougale (Rep.)
For GEPL/MBPPL	: Shri Nitin Chunarkar, (Rep.)
For MSETCL	: Shri Jagannath Chude (Rep.)
For STU	: Shri Prasad G Narnaware (Rep.)

ORDER

Dated: 23 January, 2021

1. Kharghar Vikhroli Transmission Private Limited (**KVTPL**), Prakashganga, Plot No. C-19, E-Block, Bandra Kurla Complex, Bandra (E), Mumbai, has filed a Case on 7 July, 2020 seeking approval for adoption of transmission charges under Section 63 of the Electricity Act, 2003 (**EA**) for 400 kV Vikhroli receiving station and associated incoming transmission lines (**Vikhroli Scheme**) being established at Vikhroli as per Tariff Based Competitive Bidding (**TBCB**) Guidelines.
2. **KVTPL's main prayers are as follows:**
 - a) *“To adopt the Levelized Transmission Charges for the Project discovered through competitive bidding process.*
 - b) *To grant Transmission Tariff from Actual Date of Commercial Operation (COD), if the element(s) of the project are commissioned before original SCOD.”*
3. **KVTPL in its Petition has stated as follows:**
 - 3.1 The Commission had approved various schemes for strengthening of Mumbai Transmission system such as construction of new lines/substations and up-gradation of existing line/ substations. Among the various approved schemes by the Commission, 400 kV Vikhroli Transmission project was the most crucial scheme to enhance Available Transmission Capacity (**ATC**) of Mumbai. The Vikhroli scheme was to be developed by Tata Power Company Limited -Transmission (**TPC-T**). The objective of the scheme was to strengthen Mumbai Transmission Network and thereby import additional power into Mumbai from external sources in order to meet growing electricity demand of Mumbai. The Commission had approved scope of 400 kV Vikhroli Project from time-to-time as proposed by TPC-T and on the recommendation of STU expecting that the project will help to meet the demand of Mumbai by augmenting the ATC. However, there was inordinate delay in execution, resulting in substantial increase in the cost of the scheme.
 - 3.2 Further, the Commission in Mid Term Review Order dated 12 September, 2018 in Case No. 204 of 2017 (**MTR Order**) has observed that even after substantial delay and increase in cost of the project, there was no tangible progress in execution of the scheme. Project monitoring had not been rigorous and the timelines for seeking clearances were not adhered to by effective liaising and follow up. Hence, considering the increasing electricity demand of Mumbai, limited embedded generation and Transmission bottleneck to import outside power, the Commission in the MTR Order has categorically ruled as under:

“7.12.9 Considering above, the Commission noted that STU has observed that there is an inordinate delay in completion of this scheme and suggested to take up this scheme under Tariff Based Competitive Bidding (TBCB) route. The Commission is concerned about the approach adopted by TPC-T for execution of the scheme. This scheme is being treated as deemed closed by the Commission and the Commission directs STU to take a review of such critical schemes and

propose a way forward. STU is directed to submit its report to the Commission on review of TPC-T's proposed 400 kV Vikhroli Receiving Station within a month."

- 3.3 Accordingly, the Government of Maharashtra (**GoM**) appointed the Maharashtra State Electricity Transmission Company Limited (**MSETCL**) to be the Bid Process Coordinator (**BPC**) for the purpose of selection of Bidder as Transmission Service Provider (**TSP**) to establish Vikhroli scheme through TBCB process on build, own, operate and maintain basis.
- 3.4 A company under the Companies Act, 2013 by the name "Kharghar Vikhroli Transmission Company Private Ltd. (**KVTPL**)."(i.e., the Petitioner), was incorporated by MSETCL on 13 May, 2019, as its 100% wholly owned subsidiary to initiate activities for execution of the project and to act as the TSP after being acquired by the successful bidder.
- 3.5 MSETCL invited all prospective Bidders for issuing Request for Qualification (**RFQ**) to qualify/shortlist Bidders for participation in the next stage of bidding, i.e., Request for Proposal (**RFP**). The bidding process was carried out on the basis of international competitive bidding in accordance with the "*TBCB Guidelines for Transmission Service*" and "*Guidelines for Encouraging Competition in Development of Transmission Projects*" issued by Government of India (**GoI**), Ministry of Power (**MoP**) under section 63 of the EA, as amended from time to time.
- 3.6 A Transmission Service Agreement (**TSA**) was duly signed between KVTPL and all the Long Term Transmission Customers (**LTTCS**), i.e., Respondent Nos. 1 to 8, except Central Railway.
- 3.7 Pursuant to the process of competitive bidding conducted by the BPC, M/s Adani Transmission Limited (**ATL**) has been declared as a successful bidder. The initial financial offers were opened in the presence of Bid Evaluation Committee (**BEC**) on 29 August, 2019. The lowest initial financial offer received is levelized tariff of Rs. 2199.89 Millions. The E-Reverse Auction was conducted on 30 August, 2019 and ATL emerged as the L1 bidder with levelized tariff quote of Rs. 2199.89 Millions.
- 3.8 On 12 December, 2019, a Letter of Intent (**LoI**) No. MSETCL/CO/BDC/TBCB/9392-A, was issued in favour of ATL. Thereafter, in accordance with clause 2.21.1 of the RFP, ATL submitted a Bank Guarantee/s for an aggregate amount of Rs. 23.61 Crores to LTTCS on 14 October, 2019. ATL subsequently acquired SPV, i.e., KVTPL on 25 June, 2020, after execution of the Share Purchase Agreement (**SPA**) and completing all procedural requirements as specified in the bid documents.
- 3.9 The Scheduled Commercial Operation Date (**SCOD**) for the project as per RFP document is 12 March, 2022 considering the effective date, i.e., the date of acquisition of the SPV as September, 2019. However, the acquisition of SPV was delayed on account of certain issues with the original owner of the land (required for the sub-station) beyond the control of KVTPL. Accordingly, non-adherence to the above timelines ought to be treated as beyond the control of KVTPL.
- 3.10 KVTPL has submitted the bid for the aforesaid project considering the acquisition cost of Rs. 135 Crore towards the developmental charges by TPC-T for the Project.

However, any change over and above Rs.135 Crore, qualifies as change in acquisition price and will fall under Change in Law (CIL) as per Article 12 of the TSA.

3.11 In the event of an increase in the acquisition price, KVTPL reserved its rights to file a separate Petition in respect of reliefs in relation to the same.

3.12 KVTPL along with its Petition has submitted the copies of following documents:

- i. Copy of the RFQ dated 24 April,2019;
 - ii. Copy of the RFP dated 22 June, 2019;
 - iii. Copy of TSA executed by KVTPL and the LTTCs ;
 - iv. Copy of the certificate of the BEC vide which M/s ATL had been declared as the successful bidder;
 - v. Copy of the LoI No. MSETCL/CO/BDC/TBCB/9392-A dated 12 December, 2019 issued in favour of M/s ATL;
 - vi. Copy of the Bank Guarantee as per clause 2.21.1 of the RFP;
 - vii. Copy of the SPA;
 - viii. Copy of Board Resolution of the Applicant;
 - ix. Copy of Audited Financial Statements of FY 2019-20;
 - x. Copy of Certificate of Incorporation;
 - xi. Copy of Memorandum of Association;
 - xii. Copy of Articles of Association etc.;
4. The Commission vide its Notice dated 28 July, 2020 directed all the Respondents who are LTTCs of the project to submit their comments/suggestions on the Petition. The summary of the comments and/or suggestion received from respondents/ stakeholders are provided as under:

I. MSEDCL in its submissions dated 11 August, 2020 has stated as follows:

- a) The Commission may adopt the Transmission Charges discovered through competitive bidding process for Transmission System being established by KVTPL after due prudence check.
- b) The present Petition filed by KVTPL is for adoption of tariff for Vikhroli Project. Hence, KVTPL should restrict itself to the claims regarding adoption of tariff only. For any claims pertaining to CIL, KVTPL may approach the Commission separately and the Commission may allow the same only after prudence check. Further, in case KVTPL files a separate Petition before the Commission regarding CIL, MSEDCL being the lead LTTC reserves its right to file a reply/ submission at appropriate time.
- c) Further, for any claims regarding the extension of timeline to complete the project, KVTPL should approach the Commission separately. Also, for any such Petition if filed before the Commission, MSEDCL being a lead LTTC, reserves its right to file a reply/ submission.

- d) KVTPL has prayed to grant the transmission tariff from Actual Date of Commercial Operation (**ACOD**), if the element(s) of the project are commissioned before original SCOD. In this regard, the Commission may grant transmission tariff from ACOD, if the project is commissioned before original SCOD, only if KVTPL sought permission for early commissioning from Lead LTTC as per Article 6.1.1 of the TSA.

II. NUPLLP in its submissions dated 12 August, 2020 has stated as follows:

- a) For any claims pertaining to CIL, KVTPL should file a separate Petition with LTTCs as parties in the matter.
- b) Further, the project should be completed within the timelines, i.e., 30 months from the effective date of acquisition of SPV by KVTPL. In case of any extension of timeline of the project, KVTPL should approach the Commission well in advance in the form of a Petition and update the progress of the project to STU and the Commission from time to time.
- c) Grant of transmission tariff should be starting from the original SCOD. In case, the project is commissioned before the SCOD, a prior permission needs to be sought from LTTCs.

III. MBPPL and GEPL in their submissions dated 22 August, 2020 has stated as follows:

- a) The bid for Vikhroli project was submitted by KVTPL considering the acquisition cost of Rs. 135 Core towards development charges spent by TPC-T for the project. Any increase in acquisition cost over and above Rs. 135 Crore qualifies for change in acquisition price which falls under CIL. In such a case, KVTPL reserved the right to file separate Petition subject to prudence check and approval by the Commission.
- b) Grant of Transmission Tariff shall be done as per SCOD. KVTPL should complete the project within the given time frame of 30 months from the date of acquisition of SPV as per the TSA signed on 14 August, 2019 between ATL, MBPPL, GEPL and others.

IV. BEST vide its submission dated 18 September, 2020 stated that it has no specific comments on the Petition filed by KVTPL.

V. TPC-D in its submission dated 28 October, 2020 has stated as follows:

- a) KVTPL should restrict its prayers with respect to adoption of tariff only.
- b) At this stage of Tariff adoption, TPC-D does not have specific comments on the Petition. Further, for any other claims including but not limited to deviations with respect to the acquisition price of Rs.135 Crores or deviations with respect to SCOD, KVTPL should file separate Petition(s) before the Commission with LTTCs as parties.

5. KVTPL in its rejoinder dated 4 September, 2020 to the reply of MSEDCL, NUPLLP and GEPL has submitted as follows:

- i. Adoption of Transmission Tariff:

- a) As per clause 3.1.3 (b) of TSA, KVTPL has to obtain the Order for adoption of Transmission Charges from the Appropriate Commission. Accordingly, the present Petition has been filed by KVTPL under Section 63 of EA with limited purpose of adoption of Tariff only. KVTPL has not sought any reliefs in relation to CIL or Force Majeure by way of present Petition.
 - ii. Timelines of the project:
 - a) The SPV was transferred to the successful bidder, i.e., ATL only on 25 June, 2020, which is almost six months after the issuance of LoI dated 12 December, 2019. In this regard, KVTPL reserves the right to approach the Commission for remedial measures by way of a separate Petition, if necessary.
 - iii. Grant of Transmission Tariff from ACOD:
 - a) KVTPL has submitted that it will fulfill all its obligation under the TSA and shall approach LTTCs and the Commission as and when required.
 - b) The Respondents have not raised any objections in their replies to the adoption of levelized Transmission Charges discovered through TBCB process. Hence, the Commission may allow the present Petition.
- 6. At the E-hearing through video conferencing held on 30 December, 2020:**
- i. Advocate of KVTPL reiterated its submission made in the Petition and stated that KVTPL has submitted its rejoinder on the comments received. He further prayed that the Commission may allow the Petition.
 - ii. Representatives of MSEDCL, TPC-D, BEST, MBPPL and GEPL stated that they do not have any additional comments on the Tariff adoption Petition and the written submissions made by them should be considered.
 - iii. Representatives of MSETCL, AEML-D and STU stated that they have no specific objections on the Petition.

Commission's Analysis and Ruling

- 7. The Commission's ruling on the objections and comments is given as under:**
- i. Adoption of Transmission Tariff:
 - a) As regards adoption of Transmission Tariff discovered through TBCB process, the Commission has evaluated the said process which is elaborated at paras below.
 - b) The Commission notes that KVTPL in the present Petition has not sought any reliefs in relation to CIL or Force Majeure and has restricted its claim to adoption of Transmission Tariff only.
 - ii. Separate Petition for Change in Law:
 - a) The Commission has noted the objections of the Respondents stating that KVTPL should file separate Petition seeking any claim under CIL or Force Majeure events. Further as the present Petition has been filed for adoption of transmission tariff, the Commission opines that no direction is warranted at this stage.

- b) In case such Petition if any is filed by KVTPL in future, the Commission shall provide due opportunity to the concerned Stakeholders/Respondents to file there submission/arguments.
- iii. Project timelines and grant of Transmission Tariff from ACOD:
- a) As regards project timelines, the Commission is of the view that KVTPL should abide by the terms and conditions of TSA and that ACOD is premature at this stage. Such advance permission without any details cannot be permitted. However, in case of slippage in execution of the project within the timeline specified in the TSA, the same shall be dealt with as per the relevant provisions of the TSA and prevalent Rules and Regulations.
- b) As regard grant of Transmission Tariff from ACOD, the Commission has dealt with the same at subsequent **Para 69 to Para 73** of this Order.
8. KVTPL has filed the present Petition under Section 63 of the EA for adoption of Transmission Charges for Vikhroli project which provides as under:
- “Section 63. Determination of tariff by bidding process: *Notwithstanding anything contained in section 62, the Appropriate Commission shall adopt the tariff if such tariff has been determined through transparent process of bidding in accordance with the guidelines issued by the Central Government.*”**
9. On receipt of the present Petition, for further evaluation, the Commission vide its email dated 21 October,2020 asked the BPC/MSETCL to submit the documents regarding TBCB process carried out. The necessary details have been submitted by the BPC vide email dated 23 October,2020.
10. The Commission notes that the MoP, GoI under Section 63 of the EA vide Resolution No. 11/5/2005-PG(i) dated 13 April, 2006 has notified the ‘*Tariff based Competitive bidding Guidelines for Transmission Service*’ with the objectives to promote competition, facilitate transparency and fairness in procurement electricity and also to protect the interest of consumers. The salient features of the Guideline are as under:
- a) The Guidelines are applicable for procurement of transmission services for transmission of electricity through TBCB and for selection of TSP for new transmission lines and to Build, Own, Maintain and Operate the specified transmission system elements.
- b) For procurement of transmission services, required for intra-State transmission project, the appropriate State Government may notify any Organization/State Public Sector Undertaking especially engaged for this purpose by the appropriate State Government or BPC notified by the Central Government to be the BPC for the State.
- c) The BPC shall prepare the bid documents in accordance with the Guidelines and obtain approval of the Appropriate Commission. Alternatively, the BPC can use the Standard Bid Documents (**SBDs**) notified by the MoP. Approval of the Appropriate Commission would be necessary, if any material deviation is proposed to be made in the SBDs. Intimation about the initiation of the bid process shall be sent by the BPC to the Appropriate Commission.

- d) For procurement of transmission services under the Guidelines, BPC may adopt at its option either a two-stage process featuring separate RFQ and RFP or adopt a single stage two envelope tender process combining both RFQ and RFP processes.
- e) RFQ or combined RFQ and RFP notice shall be issued in at least two national newspapers, on websites of the BPC and the Appropriate Government and preferably in the trade magazines also to provide wide publicity. For the purpose of issue of RFQ, minimum conditions to be met by the bidder shall be specified in RFQ notice. The bidding shall be by way of International Competitive Bidding.
- f) Standard documentations to be provided at RFQ stage shall include definitions of requirements including brief description of the Project, commissioning milestones to be achieved by the bidders, qualification required to be met by bidders, conditions as specified by the Appropriate Commission for being eligible to obtain transmission licence, etc.
- g) Standard documentation to be provided by BPC in the RFP shall include specified target dates/months for commissioning and commercial operations and start of providing transmission services, TSA proposed to be entered with the selected bidder, period of validity of offer of bidder, bid evaluation methodology to be adopted by the BPC, Discount Factor to be used for evaluation of the bids, specification regarding the bid bond and project completion guarantee to be furnished by the bidders, proposed indemnification agreement between the TSP and the utilities, amount of contract performance guarantee as percentage of the project cost, the liquidated damages that would apply in case of delay in start of providing the transmission services and other technical and safety criteria to be met by the bidder/TSP including the provisions of Indian Electricity Grid Code (**IEGC**).
- h) To ensure competitiveness, the minimum number of qualified bidders shall be two. The BPC shall constitute a committee for evaluation of the bids with at least one member from Central Electricity Authority (**CEA**) and not less than two members from the concerned Regional Power Committees and at least one independent member. The bids shall be opened in public and the representative of the bidders shall be allowed to remain present. The technical bids shall be scored to ensure that only the bids that meet the minimum technical criteria set out in the RFQ shall be considered for further evaluation on the transmission charge bids. The transmission charge bid shall be rejected if it contains any deviation from the tender conditions for submission of the same. The bidder, who has quoted the lowest transmission charge as per the evaluation procedure, shall be considered for the award.
- i) The Guidelines provide for suggested timetables for the bid process. The timeline suggested for two stage bid process is 145 days and single stage two envelope bid process is 180 days. BPC is empowered to give extended timeframe based on the prevailing circumstances and such alterations shall not be construed as the deviation from the Guidelines.
- j) The selected bidder shall make an application for grant of transmission licence to the Appropriate Commission within ten days from the date of issue of LoI or signing of TSA, whichever is later, subject to further extension of time as provided under

- Clause 2.4 of the RFP. TSA shall be signed with the selected bidder in accordance with the terms and conditions as finalized in the bid document before the RFP stage.
- k) BPC shall make the final result of evaluation of all bids public by indicating the terms of the winning bid and anonymous comparison of all other bids. All contracts signed with the successful bidder shall also be made public. The final TSA along with the certification of BEC shall be forwarded to the Appropriate Commission for adoption of tariff in terms of Section 63 of the Act.
11. The Commission in the present case has examined whether the TBCB process for Vikhroli Transmission Project has been followed as per provisions of the TBCB Guidelines for arriving at the lowest levelised Transmission Charges and for selection of the successful bidder.
12. As regards 400 kV Vikhroli Transmission Project, the Commission notes that the aforesaid project was initially awarded to TPC-T for strengthening Mumbai Transmission system. The Commission had approved the DPR for commissioning of 400 kV Receiving Station at Vikhroli and 400 kV Kharghar -Vikhroli line in June 2011 and October, 2011, respectively, with target date of completion as March, 2015 for both the schemes.
13. During MTR proceedings of TPC-T for FY 2012-13 to FY 2015-16, i.e., in Case No. 5 of 2015, it was observed that except routinely applying for various statutory permissions and no rigorous follow up thereon, no tangible work on ground was undertaken till FY,2015 by TPC-T. The Commission had been repeatedly issuing directions to TPC-T for completion of the project within the fixed timeframe and also expressing its dissatisfaction over the progress made. In the Multi Year Tariff (MYT) Petition of second control period in Case No. 178 of 2011, TPC-T had stated that for the initiation of work, the approvals are required at various stages including clearances from MoEF, Forest Authorities and Airport Authority of India. It also stated that the land required for the receiving/switching station and bays was in the final stages of possession. The major contracts had either been placed or were at advanced stage of finalization and the work could be initiated after obtaining all relevant approvals. Accordingly, TPC-T had proposed revised timelines for the scheme completion as FY 2017/ FY 2018.
14. The Commission also notes that during MYT Petition for the third control period, i.e., in Case No. 22 of 2016, TPC-T failed to provide any time-frame for the completion of the scheme. Subsequently, the Commission directed TPC-T to submit closure/review report for the scheme. However, TPC-T did not submit the review/ closure report for the scheme stating that the processes for statutory approvals were in progress.
15. Further, during MTR Petition of third control period, i.e., in Case No. 204 of 2017, the Commission observed that even after substantial period of time, there was absolutely no progress in the scheme and TPC-T had been repeatedly citing the reasons of pending statutory permissions. TPC-T had already sought time extension for completion of the scheme twice. The Commission had also given revised approval to the scheme in September, 2013 with target completion date as March, 2017 and in March, 2015 with target completion date as March, 2019. Despite this, it was observed that TPC-T in its

aforesaid Petition had again submitted revised completion date as March, 2022 for the Vikhroli scheme.

16. The Commission in Case No.176 of 2017 (BEST's Petition regarding power procurement under competitive bidding) also observed that, STU while providing its comments highlighted the 400 kV Vikhroli scheme as an essential scheme for strengthening of Mumbai Transmission system. STU had made its observation that this scheme was getting inordinately delayed and suggested to take up this scheme under TBCB route. Accordingly, the Commission vide its Order dated 12 September, 2018 in Case No. 204 of 2017 declared these schemes as deemed closed and directed STU to take a review of such critical schemes and propose a way forward.
17. Further, in line with the Commission's directives, STU carried out system study and submitted its reply on 28 January, 2019 wherein it stated that the 400/220 kV Vikhroli project scheme was required for strengthening of Mumbai Transmission as it would facilitate 800-1000 MW of power import into Mumbai from grid at 400 kV level. STU also mentioned that 400 kV Vikhroli scheme was most critical to bring outside power into Mumbai City and it was imperative to execute such transmission system in an expeditious manner.
18. Further, aggrieved by the Commission's Order dated 12 September, 2018, TPC-T, along with certain other issues related to the MTR Order in Case No. 204 of 2017, had filed Appeal No. 88 of 2019 before the Hon'ble APTEL on 31 October, 2018. The Hon'ble APTEL issued its Judgement in Appeal No. 88 of 2019 dated 23 September, 2019, wherein it upheld the directions of the Commission and dismissed the prayer of TPC-T regarding deemed closure of 400 kV Vikhroli scheme .
19. TPC-T on 2 January, 2019 also filed Petition in Case No. 3 of 2019 seeking the review of the Commission's Order dated 12 September, 2018 in Case No. 204 of 2017 regarding deemed closure of 400 kV Vikhroli Transmission Scheme. The Commission vide its Order dated 29 January, 2019 in Case No. 3 of 2019 dismissed the Review Petition filed by TPC-T and directed STU to submit its recommendations regarding execution of the 400 kV Vikhroli Transmission Project under TBCB. The relevant extract of the Order issued by the Commission in the above Case is reproduced below:

“ORDER

- a) *Case No. 3 of 2019 is dismissed.*
 - b) *STU is directed to submit its recommendations regarding execution of the 400 kV Vikhroli Transmission Project under TBCB as per GoM's Resolution dated 4 January,2019 within 15 days from the date of this Order. STU should also setup a credible mechanism for continuous monitoring of the project to ensure that the project remains on track to avoid any further delay.”*
20. Meanwhile, the GoM vide its Resolution No. Misc – 2018/ No. 214/ URJA-4 dated 4 January, 2019 decided to implement the TBCB process for construction of new Transmission projects in the State. For facilitating the transmission projects through TBCB process, the Empowered Committee (EC) was duly formed by GoM in accordance with the Guidelines issued by MoP, for “*Encouraging Competition in Development of Transmission Projects*”. Meetings were held by this Committee on 14

- January, 2019 and 07 March, 2019 in which the Vikhroli Transmission project was also discussed and it was decided that this project must be taken under TBCB process.
21. Subsequently, the GoM vide GR dated 2 May, 2019 appointed MSETCL as the BPC for the purpose of selection of Bidder as TSP to establish transmission system for “400 kV Vikhroli Project ” through TBCB process. The EC then allotted the Vikhroli Project to BPC (MSETCL) and constituted BEC as per the TBCB Guidelines as under :
- i. Shri. Awdhesh Kumar Yadav, Director (PSPA-I), CEA Member
 - ii. Shri. Parrag Jaiin Nainutia, Chairman & Managing Director, MSETCL
 - iii. Shri. Jaikumar Srinivasan, Director (Finance), MSEDCL Finance Sector expert (independent)
 - iv. Shri. Anil Kolap, Chief Engineer, SLDC
22. BPC (MSETCL) initiated the Bidding process as per the “TBCB Guidelines for Transmission Service” and “Guidelines for Encouraging Competition in Development of Transmission Projects” issued by MoP, GoI under Section 63 of the EA. The two-stage bidding process comprising of RFQ and RFP stages were adopted.
23. BPC incorporated a SPV, i.e. KVTPL, on 13 May, 2019 under the Companies Act, 2013 as its wholly owned subsidiary with the objective of execution, operation and maintenance of the Transmission scheme and subsequently to act as TSP after being acquired by the successful bidder. The main objectives of KVTPL in its Memorandum of Associations (**MoA**) are as under:
1. *To 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, substations, 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 and wheeling of power in accordance with the policies, guidelines and objectives laid down by the Central Government from time to time.*
 2. *To study, investigate, collect information and data, review operation, plan, research, design and prepare Report, diagnose operational difficulties and weaknesses and advise on the remedial measures to improve, undertake development of new and innovative product connected with business of the Company as well as modernize existing EHV, HV lines and Sub-Stations.*
24. MSETCL prepared the bidding documents such as RFQ and RFP in accordance with the SBDs issued by the MoP, GoI and amended from time to time without any deviations. The RFQ document was published on 24 April, 2019 which was made available to Bidders up to 18 May, 2019. The last date for submission of response to RFQ was 23 May, 2019.
25. Meanwhile, TPC-T filled an Interim Application, i.e., IA No. 372 of 2019 (Application for Stay) before Hon’ble APTEL. Subsequently, BPC prayed before Hon’ble APTEL

to provide two weeks' time to file reply to the aforesaid Application. Accordingly, Hon'ble APTEL vide its Interim Order dated 29 April, 2019 directed BPC not to precipitate the matter for a period of two weeks, i.e., till 13 May, 2019. Subsequently, Hon'ble APTEL vide its Order dated 21 May, 2019 allowed two weeks' time extension for TPC-T to submit its response to RFQ. The relevant extract from the APTEL Order is as provided below:

“ORDER

IA NO. 372 OF 2019

(Appln. for stay)

We have heard learned counsel for the parties.

*By Order dated 29.04.2019 there was a direction to Respondent No.2 not to precipitate in the matter for a period of two weeks, which ended on 13.05.2019. Subsequently, the interim order came to be extended till yesterday i.e., 20.05.2019. We now note that the bidding process has already commenced and the last date for submission of RFQ ends on 23.05.2019 in general. The technical bid and price bid submission scheduled on 22.08.2019. **We permit the Appellant to submit RFQ within two weeks from today i.e., on or before 04.06.2019.** Subsequently, the scheduled dates would be proceeded with as indicated by Respondent NO.2-STU. This concession is given only to the Appellant and no one else. Even if someone submits such RFQ beyond 23.05.2019, the same shall not be considered by Respondent No.2. Meanwhile, before 22.08.2019, the matter will be heard and disposed of on merits. To this extent the interim order is modified. This interim order is subject to the outcome of the Appeal. It is made clear that the Appellant's participation in the bid is without prejudice to the rights of the parties on merits. List it on 17.07.2019.”*

26. In response to the RFQ notification, following bidders submitted their responses within the bid deadline stipulated in the RFQ document.

Table 1: List of Bidder submitted response to RFQ.

S. No.	Name of the Bidder	Sole / Consortium	Date of Submission
1	Power Grid Corporation of India Ltd (PGCIL)	Sole Bidder	23 May, 2019
2	Adani Transmission Limited (ATL)	Sole Bidder	23 May, 2019
3	The Tata Power Company Limited (TPCL)	Sole Bidder	4 June, 2019*
4	Sterlite Grid 24 Limited (SG24L)	Sole Bidder	23 May, 2019
5	Alfanar Power Private Limited (APPL)	Sole Bidder	23 May, 2019

**extended only for TPC as per APTEL's Order dated 21 May, 2019 in IA No. 372 of 2019 in Appeal No. 88 of 2019, as described in earlier paragraphs of this Order.*

27. The Scope of Work of the Project as per RFQ was finalised by BPC and the same was as follows:

Table 2: Scope of Work of the Project as per RFQ

S. No.	“400 kV Vikhroli receiving station and associated incoming Transmission lines for strengthening of Mumbai Transmission System”	SCOD In months from Effective Date
1	400 kV Kharghar-Vikhroli D/C & M/C line with bays at Kharghar (with Twin HTLS conductor) -21.1 km	30 Months (12, March, 2022)
2	LILO on 400 kV Talegaon-Kalwa line at 400 kV Vikhroli GIS S/S – 14.224 km	
3	3 x 500 MVA, 400/220 kV ICTs & 2 x 250 MVA, 220/110/33 kV ICTs	
4	14 Nos. 400 kV GIS bays and 21 Nos. 220 kV GIS bays	
5	Construction of 400 kV GIS & 220 kV GIS Buildings at Vikhroli S/s	
6	LILO of existing 220 kV Trombay – Salsette I & II and 220 kV Trombay –Salsette III & IV by laying 9.5 km 220 kV Cable at 400/220 kV Vikhroli S/S	
7	5 km of 220 kV cable & accessories for diversion of existing 110 kV Dharavi-Salsette via Vikhroli lines, considering future upgradation	
8	Installation of 1 x 125 MVAR 400 kV Bus Reactor	

28. The qualification requirements (i.e., Technical and Financial) to be met by the bidders in the RFQ document were as under:

Table 3: qualification requirements as per RFQ

Qualification Parameter	Reference	Description
Technical	Clause No: 2.1.2 / Pg. No 17 of RFQ Document	<ul style="list-style-type: none"> Aggregate Capex (Not necessarily in Power Sector): not less than Rs. 500 Crore in the last 5 Years calculated up to 7 days prior to the bid submission date. Each Project: Not less than Rs. 77 Crore.
Financial	Clause No: 2.1.3 / Pg. No 17 & 18 of RFQ Document	<ul style="list-style-type: none"> Net worth: Not less than Rs. 250 Crore (any of the last three financial years)

29. The aforementioned qualification requirements were arrived at by BPC based on the norms provided in the SBDs as amended on 7 March, 2011, issued by MoP. The calculation for above qualification requirement is as provided in Table below:

Table 4: Computation of Technical requirements to be met by the bidders.

Technical	Line Length (a)	Transformation Capacity (b)	Norms*		Total (a*c + b*d)
			Line Length (c)	Transformation Capacity (d)	
Aggregate Capex	50 km	2000 MVA	Rs. 1.75 Cr/km	Rs. 0.015 Cr./MVA	Rs. 387 Crore (Specified Rs. 500 Cr,

Technical	Line Length (a)	Transformation Capacity (b)	Norms*		Total (a*c + b*d)
			Line Length (c)	Transformation Capacity (d)	
					minimum as per SBD
Each Project	50 km	2000 MVA	Rs. 0.35 Cr/km	Rs. 0.03 Cr./MVA	Rs. 77 Crore

Table 5: Computation of Financial requirement to be met by the bidders.

Financial	Line Length (a)	Transformation Capacity (b)	Norms*		Total (a*c + b*d)
			Line Length (c)	Transformation Capacity (d)	
Net Worth	50 km	2000 MVA	Rs. 0.875 Cr/Km	Rs. 0.075 Cr./MVA	Rs. 194 Crore (Specified as Rs. 250 Cr , minimum as per SBD)

*Norms as per SBD for procurement of transmission service amendment dated 7 March, 2011.

30. Further, as per the Clause 2.1.4 of RFQ, it was specified that the Bidder may seek qualification on the basis of technical and financial capability of its Parent and/ or its Affiliate(s) company for the purpose of meeting the qualification requirements. Accordingly, Bidders submitted their Bids along with their proposed Technically Evaluated Entity (TEE) and/or Financially Evaluated Entity (FEE) to meet the qualification requirements, as under:

Table 6: Evaluation of TEE & FEE nominated by the Bidders.

Name of the bidder	Type of bidder	Technically Evaluated Entity (TEE)			Financially Evaluated Entity (FEE)		
		Name	Relationship	Equity Share	Name	Relationship	Equity Share
Power Grid Corporation Ltd	Sole bidder	Power Grid Corporation Ltd	Self	N/A	Power Grid Corporation Ltd	Self	N/A
Adani Transmission Ltd	Sole bidder	Maharashtra Eastern Grid Power Transmission Company Limited	Affiliate	100%	Adani Transmission Ltd	Self	N/A
The Tata Power Company Ltd	Sole bidder	Tata Power Renewable Energy Ltd	Affiliate	100%	The Tata Power Company Ltd	Self	N/A

Name of the bidder	Type of bidder	Technically Evaluated Entity (TEE)			Financially Evaluated Entity (FEE)		
		Name	Relationship	Equity Share	Name	Relationship	Equity Share
Sterlite Grid 24 Ltd	Sole bidder	Talwandi Sabo Power Limited	Affiliate	50.13 %	Sterlite Power Grid Ventures Limited	Affiliate	71.38 %
Alfanar Power Private Ltd	Sole bidder	Alfanar Company Saudi Arabia	Parent Company	99.99 %	Alfanar Company Saudi Arabia	Parent Company	99.99 %

31. BPC evaluated the RFQ Bids as per the evaluation criteria defined in the RFQ document and the clarifications were sought from all the Bidders by 18 June, 2019 14:00 Hrs. Sterlite Grid 24 Limited sought extension of time for submitting its response to these clarifications. Considering the time extension request, BPC allowed all Bidders to submit their responses to the clarifications by 19 June, 2019 17:00 Hrs.
32. All the bidders submitted the clarifications by 19 June, 2019 except Alfanar Power Private Limited (APPL). APPL sent an e-mail on 19 June, 2019 at 18:28 Hrs; however, the e-mail did not have the attachments to the clarifications sought. The hard copy of the response was submitted by APPL on 20 June, 2019. Evidently, there was delay in submission of response to the clarifications by APPL. In view of above, BPC informed BEC that the response to RFQ submitted by APPL was Non-responsive and was liable for rejection.
33. BPC further evaluated the responses from all 5 Bidders and the shortlisting of Bidders done based on their ability to meet the qualification requirements as specified in the RFQ document. The Table below provides the summary of detailed evaluation for financial qualification requirements to be met by Bidders:

Table 7: Evaluation of Financial Qualification Requirement of Bidders

S. No.	Name of the bidder	Net worth claimed by Bidder	Net worth assessed by BPC*	Meet Requirement (Yes/No)
1	Power Grid Corporation Ltd	52,879.22	52,879.22	Yes
2	Adani Transmission Ltd	2,004.14	2,004.14	Yes
3	The Tata Power Company Ltd	12,246.12	12,246.12	Yes
4	Sterlite Grid 24 Ltd	723.19	723.19	Yes
5	Alfanar Power Private Ltd	4,556.62	4,556.62	Yes

*Assessed from the Audited account of the Bidders.

34. On detailed analysis of financial capability claimed by bidders, it was observed that all five (5) bidders met the Net worth requirement.
35. The Table below provides the summary of detailed evaluation for technical qualification requirements to be met by Bidders:

Table 8: Evaluation of Technical Qualification Requirement of Bidders

S. No.	Name of the bidder	Project Name	Single Project (in Rs. Crore)		Total Project (in Rs. Crore)		Meet Requirement (Yes/No)
			Claimed by Bidder	Assessed by BPC	Claimed by Bidder	Assessed by BPC	
1	Power Grid Corporation Ltd	Wardha-Hyderabad 765kV Link	1642.84	1642.84	7074.84	7074.84	Yes
		S/s work for system strengthening in SR for import Power from ER	797.35	797.35			
		Hyderabad (Maheshwaram) Pooling Station	400.88	400.88			
		Inter- regional system strengthening Scheme in WR & NR	4233.77	4233.77			
2	Adani Transmission Ltd	2xS/C- 765kV Tiroda – Koradi III- Akola II – Aurangabad line, 400 kV D/C Akola I- Akola II line, along with 765/400kV Tiroda S/s, Koradi III S/s & Akola II S/s	5831.77	3607.79 [^]	5831.77	3607.79**	Yes
3	The Tata Power Company Ltd	Solar Project at Pavagada, Karnataka- 150 MW	1010.10	1010.10	1010.10	1010.10	Yes
4	Sterlite Grid 24 Ltd	Talwandi Sabo Power Limited (3x 660 MW Super Critical Thermal Power Plant)	3127.07	3127.07	3127.07	3127.07	Yes
5	Alfanar Power Private Ltd	Alfanar Workers Accommodation Riyadh, Saudi Arabia	430.41	430.41	953.15	430.41	No
		50 MW Solar Project in Ben ban, Egypt	522.74	522.74*			

**Capital Expenditure of FY 2013-14 (prior to 5 years) not considered.

*The project was under construction as certified by Statutory Auditor and hence not considered for meeting the technical requirement.

36. Further, on analysis of technical capability claimed by bidders, it was observed that four (4) out of five (5) bidders except APPL met the technical requirements.

37. APPL had claimed to meet the technical requirements based on 2 (two) projects. However, one of the project did not qualify as it was under construction as per Auditor Certificate submitted by the bidder and as per the RFQ, project should have been completed/commissioned 7 days prior to due date for submission of RFQ.

38. BPC sought clarifications from APPL and post evaluation, the response to RFQ and the clarifications submitted by APPL was found to be deficient on following grounds:
- i. Non-responsive due to delay in submission of clarifications sought by BPC;
 - ii. Non-compliance with submission requirement mainly due to non-submission of Statutory Auditor Certification in Format 4.7 and Banker Certificate for exchange rate not submitted; and
 - iii. Not meeting the Technical Qualification Requirement
39. The detailed evaluation of responses and clarification submitted by APPL is summarized in the points below:

I. Non-responsiveness in submission of response:

The Clause 3.1.1 and Clause 3.3 of the RFQ document provides stipulation regarding the delay in submission of clarifications sought by the BPC. As per the said Clauses, there was a delay by APPL in submission of clarifications sought by BPC, accordingly, the same was considered Non-responsive and was liable for rejection.

II. Non-compliance in procedural requirements:

- i. As per clause 2.1.3.1 of RFQ, the Net-worth of the bidder shall not be less than Rs. 250 Crore or equivalent USD (calculated as per provisions in Clause 3.1.3.1) based on unconsolidated Audited Annual Accounts of any of the last three financial years, immediately preceding the last date of submission of response to RFQ. In order to meet the aforesaid requirement, APPL had considered its FEE, i.e., Alfanar Company Saudi Arabia. APPL had submitted the Audited consolidated statements of FEE in Indian Rupees and had claimed the Net-worth of Rs. 4,556.62 Crore for FY 2016-17. The aforementioned FEE was registered in Saudi Arabia with currency denomination of SAR. The clause 3.1.3.1 of RFQ provides stipulation for conversion of amounts from SAR to INR as under:

“3.1.3.1 Interpolation of financial data

For the Qualification Requirements data provided by the Bidders in foreign currency, equivalent rupees of Net worth will be calculated using bills selling exchange rates (card rate) USD/INR of State Bank of India prevailing on the date of closing of the accounts for the respective financial year as certified by their Banker.”

- ii. **The above stipulation of certification from the Banker had not been complied with by APPL.** Further, it was observed that APPL had considered the RBI reference rate as on 31 December 2018 for amount conversion instead of exchange rates (card rate) USD/INR of State Bank of India as stipulated in RFQ document.
- iii. Also, as per the format 4.7A of RFQ document, the bidders were required to submit the Net-worth certificate duly certified by the Statutory Auditors. APPL submitted the Net-worth Certificate (duly converted in INR) which was certified by B A G S & Co. BPC sought clarification to confirm whether B A G S & Co. was the Statutory Auditor of APPL or not. In its response APPL stated that B A G S & Co.

was only engaged to translate the currency. APPL was also asked to provide Net-worth Certificate as certified by the Statutory Auditor of the FEE and certified as true by the Statutory Auditor of APPL. This certificate by Statutory Auditor was not submitted by APPL.

- iv. Further, as per Note 2 to clause ii of Format 4.7D (additional information for verification of financial and technical capabilities of Bidders), the Bidder was required to furnish the Executive Summary for each project covering the 15 points listed. From the Executive Summary submitted by APPL, it was observed that the details regarding (i) Cost data, (ii) Address and contact numbers of owners of the project and (iii) Operating environmental compliance history, were not provided. APPL was asked to submit the same, however, it did not provide any response to the aforesaid clarification request.

III. Technical Qualification Requirement

- i. As per Clause 2.1.2 of the RFQ, the bidders must have experience of development of projects (not necessarily in the power sector) in the last five (5) years with aggregate capital expenditure not less than Rs. 500 Crore or equivalent USD. The relevant clause is as reproduced below:

“Experience of development of projects (not necessarily in the power sector) in the last five (5) years with aggregate capital expenditure not less than Rs. 500 Crore or equivalent USD (calculated as per provisions in Clause 3.1.3.1). However, the capital expenditure of each project shall not be less than Rs. 77 Crore or equivalent USD (calculated as per provisions in Clause 3.1.3.1).”

For this purpose, capital expenditure incurred on projects that have been commissioned/completed at least seven (7) days prior to the last date for submission of Response to RFQ shall be considered. The capital expenditure discussed above shall be as capitalized and reflected in the audited books of accounts of the Technically Evaluated Entity. In case a clearly identifiable part of a project has been put into commercial operation, the capital expenditure on such part of the project shall be considered. Further, the Technically Evaluated Entity must have either executed such projects itself or must own at least 26% of the shareholding in the company that has executed the project(s) and must have held such shareholding from the date of financial closure of the project(s) till the time of commissioning/completion of such project(s). The Technically Evaluated Entity may be the Bidding Company or the Lead Member of a Consortium or an Affiliate or Parent of such Bidding Company or the Lead Member, as the case may be.”

- ii. For satisfying aforesaid technical requirement, APPL had claimed two projects, i.e., (1) Alfanar Workers Accommodation, Riyadh, Saudi Arabia executed by Alfanar Company and (2) 50 MW Solar Project in Ben ban, Egypt executed by Alfa Solar (TEE), having total aggregate capital expenditure of Rs. 953.15 Crore as summarised in Table below:

Table 9: Details of Project Submitted by Alfanar Power Private Limited for Technical Qualification

Project Name	Name of Company Executed project	Financial closure of Project		CoD of Project		Capex of Each Project (Rs. Crore)	Total Capex (Rs. Crore)
		Date	Equity Share of TEE as on date	Date	Equity Share of TEE as on date		
Alfanar Workers Accommodation- Riyadh, Saudi Arabia	Alfanar Company	January, 2016	Project executed by TEE	31 March, 2019	Project executed by TEE	430.41	953.15
50 MW Solar Project in Benban, Egypt	Alfa Solar (Affiliate of TEE)	25 October, 2017	100%	23 April, 2019	99.9%	522.74	

iii. While the project Alfanar Workers Accommodation fulfilled its technical requirement criteria as specified in RFQ, the BPC observed certain deficiencies in 50 MW Solar Project as under.

- The Audited Accounts submitted for Alfa Solar Company (TEE) was not duly certified by Statutory Auditor. BPC accordingly asked APPL to submit the duly signed Audited Accounts. APPL in its response submitted the Certificate from auditor (PwC) for Capex in Alfa Solar Project in Egypt. Based on the auditor certificate, it was observed that the project was under construction and hence this project could not be considered for meeting technical qualification. Further, upon clarification, APPL also submitted the ‘Certificate of achievement of commercial operation date criteria’ issued by Alfa Solar but this certificate did not specify the project capacity.
- APPL was also asked to submit the documentary evidence to establish that the TEE had more than 26% shareholding in the Company that had executed the 50 MW Solar Project in Ben ban, Egypt as on the date of financial closure. APPL did not submit any documentary evidence to establish the shareholding till commissioning of the project.
- Also, as per Format 4.11 of RFQ, the Bidder is required to submit the documentary evidence such as certified copy of the Register of Members / Demat Account Statement, Share Certificate, Annual Return filed with ROC in support of its shareholding structure as on 16 June, 2019. APPL in its response provided reference of the Copy of Memorandum and Articles of Association but it did not meet the clarification requirement as stipulated in RFQ.

iv. In view of foregoing, as the 50 MW Solar Project in Ben ban, Egypt did not qualify to be considered for meeting the technical qualification, APPL did not meet the technical qualification requirement of aggregate capital expenditure of Rs. 500 Crore in the last 5 years.

40. Based on its detailed evaluation, BEC declared four (4) out of five (5) bidders as Qualified Bidders for issue of RFP as per Clause 3.1.4 of the RFQ. The list of Qualified Bidders was as below:

- 1) Power Grid Corporation Limited
- 2) Adani Transmission Limited
- 3) The Tata Power Company Limited
- 4) Sterlite Grid 24 Limited

41. TPC vide its letter dated 15 June, 2019 informed BPC regarding reimbursement of pre-development expenses of Rs.135.44 Crore. In view of this, the Commission issued directives vide its letter dated 20 June, 2019 as follows:

i The Commission notes that TPC has claimed reimbursement of Rs. 135.44 Crores on predevelopment expenses for development of 400 kV Vikhroli Project (including IDC on 400 kV Vikhroli Receiving Station) till 31.05.2019.

ii MSETCL in its RFP shall also clarify that the successful bidder of 400 kV Vikhroli Project shall have to pay the predevelopment expenses of Rs. 135.44 Crores to SPV ("Kharghar Vikhroli Transmission Pvt. Ltd.") which in turn would reimburse the same to TPC.

iii Any deviation in the predevelopment expenses of Rs. 135.44 Crores on account of expenses required on transfer of approval/clearances/land etc., in favour of SPV, viz., Kharghar Vikhroli Transmission Pvt. Ltd., TPC-Transmission shall incorporate the same as a part of its regulated business in its upcoming Tariff Petition with requisite information and supporting documents in accordance with prevailing MYT Regulations.

iv TPC-T shall provide its NOC to transfer the land acquired for the project and clearances / permissions obtained from the various Authorities in the name of SPV ("Kharghar Vikhroli Transmission Pvt. Ltd.") along with copy of survey report and other related documents immediately for issuance of RFP Document Requirement.

v MSETCL/STU shall ensure there would not be double recovery of the expenses."

42. In compliance with the above directions, BPC included the amount of Rs. 135.44 Crore as the Acquisition price to be paid by the successful bidder to SPV. Subsequently, BPC issued RFP to Qualified Bidders on 22 June, 2019. The activities undertaken at RFP stage are as follows:

Table 10: Key activity undertaken at RFP Stage.

S. No.	Date	List of Activities
1	22 June, 2019	Issuance of RFP Documents
2	28 June, 2019	Meeting with TPC at MSETCL office on the issues related to transfer of land and clearances
3	02 July, 2019	Submission of Queries on the RFP by the Bidders
4	05 July, 2019	Issue of Survey Report to bidders

S. No.	Date	List of Activities
5	12 July, 2019	Meeting with TPC in the presence of Principal Secretary(Energy) on the issues related to transfer of land and clearances
6	12 July, 2019	Pre-bid Meeting
7	17 July, 2019	Issue of clarifications to the Bidders and revised RFP documents
8	22 July, 2019	Communication of Acquisition Price to Bidders (Rs 152.65 Crore)
9	06 August, 2019	Issue of additional clarifications
10	14 August, 2019	Issue of further clarifications and revised RFP documents (including executed TSA)
11	21 August, 2019	Submission of Bid (Non-Financial and Financial Bid)
12	21 August, 2019	Opening of Non-Financial Bid
13	28 August, 2019	Opening of Financial Bid -Initial Offer and announcement of the Qualified Bidders
14	29 August, 2019	Electronic auction
15	05 September, 2019	Selection of Successful Bidder and issue of LOI
16	13 September, 2019	Signing of RFP Project Documents and transfer of Kharghar Vikhroli Transmission Private Limited

43. As per the provisions of the SBDs, LTTCs have to sign the TSA and executed TSA has to be provided to short-listed bidders at least seven days prior to Bid-deadline. Accordingly, BPC organized meeting with LTTCs on 30 July, 2019 regarding signing of the RFP documents. Signing of the TSA has been done by SPV and all the LTTCs except Central Railway. STU vide its letter MSETCL/CO/CE-STU/1081 dated 14 August, 2019 requested the Central Railway for signing of TSA and also brought to notice that non signing of TSA by Central Railway by 16 August, 2019 will be treated as deemed acceptance of TSA by Central Railway. Subsequently, executed TSA (except by Central Railway) was furnished to the Bidders on 14 August, 2019.

44. In response to the RFP, out of four (4) Qualified Bidders, the following three (3) Bidders submitted their response on 21 August, 2019 as provided in the Table below:

Table 11: List of Bidder Submitted Response at RfP

S. No.	Name of the Bidders	Sole / Consortium
1	Adani Transmission Limited	Sole bidder
2	The Tata Power Company Limited	Sole bidder
3	Sterlite Grid 24 Limited	Sole bidder

45. BPC evaluated Non-financial Bids submitted by the qualified bidders. The Table below provides the summary of evaluation:

Table 12: Evaluation of Non-financial Bids submitted by the qualified bidders.

S. No.	Reference to RFP (Requirement)	Compliance by Bidders		
		ATL	TPL	Sterlite Grid 24
1	Annexure-2: Bid Bond of Rs 9.37 Crore having validity upto 17.02.2020 and claim period of 30 days	Yes (Claim Period upto 18.05.2020)	Yes (Claim Period upto 30.04.2020)	Not Submitted
2	Annexure 6 – Format 1: Bidder’s Undertaking	Yes	Yes	Yes
3	Annexure 6 – Format 2: Detail of Equity Investment in Project	Yes (100% equity investment by Bidder itself)	Yes (100% equity investment by Bidder itself)	Yes (100% equity investment by Bidder itself)
4	Annexure 8 – Format 1: Board Resolution by Bidder	Yes	Yes	Yes
5	Annexure 8 – Format 2: Board Resolution by TEE/FEE/Ultimate Parent Company	Yes (TEE)	Yes (TEE)	Yes (Ultimate Parent Company)
6	Annexure 9: Covering Letter	Yes	Yes	Yes
7	Annexure 10 – Format 1: Power of Attorney	Yes	Yes	Yes
8	Annexure 10A- Undertaking for TEE/ FEE/Ultimate Parent Company	Yes (TEE)	Yes (TEE)	Yes (Ultimate Parent Company)
9	Annexure 14: Format for Disclosure	Yes	Yes	Yes
10	Payment towards RFP document	Yes	Yes	Yes

46. On the basis of above evaluation, it was observed that M/s Sterlite Grid 24 Limited had not submitted the Bid Bond. Subsequently, BEC in its meeting dated 23 August, 2019 decided that in order to promote competition, an opportunity should be provided to M/s Sterlite Grid 24 Limited to submit the Bid Bond before 17:00 Hrs on 26 August, 2019. However, M/s Sterlite Grid 24 Limited did not submit the Bid Bond and the responses to the clarifications sought by BPC. In view of above, the bid submitted by M/s Sterlite Grid 24 Limited was considered non-responsive as per clause 3.2.1 of the RFP.
47. After the detailed evaluation of the responses to the clarifications, Bids of ATL and TPCL were found to be complying with the provisions of the RFP. Subsequently, Financial Bids were opened in presence of BEC in a meeting held on 29 August, 2019. The details are as follows:

Table 13: Summary of financial bids submitted by the Bidders.

S. No.	Name of the Bidders	Levelised Tariff (Rs in million) As per Initial Offer	Ranking
1	Adani Transmission Limited	2,199.89	L1
2	The Tata Power Company Limited	4,014.72	L2

48. The BEC authorized BPC to communicate the lowest Initial Price Offer (**IPO**) to qualified bidders and conduct the Electronic Reverse Auction (**E-RA**) for the qualified bidders on **30 August, 2019 at 11:00 Hrs.** Accordingly, BPC conducted the E-RA and it was observed that **there was no bid quoted till the first two hours of E-RA.** In this regard the clause No 3.4.1.1 in the RFP document provides stipulation as under:

“3.4.1.1

..... However if no bid is received during the e-reverse bidding stage then the Bidder with lowest quoted initial Levelised transmission charges ("Initial Offer") during e-bidding stage shall be declared as the Successful Bidder.”

49. **Hence, after the conclusion of E-RA, M/s ATL emerged as L1 Bidder with a levelised tariff of Rs. 2199.89 million.**

50. Subsequently, the meeting of BEC was held on 23 October, 2019 wherein reasonableness of tariff quoted by the lowest Bidder, i.e., ATL, was discussed. At the meeting, BPC informed BEC that the State EC in its meeting held on 15 October, 2019 had directed BPC to approach M/s PFC Consulting Limited (**PFCCL**) and/or M/s REC Transmission Projects Company Limited (**RECTPCL**) for independent assessment of project cost and competitiveness of the lowest levelised Tariff discovered through TBCB process for 400 kV Vikhroli Project. BEC accordingly advised BPC to approach third party consultant, viz., M/s PFCCL and/or M/s RECTPCL for independent assessment of project cost and competitiveness of the lowest Levelised Tariff discovered.

51. In compliance with the EC’s directions, BPC invited proposals from M/s PFCCL and M/s RECTPCL for the aforesaid task. In response, M/s PFCCL submitted its proposal while M/s RECTPCL expressed its regret to submit the proposal. Accordingly, BPC engaged M/s PFCCL for review of cost estimates and reasonability of levelized tariff discovered in the TBCB process of 400 kV Vikhroli Transmission Project.

52. PFCCL vide its final report dated 3 December, 2019 recommended that the tariff discovered through the competitive bidding process on E-RA appeared to be fair and reasonable. The salient features of the report submitted by PFCCL are as follows:

- a) For assessment and review of the 400 kV Vikhroli Transmission Project cost, PFCCL has considered the project cost estimates from MSETCL, from Schedule of Rates (SOR) of Uttar Pradesh Power Transmission Corporation Limited (UPPTCL) for year 2018-19 and based on the available prevailing market rates as summarised in Table below:

Table 14: Project Cost Estimation as per MSETCL, UPPTCL SOR and Prevailing market rates

S. No.	Element	Line Length (in Km)	As per MSETCL (Rs. Crore)	As per UPPTCL SOR FY19 (Rs. Crore)	As per Prevailing Market Rate (Rs. Crore)
A	Establishment of 3X500 MVA, 400/200 kV s/s at Vikhroli (400 kV GIS Bays- 12 nos., 400kV AIS Bays - 2 nos, 220 kV GIS Bays - 17 nos, ICT 500 MVA 400/220 kV - 3nos and 125 MVAR Bus Reactor)				
a)	Civil Work		107.68	58.70	58.70
b)	Electrical Work		287.91	282.99	329.18
	Sub Total		395.59	341.69	387.88
B	400kV Kharghar-Vikhroli D/C & M/C line with bays at Kharghar & Vikhroli (with conductor capacitor of 2,000 MW per Circuit) along with 400kV bus extension at 400kV Kharghar end	24	494.29	430.49	439.55
C	LILO on 400kV Talegaon - Kalwa line at 400kV Vikhroli GIS s/s with Bays	12	262.37	256.75	265.59
D	LILO of existing 200kV Trombay-Salsette I&II and 220kV Trombay-Salsette III & IV at 400/200kV Vikhroli s/s	0.9	56.26	56.10	79.67
E	Diversion of existing 110kV Dharavi -Salsette via Vikhroli line considering future 220kV upgradation	0.75	21.34	21.34	30.33
F	Dismantling of 400kV existing TATA line	0.36	0.13	0.13	0.1
G	IDC		152.3	111.37	119.91
H	Pre-Bid Expenses (Acquisition Price)		152.65	152.65	152.65
	Total		1534.93	1370.50	1475.67

- b) As regards variations in above cost estimates, PFCCL in its report has stated that the aforesaid cost as per UPPTCL SOR and other projects, are in normal terrain and have comparatively lower foundation cost. Whereas, Vikhroli Transmission project is a Double/Multi-Circuit project passing through mangrove area, CRZ, reserved forest, metropolitan area, wildlife sanctuary, aviation zone, creek, etc. requiring pile foundations and high Right of Way (**RoW**) costs. PFCCL also stated that one-to-one comparison in terms of cost for such projects was not feasible as the implementation of the project depends upon many factors including financial factors, demography of the region and line route, execution timeline, risk involved, etc., which cannot be quantified in terms of price.

- c) Further, based on the above cost estimates PFCCCL determined the levelized Annual Transmission Charges for the project as per the CERC (Terms and Conditions of Tariff) Regulations, 2019-24. A comparison of CERC Tariff w.r.t project cost as per MSETCL, UPPTCL and prevailing market rates vis-à-vis the discovered tariff is given in the Table below:

Table 15: Comparison of Tariff determined through CERC norms w.r.t project cost as per MSETCL, UPPTCL SOR and Prevailing market rates.

S. No.	Particular	As per MSETCL estimate	As per UPPTCL SOR for FY 2019	As per Prevailing Market Rate
1	Vikhroli Project Cost (in Rs. Million)	15,349.30	13,705.03	14,756.73
2	Levelized Tariff Discovered as per CERC Tariff Regulation (Rs. Million)	2,200.80	1,952.03	2,089.90
3	Levelised Tariff discovered through e-RA (Rs. Million)	2,199.89		
4	Percentage by which discovered Tariff is higher than CERC tariff	At par	12.70%	5.26%

- d) It was observed that the levelized tariff as per CERC Tariff Regulations based on project cost as per MSETCL estimates is at par with the discovered tariff. Whereas the discovered tariff is 12.70% and 5.26% higher than the levelized tariff as per CERC Tariff based on project cost for UPPTCL SOR and prevailing market rates, respectively.
- e) PFCCCL in its report also provided the comparative assessment of tariff discovered for this Vikhroli Project with the various other projects awarded by PFCCCL through TBCB route. The summary of project cost and the tariff discovered for each of the projects has been provided in the Table below:

Table 16: Comparative assessment of various project awarded through TBCB route.

Name of Project	Date of transfer of SPV	Estimated Cost	Tariff discovered through TBCB	Tariff as per CERC norms	% Higher/Lower than CERC norms
System Strengthening for WR	2011-03-31	2,900	1,995	3,531.8	-44%
System Strengthening for WR & NR	2011-03-31	1,720	1,421	2,133.8	-33%
ER System Strengthening Scheme VII	2013-12-09	370	589	561.3	5%
ER System Strengthening Scheme VI	2013-12-10	540	1,174	896.7	31%

Name of Project	Date of transfer of SPV	Estimated Cost	Tariff discovered through TBCB	Tariff as per CERC norms	% Higher/Lower than CERC norms
System Strengthening of Generating station in WR	2015-11-23	1,285	1,324.02	1,968.8	-33%
400kV GIS substation in Gurgram and Palwal as part of ISTS	2016-07-14	1,640	1,255.42	2,909.1	-57%
765kV System strengthening scheme in ERSS-XVIII	2017-03-28	3,246	4,986.5	5,068.1	-2%
NER strengthening scheme (NERSS-VI)	2017-03-31	1,044	2,027.4	1,604.5	26%
400kV power evacuation polled at Raigarh (Tamnar) Pool	2018-03-14	1,531	1,647.75	2,245.7	-27%
Transmission System for Ultra Mega Solar park in Rajasthan	2018-03-14	575	380.15	838.73	-55%
Transmission System for LTA application from Rajasthan SEZ part-D	2019-09-19	1,630.58	1,000.51	2,295.39	-56%
Transmission System for LTA application from Rajasthan SEZ part-B	2019-10-14	1,186	715.58	1,583.93	-55%
RE connectivity project - Bhuj II (2000MW) in Gujarat	2019-10-16	1,409.17	1,237.67	2,076.89	-40%

f) It was observed that the tariff discovered under the TBCB process was higher than the CERC tariff in the range of 5-31% in case of certain projects while it was lower in the range of 2-57% in other cases. PFCCL further stated that an exact comparison was not possible among various transmission systems as the tariff quoted by the Bidders depended on various factors which rendered each project unique. The major factor affecting the tariff are listed below:

- i. Risk appetite and strategic objectives of the Bidders
- ii. Cost of funding for both equity as well as debt.
- iii. RoW issues and its associated cost
- iv. Political and Socio-Economic Scenario
- v. Demography (Involvement of Forest, Wildlife Sanctuary, etc.)
- vi. Payment Mechanism and Security

53. Based on the detailed evaluation and report submitted by PFCCL, BEC in its meeting dated 7 December, 2019 decided the following:

- a) **M/s ATL is the successful bidder after the conclusion of the E-RA with the lowest Levelised Transmission Charges of Rs. 2199.89 Million.**

b) In view of (a) above, M/s ATL may be issued LOI.

54. Further, in accordance with the TBCB Guidelines, BEC has to certify that the tariff has been discovered through a transparent process of bidding and the tariff discovered is in line with prevailing market prices. BEC issued separate certificate dated 7 December, 2019 in this regard stating as follows:

“It is certified that:

- a. The entire bid process has been carried out in accordance with the *"Tariff based Competitive Bidding Guidelines for Transmission Service"* and *"Guidelines for encouraging competition in development of the Transmission Projects"* issued by Ministry of Power, Govt. of India under Section 63 of the Electricity Act, 2003 and as amended from time to time.
- b. After the conclusion of e-Reverse Auction, M/s Adani Transmission Limited emerged as the Bidder with Lowest Levelised Transmission Charges of Rs. 2199.89 Million.
- c. The levelised tariff computed on the basis of rates quoted by the successful Bidder, during e-reverse auction appears to be reasonable as compared to the Levelised Tariff calculated based on MERC/CERC norms. Hence, the levelised tariff discovered through e-reverse auction is acceptable.”

55. Subsequently, LoI No. MSETCL/CO/BDC/TBCB/9392-A dated 12 December, 2019 was issued in favour of ATL. Further, in accordance with Clause 2.4 of RFP, the selected bidder within 10 days of issue of the LoI, had to accomplish the following tasks:

- a) Provide the Contract Performance Guarantee in favour of the LTTCs;
- b) Execute the SPA and all other RFP Project Documents as listed in Annexure-3;
- c) Acquire, for the Acquisition Price, one hundred percent (100%) equity shareholding of KVTPL from MSETCL, who shall sell to the Selected Bidder, the equity shareholding of KVTPL, along with all its related assets and liabilities;
- d) Make an application to the Appropriate Commission for the adoption of Transmission Charges, as required under section 63 of the EA, 2003;
- e) Apply to the Appropriate Commission for grant of Transmission License.

56. 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".

57. As mentioned earlier the LoI was issued on 12 December, 2019 and the initial bid validity was up to 17 February, 2020. However, ATL could not complete the various activities as per Clause 2.4 of RFP document within the stipulated time of 10 days due to various issues pertaining to handover of SPV. ATL accordingly vide its letter dated 15 February, 2020 requested MSETCL for extension of the bid validity up to 31 March, 2020 which was accepted by MSETCL vide its letter dated 17 February, 2020. ATL on 30 March, 2020 again sought for extension of the bid validity up to 31 May, 2020 on account of national lockdown imposed by GoI till 14 April, 2020 vide Order No. 40-

3/2020-DM-I(A) dated 24 March, 2020 due to outbreak of COVID-19. MSETCL vide its letter dated 30 March, 2020 accepted the request of ATL and accordingly, extended the bid validity period. Subsequently, ATL vide its letter to MSETCL dated 29 May, 2020 submitted that the GoI extended the national lockdown till 31 May 2020. Hence, due to continuation of national lockdown due to COVID-19, it was required to further extend the bid validity. MSETCL vide its letter dated 30 May, 2020 accepted the request of ATL and extended the Bid validity period up to 10 July, 2020 for the purpose of meeting the compliance as per clause 2.4 of RFP document.

58. Subsequently, ATL furnished the Contract Performance Guarantee to the LTCCs of the Project for an aggregate amount of Rs. 23.61 Crore (determined as per the norms defined in SBDs) and has acquired hundred percent equity-holding in the applicant company on 25 June, 2020 after execution of the SPA. KVTPL then filed the Petition for adoption of Tariff on 7 July, 2020.
59. Further, regarding acquisition price of SPV, MSETCL vide letter dated 26 December, 2019 informed ATL to initiate the payment of Rs.152.65 Cr for acquisition of KVTPL in three parts, i.e., bid processing consultancy charges (Rs. 16.31 Crore to MSETCL account), reimbursement of expenses incurred by BPC (Rs. 0.89 Crore to MSETCL account) and pre-development expenses to be reimbursed to TPC (Rs. 135.44 Crore to SPV account as per the Commission's letter 20 June, 2019).
60. ATL has paid a net amount of Rs. 14.93 Crore (invoice amount Rs. 16.31 Crore less TDS 1.38 Crore) as a part of Bid Processing Consultant Charges for conducting the TBCB process and an amount of Rs. 0.89 Crore (amount inclusive of applicable GST) as a part of reimbursement of expenses incurred by BPC for conducting the TBCB process on 6 January, 2020.
61. ATL has also paid an amount of Rs. 135.44 Crore as a part of acquisition price of the SPV, viz., KVTPL on 29 May, 2020. As per the Commission's directions, this amount was to be reimbursed to TPC-T after due verification and validation by STU.
62. STU completed the verification of pre-development expenses of Rs.135.44 Crore claimed by TPC-T and submitted its report on 2 September, 2020 for the Commission's approval. The Commission vide its letter dated 14 September, 2020 has approved the amount of Rs.118.27 Crore towards pre-development expenses against Rs.135.44 Crore claimed by TPC-T, as recommended by STU in its report. The Commission also directed STU to pay Rs. 118.27 Crore to TPC-T within 15 days as per STU's validation report. The summary of the amount as claimed by TPC-T and as recommended by STU in its report and as approved by the Commission vide letter dated 14 September, 2020 is as provide in Table below:

Table 17: Comparison of predevelopment expenses

S. No.	Description of item	Amount claimed by TPC-T Rs. (Rs. Crore) (A)	Eligible Claim Rs. Crore /Comment (B)	Difference in Rs. Cr. C=(A-B)
	Fixed Asset Register			
1	Purchase of land at Kharghar	47.96	47.96	-

S. No.	Description of item	Amount claimed by TPC-T Rs. (Rs. Crore) (A)	Eligible Claim Rs. Crore /Comment (B)	Difference in Rs. Cr. C=(A-B)
2	Vikhroli- Purchase of land including stamp duty, Registration Charges, and other incidental cost	28.99	28.99	-
	Total (A)	76.95	76.95	-
	Construction Work in Progress			-
3	Statutory Payment for Stage -I Forest Clearance	9.84	9.84	-
4	Statutory Payment to MCGM (for CC & others) CRZ application expenses, etc.)	0.89	0.89	-
5	Expenditure incurred for Vikhroli (Statutory payment to MCGM for CC& others, etc.)	3.72	3.72	-
6	Statutory payment towards Reinstatement charges, Ground Rent, Security Deposit & Bank Guarantee Charges	5.09	5.09	-
7	Payment to CIDCO for CC of Kharghar Building	0.73	0.73	-
8	All type of survey related expenses	2.19	2.15	0.04
9	Engineering Consultancy	3.30	3.26	0.04
10	Site Development Expenses	1.10	1.09	0.01
11	Consultancy	1.36	1.36	0
12	Interest During Construction (IDC) (up to December 2018)	9.30	To be Kept on hold	9.30
13	Staff Cost	6.52	6.52	0
14	Pre-development expenses	4.84	4.81	0.03
15	Security	1.86	1.86	0
	Total(B)	50.74	41.32	9.42
16	Grand Total	127.69	118.27	9.42
17	Return on Investment (RoI) from January 2019 to May, 2019	7.75	Not eligible	7.75
18	Total Pre-development Expenses	135.44	118.27	17.17
19	Total Eligible Claim as on 20 August, 2020		118.27	

63. It is to be noted that STU, in its report has kept Rs. 9.30 Crore towards IDC on hold as TPC-T did not submit the complete documents justifying the claim. Accordingly, TPC-T was directed to submit the requisite documents and justification complete in all respects to STU within a month. Any delay in doing so shall be to TPC-T's account. After compliance by TPC-T to the satisfaction of STU, validated amount by STU should be paid by MSETCL to TPC-T towards IDC under intimation and approval by the Commission.

64. The Commission has also disallowed Rs. 7.87 Crore as recommended by STU, which was incurred/estimated by TPC-T post closure of the scheme towards the activities such as survey related expenses, engineering consultancy, site development expenses, pre-development expenses, and estimated claim of Return on Investment (ROI) for the period January 2019 to May 2019 as shown in above Table No.17 above.
65. The Commission vide its Email dated 6 January,2021 has sought current status of pre-development expenses from STU, as approved by the Commission based on STU's validation report. In reply, STU vide its Email dated 15 January,2021 has confirmed that it has paid Rs. 118.27 Cr. to TPC-T on 14 October,2020 as approved by the Commission. The remaining amount (disallowed amount 7.87Cr. and amount kept on hold towards IDC 9.30 Cr.) is held with MSETCL.
66. With regard to the amount kept on hold towards IDC (i.e. Rs.9.30 Crs), STU confirmed that the claim is under verification based on the documents submitted by TPC-T. The Commission will be informed updated status after completion of due verification.
67. Considering the aforesaid disallowance and withholding of IDC amount, it is envisaged that the cost of the project will be reduced. The Commission notes that the relevant provision of TSA provides remedial measure in case of increase/decrease in the cost of the project. However, the final amount of the project after considering allowed or disallowed amounts is still to be ascertained. Hence, the Commission is not inclined to give effect of aforesaid disallowance or withheld IDC amount as of now. The Commission may provide the impact of any increase/decrease in the cost of the scheme at the time of commissioning of the project after prudence check and after hearing the LTTCs and stakeholder. Therefore, KVTPL is at liberty to file sperate Petition with due justification in case of increase or decrease in project cost.
68. Further, MSETCL in compliance with the directives of the Commission vide letter dated 3 October, 2020 has effected payment of Rs.114.50 Crore (i.e., validated amount of Rs.118.27 Crore less TDS Rs.3.77 Crore) in favour of TPC-T on 14 October, 2020 in accordance with methodology prepared by MSETCL.
69. In the present Petition, KVTPL has also prayed for grant of Transmission Tariff from Actual COD, if the element(s) of the project are commissioned before original SCOD. The Commission notes that here KVTPL is meaning to avail incentives as per the policy issued by MoP, for early commissioning of transmission element before SCOD by way of commencement of transmission charges from the actual COD before SCOD. The relevant extract from the policy for incentivizing early commissioning of Transmission projects issued by MoP vide its letter dated 15 July, 2015 is as under:

"The undersigned is directed to say that the Hon'ble Minister of State (IC) for Power has approved the Policy for incentivizing early commissioning of Transmission projects w.e.f. 12.6.2015 as given below:

1.1 For transmission system strengthening schemes under Tariff Based Competitive Bidding (TBCB) and also for such schemes awarded to PGCIL under compressed time schedule on cost plus basis, the developer shall get the following incentive for early commissioning of transmission project(s)

(i) Entitlement of the transmission charges from the actual date of Commercial Operation (COD) prior to the original scheduled COD. However, the number

of years of applicability of tariff would remain unchanged i.e. for 25/35 years, as the case may be.

Note: The above incentive will be applicable for the transmission project(s)/element(s) which are under implementation/yet to be bid out under TBCB/yet to be assigned to CTU (PGCIL) under compressed time schedule.

70. Thus, from the above stated fact, it can be inferred that the Policy provides for grant of incentive in the form of admissibility of the transmission charges from the date of actual COD which takes place before the SCOD. The Commission is of the view that, the above Policy needs to be read in the context of the TSA. The COD has been defined in the TSA as under:

“Commercial Operation Date” or “COD” shall mean the date as per Article 6.2; Provided that the COD shall not be a date prior to the Scheduled COD mentioned in the TSA, unless mutually agreed to by all Parties.

71. Further, the SCOD has been defined in the TSA as under:

“Scheduled COD” in relation to an Element(s) shall mean the date(s) as mentioned in Schedule 3 as against such Element(s) and in relation to the Project, shall mean the date as mentioned in Schedule 3 as against such Project, subject to the provisions of Article 4.4 of this Agreement, or such date as may be mutually agreed among the Parties.

72. Also, Article 6.1.1 of TSA states that-

“The TSP shall give the RLDC(s)/ SLDC, CTU/ STU, as the case may be, the Long Term Transmission Customers and any other agencies as required at least sixty (60) days advance written notice of the date on which it intends to connect an Element of the Project, which date shall be not earlier than its Scheduled COD or Schedule COD extended as per Article 4.4.1 of this Agreement, unless the Lead Long Term Transmission Customer otherwise agrees.”

73. Thus, it is clear that consent from all the parties, i.e., LTTCs shall be required to grant Transmission Charges in case KVTPL commissions project before original SCOD. Since, the present Petition has been filed for adoption of transmission tariff, the Commission opines that no direction is warranted at this stage. However, KVTPL is at liberty to claim the relief in this regard at appropriate point of time in accordance with law and with full justification.

74. Further, as this case has been filed under Section 63 of the EA, the Commission would like to take on record judgment dated 16 December 2011 of Hon’ble APTEL in Appeal No. 82 of 2011 providing a ruling on powers available with the Commission while dealing with tariff adoption cases under Section 63 of the EA. Relevant part of said Hon’ble APTEL Judgment is reproduced below:

“(A) The first question relates to the scope of power to be exercised and the method of procedure to be followed by the State Commission under section 63

of the Act. The powers of the State Commission are limited under Section 63 of the Act.

The State Commission while dealing with the petition under Section 63 for adoption of tariff could either reject the petition if it finds that the bidding was not as per the statutory framework or adopt the tariff if it is discovered by a transparent process conducted as per Government of India guidelines. Section 63 starts with non-obstante clause and excludes the tariff determination powers of the State Commission under Section 62 of the Act. The entire focus of the competitive bidding process under Section 63 is to discover the competitive tariff in accordance with the market conditions and to finalize the competitive bidding process in accordance Central government's guidelines, standard document of Request for Proposal and the PPA. Under Section 62 of the Act, the State Commission is required to collect various relevant data and carryout prudence check on the data furnished by the licensee/generating company for the purpose of fixing tariff. Hence determination of tariff under Section 62 is totally different from determination of tariff through competitive bidding process under Section 63. Competitive bidding process under Section 63 must be consistent with the Government of India guidelines. Any deviation from the standard Request for Proposal (RFP) and model PPA notified by the Government of India must be approved by the State Commission. This process must discover competitive tariff in accordance with market conditions from the successful bid- consistent with the guiding principles under section 61 of the Act. If the deviations are permitted by failing to safeguard the consumer interests as well as to promote competition to ensure efficiency, it will destroy the basic structure of the guidelines. In this case the above procedure had not been followed. The contention of the Noida Power that under Section 63 of the Act it can negotiate with the 3rd party with the approval of the State Commission even after the bidding process is completed is contrary to the provisions of the Act as well as the bidding guidelines. Even assuming that negotiations are permitted under competitive bidding process, the said negotiation can take place at any time only prior to Noida Power declaring the Essar Power as successful bidder by filing the petition under Section 63 of the Act for adoption of the tariff. Once the petition has been filed on the recommendation of the Evaluation Committee seeking for the adoption of tariff after it is discovered, it is not open for the Noida Power to enter into negotiation with 3rd party to reduce the tariff.

75. Thus, the Commission's power under Section 63 of the EA is limited to adopting such tariff if it is discovered through transparent process of bidding and is reflective of market conditions or reject such tariff if it is not as per statutory framework of competitive bidding guidelines.
76. The Commission also notes that clause 3.1.3 of TSA provides that KVTPL, along with other activities mentioned, has to obtain the Transmission Licence and the Order for adoption of Transmission charges from the Commission within six months from the effective date. Failing to honor any of the conditions as specified in the clause 3.1.3 of TSA within stipulated time, KVTPL shall, on a weekly basis, be liable to furnish

additional Contract Performance Guarantee to LTTCs. Further delay beyond the stipulated time may also enable the right of LTTCs to terminate the agreement. Considering the importance and criticality of the project, the Commission is adopting the Transmission Charges as discovered through TBCB process for the defined scope of work. Any reduction / exclusion of the scope of work or project cost or delay in execution; the Tariff may change accordingly subject to approval of the Commission.

77. In the light of the discussions in preceding paragraphs, it emerges that selection of the successful bidder and the levelised tariff of the Project has been carried out by the BPC through a transparent process of competitive bidding in accordance with the Guidelines issued by the MoP, GoI under Section 63 of the EA. BEC has certified that the process is in conformity with the MoP's TBCB Guidelines. BEC in its certificate dated 7 December, 2019 has certified that M/s ATL has emerged as the successful bidder after conclusion of E-RA with lowest levelised transmission charges of Rs. 2199.89 Million per annum. BEC has further certified that the levelised tariff computed on the basis of rates quoted by the successful bidder, during E-RA appears to be reasonable as compared to the levelised tariff calculated based on MERC/CERC norms. Further, as per the report of PFCCL for independent assessment of project cost and competitiveness of the Lowest Levelised Tariff discovered, it was also recommended that the tariff discovered through a competitive bidding process on E-RA appeared to be fair and reasonable.

78. Hence, following Order:

ORDER

1. **Case No. 142 of 2020 is allowed.**
2. **The Commission approves and adopts the transmission charges for the Project as per the Appendix "A" to this Order which shall remain valid throughout the period covered in the Transmission Service Agreement.**
3. **The Tariff is for defined scope of the work . If there is any reduction / exclusion of the scope of work or project cost or delay in execution; the Tariff may change accordingly subject to approval of the Commission.**
4. **The transmission charges will be shared and recovered as per the Maharashtra Electricity Regulatory Commission (Multi Year Tariff) Regulations, 2019 as amended from time to time.**
5. **Kharghar Vikhroli Transmission Private Limited shall abide the system specifications as provided and agreed in the bidding document and also incorporated in the Transmission Service Agreement. No deviation, whatsoever, causing adverse impact on the Tariff shall be permitted at any stage. Any adverse impact on Tariff shall be at the risk and cost of Kharghar Vikhroli Transmission Private Limited.**
6. **It shall be the responsibility of the Kharghar Vikhroli Transmission Private Limited to adhere to the terms and conditions of the Transmission Service**

Agreement and any other contractual agreements with Long Term Transmission Customers.

Sd/-

**(Mukesh Khullar)
Member**

Sd/-

**(I.M. Bohari)
Member**



Appendix A

Year wise Transmission Charges for Transmission System for “400 kV Vikhroli receiving station and associated incoming Transmission lines”.

Year (Term of License)	Commencement Date of Contract Year	End Date of Contract Year	Quoted Non- Escalable Transmission Charges (Rs. in Millions)	Quoted Escalable Transmission Charges (Rs. in Millions)
Year 1	(Scheduled CoD) 12 March, 2022	31 March 2022	2,017.38	0.00
Year 2	01 April 2022	31 March 2023	2,877.86	Same as above
Year 3	01 April 2023	31 March 2024	2,877.86	Same as above
Year 4	01 April 2024	31 March 2025	2,877.86	Same as above
Year 5	01 April 2025	31 March 2026	2,877.86	Same as above
Year 6	01 April 2026	31 March 2027	2,877.86	Same as above
Year 7	01 April 2027	31 March 2028	2,877.86	Same as above
Year 8	01 April 2028	31 March 2029	2,017.38	Same as above
Year 9	01 April 2029	31 March 2030	2,017.38	Same as above
Year 10	01 April 2030	31 March 2031	2,017.38	Same as above
Year 11	01 April 2031	31 March 2032	2,017.38	Same as above
Year 12	01 April 2032	31 March 2033	2,017.38	Same as above
Year 13	01 April 2033	31 March 2034	2,017.38	Same as above
Year 14	01 April 2034	31 March 2035	2,017.38	Same as above
Year 15	01 April 2035	31 March 2036	2,017.38	Same as above
Year 16	01 April 2036	31 March 2037	2,017.38	Same as above
Year 17	01 April 2037	31 March 2038	2,017.38	Same as above
Year 18	01 April 2038	31 March 2039	2,017.38	Same as above
Year 19	01 April 2039	31 March 2040	2,017.38	Same as above
Year 20	01 April 2040	31 March 2041	2,017.38	Same as above
Year 21	01 April 2041	31 March 2042	2,017.38	Same as above
Year 22	01 April 2042	31 March 2043	2,017.38	Same as above
Year 23	01 April 2043	31 March 2044	2,017.38	Same as above
Year 24	01 April 2044	31 March 2045	2,017.38	Same as above
Year 25	01 April 2045	31 March 2046	2,017.38	Same as above
Year 26	01 April 2046	31 March 2047	2,017.38	Same as above
Year 27	01 April 2047	31 March 2048	2,017.38	Same as above
Year 28	01 April 2048	31 March 2049	2,017.38	Same as above
Year 29	01 April 2049	31 March 2050	2,017.38	Same as above
Year 30	01 April 2050	31 March 2051	2,017.38	Same as above
Year 31	01 April 2051	31 March 2052	2,017.38	Same as above
Year 32	01 April 2052	31 March 2053	2,017.38	Same as above
Year 33	01 April 2053	31 March 2054	2,017.38	Same as above
Year 34	01 April 2054	31 March 2055	2,017.38	Same as above
Year 35	01 April 2055	31 March 2056	2,017.38	Same as above
Year 36	01 April 2056	35th Anniversary of the Scheduled CoD	2,017.38	Same as above