

**Sub: In the matter of MPPTCL's application for adoption of tariff under section 63 of Electricity Act, 2003 and payment of Unitary Charges in respect of 400 KV Satpura-Ashta Transmission Line Project through Public Private Partnership (PPP).**

**ORDER**

(Date of Hearing: 1<sup>st</sup> October, 2013)

(Date of Order : 8<sup>th</sup> October, 2013)

**M.P. Power Transmission Co. Ltd., Jabalpur - Petitioner**

V/s

- |  |   |                    |
|--|---|--------------------|
| <ol style="list-style-type: none"><li>1. M.P. Poorv Kshetra Vidyut Vitaran Company Ltd, Jabalpur</li><li>2. M.P. Madhya Kshetra Vidyut Vitaran Company Ltd, Bhopal</li><li>3. M.P. Paschim Kshetra Vidyut Vitaran Company Ltd, Indore</li><li>4. M.P. Power Management Company Ltd., Jabalpur</li><li>5. M.P. Power Generating Co. Ltd., Jabalpur</li><li>6. M.P. Audyogik Kendra Vikas Nigam, Indore (SEZ Indore)</li></ol> | } | <b>Respondents</b> |
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Shri D.P. Badkul SE, Shri V. D'souza, EE (CRA) , Shri R.K. Mishra, EE (PPP) and Shri D.K.Gupta, EE appeared on behalf of the petitioner.

MP Power Transmission Co. Ltd., Jabalpur filed the subject petition for adoption of Base Unitary Charges in respect of 400 KV Satpura-Ashta Transmission Line Project for evacuation of power from 2x250 MW extension Units at STPS, Sarni in Madhya Pradesh through Public Private Partnership (PPP) on Design, Build, Finance, Operate and Transfer ("DBFOT") basis.

2. The petition has been filed in accordance with the "Guidelines for Encouraging Competition in the Development of Transmission Projects" issued by the Ministry of Power (hereinafter referred to the "Guidelines") under section 63 of the Electricity Act'2003.

3. The petitioner broadly submitted the following:

*"(i) MPPTCL is desirous of developing a State Transmission Grid, with the objective of evacuation of power from the 2 x 250 MW Generating units being commissioned at Satpura Thermal Power Station at Sarni (District Betul).*

*MPPTCL initiated the process of development of transmission system by construction of 400 KV DCDS Transmission Line between Satpura and Ashta (Dist. Sehore) for evacuation of power from 2 x 250 MW extension units at Satpura in the State of Madhya Pradesh through Public Private Partnership ("PPP") on Design, Build, Finance, Operate and Transfer ("DBFOT") basis.*

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(ii) *The Ministry of Power issued "Guidelines for encouraging competition in development of Transmission Projects and Competitive-bidding for Transmission Service. The said Guidelines were amended by the Ministry of Power on 02.05.2012, thereby giving the option to the States to use the Viability Gap Funding (VGF) Model Transmission Agreement (MTA) document of Planning Commission for development of Transmission System in their States under Public Private Partnership (PPP) mode.*

(iii) *The Applicant had earlier approached this Commission vide petition No.44/2012 for seeking approval of the MPERC in respect of Unitary Charge of ₹ 3.15 Cr. for facilitating the determination of Tariff by following transparent process of Bidding on the basis of Viability Gap Funding based Bidding Documents of Planning Commission for development of Transmission System by construction of 400 KV DCDS Transmission Line between Satpura and Ashta for evacuation of power from 2x250 MW extension units at Satpura in the State of M.P. through Public Private Partnership (PPP) mode on Design, Build, Finance, Operate and Transfer (DBFOT) model.*

*Hon'ble MPERC disposed of the said Petition vide its Order dated 08.08.2012 reproduced hereunder:*

***"In view of the submissions/clarifications filed by the petitioner and the amendment to Para-24 of the "Guidelines for Encouraging Competition in the Development of Transmission Projects" issued by the Ministry of Power on 2<sup>nd</sup> May 2012, the Commission hereby accords approval to the notional unitary charges of ₹3.15 Crore as filed by the petitioner for initiating the tariff based bidding process in the subject matter."***

(iv) *Govt. of Madhya Pradesh has also accorded approval for implementation of the captioned Project through Public Private Partnership mode with Viability Gap Funding (VGF) upto 35% of the total Project Cost (20% from GoI and 15% from GoMP) in accordance with the recommendations made by State Level Empowered Committee. Further, GoMP has also approved the notional Unitary Charge of ₹ 3.15 Cr. per month for the captioned Project.*

(v) *As per the model bid documents of the Planning Commission, the Applicant had adopted a two stage process for selection of bidder for award of the Project. The first stage (the "Qualification Stage") of the process involved "Pre-qualification" of the interested parties / consortia in accordance with the provisions of Request for Qualification (RFQ). At the end of "Qualification Stage", the Bidders were "Prequalified & Shortlisted" for*

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*participation in the second stage of Bidding Process (the "Bid Stage") or Request for Proposal (RFP) stage.*

*The Bids were invited for the Project on the basis of the lowest financial grant (the "Grant") required by the Bidder. The Bidder may instead of seeking grant, offer to pay a Premium in the form of Revenue Share and / or upfront payments (the "Premium"), to the Authority as the case may be, for award of Concession. The Project was to be awarded to the Bidder quoting the highest Premium, and in the event no Bidder offers a Premium, then to the Bidder seeking the lowest Grant.*

*The bidders were required to quote a Premium or seek Grant for implementing the Project based on the monthly Unitary Charge of ₹ 3.15 Cr. as approved by the Hon'ble Commission and specified in the Article -26 of the Transmission Agreement.*

- (vi) *As per the Model Bid Documents of the Planning Commission, RFQ bearing specification No. PTR-04/2012 was issued on 18.08.2012 for "Pre-qualification and shortlisting of Applicants" for participation at RFP stage to select the Concessionaire for development of captioned Project. Against above RFQ, total thirteen firms had submitted their Applications which were opened on 16.10.2012. Out of these thirteen Applicants, eleven Applicants were shortlisted for participation at RFP stage. At RFP stage only five Applicants had submitted their Bids upto the Due Date and time specified for submission of Bids. The Bids were opened on 19.03.2013.*

*Evaluation of the Bids against RFQ and RFP stage was carried out by the Bid Evaluation Committee constituted by Energy Deptt., Govt. of MP vide Order No. 5336/13/2012 dtd. 15.10.2012 in accordance with Clause-9.8 of the guidelines issued by Ministry of Power, Govt. of India under the provisions of Section 63 of Indian Electricity Act 2003.*

*The sole criterion for evaluation of Bids against captioned RFP was grant / premium quoted by the Bidders. The project was to be awarded to the Bidder quoting the Highest Premium, and in the event no Bidder offers a premium, then to the Bidder seeking the lowest grant.*

- (vii) *M/s Kalpataru Power Transmission Limited, Gandhinagar have quoted lowest grant of ₹60.75 Cr., as such Bid Evaluation Committee has evaluated M/s Kalpataru Power Transmission Limited, Gandhinagar as the "Selected Bidder" for development of the captioned Project. The quoted grant corresponds to 21.49% of the estimated project cost of ₹282.70 Cr {20% (₹ 56.54 Cr.) from GoI and 1.49% (₹ 4.21 Cr.) from GoMP}.*

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*Accordingly, Letter of Award has been issued in favour of M/s Kalpataru Power Transmission Limited, Gandhinagar for development of the captioned Project at a Grant of ₹60.75 Cr. Further, M.P. Power Transmission Co. Ltd. has executed a Transmission Agreement with M/s. Kalpataru Satpura Transco Pvt. Ltd., Gandhinagar (a Special Purpose Vehicle set up by M/s Kalpataru Power Transmission Limited, Gandhinagar) on dtd. 06.06.2013 for implementation of captioned Project through PPP mode. A copy of Transmission Agreement is annexed.*

- (viii) *Since the Concessionaire has been selected through a transparent and open competitive bidding process by following guidelines issued by the Central Govt., the Hon'ble Commission is requested to grant approval for adoption of Tariff under Section 63, of the Electricity Act 2003 in the form of Unitary Charge of ₹3.15 Cr. per month as Base Unitary Charge and payment of Unitary Charges and other associated charges in accordance with the provisions made in the Transmission Agreement.*
- (ix) *As per provisions of the Transmission Agreement, the Unitary Charges are to be paid by the Authority to the Concessionaire. The beneficiaries for this "Transmission System" will be the DISCOMs and other Long-terms-open access customers. The Unitary Charges and associated charges if any, as per Transmission Agreement paid by the MPPTCL in any financial year shall be claimed from above mentioned beneficiaries, by adding this amount in the ARR and consequently in Transmission Tariff.*
- (x) *Madhya Pradesh Power Transmission Company Limited (hereinafter referred to as "MPPTCL" or the "Authority") has been appointed as the Bid Process Coordinator (BPC) by the State Government vide its notification dated 07 January'2012.*
- (xi) *MPPTCL in its capacity as BPC has decided to carry out the bidding process for the selection of a private sector entrepreneur i.e. Concessionaire, whose scope of work shall include construction and commissioning of New Transmissions Line and Operation & Maintenance thereof. For this purpose, the Concessionaire shall apply for and procure the necessary Transmission License from the Madhya Pradesh Electricity Regulatory Commission (the "MPERC"), in accordance with provisions of the Electricity Act, 2003 and rules and regulations made thereunder.*

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(xii) *As per the Guidelines notified by the Ministry of Finance, Department of Economic Affairs vide O.M. No. 1/5/2005 – PPP dated 12.01.2006, the Government of India extends financial support in the form of Viability Gap Funding (VGF) for facilitating the implementation of various Public Private Partnership (PPP) projects by the States. The said Guidelines contain the Scheme for Support to Public Private Partnerships in Infrastructure. A copy of the aforesaid Guidelines is attached herewith. As per the said guidelines, “VGF or Grant means a grant one time or deferred, provided under the scheme for financial support to the Public Private Partnerships in the infrastructure with the objective of making a project Commercially Viable”. The quantum of the Financial Support to be provided as VGF under the scheme shall be in the form of Capital Grant at the stage of Project Construction subject to a maximum of 20% of the Total Project Cost.*

*As per Para 3 (b) (ii) of Annexure-I of the “Scheme for Support to Public Private Partnerships in Infrastructure”, projects in the Power Sector are eligible for VGF under the Scheme. However, as per Para 6(1) of Annexure-I of the said Guideline, the Private Sector Company is to be selected through a transparent and open competitive bidding process with the criterion for the bidding being the amount of VGF required by the Private Sector Company for implementing the project where all other parameters are comparable.*

(xiii) *For the Bidding process in respect of the present Project, keeping in view the overall interest of the Project, the interest of the consumers, the Applicant used the Model Bid Documents issued by the Planning Commission, so that the Project becomes eligible for availing VGF from the Govt. of India.*

(xiv) *The State Level Empowered Committee (SLEC), GoMP in its 10th meeting held on 2nd Jan 2012 has accorded approval to the captioned Project along with proposed Viability Gap Funding of 35% of total Project Cost of ₹282.7 Cr. (20% from GoI and 15% from GoMP). A copy of the aforesaid approval is attached herewith.*

(xv) *The Empowered Institution, Ministry of Finance, Govt. of India, in its 40<sup>th</sup> meeting held on 11.06.2012 has granted “In Principle” approval to the captioned Project with maximum Viability Gap Funding (VGF) support of ₹56.54 crore (20% of Total Project Cost) subject to certain conditions. A copy of the aforesaid approval is attached herewith.”*

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4. With the above submissions and documents, the following is prayed in the petition:

- “(i) To adopt Base Unitary Charge of ₹3.15 Cr. per month as the Tariff determined through transparent process of bidding in accordance with the guidelines issued by the Central Government under Section 63 of the Electricity Act 2003 and approve payment of Unitary Charges and other associated charges in accordance with provisions made in the Transmission Agreement.*
- “(ii) To allow recovery of Unitary Charges and other associated charges from the DISCOMs and other long term customers.”*

5. Motion hearing in the matter was held on 17<sup>th</sup> September, 2013. The petition was admitted and the petitioner was directed to serve copy of petition on all the respondents in the matter. The petitioner was also directed to file/clarify certain issues mentioned in the Commission's Order dated 18<sup>th</sup> September, 2013. The respondents in the matter were also asked to file their response on the petition if any, by 27<sup>th</sup> September, 2013.

6. The respondent No. 1 & 3 authorized M.P.Power Management Co. Ltd, Jabalpur (Respondent No. 4), to represent them before the Commission in the subject petition. The respondents filed no comments on the petition.

7. By affidavit dated 26<sup>th</sup> September 2013, the petitioner filed a copy of its letter dated 20.09.2013, vide which copy of the petition was served on all the respondents in the matter. By the same affidavit, the petitioner also filed its response/clarification to the issues mentioned in the Commission's order dated 18<sup>th</sup> September, 2013. Issue-wise response of the petitioner is as given below:

**(i) Issue:**

**Whether any deviation was made from the Standard Bid Document in the bidding documents for the instant bidding process?**

**Petitioner's Reply:**

*“As submitted in para 12 of the Application, the Empowered Institution, Ministry of Finance, Govt. of India, in its 40<sup>th</sup> meeting held on 11.06.2012 has granted “In Principle” approval to the captioned Project with maximum Viability Gap Funding (VGF) support of ₹ 56.54 crore (20% of Total Project Cost) subject to certain conditions which amongst others include the following:*

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- (a) *"The Model Transmission Agreement under Clause-37.3.2 prescribed that in case of Authority default, minimum termination payment of 50 times of Unitary Charges is payable. However, in case of Jhajjar Transmission Project approved by the Empowered Institution earlier, the minimum termination payment is only 3 times of Unitary Charge. The same provision may be adopted for the instant Project".*

*Since, the direction given by the Empowered Institution, Ministry of Finance, Govt. of India, was in the interest of the Authority (MPPTCL), the Clause 37.3.2 of the Transmission Agreement has been modified accordingly.*

- (b) *Further, to bring more clarity in regards to holding of subscribed and paid-up equity of the Members of Consortium, the provisions of the RFQ has been suitably incorporated in the Clause-7.1(k) of the Transmission Agreement. The relevant provisions of the RFQ and Transmission Agreement are annexed as Annexure-I.*

*Besides above, no change in the Bid Document was made by the MPPTCL from the Standard Bid Document adopted in the Bidding process."*

**(ii) Issue:**

**Whether the bidding process has complied with all the provisions under the "Guidelines for Encouraging Competition in the Development of Transmission Projects".**

**Petitioner's Reply:**

*"As submitted in para 15 to 19 of the Application, the Bidding process has complied with all the provisions under the "Guidelines for Encouraging Competition in the Development of Transmission Projects".*

**(iii) Issue:**

**The document/(s) regarding constitution and composition of Bid Evaluation Committee along with a certificate by the Bid Evaluation Committee that the Unitary Charges of ₹ 3.15 Crore per month are reasonable and have been determined through a transparent bidding process in accordance with the "Guidelines for Encouraging Competition in the Development of Transmission Projects" be submitted.**

**Petitioner's Reply:**

*"As submitted in para 15 to 19 of the Petition, the Evaluation of the Bids against RFQ and RFP stages were carried out by the Bid Evaluation Committee constituted by Energy Deptt., Govt. of MP vide Order No. 5336/13/2012 dtd. 15.10.2012 in accordance with Clause-9.8 of the guidelines issued by Ministry of Power, Govt. of India under the provisions of Section 63 of Indian Electricity Act 2003 for Tariff Based Competitive*

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*Bidding for Transmission Service. A copy of above order is annexed herewith as Annexure-II. Further, copy of Bid Evaluation Report at RFQ and RFP stages are also annexed as Annexure-III & Annexure-IV respectively. It is most humbly submitted that the Concessionaire has been selected through a transparent and open competitive bidding process by following the guidelines issued by the Central Govt. A certificate by the Bid Evaluation Committee in this regard is also annexed herewith as Annexure-V."*

8. On examination of the petition, additional submission and the documents filed by the petitioner, the following is observed:

- (a) In accordance with the amended Para 24 of the Guidelines, MPPTCL adopted the "Model Bidding Document" of the Planning Commission for the Bidding Process.
- (b) Vide Order dated 8<sup>th</sup> August'2012 in Petition No. 44 of 2012, this Commission accorded approval to the notional Base Unitary Charge of ₹ 3.15 Crore to enable the petitioner for initiating the VGF based bidding process in the subject matter.
- (c) As per the guidelines notified by the Ministry of Finance, Department of Economic Affairs dated 12<sup>th</sup> January 2006, financial support in the form of Viability Gap Funding (VGF) is to be extended by the Government of India for facilitating PPP Projects in the State. The quantum of financial support to be provided by Government of India as VGF in the form of Capital Grant at the stage of project construction is subject to a maximum of 20% of the total project cost.
- (d) State Level Empowered Committee (SLEC) for Public-Private Partnership Projects in its 10<sup>th</sup> meeting held on 02.01.2012 approved total project cost of ₹ 282.70 crore with proposed Viability Gap Funding (20% from GoI and 15% from GoMP).
- (e) Vide order No. F13-51/2011/13 dated 7<sup>th</sup> January 2012, Energy Department, Government of MP appointed MPPTCL as "Bid Process Coordinator (BPC)" under clause 3.3 of the Guidelines.
- (f) Vide letter No. 5971/F 13-51/11/13 dated 15.11.12, GoMP granted approval for notional Unitary Charges of ₹ 3.15 crore per month and also for implementation of project under PPP with VGF 35% as per recommendations of SLEC.
- (g) Empowered Institution (EI), Ministry of Finance, Department of Economic Affairs (PPP cell), Govt. of India in its 40<sup>th</sup> meeting held on 11.06.2012, granted in-principle approval to this project with maximum VGF support of ₹56.54 crore (20% of Total project Cost) from the Government of India subject to fulfillment of certain conditions. One of the conditions to



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be fulfilled by GoMP was to modify clause 37.3.2 of the Draft Concession Agreement (DCA) as agreed in the meeting. The aforesaid modification is construed by the petitioner as deviation from the Standard Bid Document as mentioned in para 7 (i) of this Order. It is noted from para 90 of the aforesaid minutes of meeting of Empowered Institution (EI), DEA that the modification in Clause 37.3.2 of DCA was agreed to in the meeting since the existing provision was not appearing to DEA in the interest of the Sponsoring Authority. The Commission finds that this is not an exceptionable deviation for it is in the interest of the Petitioner.

- (h) Vide Order No. 5336/13/2012 dated 15.10.2012, Government of Madhya Pradesh, Energy Department constituted Bid Evaluation Committee in terms of Clause 9.8 of the Guidelines issued by the Ministry of Power.
- (i) Vide Order No. AS/MPPTCL/2981 dated 15<sup>th</sup> October 2012, MPPTCL constituted sub-Committee to assist the Bid Evaluation of Committee. This sub-Committee performed its function for detailed evaluation of Bids and the reports alongwith minutes of meetings of the sub-Committee are also filed by the petitioner.
- (j) Reports of the Bid Evaluation Committee at Request for Qualification (RFQ) and Request for Proposal (RFP) stage have been submitted by the petitioner.
- (k) Bid Evaluation Committee in its Certificate dated 26<sup>th</sup> September 2013 has certified the following:

*“The Evaluation of Applications/Bids received against RFQ and RFP stages (PTR-04/2012) were carried out by the Bid Evaluation Committee constituted by Govt. of M.P. vide order No. 5336/13/2012 dtd. 15.10.2012. Further, the Unitary Charge of ₹3.15 Crore per month have been determined through a transparent bidding process in accordance with the “Guidelines for Encouraging Competition in the Development of Transmission Projects”. Since, the “Selected Bidder” have quoted Grant of 21.49% of the total Project Cost as against 35% assessed by the Transaction Advisor (considering Equity IRR of 15.5% provided by CERC for Competitive Bidding, also approved by SLEC and GoMP), as such, the Unitary Charge of ₹3.15 Crore per month indicated in the Bidding document appears to be reasonable.”*

9. Based on the above Certificate issued by the Bid evaluation Committee, the documents filed with the petition and the supplementary submission, the Commission hereby adopts the Base

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Unitary Charge of ₹ 3.15 Crore per month determined through a transparent process of bidding in accordance with the guidelines issued by the Central Government under Section 63 of the Electricity Act, 2003. The aforesaid Base Unitary Charge and other applicable associated charges payable by the petitioner as per Transmission Agreement entered into by the M.P. Power Transmission Company Ltd., Jabalpur and the Concessionaire on 6<sup>th</sup> June 2013 for 400 KV DCDS Satpura-Ashta transmission line PPP Project, may be claimed by the petitioner in its petition for determination of Transmission tariff for recovery of these charges from the DISCOMs and other long term customers. The adoption of the aforesaid charges in this Order is subject to fulfilment of all other conditions in the "*Guidelines for Encouraging Competition in the Development of Transmission Projects*" by the petitioner and the selected Bidder/ Concessionaire.

Ordered accordingly.

sd/-

**(Alok Gupta)**  
**Member**

sd/-

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

sd/-

**(Rakesh Sahni)**  
**Chairman**