

Rajasthan Electricity Regulatory Commission

Petition No. RERC-555/15

Petition 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.

Coram:

Shri Vishvanath Hiremath, Chairman
Shri Vinod Pandya, Member
Shri Raghuvendra Singh, Member

Petitioner : Rajasthan Vidyut Prasaran Nigam Limited (RVPN)

Respondents : Jaipur Vidyut Vitran Nigam, Ajmer (JVVNL)
Ajmer Vidyut Vitran Nigam, Ajmer (AVVNL)
Jodhpur Vidyut Vitran Nigam, Ajmer (JdVVNL)

Date of hearings : 30.07.2015, 10.09.2015

Presents : 1. Sh. A.K.P. Agarwal, S.E., RVPN
2. Sh. Neelesh Dharwal, Ex. En, RVPN
3. Sh. S.T. Hussain, Ex.En.(RA), JVVNL

Order Date:

09.10.2015

ORDER

1. Rajasthan Vidyut Prasaran Nigam Limited (herein after referred to as 'Petitioner' or 'RVPN') has filed this petition 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).

2. The petitioner in its petition submitted as under:

- (i) Earlier, RVPN has filed a petition bearing no. RERC/473/14 before the Commission seeking approval of Unitary Charge of 400 kV D/C Bikaner-

Sikar (Twin Moose) Transmission Line Project through Public Private Partnership mode availing VGF.

- (ii) 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. However, this approval was subject to receiving approval of VGF by GoR and Gol. Commission also held that once bidding takes place, Commission will have a final view on the whole thing including the estimated cost, and how charges have to be borne by Discoms and open access consumers before adopting the tariff discovered through the bid.
- (iii) Further, as per provision of the MTA, applicant had discretion to increase the amount determined there under up to 10% thereof in order to provide for a higher Unitary Charge.
- (iv) The Empowered Institution, Ministry of Finance, Govt. of India, in its 61st meeting held on 19.12.2014 granted in principle approval to the project for total project cost of Rs 260 crores with VGF contribution as per the VGF Scheme. As the VGF is less than 20% of project cost, support would only be needed from the Gol.
- (v) Based on the model bid documents of the Planning Commission, RVPN conducted two-stage bidding for selection of bidder for award of the Project.
- (vi) Request for Qualification (RFQ), as per the Model Bid Documents of the Planning Commission, was published on 30.06.2014 for short listing of applicants for participation in Request for Proposal (RFP) stage and also uploaded on RVPN's website. As per the provisions of RFQ, pre-bid conference was organized by RVPN on 04.08.2014. Total of seven firms submitted their applications which were opened on 19.08.2014 in presence of authorised representatives of bidders. Based on the detailed evaluation and subsequent clarifications received from applicants, RVPN shortlisted all the following seven firms for RFP stage:
 - (i) M/s Kalpataru Power Transmission Limited.
 - (ii) M/s TATA Projects Limited.

- (iii) M/s Essel Infra projects Limited.
- (iv) M/s EMCO Infrastructure, Limited.
- (v) M/s Inabensa Bharat Pvt. Limited.
- (vi) M/s Adani Power Limited.
- (vii) M/s KEC International Ltd.

(vii) At the RFP stage, five shortlisted firms purchased the RFP. As per the provisions of RFP, two pre-bid conferences were organized by RVPN on 05.12.2014 and 05.01.2015. Bids from following three bidders were received and opened on 25.02.2015 in presence of authorised representatives of bidders.

| S.No | Bidder | Grant Quoted (in Rs. Crore) | Grant Quoted (as % of TPC) |
|------|----------------------------------|--------------------------------|-------------------------------|
| 1 | M/s KEC International Limited | 28.8 | 11.1% |
| 2 | M/s Tata Projects Limited | 39.0 | 15.0% |
| 3 | M/s Essel Infra projects Limited | 100.62 | 38.7% |

(viii) Based on the evaluation, M/s KEC International Limited (KEC) has emerged as L1 (Selected Bidder). KEC has quoted lowest grant of Rs. 28.80 crore. The quoted grant corresponds to 11.1% of the estimated project cost of Rs. 260 crores.

(ix) The Concessionaire has been selected through a transparent and open competitive bidding process by following guidelines issued by the Central Govt. RVPN confirms 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 and hence, the Commission is requested to grant approval for adoption of Tariff under Section 63, of the Electricity Act 2003 with a Unitary Charge of Rs. 29.43 crores as Base Unitary Charge.

(x) As per provisions of the Transmission Agreement, the Unitary Charges are to be paid by the RVPN to the Concessionaire. Hence, the Commission is requested to grant approval for payment of Unitary Charges and other associated charges in accordance with the provisions made in the Transmission Agreement by RVPN to Concessionaire. Further, the beneficiaries for this transmission system would be the Discoms and other Long-term-open access customers. Hence, the Unitary Charges and associated charges if any, as per Transmission Agreement to be paid by

the RVPN in any financial year shall be claimed from above mentioned beneficiaries, by adding this amount in the ARR and consequently in Transmission Tariff.

3. On 30.07.2015, after hearing preliminary submissions, Commission issued notice to Respondent Discoms to file reply on the petition. Discoms have filed their response to the petition on 07.09.2015. The Respondent Discoms submitted as follows:

- (i) The Bidding was entitled only after approval of VGF by GoR and Gol. Petitioner should submit the approval of GoR/Gol.
- (ii) Petitioner should assure that Bidder was selected through a transparent and competitive bid process and the guidelines issued by the Central Govt.
- (iii) Revised Unitary Charges should be computed as per the formula mentioned in Model Transmission Agreement of the Planning Commission and approve charges as per the mentioned agreement.
- (iv) For computation of the Unitary Charges, transmission charges allowed by the Commission in its Tariff Order for FY 2014-15 should be used.

4. RVPN filed rejoinder to the reply of Discoms on 09.09.2015 as under:

- (i) The project has been granted In-principle approval by the Empowered Institution, the Ministry of Finance, the Govt. of India, in its 64th meeting held on 07.04.2015 (copy enclosed in petition). The Grant/VGF quoted by selected bidder is INR 28.8 Crore (11.1% of Total Project Cost). As the VGF is less than 20% of TPC, support would only be needed from the Gol. As per the Guidelines 'Scheme for financial Support to Public Private Partnerships in Infrastructure' notified by the Ministry of Finance, the Department of Economic Affairs vide O.M. No. 1/5/2005 - PPP dated 12.1.2006, the final approval from the Empowered Institution would be sought by the Lead Financial Institution.
- (ii) The Commission approved unitary charge of Rs. 26.75 Crore vide its order dated 8.12.2014 in the matter of Petition No. RERC/473/14. The relevant extract reads as under:

"...Commission in principle agrees to grant 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 MTA on the basis of approved ARR of RVPN for FY 2014-15."

- (iii) The MTA empowers RVPN to fix the Unitary Charge at a level 10% higher than the amount computed as per the mentioned below clause in MTA:

"Provided, however, that the Base Unitary Charge shall in no case be fixed at a level lower than 0.75% of the Total Project Costs. The Authority may, in its discretion, increase the amount determined hereunder by upto 10% thereof in order to provide for a higher Unitary Charge."

- (iv) At base approved unitary charge of Rs. 26.75 Crore, the tentative grant requirement was Rs. 100.62 Crore (38.7% of Project Cost). As the tentative grant requirement is very close to max. Grant of 40%, RVPN opined that bidding process may be jeopardised if bidder quotes grant in excess of 40%. Also, the entire exercise is aimed at maximising private investment and minimizing public investment. By offering a lower unitary charge, the Concessionaire would seek a higher VGF which means that its own investment would reduce. Hence, RVPN decided to increase the Base Unitary Charge by 10% as per the provisions in MTA to Rs. 29.43 Crore.
- (v) RVPN had developed RFQ and RFP as per the model bid documents of the Planning Commission. A two-stage bidding process for selection of bidder was followed. The RFQ was published on 30.06.2014 and uploaded on RVPN's website. As per the provisions of RFQ, pre-bid conference was organized by RVPN on 04.08.2014. RVPN received response to RFQ from seven firms which were opened on 19.08.2014 in presence of authorised representatives of bidders. RVPN carried out evaluation as per the criteria mentioned in RFQ and shortlisted all seven firms for RFP stage (names of the firms are mentioned in the petition). Subsequently, the RFP was purchased by five shortlisted firms. As per the provisions of RFP, two pre-bid conferences were organized by RVPN on 05.12.2014 and 05.01.2015. Finally, RVPN received response to RFP from three firms (viz. M/s KEC International Limited, M/s Tata Projects Limited, M/s Essel Infra projects Limited) which were opened on 25.02.2015 in presence of authorised representatives of bidders (VGF/Grant amount through e-tendering process). RVPN carried out evaluation as per the criteria mentioned in the RFP and selected the bidder which met all evaluation criteria and quoted lowest grant. RVPN confirms 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.

- (vi) The Commission had calculated Base Unitary Charges as per the RVPN Tariff Order for FY 2014-15 as mentioned in order dated 8.12.2014 issued in the matter of Petition No. RERC/473/14. The relevant extract of the order is reproduced as under:

"...Commission in principle agrees to grant 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 MTA on the basis of approved ARR of RVPN for FY 2014-15."

5. The matter was heard on 10.09.2015. Sh. Neelesh Dharwal, Ex. En, RVPN appeared for Petitioner and Sh. S.T. Hussain, Ex. En, appeared for Discoms. Petitioner and Respondent reiterated the same contention as filed in their petition/response.
6. The Commission has considered the submissions of RVPN made in the petition and submissions made by Discoms and rejoinder filed by RVPN to the points raised by Discoms.
7. Before proceeding to decide the petition on merit, we express our displeasure on the way in which reply has been filed on behalf of Discoms.
8. In the reply Discoms suggested that everything has to be looked into by this Commission instead of satisfying themselves on the merit of petition. It is the duty of the Discoms to verify and satisfy itself on the doubts it has on the facts of the petition.
9. We see no responsibility has been taken by Discoms in assisting the Commission while deciding the matter. However, to save further time in deciding the matter, the Commission has looked into the points raised by Discoms and also in light of rejoinder filed by Petitioner.
10. We find that the petition has been filed for adoption of tariff, which is covered under section 63 of the Act which provides:
"63. 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."

11. Section 63 of the Act mandates this Commission to adopt the tariff if such tariff is determined through a transparent process of bidding in accordance with the guidelines issued by Ministry of Power, Government of India. In this regard, Gol has issued "Guidelines for Encouraging Competition in Development of Transmission Projects" and amendments thereof.
12. Aforesaid guidelines as amended on 02.05.2012 read as under:

"As far as the intra-state projects are concerned, the State Government may adopt these guidelines and may constitute similar committees for facilitation of transmission projects within the state. The States also have option to use Viability Gap Funding based Model Transmission Agreement document of Planning Commission for development of transmission system in their states under Public Private Partnerships mode."
13. Petitioner as per the aforesaid guidelines opted VGF based MTA document proposed by Planning Commission for development of the project. Ministry of Finance, Department of Economic Affairs vide O.M. No. 1/5/2005-PPP dt. 12.01.2006 has notified the guidelines containing the scheme for support to Public Private Partnerships in infrastructure.
14. We observe from the scheme that Gol extends financial support in the form of Viability Gap Funding for facilitating the implementation of various Public Private Partnership projects. The said guidelines contain the scheme for support to Public Private Partnerships in Infrastructure.
15. 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. As per para 5.1 of the guidelines, the quantum of financial support (VGF) to be provided under this scheme shall be in the form of a capital grant at the stage of project construction. The amount of VGF shall be equivalent to the lowest bid for capital subsidy, but subject to a maximum of 20% of the total project cost. In case the sponsoring Ministry/State Government/ statutory entity propose to provide any assistance over and above the said VGF, it shall be restricted to a further 20% of the total project cost.
16. As per para 3 (b) (ii) of guidelines "Scheme for financial Support to Public Private Partnerships in Infrastructure", infrastructure projects in the power sector are eligible for VGF under the scheme. Further, guidelines also specify

that Private Sector Company is to be selected through an open and transparent 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.

17. We have examined the process of competitive bidding adopted in the present case by RVPN for selection of the successful bidder on the basis of the lowest grant or the highest premium. Further, RVPN has also submitted a certificate confirming that the bidding process is as per the scheme for financial support to Public Private Partnership in infrastructure notified by Central Government.

18. This Commission vide its order dt. 08.12.2014 has granted in principle approval for 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 MTA on the basis of approved ARR of RVPN for FY 2014-15. Further, RVPN, looking to the tentative VGF requirement of more than 20% cap, decided to increase the base unitary charge by 10% as per the provision in MTA to Rs. 29.43 crore.

19. Considering the submissions made by RVPN and the documents produced in support, we are satisfied 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.

20. In the light of above, Commission decides to

(i) adopt Base Unitary Charge of Rs. 29.43 crores per annum as the tariff determined through transparent process of bidding in accordance with the guidelines issued by the Central Govt. under Section 63 of the Electricity Act, 2003.

(ii) allow payment of Unitary Charges and other associated charges by RVPN to concessionaire in accordance with provisions made in the Transmission Agreement.

(iii) allow recovery of such charges paid by RVPN from the Discoms and other long term open access consumers.

21. The adoption of the aforesaid charges in this order is subject to the fulfillment of all other conditions in the "Guidelines for Encouraging Competition in the Development of Transmission Projects" by the Petitioner and the selected Bidder/concessionaire.

22. The copy of the order may be sent to State Govt., CEA, Petitioner and Discoms.

(Raghuvendra Singh)
Member (T)

(Vinod Pandya)
Member (F)

(Vishvanath Hiremath)
Chairman