

Petition No. 1 / 2023

Subject: In the matter of petition filed under Section 63 of the Electricity Act, 2003 for Adoption of Transmission Charges with respect to the Transmission System to be constructed / implemented by M. P. Power Transmission Package-I Limited.

Objection: A letter dated May 20, 2023 of Mr Anil Kumar was received in the Office of the Commission by e-mail, which broadly stated as follows:

- i. *We are opposing the petition as the tendering process followed is flawed and the contract has been deliberately awarded at higher price to Megha Engineering and infrastructures Ltd (“Megha”). The difference is to the tune of Rs 4.493 crore per year for 35 years, which is a significant amount of Rs 157.255 crore. There is no justification to award the project at higher rates. No negotiation was carried out with Megha to match the price. There was no justification in the annulment of 1st tender after the issuance of Lol and signing of SPA with the L1 bidder i.e. Adani Transmission Ltd. The entire burden of this high tariff will ultimately be recovered from end-consumer in the form of higher tariff. Therefore, the petition filed by the petitioner is being challenged.*
- ii. *While the process for signing of Transmission Service Agreement was underway, suddenly RECTPCL issued a letter dated October 22, 2021 informing that “The bidding process for the subject project for the subject project is hereby annulled and shall be reinitiated. For further updates keep visiting our website”. It did not specify any reason for the annulment.*
- iii. *Subsequently, RECTPCL re-issued the RFP with the same scope of work. The bidders participated in the e-RA. Megha emerged as the L1 bidder at Rs 147.469 crore, which was higher than the Rs 142.976 crore market price determined e-RA process in the annulled tender. Without any negotiation to match the price, REC handed over project SPVMP Power Transmission Power Package-I Ltd” to Megha on January 21, 2023.*
- iv. *It is therefore prayed that the petition be disallowed in the present form as the same would cost Rs 157 crore more to the electricity consumers of the state.*

2. Response of the Petitioner and the Respondents on the aforesaid objection is as under:

A. **Petitioner’s response:** The petitioner filed Affidavit dated 07/06/2023 broadly submitting as under:

- i. *The application filed by the applicant society is liable to be dismissed at first instant because any individual or organization cannot become a party without having a locus standi to the matter as per law. It is a settled law that any party who has no right has no locus in the matter to file application or intervene. The rule of locus standi is that judicial redress is available only to a person who has suffered a legal injury by reason of violation of his legal right or legally protected interest by the impugned action of the State or a public authority or any other person or who is likely to suffer a legal injury by reason of threatened violation of his legal right or legally protected interest by any such action. The basis of entitlement to judicial redress is personal injury to property, body, mind or reputation arising from violation, actual or threatened, of the legal right or legally protected interest of the person seeking such redress.*

- ii. *That the objections filed by the society are baseless misconceived and not tenable and need to be dismissed because the applicant by his own admission at Para 10 has stated that the lowest IPO was Rs. 172. 783 Cr as quoted by PGCIL (A Public Sector Enterprise of GoI) and that MEIL emerged as a Selected Bidder at Rs. 147.469 Cr after out bidding others through e-reverse auction by a margin of around Rs. 25.315 Cr. which translates to Rs. 855.39 Cr. over a period of 35 Years. This clearly demonstrates that there was intense competition during the e-RA process and MEIL emerged as the Successful Bidder after e-RA.*
- iii. *It is also kindly submitted that the e-bidding methodology prescribed under RFP for selection of L1 bidder offers an equal and contemporaneous opportunity to all the qualified bidders and that it is the voluntary business decision of other bidders to choose to exit or continue with the e-bidding after each round of bidding.*
- iv. *The Society at Para 10 of its application states that RECPTCL re-issued the RFP with the same scope of work. This is a false and misleading statement. It is submitted that the Society has arrived at completely erroneous conclusion without having basic knowledge & understanding about BOOT and BOOM Project. It is kindly submitted that the earlier annulled bid was on a two stage Build Own Operate and Maintain (BOOM) basis whereas the current RFP is for a single stage Build Own Operate & Transfer Project (BOOT). It is submitted that in a BOOM project the constructed Asset is owned and maintained for perpetuity by the BOOM developer, whereas in this BOOT project the developer is required to construct the Asset and operate it for a period of 35 years and transfer the Asset subsequently to the nominated agency as decided by GoMP. It is kindly submitted that BOOM & BOOT projects cannot be compared because of reasons explained above. Hence, on this account only the application filed by the Society needs to be dismissed.*
- v. *The present application filed by the society is empathically denied for being devoid of merit. The applicant is trying to mislead this Ld. Commission by wrong and unsubstantiated allegation. It is respectfully submitted that the Respondents had already filed their reply along with supporting documents to demonstrate that bidding process was conducted in accordance with the guidelines issued by the Central Government and the bidding process was conducted in a fair and transparent manner. That the contents of preliminary objections may kindly be treated as part and parcel of the present para under reply to avoid repetition.*
- vi. *This Hon'ble Commission may kindly be pleased to dismiss the present application of the objector with exemplary cost.*

B. **Respondent No. 1 (MPPMCL)** submitted letter No. 484 dated 07/06/2023 on Affidavit supporting reply filed by MPPTCL vide its letter No. 1481 dated 02/06/2023 and further submitted that the objector has made bald averments without any substantiation. If the same are considered against the parties hereto, it shall cause grave prejudice and hardship at all levels touching the timely upcoming of the necessary project. Hence, submitted that same may be deprecated in the larger interest.

- C. **Respondent No. 2 (MPPTCL)** submitted letter No. 1481 dated 02/06/2023 on Affidavit. It broadly submitted as under:
- i. *The issues raised by intervener in respect of petition no. 1/2023 is inappropriate and doesn't hold any legal ground.*
 - ii. *The lowest IPO was submitted by M/s PGCIL at Rs.172.783 Crore per year. All the bidders have participated in the e-RA and M/s Megha Engineering and Infrastructure Ltd. (MEIL) has emerged as the LI bidder with quoted tariff of Rs. 147.469 Crore per year.*
 - iii. *It is to submit that, the entire bidding process including 1st Tendering and Re-Tendering for Package-I works was carried out through transparent TBCB bidding process in line with MoP guidelines.*
 - iv. *The Bid Evaluation Committee has evaluated the tariff quoted by the bidders in respect of Package-I and based on the evaluation report submitted by the Bid Evaluation Committee, the GoMP vide letter dated 14.09.2021, directed the Bid Process Coordinator (M/s RECPDCL) to initiate re-tendering process with same scope of work covered under Package-I. Accordingly, M/s RECPDCL has issued the RFP with the same scope of work in line with the revised guideline issued by MoP, Gol vide notification dated 10.08.2021.*
 - v. *Since, GoMP vide letter dated 14.09.2021, directed for re-tendering for transmission works under Package-I, no LOI was issued to M/s Adani Transmission Ltd. (LI bidder) and accordingly SPA was not executed. therefore, the dates mentioned in Objector's letter dated 20.05.2023 do not pertain to **Package - I** and the statement of the Objector is incorrect. However, as approved by GoMP, the LOI for **Package - II** was issued to M/s Adani Transmission Ltd. on 13.09.2021 and the SPA was signed on 01.11.2021.*
 - vi. *It is also to submit that, the first tendering process for PKG-1 was governed as per the TBCB guidelines dated 13.04.2006 wherein provision is that the selected Transmission Service Provider (TSP) shall have to establish the transmission system on Built, Own, Operate and Maintain (BOOM) basis.*
Whereas, the re-tendering with the same scope of works under Package-I was governed as per the revised guidelines issued by MoP, Gol dated 10.08.2021 wherein provision is that the Transmission Service Provider (TSP) shall have to establish the transmission system on Build, Own Operate and Transfer (BOOT) basis.
 - vii. *M/s Adani Transmission Ltd. who emerged as the LI bidder after e-RA in the 1st tendering process had the equal opportunity to bid with other bidders, however during the Re-Tendering process, M/s Adani Transmission Ltd stopped the bidding at the annual tariff of Rs. 1482.11 Million per year. Consequently, M/s Megha Engineering & Infrastructure Ltd. emerged as LI bidder quoting the annual tariff of Rs. 1474.69 Million.*
 - viii. *The issues raised by intervener / objector regarding award of the project to Ms MEIL at higher tariff and annulment of 1st tender after issuance of LOI and SPA to M/s Adani Transmission Ltd. is not appropriate, as after e-RA for Package-I on 11.03.2021, on recommendation of Bid Evaluation Committee the GoMP has directed the Bid Process Coordinator to initiate the re-tendering process for Package-I works and therefore neither LOI has been issued to nor SPA has been executed.*
 - ix. *In view of the detailed submissions, it is evident that the entire TBCB bidding process is completely transparent and governed as per the procedure of revised TBCB guidelines issued by MoP, Gol, dated 10.08.2021, the objection may kindly be quashed.*

D. **Respondent No. 3** (RECPDCL) filed letter No. 527 dated 06/06/2023 on Affidavit regarding procedures followed in this case with detailed timelines and also procedures followed in previous bidding. It stated that Empowered Committee & GoMP took decisions based on facts & circumstances of the matter. The Guidelines have been followed and so the objection may be dismissed. It broadly submitted as under:

- i. *The averment made in the objector's letter is vehemently denied in toto as false and factually incorrect. In response, it is submitted that RECPDCL has carried out the bidding process as per the provisions of the RFP prepared in accordance with the SBD duly approved by Government of Madhya Pradesh. Further as already highlighted in the Brief Facts as above, each time based on the recommendation of the BEC, RECPDCL as BPC has referred the matter and sought approval from Government of Madhya Pradesh and carried out the bidding process in line with the directions as received from Government of Madhya Pradesh from time to time.*
- ii. *The averments made in the Letter is vehemently denied as factually incorrect and baseless and may be put to strict proof of the same. In response, it is submitted that after conclusion of the bidding process as well as the e-reverse auction under the original RFP dated 02.11.2020, the bidding process was annulled basis the directions of Government of Madhya Pradesh and recommendation of the BEC and therefore the question of issuance of letter of intent for the project does not arise. In this regard, the contents of the Brief Facts are reiterated herein and the same way be taken as part of accompanying. Paragraph and is not repeated for the sake of brevity and to avoid prolixity.*
- iii. *It is submitted that issuance of letter of intent and transfer of SPV to Megha Engineering and infrastructure Limited was done pursuant the approval of Government of Madhya followed by recommendation of BEC in accordance with the provisions of REP. it is pertinent to mention that the rates on which award was made was finalized upon conducting of the e-reverse auction in terms of the RFP.*
- iv. *In light of the Brief Facts and the Parawise reply submitted by Respondent No 3, it is humbly submitted that there is no merit in the letter of the objector; accordingly, the objector's letter may be dismissed.*

E. **Respondent No. 4** (Government of Madhya Pradesh via Energy Department) filed letter No. 1658 dated 12/06/2023 with Affidavit in which it broadly submitted as under:

- i. *The issues raised by intervener are inappropriate and doesn't hold any legal ground.*
- ii. *The intra-state transmission works covered under Package-I and Package-II are to be built in the jurisdiction area of Discoms viz. MPPoKVVCL / MPMKVVCL / MPPaKVVCL. The procedure for tariff based competitive bidding for selection of TSP was followed as per the guidelines issued by MoP, GoI vide notification dated 13.04.2006 and its subsequent amendments. The Energy Department, GoMP vide notification dated 08.05.2020 appointed M/s RECTPCL as Bid Process Coordinator (BPC) for implementation of intra-state transmission work through TBCB bidding process.*

