

Gap Funding on Design-Build-Finance-Operate-Transfer (DBFOT) basis to facilitate evacuation of renewable energy.

- (ii) Petitioner is promoted by M/s KEC International Limited, the selected Bidder through RVPN bidding process to develop the 400 kV D/C transmission line on DBFOT Basis. KEC International Limited has vast experience of more than almost 6 decades in EPC of transmission line projects in India as well as overseas. KEC International Limited is one of the largest EPC Contractor in Transmission & Distribution Space in India with in house design & engineering, Tower Testing & Tower Manufacturing Capabilities and also possesses the strong financial strength that makes it fully capable of developing the said project well within time. The Applicant being almost 100% subsidiary of M/s KEC International Limited, has the full financial support from its promoters.
 - (iii) Applicant is a Special Purpose Vehicle (SPV) Company promoted especially to undertake and perform the obligation and exercise the rights of selected bidder, i.e., KEC International Ltd. under the Letter of Award dated 24.07.2015 given effect from 15.10.2015.
 - (iv) The above said transmission line of 172 Kms. will emanate from 400/220 KV Bikaner substation of RRVN to 400 /220 KV Sikar substation of Power Grid Corporation of India Ltd. (PGCIL). The line will connect Bikaner substation of RRVN to Sikar Substation of PGCIL. The scope of work for the applicant is design, build, finance, construction and maintenance of transmission line from gantry to gantry. Construction of bays at both the ends of substation is the responsibility of respective utilities, i.e., RVPN for Bikaner and PGCIL for Sikar.
3. The matter was heard on 03.12.2015. Sh. Shakunt Saumitra, Advocate appeared for Petitioner. After hearing preliminary submissions, Commission admitted the petition and directed Petitioner to publish notices in the news papers as per the Regulations.
4. Petitioner, as per RERC (Licensing) Regulations, 2004 published the public notices for grant of transmission license, with details of proposed line in the following newspapers, on the dates shown against each:

S.No.	Name of News Paper	Date
(i)	Dainik Bhaskar	10.12.2015
(ii)	Danik Nav Jyoti	10.12.2015
(iii)	Times of India	10.12.2015

The petition was also placed on the websites of the Commission and Petitioner.

5. Objections/comments were received from one person, namely, Shri G. L. Sharma. The objections/comments received from Shri G. L. Sharma were sent to the Petitioner to file the reply and Petitioner submitted the same before the Commission on 27.01.2016.
6. Shri G. L. Sharma in his objections/comments mainly contended as under:
 - (i) Petitioner has submitted this application under Section 14 of Electricity Act, 2003 for grant of transmission license, as a developer, for development of 400 KV Bikaner-Sikar D/C transmission line awarded by RRVPN on DBFOT basis. The scope of work is design, build, finance, construction and maintenance of transmission line from gantry to gantry. The construction of bays at both ends of the sub-stations is the responsibility of respective utilities, i.e., RRVPN for Bikaner and PGCL for Sikar.
 - (ii) From the above, it is clear that Applicant has to design and construct the 400 D/C Bikaner-Sikar line at its cost and also it has to maintain and operate the same on behalf of RVPN for a certain period prescribed in Transmission Service Agreement (TSA). The preamble of the TSA, entered into between Petitioner and RRVPNL, also specifies that the Authority, i.e., RRVPNL has resolved to procure a transmission system of 400 KV transmission line from Bikaner-Sikar from this company on design, build, finance, operate and transfer basis. This position clarifies that the status of Applicant will be as of a contractor working on their behalf.
 - (iii) RVPN in their Investment Plan of 2014-15 and 2015-16 had included this line for approval of the Commission. Inclusion of such works in investment plan indicates that the works will be carried out by them or

the same may be got done through some agency for them. Thus, the construction of this line and its maintenance and operation is nothing but to do the job on behalf of the RVPNL. Thus the Applicant's status is that of a contractor. The contractor, therefore, does not require any license.

- (iv) RVPNL will be getting VGF for the investment in construction of this line which means investment from their side. Further, RVPNL will pay Unitary Charges of Rs. 29.43 Cr per annum for the aforesaid project and the same will be received from Discoms through ARR. In case a license is granted to the Applicant it becomes a transmission licensee and there is no provision in the Electricity Act which provides that a transmission licensee may recover any kind of charges from another Transmission licensee.
- (v) If a consumer carries power from a generating company or from an agency other than Discoms, he has to be given open access and such consumer has to pay wheeling charges. In case RVPNL recovers these charges, it would mean that indirectly work has been done by his contractor on behalf of RVPNL and such charges are being recovered by them. Thus, the status of applicant has to be considered /stands as a contractor. Further, even if the Applicant recovers such charges, the same is to be passed on to RVPNL. This would mean recovery of charges from a licensee by another licensee. There is no provision in the Electricity Act for such recovery by a licensee from another licensee.
- (vi) RVPNL's petition for investment plan of FY 2014-15 and 2015-16 indicates the total cost of the said line as Rs. 208.5116 Crore and 11.1% of total cost works out as Rs. 23.14 Crore only whereas in the present petition, RVPNL has indicated such 11.1% as Rs. 28.8 Crore which is on much higher side.
- (vii) State Government has constituted a State Level Empowered Committee (SLEC) to identify the projects to be developed through private sector participation. From the petition it is not clear as to whether this project has been identified to be developed through private sector by the State Level Empowered Committee or otherwise.

7. Petitioner in its reply to objections/comments raised by Sh. G.L. Sharma mainly contended as under:

- (i) The Objector fails to recognize that the Bikaner-Sikar Transmission Project 400 kV D/C is a PPP Project already identified and approved by the Central Government for VGF funding. Tender has been invited on this basis and bid was awarded to the Petitioner on the ground that the Petitioner is a Developer of this PPP Project. The objection based on the premise that the Developer is just a Construction Contractor and does the work on a contract given by RVPNL and therefore does not need any Transmission License is totally false and misconceived in so far as it fails to recognize the above facts.
- (ii) A Construction Contractor or EPC Contractor and a Developer under a PPP Project are a distinct entity and have a separate status other than the Government Agency (RVPNL). Further, Developer makes its own investments through financial institutions and undertakes its own risks and responsibilities as outlined in the Transmission Service Agreement and holds full responsibility to provide the transmission service undertaken for the length of period specified in the Agreement and hence a Developer under a PPP Project has a status of its own as a partner in the project, which fact is ignored and misconceived by the Stakeholder and hence the objection is liable to be dismissed at the outset.
- (iii) As a Developer of a PPP Project, the Petitioner has the authority and obligation vested by the Transmission Service Agreement (TSA) to acquire the Right of Way for the line at its investments on its own risk and responsibility. The status of the Developer envisioned in the TSA is as of a Partner with the Government entity (RVPN) for the development and operation of the transmission line and discharge of such obligations can be done only through the requisite statutory licenses and authorizations. Hence, in order to discharge the obligations of a Developer of the said project, the Petitioner is entitled for the grant of Transmission License by the Commission. The said rights, responsibilities and obligations are in line with the provisions of Model Transmission Agreement formulated by the Planning Commission.

- (iv) Transmission Agreement entered into by RVPN with the Petitioner is in discharge of its statutory function as an STU and not just getting its transmission construction work done through a construction Contractor. The objection raised is totally erroneous and absurd and be rejected at the outset.
- (v) The VGF provided in the Transmission Agreement is by way of a onetime grant which is ultimately borne by the Ministry of Finance, Government of India, for attracting Private participation in the PPP Transmission Projects. Such PPP project is awarded for VGF through competitive Bidding Process specified for the purpose. VGF is applied by the Lead Financial Institution of the Concessionaire according to the procedure laid down for it and then disbursed by the Empowered Institution which gets it reimbursed from the Ministry of Finance. VGF is granted to mitigate loss to the Private Participant in the PPP Projects as a promotional measure for PPP Projects from the Central Government and is not an investment by RVPN.
- (vi) Commission's order dt. 08.12.2014 is absolutely clear on the subject that the Unitary Charge is a Fee to the Concessionaire of a PPP Project and including it in its ARR for collection from Discoms is a separate act as RVPN requires revenue. Moreover, it is submitted that there is no prohibition of any nature in the Electricity Act, 2003 on the Concessionaire Licensee collecting unitary charge from the State Transmission Utility as its project revenue. The objection does not merit any consideration.
- (vii) Petitioner is to be paid Unitary Charge as a monthly fee as its Project revenue as clarified by this Hon'ble Commission in its Order dated 8.12.14 and whether the wheeling charges is directly collected by RVPN or collected by RVPN through the Petitioner does not change the character of the receipt of Unitary Charge by Petitioner and it does not in any way change the character of Petitioner from that of a Developer of the PPP Project to a mere Construction Contractor doing the work for a payment and get it released thereafter. The total approach of the

Objector is a misnomer and absurd and the objection does not merit any consideration.

- (viii) There is no prohibition on some payment from one Transmission Licensee to another Transmission Licensee in the Electricity Act, 2003. It is further submitted that there is no provision in the Transmission Agreement for collection of wheeling charge by the Petitioner.
- (ix) VGF is provided as a percentage of the Project cost and the 11.1% specified in the Investment Plan is on projected cost of Rs.208.5116 Crores and is obviously prior to the Bidding process and was a mere projected figure. After the transparent Bidding process the lowest VGF Bid received by RVPN is the Bid of the Petitioner being for Rs. 28.8 Crores VGF, it being 11.1% of the actual total project cost worked out in the Bid of Rs. 260 Crores. Hence, on the basis of the actual Bid accepted and evaluated in compliance with the Bidding procedure laid down, this Commission satisfied itself that the VGF of 11.1% of the total project cost in the Bid is Rs. 28.8 Crores and approved it in its Order dated 09.10.2015. Therefore, the difference between the planned figures of RVPN and that of the actual Bid figures received through transparent bidding process cannot be a matter of questioning in this proceeding and does not merit any consideration and it does not have any relevance to the present Petition for Transmission License.
8. The matter was heard on 18.02.2016. Sh. Shakunt Saumitra, Advocate appeared for Petitioner. Sh. G.L. Sharma appeared as Stakeholder and made his submissions. After hearing order was reserved.
9. We have considered the submissions made by the Petitioner and Stakeholder and also documents submitted in support of submissions.
10. Commission observes that earlier RVPN vide petition no. 473/14 sought approval of Unitary Charge of 400 kV D/C Bikaner-Sikar (Twin Moose) Transmission Line Project through Public Private Partnership mode availing VGF. Commission vide its order dated 08.12.2014 granted in-principle approval to the proposal of RVPN for initiating tariff based bidding process on notional unitary charges of Rs. 26.75 Crores determined as per the

formula provided in Model Transmission Agreement (MTA) on the basis of approved ARR of RVPN for FY 2014-15. Further, Commission vide its order dt. 09.01.2015 clarified that this Commission's order dt.8.12.2014, did not take away the discretion vested with the Authority to increase the amount determined as 'Base Unitary Charges' by upto 10%.

11. Based on the model bid documents of the Planning Commission, RVPN had conducted two-stage bidding for selection of bidder for award of the 400 kV D/C Bikaner-Sikar Transmission Project.
12. Subsequently, RVPN filed a petition (555/15) under Section 63 of Electricity Act, 2003 for adoption of tariff in respect of 400 kV D/C Bikaner-Sikar (Twin Moose) Transmission Line Project through Public Private Partnership mode availing Viability Gap Funding (VGF). RVPN submitted that M/s KEC International Limited (KEC) has emerged as successful bidder and was selected through a transparent and open competitive bidding process by following guidelines issued by the Central Govt. RVPN confirmed that it has adhered to the process detailed in the model documents and ensured transparency at every stage of bid process in selection of bidder.
13. Commission while deciding the said petition vide its order dt. 09.10.2015 noted that selection of the successful bidder by RVPN has been carried out through a transparent process of competitive bidding in accordance with the Guidelines. Further, the process of arriving at the Base Unitary Charge of the aforesaid project has also been carried out as per Guidelines/Model Transmission Agreement issued by Planning Commission, Govt. of India. Therefore, Commission adopted the Base Unitary Charge of Rs. 29.43 crores per annum.
14. Now, M/s KEC has filed this application under section 14 of the Electricity Act, 2003 for grant of license for transmission of electricity through 400 kV D/C Bikaner-Sikar transmission line.
15. Sh. G.L. Sharma, Stakeholder raised some preliminary objections and submitted that the Applicant's status is that of a contractor and the contractor, therefore, does not require any license.

16. Per contra, Petitioner submitted that Bikaner-Sikar Transmission Project 400 kV D/C is a PPP Project already identified and approved by the Central Government for VGF funding. Tender has been invited on this basis and bid was awarded to the Petitioner on the ground that the Petitioner is a Developer of this PPP Project.
17. In this regard, we observe that the Petitioner has been selected through the process of bidding based on the model bid documents of the Planning Commission for the aforesaid project. Further, we also agree with the contention of the Petitioner that a Contractor and a Developer under a PPP Project have a separate status. Developer makes its own investments and undertakes risks and a responsibility for the length of period specified in the Agreement and is paid the per annum Unitary Charges. On the other hand, a Contractor executes the work and is paid the full amount of the work carried out by him. Therefore, we do not find any merit in the objection raised by the Stakeholder.
18. The STU has already recommended the grant of Transmission Licence to Petitioner. We observe that Petitioner has filed an affidavit that any cantonment, aerodrome, fortress, arsenal, dockyard or camp or any building or place in occupation of the Central Government for defence purpose does not fall in the project specific area of the Applicant.
19. We are satisfied that the Applicant meets the requirements of the Act for grant of transmission licence for the transmission system mentioned below. Accordingly, we direct that a transmission licence be granted to M/s KEC Bikaner-Sikar Transmission Pvt. Ltd. for the 400 kV Double Circuit Bikaner-Sikar Transmission line of 172 Km.
20. The grant of transmission licence to the Applicant is subject to the fulfillment of the following conditions throughout the period of licence:
 - (a) The transmission licence shall, unless revoked earlier, remain in force for a period of 25 years;
 - (b) The transmission licensee shall comply with the provisions of the Rajasthan Electricity Regulatory Commission (Conditions of Licence) Regulations, 2004 or any subsequent enactment thereof during the period of subsistence of the licence;

- (c) If the useful life of the transmission system extends beyond the period of 25 years, the applicant may make an application, two years before the expiry of initial licence period, for grant of licence for another term which shall be considered by the Commission in accordance with law;
- (d) The transmission licensee shall not enter into any contract for or otherwise engage in the business of trading in electricity during the period of subsistence of the transmission licence;
- (e) The transmission licensee shall have the liability to pay the license fee in accordance with the provisions of the Rajasthan Electricity Regulatory Commission (Fees for Petitions) Regulations, 2005, as amended from time to time or any of other regulations in force. Delay in payment or non-payment of licence fee or a part thereof for a period exceeding sixty days shall be construed as breach of the terms and conditions of licence;
- (f) The transmission licensee shall comply with the directions of the National/ Regional/ State Load Despatch Centre under the Act, as may be issued from time to time for maintaining the availability of the transmission system;
- (g) The transmission licensee shall abide by the Rajasthan Electricity Regulatory Commission (Transmission Licensee's Standards of Performance) Regulations, 2004 as amended from time to time;
- (h) The transmission licensee shall furnish to the Commission such information, documents and details related to the Licensed Business and/or the Other Business of the Transmission Licensee as the Commission may require;
- (i) The transmission licensee shall establish adequate telemetering, SCADA, data transfer and communication facilities as required by SLDC.
- (j) The transmission licensee shall pay to the State Load Despatch Centre such fee as may be specified by the Commission;
- (k) Where the transmission licensee fails, omits or neglects to undertake transmission in electricity, the transmission licence shall be subject to revocation in accordance with the provisions of the Act;
- (l) The transmission licensee shall comply with the conditions agreed in Transmission Service Agreement;

- (m) The transmission licensee shall provide non-discriminatory open access on its transmission system for use by any other licensee, including a distribution licensee or an electricity trader, or generating company or any other person in accordance with the Act and Regulations as amended from time to time;
- (n) The Transmission Licensee shall as soon as practicable, report to the Commission:
 - (i) any change in major shareholding, ownership or management of the licensee; and
 - (ii) any proceedings initiated by one or more of the parties signing the agreement for interpretation, amendment or termination of the agreement;
- (o) The transmission licensee shall abide by the provisions of the Act, the rules and regulations framed thereunder, in particular the transmission licence regulations, the Grid Code, the Standards specified by the Central Electricity Authority, orders and directions of the Commission issued from time to time.
- (p) The interpretation of the Licence and the terms and conditions thereof shall be as determined by the Commission.

21. The license shall come into force w.e.f. 15.03.2016 before which the licensee shall deposit the security amount indicated in the licence.

22. The licence in Form - 6, as specified in the RERC (Licensing) Regulations 2004, and appended herewith, may be issued under the signature of the Secretary to the Commission.

(Raghuvendra Singh)
Member (T)

(Vinod Pandya)
Member (F)

(Vishvanath Hiremath)
Chairman

LICENCE

(Licence for Transmission of Electricity under the Electricity Act, 2003)

RERC/Transmission Licence/11

Date: 4th March, 2016

Licence is hereby granted for transmission of electricity to the person whose name and address is given below with powers and upon terms and conditions specified hereunder: -

1. Name of the Licensee:

M/s KEC Bikaner-Sikar Transmission Pvt. Ltd.

2. Address of the Licensee:

RPG House, 463, Dr. Annie Besant Road, Worli, Mumbai-400030

TERMS AND CONDITIONS OF THE LICENCE

1. **Security**

The Licensee shall deposit as security an amount of Rs.10.00 lacs (Rupees Ten Lacs) before the date of commencement of this licence towards fulfillment of terms and conditions of this licence and efficient discharge of duties and obligations imposed upon him by this licence.

2. **Area of Transmission**

The Licensee is authorised to transmit electricity through the transmission system specified in clause 3 below.

3. **Details of Transmission Line**

The Licensee is authorised to establish, operate and maintain the 400 kV Double Circuit Bikaner-Sikar 172 Km transmission line.

4. **Compliance with Provisions of the Act**

The Licensee shall comply with the provisions of the Electricity Act, 2003, and rules and regulations made thereunder.

5. **Terms of Licence**

- (1) The date of commencement of this licence shall be **15th March, 2016**.
- (2) The licence shall be in force for a period of **twenty five years** from the date of its commencement unless the licence is revoked earlier.

6. **General Conditions of Licence**

In addition to the said terms and conditions of this licence, the general conditions of licence specified by the Commission in the order dated 4th March, 2016 granting licence, shall apply to the Licensee and shall also be deemed to be the conditions of this licence.

7. **Revocation of Licence**

The licence shall be liable to revocation under Section 19 of the Electricity Act, 2003 , for reasons mentioned therein and also for breach of any terms or conditions of this licence or the conditions specified by the Commission under Section 16 of the Act.

By orders of the Commission

(G.K. Sharma)
Secretary