

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 54/MP/2014

Coram:

Shri Gireesh B Pradhan, Chairperson

Shri M.Deena Dayalan, Member

Shri A.K. Singhal, Member

Shri A. S. Bakshi, Member

Date of Hearing: 18.09.2014

Date of Order : 07.01.2015

In the matter of

Petition under section 17 (3) of the Electricity Act, 2003 for amalgamation/ merger of Petitioner No 2 (WRTML) and Petitioner No 3 (WRTGL) with Petitioner No 1 (RInfra)

And

In the matter of

1. Reliance Infrastructure Limited,
H-Block, First Floor,
Dhirubhai Ambani Knowledge City,
Navi Mumbai-400710
2. Western Region Transmission (Maharashtra) Private Limited,
H-Block, First Floor,
Dhirubhai Ambani Knowledge City,
Navi Mumbai-400710
3. Western Region Transmission (Gujarat) Private Limited,
H-Block, First Floor,
Dhirubhai Ambani Knowledge City,
Navi Mumbai-400710

.....Petitioners

Vs

1. Power Grid Corporation of India,
"Saudamini",
Plot No. 2, Sector-29,
Gurgaon: 122001
2. MP Power Trading Company Ltd. (MP Tradeco),
Shakti Bhawan, Rampur,
Jabalpur:482008



3. Gujarat Urja Vikas Nigam Ltd. (GUVNL),
Race Course Road,
Vadodara-390007
4. Maharashtra State Electricity Distribution Company Ltd. (MSEDCL),
Prakashgad, Bandra (East),
Mumbai-400051
5. Chhattisgarh State Power Distribution Company Ltd. (CSPDCL),
Vidyut Seva Bhavan, P.O. Sundernagar,
Danganiya, Raipur-492013
6. Government of Goa, Electricity Department,
Third Floor, Vidyut Bhavan,
Panaji, Goa-403001
7. Electricity Department, Administration of Daman & Diu,
Secretariat, Fort Area, Moti Daman,
Daman-396220
8. Administration of Dadra & Nagar Haveli,
Electricity Department,
Govt of UT of Dadra & Nagar Haveli,
Silvassa-396230
9. MP Audyogik Kendra Vikas Nigam Ltd. (MPAKVNL),
Free Press House,
I Floor, 3/54-Press Complex,
A.B.Road, Indore-452008
10. Jindal Power Limited,
Second Floor, DCM Building,
Plot No.: 94, Sector-32, Near Exit-9,
Gurgaon-122001
11. Power Trading Corporation of India Ltd.,
NBCC Tower, 15, Bhikaji Cama Place,
New Delhi-110066
12. Heavy Water Project, Department of Atomic Energy,
Heavy Water Board,
Vikaram Sarabhai Bhawan,
Anushakti Nagar, Mumbai-400094
13. Sugden Mega Power Project,
Torrent Power Limited,
Off. National Highway No. 8,



Taluka-Kamrej, Dist. Surat-394155

14. Adani Power Limited,
8-A, Sambhav Bldg,
Judges Bungalow Road, Bodak Dev,
Ahmedabad-380015

...**Respondents**

Parties present

1. Shri Buddy Rangnathan , Advocate, RIL
2. Shri Naveen Nagpal, RIL
3. Shri Aditya Panda, RIL
4. Shri Raju Shayam, RIL
5. Shri L.N. Mishra, WRTML/WRTGL

ORDER

The petitioners, Reliance Infrastructure Limited (**RInfra**), Western Region Transmission (Maharashtra) Pvt. Ltd. (**WRTML**) and Western Region Transmission (Gujarat) Pvt. Ltd (**WRTGL**) have jointly filed the present petition under subsection (3) of Section 17 of the Electricity Act, 2003 praying for approval to amalgamation of WRTML and WRTGL into RInfra. The prayers made in the petition are extracted as under:

“In the premises it is respectfully prayed that this Hon’ble Commission may be graciously pleased to:

- a) *Approve the amalgamation of Petitioners No. 2 and 3 with Petitioner No. 1; and*
- b) *Pass any other order or orders as may deem fit and proper in the facts and circumstances of the case.”*

2. RInfra incorporated under the Companies Act, 1913 in the name of Bombay Suburban Electric Supply Ltd is stated to be engaged in the business of generation, transmission, distribution and trading of electricity. WRTML and WRTGL are stated to be wholly owned subsidiaries of Reliance Power Transmission Limited, a company incorporated under the Companies Act, 1956 and a wholly owned



subsidiary of RInfra. In this way, the petitioners have claimed, WRTML and WRTGL are step-down wholly owned subsidiaries of RInfra.

3. WRTML and WRTGL have been granted licenses by the Commission for construction, operation and maintenance of inter-State transmission system under the Western Region System Strengthening Schemes by two separate orders, both dated 30.12.2008, in Petition Nos. 27/2008 and 28/2008 respectively consequent upon their selection through the process of competitive bidding.

4. The petitioners have submitted that as a part of restructuring of business of RInfra, a scheme for amalgamation of WRTML and WRTGL into RInfra has been formulated. The petitioners have stated that the scheme for amalgamation would result in value creation for all the equity shareholders, including minority shareholders of RInfra. The scheme for amalgamation has been formulated to achieve the following objects, namely-

- (a) consolidate the business of the entities of RInfra which holds the entire share capital of WRTGL and WRTML;
- (b) achieve synergies of operations and integrate business functions as a consequence of consolidation of the power transmission business;
- (c) reduce managerial overlaps involved in running multiple entities;
- (d) reduce administrative cost;
- (e) remove multiple layer inefficiencies; and
- (f) achieve management efficiency



5. Rinfra stated to be a company listed on the stock exchanges has received the 'No Objection' from National Stock Exchange of India and Bombay Stock Exchange in terms of clause 24 (f) of the Listing Agreement so as to enable it to file the scheme of amalgamation with Bombay High Court . The copies of the letters placed on record by the petitioners along with the petition (**pages 97-99**) reveal that the stock exchanges concerned have consulted Securities Exchange Board of India before conveying their 'No Objection'.

6. Pursuant to the scheme of amalgamation approved by their respective Board of Directors and on receipt of 'No Objection' from the concerned stock exchanges, WRTML and WRTGL filed separate Company Scheme Petitions before the Bombay High Court under Sections 391 to 394 of the Companies Act, 1956 for sanction of the arrangement embodied in the scheme of amalgamation. Bombay High Court, by its order dated 15.7.2014, copy of which has been placed on record by the petitioners under affidavit verified on 28.7.2014, has approved the scheme effective from 1.4.2013, subject to compliance of certain conditions.

7. WRTML and WRTGL had entered into Implementation Agreement with Power Grid Corporation of India (**PGCIL**) as the Central Transmission Utility and Transmission Service Agreements with the beneficiaries in Western Region. Clause 14.1 of the agreements provides as under:

"14.1 Assignments

Beneficiary(s) shall at all times have the right to assign its rights, benefits and obligations under this agreement and also convey, transfer and vest all interest held by the Beneficiary(s) in the project together with beneficial interest to any entity or entities as Government of India/State Government may from time to time direct as a part of re-organisation or restructuring of electricity industry provided that such successor entities expressly assume the obligations of



Beneficiary(s) under this Agreement and are capable of performing the obligations of Beneficiary(s) under this Agreement.

Subject to Clause 14.2, this Agreement shall not be assigned by the OPTC other than by mutual agreement between the parties."

8. It has been stated by the petitioners that WRTML and WRTGL had given notices to PGCIL and the respective beneficiaries of the transmission systems under clause 14.1 of the Implementation Agreement as well as Power Transmission Agreements stating that RInfra would undertake businesses of WRTML and WRTGL strictly in accordance with those agreements and accordingly sought consent of PGCIL/beneficiaries for merger with RInfra. The copies of the notices dated 1.3.2014 are annexed to the petition (**Pages 100-107**). The petitioners in their affidavit filed on 24.4.2014 have stated that no response has been received either from PGCIL or the beneficiaries.

9. The petitioners have submitted that the transferee company (RInfra) is engaged in the business of generation, transmission, distribution and trading of electricity. Since after merger, a single company has been proposed to be made responsible for all the activities, including transmission and trading in electricity, the petitioners were asked by the staff of the Commission to clarify as to how the trading and transmission activities are to be kept insulated from each other in view of third proviso to Section 41 of the Electricity Act. The petitioners in their affidavit filed on 24.4.2014 have clarified as under:

"This is to state that para 6 of the petition refers to the activities carried on by Reliance Infrastructure Ltd. as the holding company for all its subsidiaries. The electricity trading activities are carried on only by Reliance Energy Trading Co. Ltd. (a subsidiary of Reliance Infrastructure Ltd.) which is a separate legal entity and it is only Reliance Energy Trading Co. Ltd. which is the Trading Licensee under the Electricity Act, 2003. Since Reliance Energy



Trading Co. Ltd. is a separate legal entity, its books of accounts are kept separately and as a sand-alone concern in accordance with the relevant provisions of the Companies Act and the Income Tax Act etc.”

10. Though the petition has been filed under sub-section (3) of Section 17 of the Electricity Act, the petitioners have not sought the Commission’s approval for assigning the inter-State transmission licences granted to WRTML and WRTGL or transfer of their utilities to RInfra. Therefore, staff of the Commission asked the petitioners to clarify whether WRTML and WRTGL were being transferred to RInfra Limited in terms of the proposed amalgamation and whether the licences granted to them were proposed to be assigned in favour of RInfra or RInfra will seek a transmission licence for carrying out the transmission business being carried out by WRTML and WRTGL. The petitioners have filed their affidavit dated 24.4.2014 stating that under the proposed scheme of amalgamation, WRTGL and WRTML were proposed to be merged with/taken over by RInfra and the transmission licenses granted in favour of WRTGL and WRTML were proposed to be assigned to RInfra.

11. After hearing the learned counsel for the petitioner, notices were issued to the respondents to file their replies. Madhya Pradesh Power Management Company Ltd in its capacity as Respondent No. 2 has filed its response on 31.10.2014. None of the other respondents has filed any reply. Madhya Pradesh Power Management Company Ltd in its response has stated that Madhya Pradesh Power Trading Company Ltd which was assigned the function of bulk purchase and sale of power within the State of Madhya Pradesh was subsequently renamed as Madhya Pradesh Power Management Company Ltd. Therefore, Power Transmission Agreements executed by WRTML and WRTGL stand transferred in the name of Madhya Pradesh



Power Management Company Ltd. In the reply it has been stated that in case the proposed merger results in any additional financial burden, it shall not be passed on to Madhya Pradesh Power Management Company Ltd.

12. The matter was heard on 18.9.2014. During the course of hearing, learned counsel for the petitioner submitted that merger is in the interest of efficient and effective conduct and running of the respective divisions of WRTML and WRTGL with RInfra. With the agglomeration of each of the businesses in each of the Divisions, the consolidated entity would be able to better concentrate on those businesses and the assets and the personnel engaged in those businesses would be optimally utilized. Learned counsel submitted that the combined financial strength and assets of the amalgamated business would also make it easier for RInfra to seek financing for the entity as a whole on competitive terms. Learned counsel further submitted that as per the regulatory requirement, RInfra is required to provide the breakup of revenues and costs of each of the regulated and un-regulated Divisions. The breakup is correlated with total numbers in the final accounts of RInfra as a whole. The said break up is also certified by the company's auditor as being in consonance with the final audited accounts of RInfra.

13. The petitioner, vide Record of Proceedings for the hearing dated 18.6.2014, was directed to file certain information/clarification. The petitioner, vide its affidavit dated 16.10.2014, has filed the information/clarification called for.

14. We have heard learned counsel for the petitioner and pursued documents on record. The following issues arise for our consideration:



- (a) Whether the proposed merger will be in conflict with third proviso to Section 41 of the Act?**

- (b) Whether this is a fit case for according approval under Section 17 (3) of the Act for amalgamation of WRTML and WRTGL?**

- (c) After the amalgamation, how the accounts of the WRTML and WRTGL shall be maintained? and**

- (d) Whether the amalgamation would require assignment of licences to RInfra?**

Issue No. 1: Whether the proposed merger will be in conflict with third proviso to Section 41 of the Act?

15. According to third proviso to Section 41 of the Act, a transmission licensee cannot enter into any contract or otherwise engage in the business of trading in electricity. In the present case, WRTML and WRTGL which are wholly owned step down subsidiaries of RInfra are proposed to be merged with RInfra. After amalgamation, RInfra would undertake the activity of transmission of electricity in addition to the other activities presently being undertaken by it. It is however, noted that Reliance Energy Trading Ltd. which is a fully owned subsidiary of RInfa is engaged in inter-State trading of electricity. Therefore, the issue that needs deliberation is whether bar of third proviso to Section 41 would be attracted in case of approval for amalgamation of utilities of WRTML and WRTGL with RInfra.

16. In the affidavit dated 16.10.2014, the petitioners have clarified about the status of RInfra and Reliance Energy Trading Ltd. after amalgamation of RInfra as under:

“14..... the trading of power is not undertaken by RInfra but by its subsidiary namely Reliance Energy Trading Limited which is a completely different and a separate entity in law. The present proposal of merger does not seek to change this position. Hence the transmission activity would be conducted by the RInfra and the trading activity would be conducted by the Reliance Energy Trading Limited. The two entities are and would continue to be completely different. Hence, there is no question or scope for violation of last proviso of Section 41 of the Electricity Act, 2003.”

17. From the above, it appears that the petitioners are ring fencing RInfra from the Reliance Energy Trading Ltd. by retaining them as separate entities. A similar issue arose in Petition No 44/TL/2013 filed for grant of transmission licence by Adani Power Ltd whose holding company, Adani Enterprises Ltd holds a licence for inter-State Trading in electricity. The Commission in its order dated 8.6.2013 held as under:

“24. We have considered the rival contentions on this issue. Section 41 of the Act provides that a transmission licensee cannot enter into any contract or otherwise engage in the business of trading in electricity. The question that arises for our consideration is whether the petitioner, in case it is granted transmission licence, would be entering into contract or otherwise engaging in the business of trading in electricity by virtue of the fact that its parent/holding company is engaged in the business of trading in electricity. In our considered view, the answer cannot be in the affirmative. The petitioner and its parent/holding company are two separate and distinct legal entities. In the facts of the present case there is no warrant to hold them as single entity. The objective of Section 41 of the Act is to avert a situation of conflict of commercial interest between the transmission licensee and the trading licensee in the matter of grant of open access. Even if the petitioner is ultimately granted the transmission licence there will be no possibility of it favouring its parent/holding company in the matter of grant or denial of open access for the purpose of trading in electricity because load despatch functions are entrusted to other statutory bodies. The case of MSETCL (supra) is clearly distinguishable. In that case, MSETCL which is entrusted with the statutory function of State Transmission Utility and operates the State Load Despatch Centre, and MSETCL, which applied for trading licence were



found to be subsidiary companies of MSEB Holding Company Ltd. MSEPTCL was refused trading licence by this Commission since the possibility of MSETCL favouring MSEPTCL under the influence of the holding company could not be ruled out. In view of the discussion, the bar of Section 41 of the Act does not come in the way of petitioner being considered for grant of transmission licence." (Emphasis supplied)

18. For the view already taken by the Commission in the above matter and keeping in view the clarification of the petitioner in its affidavit dated 24.4.2014 that two entities are and would continue to be completely different, we are of the view that bar of third proviso to Section 41 of the Electricity Act would not be attracted on transfer of utilities of WRTML and WRTGL to RInfra.

Issue No. 2: Whether this is a fit case for according approval under Section 17 (3) of the Act for amalgamation of WRTML and WRTGL?

19. Section 17 (3) of the Act provides as under:

"(3) No licensee shall at any time assign his licence or transfer his utility, or any part thereof, by sale, lease, exchange or otherwise without the prior approval of the Appropriate Commission."

Under the above provisions, the licensee cannot transfer his utility to any other entity without the approval of the Commission. Accordingly, the petitioner has approached the Commission for prior approval. It is therefore, necessary to see whether the proposed merger would have any adverse impact on the business of transmission of electricity presently being carried out by WRTML and WRTGL. As per the petitioners, RInfra has the following divisions dealing with generation, transmission and distribution of electricity:

- (i) Thermal (coal) generation at Dahanu;



- (ii) Intra-State transmission in Maharashtra- under a licence granted by the MERC;
- (iii) Distribution in Bombay under a licence by MERC;
- (iv) Gas based generation in Andhra Pradesh;
- (v) EPC Division;
- (vi) Generation and distribution at Goa;
- (vii) Wind generation; and
- (viii) Corporate Division.

20. It is noted that RInfra is already having intra-State licence of transmission of electricity which is being regulated by MERC. Therefore, the merger of the WRTML and WRTGL will only expand the business of transmission of RInfra.

21. The purpose of amalgamation is to achieve synergies of operations, integrate business functions, reduce managerial overlaps, reduce the cost of operation and achieve management efficiency. The petitioner in para 6 of the affidavit dated 16.10.2014 has submitted that assets of WRTML and WRTGL would be maintained as two Divisions of RInfra and would be separately available if so required by the Commission and can be reported if so directed by the Commission. Since after amalgamation, separate divisions of WRTML and WRTGL can be maintained within RInfra, no adverse impact on the business of transmission is visualized on account of the amalgamation. Madhya Pradesh Power Management Company Ltd. in its reply has stated that in case the proposed merger results in any additional financial burden, it shall not be passed on to Madhya Pradesh Power Management Company Ltd. The petitioner is directed to ensure that no financial burden is passed on the beneficiaries on account of the merger of WRTML and WRTGL into RInfra.



22. The Hon`ble High Court of Bombay has accorded sanction for the scheme of amalgamation with effect from 1.4.2013 in terms of Sections 391 to 394 of the Companies Act. Presently, the proposal is being considered under sub-section (3) of Section 17 of the Electricity Act, which requires the licensee to obtain “prior” approval of the Commission for transfer of utility of the licensee or a part thereof. Accordingly, we approve under sub-section (3) of Section 17 of the Electricity Act the transfer of utilities of WRTML and WRTGL to RInfra. Transfer of utilities of WRTML and WRTGL to RInfra is further subject to the condition that all rights, assets, liabilities and obligations of WRTML and WRTGL shall vest in RInfra. RInfra shall also remain bound by the terms and conditions of licences granted to WRTML and WRTGL as has been undertaken in the petition by the petitioners.

Issue No. 3: After the amalgamation, how the accounts of the WRTML and WRTGL shall be maintained?

23. Regulation 15 of the Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of Transmission Licence and other related matters) Regulations (Transmission Licence Regulations) provides as under:

“15. Accounts of the Licensee
The licensee shall -

(a) maintain separate accounts for each business, including the business of the undertaking utilising assets of the project, in such form and containing such particulars as may be specified by the Commission and till such time these are specified by the Commission, the accounts shall be maintained in accordance with the Companies Act, 1956, as amended from time to time.

(b) prepare from such records, accounting statements for each financial year comprising a profit and loss account, a balance sheet and a statement of source and application of funds together with notes thereto and showing separately the amounts of any revenue, cost, asset, liability, reserve, or provision which has been either:



- (i) charged from or to any other business together with a description of the basis of that charge; or
- (ii) determined by apportionment or allocation between the various business activities together with a description on the basis of the apportionment or allocation.

(c) get the accounting statements prepared in accordance with foregoing clauses, duly certified by the Auditors in respect of each financial year, stating whether in their opinion the statements have been properly prepared and give a true and fair view of the revenues, costs, assets, liabilities, reserves reasonably attributable to the business to which the statements relate.”

Keeping in view of the requirement to Regulation 15 of the Transmission Licence Regulations, the Commission in the Record of Proceedings dated 18.9.2014 has directed the petitioners to file the following information/clarification with regard to maintenance of separate accounts from other business and transmission business, etc:

(a) After merger, how the petitioner will maintain the separate accounts for other business and transmission business in terms of Regulation 15 (a), (b) and (c) of Transmission Licence Regulations?

(b) How the petitioner will value the assets of WRTML and WRTGL separately in the balance sheet and distribute the premium? and

(c) How the petitioner will keep cash and Bank balance separately of WRTML and WRTGL from other divisions in the company?

24. The petitioners vide affidavit dated 16.10.2014 have submitted as under:

(a) The company would be in a position to maintain separate balance sheets for each of the transmission licenses as required under Regulation 15 (a) (b) and (c) of the Transmission Licence Regulations. The company has a



world renowned SAP Enterprise Resource Planning (ERP) system in place. SAP system works on profit centre and cost centre concept which clearly segregates all the accounting, reporting and regulatory requirement of each regulated and unregulated business. The books of account of the company incorporates transaction-wise details of income, expenditure, assets and liabilities of each regulated as well as unregulated business separately over last one decade to the satisfaction of regulatory authority and it has never been felt that regulated business be kept at SPV level to meet the requirement of regulator. Therefore, merging SPV business with the parent company is not expected to pose any regulatory accounting or reporting problem.

(b) The assets of each of the two divisions can and would separately be available if so required by the Commission and can be reported if so directed by the Commission. Since the assets of WRTML and WRTGL would be valued and shown in the books of RInfra at the same value that are reflected in the present balance sheet of WRTML and WRTGL, the question of any premium or its distribution would not and does not arise.

(c) Pursuant to the scheme of amalgamation, all the assets, liabilities, rights, employees, etc. of WRTML and WRTGL would be transferred to the company. To segregate cash and bank balance of the transmission licence business from the other businesses of the company, the company will continue to maintain separate bank account for the transmission licence business of WRTML and WRTGL. With regard to the cash balance, the



employees of WRTML and WRTGL who are responsible for handling cash balance would continue to be entrusted with the responsibility of maintaining cash balance for their transmission licence business which would ensure demarcation of cash and bank balance of WRTML and WRTGL.

25. We have considered the submission of the petitioners. The petitioners have placed their reliance on the Judgments of Hon`ble Appellate Tribunal for Electricity dated 4.4.2007 and 2.12.2013 in Appeal No. 251 of 2006 and 138-139 of 2012 respectively and have submitted that if the proposed merger is operationalized, each of the regulated business is, in regulatory jurisprudence, to be treated as a stand-alone business in a water tight compartment of income and expenditures and has to be assessed as such on such stand-alone basis. The petitioners in the affidavit have affirmed that they “can keep accounts separately as profit and cost centre and it is possible to have a balance sheet for each business division.” In their subsequent affidavit verified on 7.11.2014 the petitioners have brought on record a certificate from the Auditors, M/s Pathak H. D. & Associates, Chartered Accountants, to support the submissions made in the affidavit verified on 16.10.2014. The petitioners have also submitted that assets of the Divisions can and would be separately available if so required. The petitioners have further submitted that since the assets and liabilities of WRTML and WRTGL would be valued and shown in the books of RInfra at the same value which are reflected in the present balance sheets of WRTML and WRTGL, the question of any premium or its distribution would not and does not arise. Taking note of the submission of the petitioners, we direct that RInfra after the merger will reflect the assets and liabilities of WRTML and WRTGL at the same value as are reflected in the present balance sheet of WRTML and WRTGL



and not at any discount/premium as it will disturb the debt-equity ratio of WRTML and WRTGL which are regulated entities. It is further directed that accounts of each of the transmission business being transferred shall be kept separately from other businesses of RInfra. After completion of merger, RInfra shall submit a certificate (alongwith supporting documents) from the Statutory Auditor that the above directions have been complied with.

Issue No. 4: Whether the amalgamation would require assignment of licenses to RInfra?

26. WRTML and WRTGL have been granted inter-State transmission licences by the Commission. The petitioners vide letter dated 7.4 2014 were directed to clarify as under:

“Since Reliance Infrastructure Limited is not a transmission licensee, it may be clarified whether the transmission licenses granted to WRTML and WRTGL are proposed to be assigned in favour of Reliance Infrastructure Limited or Reliance Infrastructure Limited will seek a transmission licence for carrying out the transmission business.”

27. In response, the petitioners, vide their affidavit dated 24.4.2014, have submitted that under the proposed scheme of amalgamation, WRTML and WRTGL are proposed to be merged with/taken over by RInfra and the transmission licences presently in favour of WRTML and WRTGL are proposed to be assigned to RInfra.

28. In present petition, the petitioners have not prayed for assignment of transmission licences granted to WRTML and WRTGL in favour of RInfra. After the amalgamation, the petitioners shall file appropriate application for assignment of transmission licences granted to WRTML and WRTGL in favour of RInfra.



29. With the above, the petition stands disposed of.

Sd/-
(A. S. Bakshi)
Member

sd/-
(A.K. Singhal)
Member

sd/-
(M.Deena Dayalan)
Member

sd/-
(Gireesh B Pradhan)
Chairperson

