

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No.125/AT/2023

Coram:

Shri I. S. Jha, Member

Shri Arun Goyal, Member

Shri P. K. Singh, Member

Date of Order: 6th July, 2023

In the matter of

Application under Section 63 of the Electricity Act, 2003 for adoption of transmission charges with respect to the Transmission System being established by Khavda II-A Transmission Limited.

And

In the matter of

Khavda II-A Transmission Limited,
C 105, Anand Niketan,
New Delhi 110021.

.... **Petitioner**

Versus

1. Central Transmission Utility of India Limited,
Saudamini, Plot No.2, Sector-29,
Gurgaon-122 001.
2. REC Power Development and Consulting Limited,
REC Corporate Head Quarter,
D Block, Plot No. I- 4,
Sector 29 Gurugram-122 001
3. Madhya Pradesh Power Management Company Limited,
Block No. – 11, Ground Floor, Shakti Bhavan,
Vidhyut Nagar, Rampur,
Jabalpur-482 008, Madhya Pradesh
4. Chhattisgarh State Power Distribution Company Limited,
P.O. Sunder Nagar, Dangania,
Raipur- 492013, Chhattisgarh
5. Maharashtra State Electricity Distribution Company Limited,
Prakashgad, 4th Floor, Bandra (East),
Mumbai – 400051
6. Gujarat Urja Vikas Nigam Limited,

Vidhyut Bhavan, Race Course,
Vadodara – 390007

7. DNH Power Distribution Corporation Limited,
66 kV, Amlī Ind. Estate, Silvāsa – 396230
Dadar Nagar Haveli

8. Electricity Department, Government of Goa,
Vidyut Bhavan, Near Mandvi Hotel,
Panaji, Goa -403001

9. Electricity Department,
Administration of Daman and Diu,
Plot No. 35, OI DC Complex,
Near Fire Station, Daman and Diu.

....**Respondents**

Parties present:

Shri Bhavesh Kundalia, KIIATL
Shri Swapnil Verma, CTUIL
Shri Ajay Kumar, CTUIL
Shri Ranjeet Rajput, CTUIL
Ms. Kavya Bhardwaj, CTUIL
Shri Anil Kumar Yadav, RECPDCL

ORDER

The Petitioner, Khavda II-A Transmission Limited (KATL), has filed the present Petition under Section 63 of the Electricity Act, 2003 (hereinafter referred to as ‘the Act’) for the adoption of transmission charges in respect of “Transmission scheme for evacuation of 4.5 GW RE Injection at Khavda PS under Phase II-Part A” (hereinafter referred to as ‘the Transmission System’ or ‘the Project’) to be established on Build, Own, Operate and Transfer (BOOT) basis. The Petitioner has made the following prayers:

“(a) Issue the Transmission Licence to the Petitioner for establishing, operating and maintaining the Transmission System as provided for in the Transmission Service Agreement;

“(b) Allow the “Transmission scheme for evacuation of 4.5 GW RE Injection at Khavda PS under Phase II – Part A” to be part of PoC Pool as per CERC (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2020;

(c) *Condone any inadvertent errors omissions/ errors / shortcomings and permit the Petitioner to add/change/modify/alter these filings and make further submissions as may be required at a future date;*

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

2. On receipt of the present Petition, the Bid Process Coordinator (BPC), REC Power Development and Consultancy Limited (in short 'RECPDCL'), vide letter dated 9.5.2023 was directed to submit the relevant documents regarding complete process of competitive bidding. The necessary details have been filed by the BPC vide affidavit dated 2.6.2023.

Hearing dated 20.6.2023

3. During the course of the hearing on 20.6.2023, the representative of the Petitioner submitted that the Petitioner has already served the copy of the Petitions on the BPC, CTUIL and the beneficiaries and has complied with all the requirements under the Transmission Licence Regulations including publishing of notice on its website inviting suggestions/objections on its application for grant of transmission licence. However, no suggestion /objection has been received.

4. The representative of RECPDCL, Bid Process Coordinator, confirmed that the entire bid process had been conducted as per the provisions of the “Tariff based Competitive Bidding Guidelines for Transmission Service” (hereinafter referred to as ‘the Guidelines’) notified by the Ministry of Power, Government of India.

Analysis and Decision

5. We have considered the submissions of the Petitioner and BPC and perused the documents on record. Section 63 of the Act 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.”

6. Ministry of Power, Government of India has notified the “Tariff based Competitive Bidding Guidelines for Transmission Service” (hereinafter referred to as ‘the Guidelines’) under Section 63 of the Act vide Resolution No. 15/1/2017-Trans dated 10.8.2021 as amended from time to time. The salient features of the Guidelines are as under:

(a) The Guidelines are applicable for procurement of transmission services for transmission of electricity through tariff based competitive bidding for selection of Transmission Service Provider (TSP) for new transmission system on Build, Own, Operate and Transfer basis.

(b) For procurement of transmission services, required for any inter-State transmission Project, the Central Government shall notify the CTUIL or any Central Government Organization/ Central Public Sector Undertaking or its wholly owned subsidiary (Special Purpose Vehicle) to be the Bid Process Coordinator (BPC) who would be responsible for coordinating the bid process.

(c) The BPC shall prepare the bid documents in accordance with the Guidelines and obtain approval of the Appropriate Government or alternatively, the BPC can use the Standard Bid Documents notified by the Ministry of Power. Any material deviation from the Standard Bidding Documents shall be made only with the prior approval of the Appropriate Government. Intimation about initiation of the bidding process shall be sent by the BPC to the Appropriate Commission.

(d) For the procurement of transmission services under the guidelines, BPC shall adopt a single stage two envelope tender process featuring Request for Proposal (RFP). The entire bidding process shall be conducted online through electronic medium under e-reverse bidding framework.

(e) RFP notice should be published in at least two national newspapers, website of the BPC and preferably in trade magazines also, so as to accord it wide publicity. The bidding shall necessarily be by way of International Competitive Bidding (ICB). For the purpose of issue of RFP, minimum conditions to be met by the bidder shall be specified in the RFP.

(f) Standard documentation to be provided in the RFP shall include definitions of requirements including brief description of the Project, commissioning milestones to be achieved by the bidders, Qualification requirements to be met by bidders including, minimum net-worth, etc. with necessary proof of the same, as outlined in the bid documents, Specified target dates/months for commissioning and commercial operations, Standard Transmission Service Agreement (TSA), agreement(s) under Central Electricity Regulatory Commission (Sharing of Inter State Transmission Charges and Losses) Regulations as amended from time to time, period of validity of offer of bidder, TSA proposed to be entered with the SPV including amendments, bid evaluation methodology to be adopted by the BPC, specification regarding bid bond as well as the Contract Performance Guarantee to be furnished by the bidders, proposed indemnification agreement between the TSP and the Nodal Agency, liquidated damages that shall apply in event of delay in start of providing the transmission services and technical,

operational and safety criteria to be met by the bidder/TSP and requirement of obtaining transmission Licence from Appropriate Commission.

(g) The TSP on the date of acquisition of SPV from the BPC will enter into a Transmission Service Agreement with the Nodal Agency.

(h) To ensure competitiveness, the minimum number of qualified bidders shall be two. For inter-State transmission system, bids shall be opened in the office of CEA by a bid committee comprising of at least one member from CEA and one member from BPC. For inter-State transmission system, CEA shall constitute a committee for evaluation of the bids with at least one representative from CEA and not less than two representatives from the concerned Regional Power Committees and one independent member. Further, in case project is inter-regional, there shall be at least one representative from every concerned RPC. The technical bids shall be examined to ensure that the bids submitted meet minimum eligibility criteria set out in the bid documents on all technical evaluation parameters. Only the bids that meet all elements of the minimum technical criteria set out in the bid documents shall be considered for further evaluation on the transmission charges bids. The online initial price bids shall be electronically opened by the bid opening committee in presence of the bid evaluation committee. The bidder, who has quoted the lowest transmission charge as per the evaluation procedure, shall be considered for the award.

(i) BPC is required to complete e-reverse bidding after opening of the initial offer within 75 days. The procurer may give extended time-frame indicated herein based on the prevailing circumstances and such alterations shall not be construed to be deviation from these guidelines.

(j) The TSP shall make an application for grant of transmission licence to the Appropriate Commission within five (5) working days from the date of execution of share purchase agreement for acquisition of SPV.

(k) BPC shall make the final result of evaluation of all bids public. The final TSA, along with the certification by the bid evaluation committee, shall be forwarded to the Appropriate Commission, for adoption of tariff discovered from the quoted annual transmission charges during the e-reverse bidding process in terms of Section 63 of the Act.

7. Therefore, we have to examine whether a transparent process of bidding as per the Guidelines issued by the Central Government has been followed in the present case for selection of the successful bidder.

8. Central Electricity Authority, Government of India, vide Gazette Notification No. F. No. 15/3/2018-Trans-Pt (2) dated 23.9.2020 & 6.12.2021 notified REC Power Development and Consultancy Limited (RECPDCL) as Bid Process Coordinator (BPC) for the purpose of selection of bidder as Transmission Service Provider (TSP) to establish Transmission System for "Transmission scheme for evacuation of 4.5 GW RE Injection at Khavda PS under Phase II-Part A" on Build, Own Operate and Transfer (BOOT) basis through tariff based competitive bidding process.

9. Khavda II-A Transmission Limited (the Petitioner) was incorporated on 19.4.2022 under the Companies Act, 2013 as a wholly owned subsidiary of RECPDCL with the

objective to establish the Project and to act as the Transmission Service Provider after being acquired by the successful bidder. The main objectives of the Petitioner Company in its Memorandum of Association are as under:

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

10. BPC prepared the bidding document, Request of Proposal (RfP) in accordance with the Standard Bid Documents issued by the Ministry of Power, Government of India.

11. BPC started the process of selection of successful bidder with the publication of Global Invitation for Qualification for selection of developer on BOOT basis for the Project. BPC appointed a Consultant, namely, PARY & Co., Chartered Accountant in consortium with M/s Legacy Law Offices for providing consultancy service in the process of selection of the developer of the project through tariff based competitive bidding. The notice for RfP was published on 6.5.2022 in all editions of Times of India (English), Nav Bharat Times (Hindi) and Financial Times (Worldwide) with the last date of submission of response to RfP as 8.7.2022. Intimation regarding the initiation of the bid process was given to this Commission in accordance with Clause 4.2 of the Guidelines vide letter No. RECPDCL/ISTS/TBCB/2021-22/400 dated 9.5.2022.

12. The key milestones in the bidding process were as under:

S. No.	Events	Date
1	Publication of Request for Proposal	06.05.2022
2	Technical & Price Bid Submission	16.01.2023
3	Technical Bid Opening	16.01.2023
4	Initial Price Opening (IPO)	06.02.2023

5	e-Reverse Auction	07.02.2023
6	Final Bid Evaluation Committee Meeting	13.02.2023
7	Issuance of Letter of Intent (Lol)	16.02.2023
8	Signing of Agreements & Transfer of SPV	28.03.2023

13. The scope of the Project as per the Transmission Service Agreement is as under:

	Name of the Transmission Element	Scheduled COD in months from Effective Date
1.	KPS2 (GIS) – Lakadia 765 kV D/C line	24 months
2.	330 MVAR switchable line reactors at KPS2 end of KPS2 (GIS) – Lakadia 765 kV D/C line <ul style="list-style-type: none"> • 330 MVA_r, 765 kV switchable line reactor- 2 nos. • Switching equipments for 765 kV line reactor- 2 nos. 1x110 MVA_r spare bus reactor available at KPS2 (GIS) to be used as spare 	
3.	2 nos. of 765 kV line bays each at Lakadia PS & KPS2 (GIS) for Khavda PS2 (GIS) – Lakadia PS 765 kV D/c line <ul style="list-style-type: none"> • 765 kV line bays (GIS) – 2 Nos. (for KPS2 end) • 765 kV line bays (AIS) – 2 Nos. (for Lakadia end) 	

Note:

- 1) Transmission system for evacuation of 3 GW RE injection at Khavda is being taken up under Phase-I. Phase-II RE scheme for evacuation of 4.5 GW RE injection at Khavda needs to be taken up for evacuation requirement beyond 3 GW from Khavda RE park.
- 2) Implementation of all the transmission packages proposed for evacuation of 4.5 GW RE injection at Khavda RE park under Phase-II (Part A to Part D) needs to be taken up in similar timeframe.
- 3) Developer of Lakadia P.S. to provide space for 2 no. of 765 kV line bays Lakadia PS end for termination of KPS2 (GIS) – Lakadia 765 kV D/C line.

14. Responses to RfP were received from the following five bidders:

S. No.	Name of Bidders
1	Adani Transmission Limited
2	Megha Engineering & Infrastructures Limited
3	Power Grid Corporation of India
4	Tata Power Company Limited
5	Apraava Energy Private Limited (Formerly, CLP India Private Limited)
6	Sterlite Grid 12 Limited

15. For the purpose of evaluation of bids, the Bid Evaluation Committee (BEC) comprising of the following was constituted:

a)	Sh. Umesh Kumar Madan, Head, SBI Capital Markets,	Chairman
b)	Sh. N.P. Jadav, Chief Engineer (P&C) Gujarat Energy Transmission Corporation Limited (GETCO)	Member
c)	Sh. Rajan Joshi, Executive Engineer, MSETCL	Member
d)	Shri.Y. K. Swarnkar, Director, PSETD, Central Electricity Authority	Member
e)	Ms. Manjari Chaturvedi, Director, PSPA-I, Central Electricity Authority	Member
f)	Shri Daljeet Singh Khatri, Chairman, Khavda II-A Transmission Limited,	Convener

16. The responses of the five bidders were opened on 16.1.2023 in the office of CEA in presence of the representative of the bidders. Based on the recommendation of Bid Evaluation Committee (BEC), the Initial Offer of all the six bidders were opened on 6.2.2023 in the presence of Bid Evaluation Committee. In BEC meeting held on 6.2.2023, it was noted that the lowest transmission charges from the initial offer submitted by the bidders was Rs. 1324.40 million which shall be the initial price for quoting the final offer during e-reverse auction. Accordingly, the following four bidders were qualified to participate in the re-reverse auction:

S. No.	Name of the Bidders	Transmission charges from the Initial Offer (Rs. in Million)	Rank
1	Apraava Energy Private Limited (Formerly, CLP India Private Limited)	1324.40	L1
2	Adani Transmission Limited	1380.00	L2
3	Power Grid Corporation of India Limited	1388.38	L3
4	The Tata Power Company Limited	1426.00	L4

17. As per the provisions of RfP documents, BEC recommended above four qualified bidders to participate in the electronic reverse auction stage and submit their final offer.

18. E-reverse auction was carried out at MSTC portal on 7.2.2023 in the presence of members of BEC after intimating to above four bidders regarding lowest initial price offer i.e Rs. 1324.40 million. After e-reverse auction, the transmission charges for four bidders (in ascending order) emerged as under:

S. No.	Name of the Bidder	Final quoted Transmission charges (Rs. in Million)	Rank
1	M/s Adani Transmission Limited	1189.04	L1
2	M/s Apraava Energy Private Limited (Formerly known as CLP India Private Limited)	1192.03	L2
3	M/s Power Grid Corporation of India	1219.24	L3
4	M/s Tata Power Company Limited	No bid submitted during e-reverse auction	L4

19. Based on e-reverse bidding, BEC in its meeting held on 13.2.2023 recommended Adani Transmission Limited with the lowest annual transmission charges of Rs. 1189.04 million as the successful bidder.

20. Letter of Intent (LoI) was issued by BPC on 16.2.2023 to the successful bidder i.e. Adani Transmission Limited. In accordance with Clause 12.3 of the Guidelines, BPC has hosted on its website, the final result of the evaluation of the bids for selection of developer for the Project.

21. In accordance with the provisions of the bid documents and upon issuance of LoI to the successful bidder (Adani Transmission Limited) and acquisition of SPV (the Petitioner) by the successful bidder, the Petitioner has prayed for adoption of transmission charges for the Project which has been discovered through the process of competitive bidding.

22. In accordance with Clauses 2.15.2 of RfP, the selected bidder shall within 10 days of issue of Lol, accomplish the following tasks:

- a) Provide Contract Performance Guarantee in favour of the Nodal Agency;
- b) Execute the Share Purchase Agreement and the Transmission Service Agreement;
- c) Acquire, for the acquisition price, one hundred percent equity shareholdings of Khavda II-A Transmission Limited along with all its related assets and liabilities;

23. In accordance with Clause 2.15.4 of RfP, the selected bidder shall, within five (5) working days of the issue of the acquisition of the SPV by the Successful Bidder, apply to the Commission for the grant of Transmission Licence and make an application to the Commission for the adoption of transmission charges, as required under Section 63 of Act.

24. The proviso to Clause 2.15.2 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". As per the above provision, selected bidder was required to complete all the activities including acquisition of SPVs by 6.3.2023. Though Lol was issued on 24.2.2023, BPC vide its letter dated 28.3.2023, in terms of Clause 2.15.2 of RfP extended the date upto 6.4.2023 for completion of all activities by the successful bidder. The selected bidder furnished the Contract Performance Guarantee in favour of Nodal Agency (CTUIL) for an amount of Rs. 19.08 crore and has acquired hundred percent equity-holding in the applicant company on 28.3.2023 after execution of the Share Purchase Agreement. As

per clause 2.15.4 of the RfP, TSP is required to apply to the Commission for grant of transmission licence within five working days of the issuance of the acquisition of the SPV to the successful bidder. Successful bidder, namely Adani Transmission Limited, acquired the SPV on 28.3.2023. The TSP filed the Petition through e-filing for adoption of tariff on 6.4.2023.

25. The Petitioner has approached the Commission by a separate application for the grant of transmission licence. The Commission vide order dated 5.7.2023 in Petition No. 124/TL/2023 on being satisfied that the Petitioner, *prime facie*, qualifies for the grant of transmission licence as prayed for, directed publication of notices under clause (a) of sub-section (5) of Section 15 of the Act, inviting suggestions/ objections to the proposal of the Commission.

26. In accordance with the Guidelines, BEC has to certify that the tariff has been discovered through a transparent process of bidding and that the tariff discovered is in line with prevailing market prices. In the minutes of Bid Evaluation Committee meeting held on 13.2.2023, the following has been recorded:

“2. The Bid Evaluation Committee had met earlier on 6.2.2023 where the Initial Offers were opened and following was recommended:

• As per provisions of RFP document, following First four (4) bidders were qualified to participate in the electronic reverse auction stage and submit their Final Offer:

S. No.	Name of the Bidder	Transmission charges from the Initial Offer (in Rs. Million)	Rank
1	M/s Apraava Energy Private Limited (Formerly, CLP India Private Limited)	1324.40	L1
2	M/s Adani Transmission Limited	1380.00	L2
3	M/s Power Grid Corporation of India Limited	1388.38	L3
4	M/s Tata Power Company Limited	1426.00	L4

- To start the e-reverse auction on 7.2.2022 at 10 30 Hrs (IST) after intimation to all the four (4) qualified bidders regarding lowest initial price offer.

3. Pursuant to the above, BPC confirmed to BEC that all the above four (4) bidders were informed on 6.2.2023 regarding the e-reverse Auction start time and lowest initial offer.

4. The e-Reverse Auction started on 7.2.2022 at 10 30 Hrs (IST) on MSTC portal. After 43 rounds of bidding, following Transmission Charges quoted by each bidder, emerged:

S. No.	Name of the Bidder	Transmission Charges from the Initial Offer (in Rs. Million)	Transmission Charges from the Final Offer (in Rs. Million)	Rank
1	M/s Adani Transmission Limited	1380.00	1189.04	L1
2	M/s Apraava Energy Private Limited (Formerly, CLP India Private Limited)	1324.40	1192.03	L2
3	M/s Power Grid Corporation of India Limited	1388.38	1219.24	L3
4	M/s Tata Power Company Limited	1426.00	No bid received in electronic reverse auction	L4

The system generated bid history of e-reverse auction is enclosed at Annex-1.

5. As per above table, M/s Adani Transmission Limited emerged as the successful Bidder after the conclusion of electronic reverse auction with the lowest annual Transmission Charges of Rs. 1189.04 Million which is also the Final Offer.

6. BPC, in their evaluation report (Annex- 2) has confirmed the following:

a. Lowest annual transmission charges of Rs. 1189.04 Million discovered through electronic reverse auction is less than the estimated annual transmission charges of Rs. 2226.88 Million which is computed based on the estimated cost as communicated by cost committee and as per prevailing CERC norms.

b. As per provisions of RFP Document, successful bidder i.e., M/s Adani Transmission Limited has submitted original hard copies of Annexure-3 and Annexure-14 and the same are found to be in order.

c. 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.

7. After detailed discussions on the evaluation report prepared by BPC (Annex-2), the Bid Evaluation Committee decided the following:

(a) M/s Adani Transmission Limited with the lowest annual transmission charges of Rs. 1189.04 Million, is the successful Bidder after the conclusion of the electronic reverse Auction.

(b) The transmission charges discovered after electronic reverse auction is lower than the transmission charges estimated by BPC (para 6(a) and is acceptable.

8. In view of para 7 above, BPC recommended to issue the Letter of Intent (LOI) to M/s Adani Transmission Limited.

9. This certificate by BEC to be forwarded to CERC for adoption of tariff in terms of Section 63 of the Electricity Act, 2003 is attached at Annex-3.”

27. Bid Evaluation Committee, vide its certificate dated 13.2.2023, has certified as under:

“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. M/s Adani Transmission Limited, with lowest annual transmission charges of Rs. 1189.04 Million, emerged as the successful Bidder after the conclusion of electronic reserve Auction

c. Thus, transmission charges of Rs. 1189.04 Million discovered after electronic reverse auction is acceptable.”

28. In the light of the discussions in preceding paragraphs, it emerges that selection of the successful bidder and the discovery of the annual transmission charges 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 Ministry of Power, Government of India under Section 63 of the Act. BEC has certified that the process is in conformity with the Ministry of Power Guidelines. BEC in its certificate dated 13.2.2023 has certified that Adani Transmission Limited has emerged as the successful bidder after conclusion of e-reverse auction with lowest annual transmission charges of Rs. 1189.04 million. BEC has further certified that the transmission charges computed on the basis of rates quoted by the successful bidder, during electronic reverse auction, is lower than the transmission charges calculated based on CERC norms. Based on the certification of

the BEC, we approve and adopt the single annual transmission charges of Rs. 1189.04 million subject to grant of transmission licence to the Petitioner. The transmission charges shall remain valid throughout the period covered in the TSA.

29. The sharing of the transmission charges by the designated ISTS customers (DICs) shall be governed by the provisions of the Central Electricity Regulatory Commission (Sharing of inter- State Transmission Charges and Losses) Regulations, 2020 as amended from time to time.

30. Let an extract copy of this order be sent to the Nodal Agency, CTUIL.

31. The Petition No. 125/AT/2023 is disposed of in terms of the above.

Sd/-
(P.K. Singh)
Member

Sd/-
(Arun Goyal)
Member

Sd/-
(I.S. Jha)
Member