

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 421/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: 9.12.2014

Date of Order : 8.01.2015

In the matter of

Petition under Section 17 (3) read with Section 79 (1) (e) of the Electricity Act, 2003 for Assignment of Transmission Licence (No. 20/Transmission/2013/CERC) of Adani Power Limited to Adani Transmission (India) Limited.

And

In the matter of

1. Adani Power Limited

Adani House,
Near Mithakhali Six Roads,
Navrangpura, Ahmedabad,
Gujarat-380 009

2. Adani Transmission (India) Limited

Adani House,
Near Mithakhali Six Roads,
Navrangpura, Ahmedabad,
Gujarat-380 009

.....**Petitioners**

Vs

1. Power Grid Corporation of India Ltd.

Saudamini, Plot 2, Sector 29,
Near IFFCO Chowk,
Gurgaon, 122001, Haryana

2. Ajmer Vidyut Vitran Nigam Ltd

Old Power House, Hathi Bhata, Jaipur Road
Ajmer, Rajasthan

3. Jaipur Vidyut Vitran Nigam Ltd.

Vidyut Bhawan, Janpath, Jaipur-302 005



4. Jodhpur Vidyut Vitran Nigam Ltd.
New Power House Industrial area,
Jodhpur- 342003
5. Himachal Pradesh State Electricity Board
Vidyut Bhawan
Kumar House Complex Building, Shimla
6. Punjab State Power Corporation Limited
Shed No. T-LA, Thermal Design
Near 22 No. Phatak
Patiala
7. Haryana Power Purchase Centre
Shakti Bhawan, Energy Exchange,
Sector- 06, Panchkula -134109
8. Govt. of Jammu and Kashmir
SLDC Building, 1st Floor
Gladani Power House,
Narwal, Jammu
9. U.P.Power Corporation Ltd.
Import Export and Payment Circle
11th Floor, Shakti Bhawan Extn. Building,
14, Ashok Marg, Lucknow
10. Union Territory of Chandigarh
Div-II, Opposite Transport Nagar,
Indl. Ph-I, Chandigarh
11. Uttaranchal Power Corporation Ltd.
Urja Bhawan, Kanwali Road,
Near Balliwala Chowk, Dehradun
12. BSES Yamuna Power Ltd.
2nd Floor, B-Block, Shakti Kiran Building,
Near Karkadooma Court, Karkadooma,
New Delhi – 110092
13. BSES Rajdhani Power Ltd.
BSES Bhawan, 2nd Floor, B-Block
Behind Nehru Place Bus Terminal
Nehru Place, New Delhi -110019
14. Tata Power Delhi Distribution limited
33 kV Sub-station Building,
Hudson Lane, Kingsway Camp, New Delhi-110019



15. New Delhi Municipal Corporation
Palika Kendra, Sansad Marg,
New Delhi - 110001

16. North Central Railway
DRM Office,
Nawab Yusuf Road, Allahabad
HVDC Dadri

17. Power Grid Corporation of India Limited
B-9, Qutab Institutional Area, Katwarla Sarai,
New Delhi – 110016

18. Lanco Anpara Power Limited
Plot No. 397
Udyog Vihar, Phase 3
Gurgaon -122016, Haryana

19. Everest Power Ltd.
First Floor, 15, Bhikaji Cama Place
New Delhi - 110 066

20. Ad Hydro Power Limited
Bhilwara Towers
A-12, Sector- I
Noida-201 301, Uttar Pradesh

21. Jaiprakash Power Ventures Ltd
A Block, Sector - 128
Noida - 201304, Uttar Pradesh

22. Lanco Budhil Power Pvt. Ltd.
Plot No. 397, Udyog Vihar Phase - III
Gurgaon, Haryana

23. Himachal Sorang Power Pvt. Ltd.
D-7, Sector - I, lane - I, 2nd Floor
New Shimla
Shimla - 171009, Himachal Pradesh

24. Madhya Pradesh Power Management Company Limited
Block No. -11, Ground Floor,
Shakti Bhawan, Vidyut Nagar, Rampur,
Jabalpur - 482 008, M.P.

25. Madhya Pradesh Audyogik Kandra Vikas Nigam (Indore) Ltd.
Free Press House, 1st Floor, 3/54,
Press Complex, Agra-Bombay Road
Indore-452 008



26. Maharashtra State Electricity Distribution Co. Ltd
Prakashgad, 4th Floor
Bandra (East), Mumbai - 400 051

27. Gujarat Urja Vikas Nigam Ltd
Vidyut Bhawan, Race Course
Vadodara - 390 007

28. Electricity Department
Administration of Daman & Diu
Plot No. - 35, OIDC Complex,
Near fire station, Somnath,
Daman - 396 210

29. Administration of Dadra Nagar Haveli
66 kV, Amla Road, Silvassa - 396 230
Chhattisgarh State Power Distribution Company Limited,
P.O.Sunder Nagar, Dangania,
Raipur - 492013, Chhatisgaarh

30. Jindal Power Ltd.
2nd Floor, DCM Building,
Plot No.94, Sector No.32,
Gurgaon (Haryana)

31. PTC India Limited
2nd Floor, NBCC Tower,
15, Bhikaji Cama Place,
New Delhi – 110066

32. Torrent Power Limited
Naranpura Zonal Office,
Sola Road, Ahmedabad – 380013

33. Heavy Water Board
Vikram Sarabhai Bhavan,
5th Floor, Anushaktinagar, Mumbai - 400 094

34. Power Grid Corporation of India Limited
Sampriti Nagar, Near Ring Road,
PO: Uppalwadi, Nagpur- 440026

35. Goa Electricity Department
Govt. of Goa, Curti -Ponda,
Goa-403401

36. ACB India Limited
7th Floor, Corporate Tower
Ambience Mall, NH-8, Gurgaon - 122 001, Haryana



37. EMCO Energy Limited
Plot No – F-5, Road No.- 28,
Wagle Industrial Area, Thane,
Mumbai – 400604

38. Spectrum Coal and Power Ltd.
7th floor, Corporate Tower
Ambience Mall, NH 8
Gurgaon – 122 001, Haryana

.....Respondents

Parties present:

Shri Meet Malhotra, Senior Advocate for the petitioner
Shri M. R. Krishnarao, APL
Shri Jignesh Langalia, APL
Shri Shashank Kumar, ATIL

ORDER

The petitioners, Adani Power Limited (APL) and Adani Transmission (India) Limited (ATIL) have jointly filed the present petition under sub-section (3) of Section 17 read with Section 79 (1) (e) of the Electricity Act, 2003 (“the Act”) for approval of transfer of the Transmission licence granted to APL to ATIL.

2. APL is a subsidiary of Adani Enterprises Limited (AEL) and is engaged in the business of generation and transmission of electricity. Adani Transmission (Gujarat) Ltd. was incorporated on 2.12.2013 to *inter-alia* carry on the business of establishing, commissioning, setting up, operating and maintaining electric power transmission systems. Subsequently, the name of Adani Transmission (Gujarat) Ltd. was changed to Adani Transmission (India) Limited with effect from 13.2.2014. ATIL is a wholly owned subsidiary of APL and also a step down subsidiary of AEL in terms of Section 2(87) of the Companies Act, 2013. Transmission of electricity is covered under the objects of ATIL. Relevant portion of Memorandum of Association of ATIL is extracted as under:



“To carry on in India or abroad the business of establishing, commissioning, setting up, operating and maintaining electric power transmission systems/ networks, power systems, generating stations based on conventional/ nonconventional resources for evacuation, transmission, distribution or supply of power through establishing or using stations, tie-lines, sub-stations and transmission or distribution lines in any manner including build, own and transfer (BOT), and/or build, own and operate (BOO) and/or build, own, lease and transfer (BOLT) and/or build, own, operate and transfer (BOOT) basis or otherwise, and to acquire in any manner power transmission systems/networks, power systems, generation stations, tie-lines, sub-stations and transmission or distribution systems from State Electricity Boards, Vidyut Boards, Power Utilities, Generating Companies, Transmission Companies, Distribution Companies, Central or State Government Undertakings, Licensees, other local authorities or statutory bodies, other captive or independent power producers and distributors and to do all the ancillary, related or connected activities as may be considered necessary or beneficial or desirable for or along with any or all of the aforesaid purposes which can be conveniently carried on these systems, networks or platforms.”

3. The authorized, issued, subscribed and paid up share capital and shareholding of ATIL as on 31.8.2014 are as under:

Particulars	Amount in Rupees
Authorised	
3500,00,00,000 Equity share of Rs. 10/- each	3500,00,00,000
500,00,00,000 compulsorily Convertible preference shares of Rs. 10/- each	500,00,00,000
Total	4000,00,00,000
Issued, Subscribed and paid up	
287,19,22,110 Equity shares of Rs. 10/- each, fully paid up	2871,91,21,100
Total	287,19,22,110

4. The petitioners have also submitted the corporate details of ATIL including the corporate profiles of its Directors.

5. APL has been granted inter-State transmission licence in electricity by the Commission for construction, operation and maintenance of inter-State transmission system of 400 kV D/C Mundra-Dehgam transmission line and 500 kV bipole Mundra-Mohindergarh HVDC transmission line including associated 400 kV by order dated 29.7.2013 in Petition No. 41/TL/2012. While granting the transmission licence to APL, the Commission vide order dated 29.7.2014 directed APL to form a separate

company incorporated under the Companies Act, 1956 to function as the transmission licensee in accordance with the provisions of the Act. APL was further directed to ensure that the said company is ring fenced from other businesses of the petitioner like generation, trading, etc.

6. The petitioners have submitted that in compliance with the Commission's direction, and as a part of business reorganization and to achieve utmost synergy and efficiency of operations and management of the Power Transmission Business, APL has formulated a Scheme of Demerger ("the Scheme") which was approved by the respective Board of Directors of APL and ATIL on 28.12.2013.

7. Pursuant to the Scheme approved by their respective Board of Directors, APL and ATIL filed separate Company Scheme Petitions before the Hon`ble High Court of Gujarat under Sections 391 to 394 of the Companies Act, 1956 for sanction of the arrangement embodied in the Scheme of Demerger. The petitioners have submitted that APL had also filed an application before the High Court of Gujarat for convening a meeting of the stakeholders for approval of the Scheme. Accordingly, Gujarat High Court ordered for convening the said meeting on 14.8.2014. In the meeting, the stakeholders approved the Scheme of Demerger with requisite statutory majority. Hon`ble High Court of Gujarat by its order dated 26.9.2014, copy of which has been placed on record by the petitioners, has approved the Scheme.

8. The petitioners have submitted that upon the coming into effect of the Scheme, APL alone shall be liable to perform all obligations in respect of all debts, liabilities, duties and obligations pertaining to the remaining businesses and ATIL shall not have any obligations in respects of these businesses.



9. Against the above background, the petitioner has filed the present petition with the following prayers:

“(a) To approve the transfer of the transmission licence No. 20/Transmission/2013/CERC and all rights and obligations associated therewith from Petitioner No. 1 to Petitioner No. 2 with effect from the date of the Scheme becoming effective following final approval of the Hon`ble High Court of Gujarat;

(b) Condone any inadvertent omissions/errors/shortcomings and permit to add/change/modify/alter this filing and make further submissions as may be required at a future date;

(c) Allow ATIL to operate and maintain the Transmission System under licence during the pendency of this application; and

(d) Pass such other relief or further orders, as the Hon`ble Commission may deem fit and appropriate keeping in view the facts and circumstances of the case.”

10. The petition was heard after notice to the respondents. No reply has been received from the respondents. During the course of hearing, learned senior counsel for the petitioners submitted that the present petition has been filed in compliance of the Commission’s direction dated 29.7.2013 and requested to approve the transfer of the transmission licence granted to APL to ATIL.

11. We have heard learned senior counsel for the petitioner and perused documents on record.

12. 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 assign his licence or transfer his utility, or any part thereof, by sale, lease, exchange or otherwise without the approval of the Commission. Accordingly, the petitioner has approached the Commission for prior approval.

13. APL had filed an application before the Commission for the grant of inter-State transmission licence under Section 14 of the Act in which APL had also prayed for in-principle approval for assignment of transmission licence under Section 17 (3) of the Act, upon grant of transmission licence, in the name of new legal entity. The Commission after following the regulatory process and duly considering the objections/comments of all the respondents granted transmission licence to APL on 29.7.2013. While granting the transmission licence to APL, the Commission directed APL to form a separate company to function as the transmission licensee in accordance with the provisions of the Act. Relevant portion of the order dated 29.7.2013 is extracted as under:

“14. The petitioner shall form a separate company incorporated under the Companies Act, 1956 to function as the transmission licensee in accordance with the provisions of Electricity Act, 2003. The petitioner shall ensure that the said company is ring-fenced from other business of the petitioner like generation, trading, etc.”

14. In compliance with our directions, the petitioner has created a separate company through the process of demerger. The purpose of demerger has been stated to achieve utmost synergy and efficiency of operations and management of the power transmission business and better regulatory compliance of power transmission business. Hon`ble High Court of Gujarat has also accorded sanction for the Scheme of Demerger in terms of Sections 391 to 394 of the Companies Act,1956. Under sub-section (3) of Section 17 of the Act, a licensee is required to obtain “prior” approval of the Commission for assigning the licence or transfer of its utility. In the present case, the transmission business of APL which is the licensee of inter-State transmission of electricity is being transferred to ATIL, a new company created through demerger. The licence granted to APL has been proposed to be assigned in favour of ATIL. In terms of Sub-section (3) of Section 17 of the Act, we

approve the transfer of the transmission business of APL to ATIL and assignment of the transmission licence in favour of ATIL. Consequent to the assignment of licence, all rights, assets, liabilities and obligations of APL in respect of the transmission business shall vest in ATIL which shall also remain bound by the terms and conditions of licence.

15. After transfer of the transmission business to ATIL from APL, ATIL has become a separate regulated entity. We direct that the following shall be complied with by the petitioner:

- (a) Debt-equity ratio consequent to the demerger shall remain the same as was prevailing prior to demerger and shall not undergo any change.
- (b) Equity from APL to ATIL shall be issued at par and not at any premium.
- (c) Any revenue/profit earned by APL from the transmission business shall be transferred to ATIL.
- (d) Any other liability including cash pertaining to the transmission business shall be physically transferred to ATIL.

After completion of transfer of assets and liabilities, ATIL shall submit a certificate (alongwith supporting documents) from the Statutory Auditor that the above directions have been complied with.

16. It is noted that the Main Object of ATIL in the Memorandum of Association of the Company is as under:

“... and to acquire in any manner power transmission systems/networks, power systems, generation stations, tie-lines, sub-stations and transmission or distribution systems from State Electricity Boards, Vidyut Boards, Power Utilities, Generating Companies, Transmission Companies, Distribution Companies, Central or State Government Undertakings, Licensees, other local authorities or statutory bodies, other captive or independent power producers and distributors and to do all the

ancillary, related or connected activities as may be considered necessary or beneficial or desirable for or along with any or all of the aforesaid purposes which can be conveniently carried on these systems, networks or platforms.”

Thus, acquiring power transmission systems, distribution systems and generating stations, etc. are included in the object of the company. Since ATIL has become regulated business after its demerger and consequent assignment of licence, ATIL in the event of acquiring any other business will be required to seek prior permission of the Commission in terms of Section 17 (1) of the Act.

17. The petitioners shall submit the original licence to the Secretariat of the Commission for appropriate endorsements thereon.

18. 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

