

**MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION, BHOPAL
PETITION NO. 32/2013**

Sub:- In the matter of application filed by M/s Kalpataru Satpura Transco Private Limited (KSTPL), under section 14 of the Electricity Act, 2003 for grant of Transmission Licence.

ORDER

(Date of hearing – 22/10/2013)

(Date of Order – 31/10/2013)

Shri Kausik Chowdhuri, AVP KSTPL, Shri Vikram Mehta AVP KSTPL, Shri Chandresh Bhandari, DGM KPTL, Shri Hemant Sahai, Advocate and Shri S. Venkatesh, Advocate appeared on behalf of the petitioner.

Shri D. P. Badkur, SE, Shri V. D'souza, EE and Shri D.K. Gupta, EE appeared on behalf of the MPPTCL.

2. The petition is in the matter of application filed by Kalpataru Satpura Transco Private Limited (KSTPL), under section 14 of the Electricity Act, 2003 for grant of Transmission Licence.

3. **Facts of the case :**

3.1 KSTPL filed the subject application for grant of licence under section 14 of the Electricity Act, 2003 on 17/06/2013. A copy each of the application was forwarded to STU of MP i.e M. P. Power Transmission Company Ltd. and the CTU i.e. Power Grid Corporation of India Ltd.

3.2 By its letter dated 27.06.2013 KSTPL submitted that “no part of the transmission system including the long route alignment thereof passes through or includes the whole or any part of any cantonment, aerodrome, fortress, arsenal, dockyard or camp or of any building or place in occupation of the Government for defence purposes. Accordingly, the provisions of section 15(2)(ii) of the Act and paragraph 1.19 of the MPERC (Procedure of application for licence) Regulations, 2004 are not attracted for the purpose of the transmission system”.

3.3 By letter no. 1957 dated 15.07.2013 the Commission asked MPPTCL (STU) and PGCIL (CTU) to submit their comments, if any, within the stipulated time as required u/s 15 (4) of the Electricity Act, 2003.

3.4 By its letter No. 04-02/B-2565/P&D-TLD/2050 dated 16.07.2013 MPPTCL submitted that KSTPL Gandhinagar had submitted the subject application for procuring transmission licence as per provisions made in clause 4.13 of the transmission agreement. MPPTCL further submitted that “Since the concessionaire has been selected through a transparent and open competitive bidding process, as such

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State Transmission Utility (STU) has no objection for grant of Transmission Licence u/s 14 of Electricity Act, 2003 to M/s. Kalpataru Satpura Transco Pvt. Ltd., Gandhinagar in accordance with the MPERC Regulations and agreement dated 06.06.2013 executed between M/s KSTPL & MPPTCL”.

3.5 By its letter no. C/CTU/W/MERC dated 26/08/2013 PGCIL submitted that “*since Satpura – Ashta 400 kV D/c line is an intra state line and the project is being awarded by MPPTCL (STU), CTU has no objection to grant of licence to M/s KSTPL for the line*”.

3.6 By its letter dated 26/07/2013, KSTPL submitted the following additional information with respect to the subject application:

- a. *“Copy of the Transmission Agreement with MPPTCL.*
- b. *Copy of Licence received from Haryana Electricity Regulatory Commission by a sister company JKTTL on a PPP project under the same Model Transmission Agreement of the Planning Commission, Government of India.*
- c. *Copy of a screen from website of Ministry of Corporate Affairs, Government of India, indicating Corporate Identity Number as an approved and duly incorporated”.*

KSTPL has also clarified the following points :

- d. *“Forest Clearance – As per provisions of Clause 4.1.2(c) of the Transmission Agreement, procurement of all Applicable Permits relating to environmental protection, conservation of the site and Forest Clearance is a Condition Precedent to be fulfilled by the Authority (MPPTCL). Stage 1 Forest clearance has been obtained, and further process is being followed up by MPPTCL.*
- e. *Responsibility for obtaining required Right of way (ROW) - Obtaining required ROW is within the scope of the Concessionaire and it is proposed to be achieved by following due processes. In this regard, we would also like submit that as per Clause 4.1.2 (d) and (e) of the Transmission Agreement, the procurement of necessary approvals from GoMP under sections 164 and 68 is also a condition precedent to be fulfilled by the Authority on application by the Concessionaire. The Concessionaire has already submitted the application requesting approval under section 68 and the application is being processed.*

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f. *Financial Capability of the promoters – it is confirmed that the promoter of the Concessionaire, Kalpataru Power Transmission Limited, has adequate financial strength to obtain financial closure and arrange adequate equity and debt financing to complete the project. The detailed financial statements have been enclosed as part of the application and corroborate this”.*

3.7 By letter No. 2151 dated 07.08.2013 the Commission directed the petitioner to ensure fulfilment of the conditions mentioned in the Electricity Act, 2003 and the subject regulations and to file its response on the following issues :

- (i) *Regulation 1.14 of the MPERC (Procedure for application of Licence) Regulations, 2004 provides that it has to be certified that the application is ready for being considered for grant of Licence in accordance with the procedure provided in the Electricity Act, 2003 and in these Regulations.*
- (ii) *Regulation 1.16 of the said Regulations specifies certain guidelines with regard to the public notice, which may be incorporated in the draft.*
- (iii) *Regulation 1.19 specifies conditions to be fulfilled before the application is placed for hearing.*
- (iv) *Article 4, 5 & 6 of the Transmission Agreement mentions various conditions & obligations to be fulfilled by the petitioner and various other conditions & obligations to be fulfilled by MPPTCL.*
- (v) *The Stage - I Forest clearance dated 24/01/2012 mentions certain conditions to be fulfilled before final clearance can be issued.*
- (vi) *The project is regarding 400 KV DCDS overhead transmission line from Sarni to Ashta on DBFOT basis. The transmission line route includes forest of 22.879 Kms. It crosses railway line at 3 points, national and state highway at 5 points and EHV lines at 26 points. Since the total length is approximately 240 Kms, land, whether government or private, along the alignment of the line may be affected. However in Annexure - 4 of the petition it is stated that “there is no land or any other asset which the applicant i.e. KSTPL will acquire for the purpose of licence and for the above mentioned project”. A copy of any approval / NOC / consent received from the State Government or the Central Government or any other authority / person for construction of a transmission line over the area has not been submitted. A clear plan regarding handling of the “Right of way” issues is required.*

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3.8 By its letter dated 08/08/2013 KSTPL submitted as under:

- (i) *“The Licence application filed by us is in accordance with all applicable laws and the application is ready and complete for the next stage of the proceedings as per the Act and the Regulations of this Hon'ble Commission framed there under.*
- (ii) *Draft notice has been redrafted to further clarify and comply with these regulations.*
- (iii) *The condition to obtain the Approval by Central Government under the said Regulation does not apply to the Applicant's case. Section 15 (2) (iii) of the Act clearly states that the Central Government Approval would be required if the licensee is applying in the area including the whole or any part of any cantonment, aerodrome, fortress, arsenal, dockyard or camp or of any building or place in the occupation of the Government for defense purpose. It is submitted that no portion of the proposed transmission line is affected by this provision and accordingly, the applicant is ready to commence work on the project as soon as the licence is issued by this Hon'ble Commission.*
- (iv) *Some of the obligations have already been met by the applicant and some of these obligations would trigger only once the applicant starts constructing the project. Some of the obligations are continuing obligations and trigger after the applicant commences work on the project, which in any case can happen after the grant of licence. The applicant is committed on meeting all its contractual obligations as and when they arise.*
- (v) *The said condition is not a condition precedent for grant of transmission Licence. In any event, the said approval is required to be obtained by the authority i.e. MPPTCL as per the terms of the Transmission Agreement.*
- (vi) *It is submitted that the project does not require any acquisition of land as no sub stations are involved. As regards the RoW, it is submitted that these NOCs, approvals and consents will be obtained by the Licensee as part of the development and construction process. There is no occasion for an applicant for licence to approach any of these authorities at this stage as these authorities will not entertain any request from any person other than a licensee.*

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It is submitted that these NOCs, approvals and consents form part of the development and construction risks that the applicant had taken into consideration while submitting its bid. The applicant has considerable experience in EPC projects for transmission lines and has the requisite bandwidth and strength to be able to deal with these issues. It is respectfully submitted that the applicant is aware of the detailed approvals and consents that will be required for the project and will approach the relevant authorities at the appropriate stage once the licence is granted.

The broad plan for the execution of the project is as follows:

Financial closure - The applicant is in the process of achieving financial closure. However, the same can only be finally achieved if the Transmission Licence is granted by the Hon'ble Commission.

Implementation - The applicant has team of engineers who are well versed with the region through which the Transmission Line is proposed to be built. Once the applicant is granted the Transmission Licence the applicant undertakes that it will expedite the construction of the line as early as possible.

The applicant has adequate experience and capabilities in constructing transmission lines and highlighted below are some specific and relevant points.

- a. *Experience of constructing over 15,700km of line, including more than 10,000 km at 400 kv and above level. The applicant has dedicated construction team, well versed with the process of obtaining requisite clearances and permits and our construction experience all over India, in more than 25 countries. The applicant also has constructed several lines in MP for MPPTCL and PGCIL and is conversant with state specific issues.*
- b. *Applicant's subsidiary JMC projects limited is a large EPC company in the areas of roads and highways and have extensive experience in construction for NHAI and state road corporations. Applicant is well conversant with the procedures involved in obtaining clearances and permits as may be required.*
- c. *GoMP has already accorded approval u/s 68 of the Electricity Act, 2003 enabling the applicant to lay the required overhead lines.*
- d. *The survey has been completed and the applicant has established required construction team with adequately experienced personnel.*

With the experience the applicant has, it is confident of obtaining required ROW during construction”.

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- 3.9 By letter No. 2153 dated 07.08.2013 the Commission directed MPPTCL to file its response on the following issues :
- a. Details of progress on the fulfilment of conditions and obligations by MPPTCL & KSTPL.
 - b. Readiness and completeness of KSTPL's application as per the provisions of the Electricity Act, 2003 and the Regulations 1.14 & 1.19 of the (Procedure for application of Licence) Regulations, 2004.
 - c. Detailed report on the progress on fulfilment of conditions before final clearance of Stage - I Forest clearance.
- 3.10 In response, by its letter no. 04-01/PPP/6137 dated 24.08.2013 MPPTCL submitted that MPPTCL and KSTPL will comply in due course of time with the provisions made in Article 4, 5 & 6 of the transmission agreement. MPPTCL confirmed that KSTPL's application is in accordance with all applicable laws and the procedure laid down for application of licence by the Commission in its Regulations. MPPTCL also informed that GoMP vide letter dated 14.08.2013 had submitted a compliance report along with request for issue of final forest clearance to the Govt. of India. MPPTCL requested the Commission to consider the application filed by KSTPL for grant of transmission licence.
- 3.11 By its letter dated 08.08.2013 KSTPL submitted its response on the issues raised by the Commission vide letter no. 2152 dated 07.08.2013 in which it requested the Commission that its application complied with the regulations and keeping in mind the criticality of the project and the need to adhere to required time lines, it requested that its application be considered favourably and urged the Commission to direct issue of the public notice as mandated in the Regulations.
- 3.12 By letter no. 2212 dated 16/08/2013 the Commission directed the petitioner to publish the approved public notice for inviting comments / suggestions /objections till 30th September 2013 in widely circulated newspapers (at MP and at National level) in Hindi & English version within 7 days from receipt of this letter. The approved public notice along with complete application shall also be uploaded on its website. The comments / suggestions of the stakeholders so received be submitted to the Commission along with para-wise response within 7 days from the last date of receipt of comments/suggestions.

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A copy of the published public notice is required to be served on the Central Government (Ministry of Power), CEA, PGCIL, the State Government (Energy Department), MPPMCL, MPPTCL, MPPGCL, MPMKVVCL, MP Poorv KVVCL, MP Paschim KVVCL and the local authority in accordance with Regulation 1.17 of the said Regulations”.

3.13 By its letter dated 27.08.2013 KSTPL informed that the approved public notice had been published in English and Hindi versions in Hindustan Times and Dainik Bhaskar newspapers respectively on 24.08.2013. By its letter dated 27/8/2012 KSTPL served the copies of published public notice to the Central Government, the State Government & others.

3.14 By its letter dated 01/10/2013 KSTPL confirmed that it had not received any comment / suggestion / objection from the public or any of the Authorities till 30/09/2013 and requested the Commission to proceed with grant of licence. The Commission’s Office had also not received any comment / suggestion / objection in the matter till 30/09/2013.

3.15 In accordance with section 15 (5) (a) of the Electricity Act, 2003 and Regulation 1.23 & 1.25 of the MPERC (Procedure of Application for Licence) Regulations, 2004 the Commission issued a public notice for public hearing in the matter to be held on 22nd October, 2013 at 11.00 AM at the Commission’s Office at Bhopal.

4. **Public Hearing:**

4.1 During the public hearing the petitioner’s representatives reiterated the contents of the petition in brief. MPPTCL’s representatives submitted that MPPTCL has no objection in the matter and requested the Commission to issue the licence to KSTPL so that the project can proceed further.

4.2 However a representation dated 14/10/2013 was received in the office of the Commission on 17/10/2013 in which although there was no objection to the issue of licence to KSTPL there was objection to the location of the land for construction of tower and poles for 400 KV Transmission line for Satpura Thermal Power station at Sarni to 400/220 KV sub station Ashta. The objector requested reconsideration on erection of towers and poles so that his land may be excluded from the said project.

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The same objector also submitted a letter dated 22/10/2013 at the Commission's office on 22/10/2013 after the public hearing in the matter had concluded. In this letter the objector requested that KSTPL be directed to shift tower no. 307 & 308 on the map. A copy of the representation had been sent to KSTPL & MPPTCL also and the letter marked to KSTPL by the objector.

- 4.3 The Commission in its letter dated 26/07/2013 observed that KSTPL has already submitted that *"as per Clause 4.1.2 (d) and (e) of the Transmission Agreement, the procurement of necessary approvals from GoMP under sections 164 and 68 is also a Condition Precedent to be fulfilled by the Authority (MPPTCL) on application by the Concessionaire. The Concessionaire has already submitted the application requesting approval under section 68 and the application is being processed"*.
- 4.4 By letter No. 2151 dated 07.08.2013 the Commission had directed the petitioner to ensure fulfilment of the conditions mentioned in the Electricity Act, 2003 and the subject regulations and to file a clear plan regarding handling of the "Right of way".
- 4.5 In response, by its letter dated 08/08/2013 KSTPL submitted that *"the project does not require any acquisition of land as no sub stations are involved. As regards the RoW, it is submitted that these NOCs, approvals and consents will be obtained by the Licensee as part of the development and construction process."*
5. In view of the above mentioned submissions, the Commission directs them to deal with the issues raised by the objector as per provisions of the applicable laws. Since there is no objection from the CTU, STU & the public to the grant of the transmission licence to KSTPL in this petition, the Commission has decided to proceed further in the matter.
6. By its letter no. 04-01/PPP/7911 dated 25/10/2013 MPPTCL has submitted a copy of letter no. F. No. 8-55/2011-FC dated 21st October 2013 of the Ministry of Environment and Forests New Delhi regarding final forest clearance for Satpura Ashta 400 KV DCDS Transmission line. It states that "approval of the Central Government is hereby granted under section - 2 of the forest (Conservation) Act 1980 for diversion of 106.150 hectares of forest land for Satpura TPH Ashta 400 KV DCDS Tansmission line in favour of MPPTCL in Hoshangabad, Betul, Sehore and Dewas districts of MP" subject to the conditions stipulated in the letter.

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7. In view of the above, the Commission hereby grants Transmission Licence to the petitioner M/s KSTPL in accordance with the provisions of section 14 of the Electricity Act, 2003 on the terms and conditions specified therein. The Commission also directs that a copy of the draft Transmission Licence be sent to the petitioner for its willingness in terms of provisions of Regulation 1.29 of MPERC (Procedure of Application for Licence) Regulations, 2004.

Ordered accordingly,

Sd/-

**(Alok Gupta)
Member**

Sd/-

**(A. B. Bajpai)
Member**

Sd/-

**(Rakesh Sahni)
Chairman**