

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 31/MP/2017

Coram:

Shri Gireesh B. Pradhan, Chairperson

Shri A.K. Singhal, Member

Shri A.S.Bakshi, Member

Dr. M.K. Iyer, Member

Date of Order : 7th of August, 2017

In the matter of

Petition under Section 17(3) of the electricity Act, 2003 for permission to transfer the Utility and assignment of licence comprising the transmission business/assets of the petitioner No.1/Reliance Infrastructure Limited formerly under Licence No. 6/Transmission/CERC in the name of Western Region Transmission (Maharashtra) Private Limited and Licence No.7/Transmission/CERC in the name of Western Region Transmission (Gujarat) Private Limited in favour of petitioner No.2 Western Transco Power Limited and Petitioner No.3 Western Transmission (Gujarat) Limited respectively.

And

In the matter of

1. Reliance Infrastructure Limited
H-Block, First Floor
Dhirubhai Ambani Knowledge City
Navi Mumbai 400710

2. Western Transco Power Limited
502, Plot no.91/94
Prabhat Colony, Santacruz (East),
Mumbai – 400 055

3. Western Transmission (Gujarat) Limited
502, Plot no.91/94
Prabhat Colony, Santacruz (East),
Mumbai – 400 055

.....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. Sunder Nagar,
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 and Nagar Haveli
Electricity Department,
Govt. of UT of Dadra and Nagar Haveli
Silvassa-396230
9. MP Audyogik Kendra Vikas Nigam Ltd (MPAKVNL)
Free Press House,
1st 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 110 066

12. Heavy Water Project,
Department of Atomic Energy,
Heavy Water Board, Vikaram Sarabhai Bhawan
Anushakti Nagar, Mumbai 400094

13. Sugen 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
Ahmadabad 380015

15. Adani Transmission Ltd,
Adani House, Near Mithakhali Six Roads,
Navrangpura, Ahmadabad- 380009

16. L&T Infrastructure Finance Company Limited
3rd Floor, Brindavan Plot No. 177,
CST Road, Kunchi Kurve Nagar
Kalina, Santacruz (East)
Mumbai 400 098

17. IndusInd Bank Limited
Peninsula Corporate Part,
Tower A, 4th Floor, Ganpatrao Kadam Marg
Lower Parel, Mumbai 400 013

18. India Infrastructure Finance Company Limited
8th Floor, Hindustan Times House
18 & 20, Kasturba Gandhi Marg
New Delhi 110 001

19. Credit Agricole Corporate & Investment Bank
168 Robinson Road

#23-00, Capital Tower, Singapore 068912

20. Mizuho Bank Limited
Global Project Finance Division
Asia Development, 12 Manna View, # 08-01,
Asia Square 2, Singapore 018961

.....Respondents

Following were present:

1. Shri Sanjay Sen, Senior Advocate, RInfra
2. Shri Buddy Ranganadhan, Advocate, RInfra
3. Shri Saswat Patnaik, Advocate, RInfra
4. Shri Naveen Nagpal, RInfra
5. Shri Rupin Rawat, RInfra
6. Shri Alok Roy, RInfra
7. Shri Harsha Manal, Advocate, PGCIL
8. Ms. Jyoti Prasad, PGCIL
9. Shri R.P. Padhi, PGCIL
10. Shri S.M. Singh, PGCIL
11. Shri Sitiesh Mukherjee, Advocate, CA-CIB & MBL
12. Shri Gautam Chawla, Advocate, CA-CIB & MBL
13. Shri Deep Rao, Advocate, CA-CIB & MBL

ORDER

The Petitioners, Reliance Infrastructure Limited (**RInfra**), Western Transco Power Limited (**WTPL**) and Western Transmission (Gujarat) Limited (**WTGL**) have jointly filed the present petition under sub-section (3) of Section 17 of the Electricity Act, 2003 seeking permission to transfer of the utility and assignment of licence comprising the transmission business/assets of RInfra along with security interest in such utilities in favour of WTPL and WTGL. The Petitioners have made the following prayers:

“(1) Permit the transfer of the utility indicated in Appendix A and B in favour of Petitioner No 2 / Western Transco Power Limited and Petitioner No 3 /Western Transmission (Gujarat) Limited respectively; and

(2) Assign the transmission licenses No (i) 6/Transmission/CERC dated December 30, 2008 granted by the CERC for WRTM; and (ii) 7/Transmission/CERC dated December 30, 2008 granted by the CERC for WRTG in favour of Petitioner No 2 /

Western Transco Power Limited and Petitioner No 3 / Western Transmission (Gujarat) Limited respectively; and

(3) Permit the transfer of the security interest in such utilities to be transferred along with the utility; and

(4) Permit Petitioner No 2 /Western Transco Power Limited and Petitioner No 3 / Western Transmission (Gujarat) Limited to enter into a connection agreement(s) with PGCIL/other utilities as applicable as required under the Indian Electricity Grid Code Regulations, 2010 for WRTM and WRTG projects respectively; and

(5) Approve transfer of the approval(s) granted under Section 68 of the Electricity Act, 2003 in relation to WRTM and WRTG projects, in favour of Western Transco Power Limited and Western Transmission (Gujarat) Limited respectively; and

(6) Permit the signing of Transmission Service Agreement & Revenue Sharing Agreement by Petitioner No 2 /Western Transco Power Limited and Petitioner No 3/Western Transmission (Gujarat) Limited post transfer of license(s) to Petitioner No 2/Western Transco Power Limited and Petitioner No 3 /Western Transmission (Gujarat) Limited; and

(7) Permit assignment/novation of erstwhile Western Region Transmission Maharashtra Pvt. Ltd and Western Region Transmission Gujarat Pvt Ltd /Petitioner No 1 rights and obligations in favour of Petitioner No 2/ Western Transco Power Limited and Petitioner No 3/Western Transmission (Gujarat) Limited under respective Power Transmission Agreement(s); and

(8) Permit transfer of all consents, permits, permissions, exemptions, registrations relating to WRTM and WRTG undertakings and vested in the Petitioner No 1 to Petitioner No. 2 and Petitioner No. 3 respectively so as to facilitate continuation of operations without any hindrance.

(9) Permit entry into all contracts, deeds, bonds, agreements and other instruments to substitute WTPL and WTGL in place of the erstwhile WRTM and WRTG SPVs / Petitioner No 1 in relation to various project documents. The existing project documents shall remain in full force and effect in favour of WTPL and WTGL and shall be enforceable by and against WTPL and WTGL as if WTPL and WTGL had at all material times been a party thereto.

(10) Permit the transfer of share holding in Petitioner No 2 / Western Transco Power Limited and Petitioner No 3 / Western Transmission (Gujarat) Limited to Respondent No 15 /Adani Transmission Limited; and

(11) Pass such order or orders as may be deemed just, fit and necessary in the facts and circumstances of the case.”

2. Brief facts of the case leading to filing of the present petition are discussed as under:

(a) PGCIL notified the Request for Selection in November, 2005 for selection of Independent Private Transmission Company for establishment of Western Region System Strengthening Scheme (WRSSS) Project B and WRSSS Project C on Build Own Operate Transfer (BOOT) basis through international competitive bidding. Reliance Infrastructure Limited (RInfra) through its wholly owned subsidiary Reliance Energy Transmission Limited (RETL) submitted the bid. Being the lowest bidder, PGCIL declared RETL as the successful bidder in November, 2007. Western Region Transmission (Maharashtra) Private Limited (WRTMPL) was incorporated as a 100% subsidiary of RInfra to establish Project B in the State of Maharashtra. Similarly, Western Regional Transmission (Gujarat) Private Limited (WRTGPL) was incorporated as 100% subsidiary of RInfra to establish Project C in the State of Gujarat and Madhya Pradesh. The Commission vide its orders dated 30.12.2008 granted licences to WRTMPL and WRTGPL to execute the WRSSS Project B and WRSSS Project C respectively.

(b) A consortium of financial institutions and banks led by SBI agreed to lend ₹329.70 crore to WRTGPL for part financing the WRSSS C and ₹638.40 crore to WRTMPL for WRSSS B with SBI CAP Trustee Co. Ltd as security trustee. The Commission vide orders dated 11.2.2010 in Petition Nos. 207/2009 and 208/2009 granted approval to WRTMPL and WRTGPL under Section 17 (3) of the Act to create security in favour of SBI CAP Trustee Co. Ltd. for the benefits of WRTMPL and WRTGPL lenders respectively.

(c) WRTGPL approached Credit Agricole Corporate and Investment Bank and Mizuho Corporate Bank, Singapore for part financing of the cost of the WRSSS Project C through External Commercial Borrowings in place of the rupee loans of USD 30 million each (i.e. USD 60 million) which was subsequently revised to USD 50 million. WRTGPL in Petition No. 173/MP/2011 approached this Commission seeking approval for creation of security in favour of IDBI Trusteeship Company Limited acting on behalf of Credit Agricole Corporate and Investment Bank and Mizuho Corporate Bank which was accorded by the Commission vide order dated 5.1.2012.

(d) WRTMPL approached IDFC Ltd. for part financing of the cost of the project in place of the existing rupee loan by the SBI led consortium and IDFC Ltd. agreed to give a loan of ₹601 crore. The Commission vide its order dated 22.3.2013 in Petition No. 7/MP/2013 granted approval to WRTMPL to create security in favour of SBI CAP Trustee Ltd. acting on behalf of IDFC Ltd. After getting the no dues certificate from IDFC Limited, WRTMPL approached L&T Infrastructure Finance Company Limited and IndusInd Bank Limited for part financing of WRSSS Project B and the said lenders agreed to provide loan of Rs.645 crore. WRTMPL approached this Commission for approval under section 17(3) of the Act for creation of security in favour of SBI CAP Trusteeship Company Limited on behalf of L&T Infrastructure Finance Company Limited and IndusInd Bank Limited which was accorded vide order dated 21.9.2015 in Petition No. 169/MP/2015.

(e) WRSSS B Project achieved its COD on 1.1.2014 and WRSSS C project achieved its COD on 29.12.2015. RInfra approached the Commission for approval for restructuring of its business by merging WRTGPL and WRTMPL with RInfra on the basis of approval of merger by Bombay High Court vide order dated 15.7.2014. The Commission vide order dated 7.1.2015 in Petition No.54/MP/2014 accorded the approval for merger of WRTGPL and WRTMPL with RInfra subject to the condition that RInfra shall maintain the accounts of transmission businesses separately. Subsequently, the Commission approved the assignment of licences granted to WRTGPL and WRTMPL in favour of RInfra vide order dated 22.9.2015 in Petition No.176/MP/2015.

(f) RInfra has decided to focus on the Defence and EPC sector and as part of its strategy to divest its transmission business, RInfra has proposed to sell its transmission assets under WRSSS B and WRSSS C projects to Adani Transmission Limited (ATL). RInfra has entered into Term Sheet Agreement dated 5.10.2016 and Share Purchase Agreement dated 6.12.2016 with ATL for sale of 100% economic interest in WRSSS B and WRSSS C projects. As part of divestment process, RInfra has incorporated two fully owned subsidiaries in the form of Special Purpose Vehicles (SPVs) on 6.12.2016 namely, Western Transco Power Limited (WTPL) and Western Transmission (Gujarat) Limited (WTGL) for the purpose of holding the assets of WRSSS B and WRSSS C projects through execution of Business Transfer Agreement (BTA) between

RInfra and the SPVs. After transfer of the assets of WRSSS B and WRSSS C to WTPL and WTGL, RInfra will transfer its 100% equity shareholding in WTPL and WTCL to ATL.

(h) RInfra has approached the Commission for approval under Section 17(3) of the Act for transfer of the assets of WRSSS B and WRSSS C to WTPL and WTGL alongwith assignment of the transmission licences in favour of these SPVs and thereafter for transfer of its entire equity shareholding in these two SPVs to ATL.

3. RInfra has submitted that after conducting strategic review of its business verticals and noting the high growth opportunities in the defence and EPC sectors arising from various initiatives of Government of India, RInfra has decided to focus on the defence and EPC sector as the primary driver of future growth and accordingly has decided to divest certain existing businesses like road development and transmission businesses. As part of the strategy, RInfra has proposed to sell its undertakings formerly under WRTMPL and WRTGPL i.e. the assets of WRSSS B and WRSSS C to ATL. RInfra has submitted that ATL presently owns 5,450 circuit kilometers of transmission lines ranging from 400 kV to 765 kV, with a total transformation capacity of 12,000 MVA., RInfra has further submitted that ATL is now constructing additional 1900 ckms in Rajasthan, Chhattisgarh, Madya Pradesh, Maharashtra, Jharkhand and Bihar which were awarded through the Tariff Based Competitive Bidding (TBCB) process. RInfra has submitted that the transfer of the proposed utility ultimately in favour of ATL through sale of stake in WTPL and WTGL shall not prejudice any interest or benefits of the beneficiaries of both erstwhile WRTMPL and WRTGPL or in any way weaken the

obligations of the licensee under the respective licence and project documents. RInfra has submitted that ATL, through acquisition of WTPL and WTGL, shall undertake to comply with all obligations under the (i) Implementation Agreements dated 23.11.2007 entered into between WRTMPL and PGCIL and between WRTGPL and PGCIL; and (ii) Transmission Service Agreements dated 1.8.2011 entered into between WRTMPL and PGCIL and between WRTGPL and PGCIL.

4. RInfra has submitted that vide its letter dated 7.12.2016, RInfra has informed the BSE Ltd. and National Stock Exchange (NSE) in respect of proposed divestment of WRTGPL and WRTMPL transmission businesses to ATL. RInfra has submitted that it has sought the consent of the lenders of erstwhile WRTMPL and WRTGPL to allow transfer of WRTMPL and WRTGPL undertakings from RInfra to WTPL and WTGL alongwith the designated outstanding borrowings. It has been submitted that RInfra shall transfer the WRTMPL and WRTGPL undertakings from RInfra to WTPL and WTGL only after obtaining the written consent of the lenders. RInfra has submitted that since the erstwhile WRTMPL and WRTGPL would continue to be owned and operated by ATL which has been successfully operating the transmission business, the beneficiaries of the business are likely to receive the same quality of service.

5. The Commission directed RInfra to make the lenders of WRTMPL and WRTGPL as parties to the petition. RInfra has complied with the said direction by making L&T Infrastructure Finance Company Limited, IndusInd Bank Limited, India Infrastructure Finance Company Limited, Credit Agricole Corporate & Investment Bank and Mizuho Bank Limited as parties. In response to the petition, M.P. Power Management Company

Ltd. (MPPMCL), Gujarat Urja Vikas Nigam Ltd. (GUVNL), Power Grid Corporation of India Ltd (PGCIL) and two lenders of WRTGPL namely, Credit Agricole Corporate & Investment Bank and Mizuho Bank Limited, have filed their replies.

6. MPPMCL in its reply dated 5.5.2017 has submitted that the terms and conditions of the transfer shall not be detrimental to the interests of the beneficiaries. MPPMCL has further submitted that with regard to RInfra's request for approval for transfer of the projects and permission to transfer all consents, permits, permissions, exemptions, registrations relating to WRTMPL and WRTGPL to WTPL and WTGL, it has no issue with such transfer but the Commission may direct RInfra to ensure that no financial burden shall pass on to the beneficiaries on account of transfer of utilities. MPPMCL has further requested the Commission to ensure that there shall be no upward tariff revision on account of transfer of equity shareholding of RInfra in WTPL and WTGL to ATL and in case, the proposed transfer process results in any additional financial burden, it shall not be passed on to MPPMCL.

7. GUVNL in its reply dated 18.5.2017, has submitted that while granting the approval for transfer of transmission utility and assignment of licence under Section 17 of the Act, the Commission is required to consider the cause and justification for such transfer, the terms and conditions on which such transfer has to be permitted, the interest of the beneficiaries and protection of public interest. GUVNL has submitted that the Petitioners are required to submit the details relating to the arrangement proposed for the Commission to take an informed view before granting any permission for the transfer of the utility or for assignment of the licence. GUVNL has further submitted that the transfer of utility or assignment of licence can at no time lead to any increase in tariff

payable/additional financial obligation for the use of transmission system to the beneficiaries at any time.

8. PGCIL in its reply dated 6.6.2017 has submitted that based on the International Competitive Bidding process carried out by PGCIL for selection of Independent Private Transmission Company (IPTC), RETL was notified as the prospective IPTC and thereafter, RETL incorporated WRTMPL and WRTGPL as its wholly owned subsidiaries for execution of Projects B and C of WRSSSS-II on Build, Own and Operate (BOO) basis for the purpose making available the entire transmission capacity to the beneficiaries. Implementation Agreements were signed by PGCIL on 23.11.2007 with WRTMPL for implementation of WRSSSS-II Project B and with WRTGPL for implementation of WRSSSS-II Project C. In terms of the IAs, PGCIL was to provide assistance to IPTCs for obtaining necessary Consents and Way leaves for establishment of the Projects and to suitably connect the Project to the Inter-State Transmission Systems. PGCIL has submitted that it had no liability towards payment of transmission service charges to IPTC. PGCIL has submitted that in terms of clause 4.7 of the IA, the IPTCs were required to furnish the development security of Rs.629 million to PGCIL valid upto three months beyond Required Commercial Operation Date in order to secure performance of IPTC under the IAs. A Parent/Affiliate Company Guarantee of Rs.629 million was also required to be furnished by the Parent or Affiliate Company of IPTC to be valid till the 1st anniversary of Commercial Operation Date to secure performance and obligations of IPTC. Accordingly, WRTMPL furnished Development Security in the form of Bank guarantee amounting to Rs.62.9 crore and a Parent/Affiliate Bank Guarantee amounting to Rs.62.9 crore. The validity dates of BGs were upto 31.12.2014 and same were returned back to WRTMPL by PGCIL on their expiry. In respect of WRSSSS-II Project C,

WRTGPL furnished a Bank Guarantee of Rs. 31.7 crore towards Development Security and Rs.31.7 crore towards Parent/Affiliate Company Guarantee which were valid till 31.3.2016 and the same were returned by PGCIL on their expiry. PGCIL has submitted that if the proposed scheme is approved by the Commission, then as per the Commission`s Regulations, (i) all the fresh agreements including Transmission Service Agreements, and (ii) Revenue Sharing Agreements, etc. are required to be signed by the new entities which would replace erstwhile WRTMPL and WRTGPL. PGCIL has submitted that it should not suffer at any cost, in pursuance to approval of the arrangement as sought by the Petitioners and all such agreements with PGCIL of the erstwhile /proposed companies should stand valid in the eyes of law and such arrangement should not expose PGCIL to any harassment with respect to the work to be done in accordance with agreements and applicable law. PGCIL has requested the Commission to direct the Petitioners including new companies to follow all the rules and regulations, and sign all relevant agreements with CTU on taking over by new company and declare that PGCIL should not suffer at any cost, in pursuance to approval, if accorded, of the arrangement as sought by the Petitioners.

9. Amongst the lenders, Credit Agricole Corporate & Investment Bank (CA-CIB) and Mizuho Bank Limited (MB), two foreign lenders of WRTGPL in their separate replies dated 12.6.2017 have submitted that they were the lenders to erstwhile WRTGPL pursuant to the Credit Agreements dated 29.6.2011 with CA-CIB and MB. Subsequent to the merger of WRTGPL with RInfra, CA-CIB and MB have become lenders to RInfra and have executed Amended and Restated Credit Agreement (ARCA-1) with RInfra effective from 29.9.2015. CA-CIB and MB have submitted that after obtaining internal credit approval and after negotiation and finalization of loan documentation, they have

executed among others, amended ARCA- 1 on 12.6.2017 (amended agreement referred as “ARCA-2”). CA-CIB and MB have submitted that in terms of ARCA-2 and other relevant documents, CA-CIB and MB have no objection to the transfer of the WRSSS-II Project C from RInfra to WTGL on the basis that RInfra and WTGL would continue to be in compliance with the terms of the finance documents and ARCA-2 would be effective after RInfra and WTGL have obtained all approvals for the said transfer. For the second part of the transaction i.e. sale of equity shareholding of RInfra in WTGL to ATL, CA-CIB and MB expect their credit facilities to be transferred to another lender on or prior to the transfer of shares of WTGL to ATL.

10. RInfra in a common rejoinder to the above responses of the Respondents has submitted as under:

(a) The Petitioners are not seeking any change in TSA and other agreements between the Transmission Companies and beneficiaries which shall remain the same. After the approval of the Commission, the new entities shall sign fresh agreements with the beneficiaries and the terms of the agreements shall remain the same.

(b) As regards contention of GUVNL for submission of additional material to consider whether the transfer is in public interest or not, it has been submitted that the justification for transfer is contained in the petition itself and GUVNL has not denied any contents of the petition including justification for the transfer. RInfra has assured that no additional financial burden by way of revision in tariff

would be imposed on the beneficiaries by the reason of the transfer of assets to ATL.

(c) As regards GUVNL's submission that the Commission may take an informed decision before granting permission for transfer of the utility or assignment of the licence since the project was awarded to the WRTGPL based on qualification and criteria fulfilled by the bidder, RInfra has submitted that ATL is already in the business of transmission and is operating inter-State and intra-State transmission lines of 400 kV, 765 kV, etc. and is also constructing various transmission systems under TBCB route.

(d) In response to the submission of CA-CIB and MB that upon the sale of equity shareholdings of RInfra in WTGL to ATL, their credit facility to WTGL would be replaced by another lender, RInfra has submitted that ATL has availed suitable arrangements from Standard Chartered Bank (SCB) in such a way that upon transfer of shares of WTGL from RInfra to ATL, the facility from CA-CIB and MB would be replaced by a facility from SCB. RInfra has placed on record a letter dated 17.5.2017 from SCB committing to lend upto USD 27.7 million to ATL on the date of acquisition of WTGL by ATL.

11. During the hearing on 15.6.2017, learned senior counsel for the Petitioners submitted that NoC for transfer of utility from RInfra to SPVs has been received from the lead consortium of the WRTMPL i.e. L&T Infrastructure Finance and NoCs from the other two lenders namely, IndusInd Bank and IIFCL were in the process. Learned senior counsel for the Petitioners further submitted that the commitment letter of SCB dated

17.5.2017 has been forwarded to CA-CIB and MBL. Learned counsel for CA-CIB and MB submitted that the lenders have given their consents for the transfer of utility from RInfra to WTGL upon their credit facility being transferred to another lender on or prior to the transfer of shares of WTGL to ATL. Learned counsel for CA-CIB and MB confirmed that a commitment letter dated 17.5.2017 of Standard Chartered Bank for replacing the credit facility of CA-CIB and MBL by a facility of SCB upon the transfer of shares from WTGL to RInfra has been received from the Petitioners.

12. The Commission, vide Record of Proceedings for hearing dated 15.6.2017, directed the Petitioner to submit the following information and clarifications:

(i) Valuation of the assets to be transferred under the proposed transfer scheme; and

(ii) A detailed write up giving the chronological order of events regarding assignment of licence for drawal of loan, transfer of WRTM and WRTG to RInfra, transfer of RInfra to WTPL and WTGL and proposed transfer of shares from WTPL and WTGL to ATL alongwith independent Balance Sheet before the merger of WRTM and WRTG with RInfra, Separate Balance Sheet for these assets in RInfra. The write up must also include the basis of valuation of assets at first level, second level, third level and finally at the level of transfer to the prospective buyer. Copies of arrangement of transfer at each stage may also be furnished. The Balance Sheet of the respective companies must be certified by the Statutory Auditors.

13. As regard the valuation of assets, RInfra vide affidavit dated 23.6.2017 has submitted that the demerger of WRSS undertakings from RInfra to WTPL and WTGL would be carried out at book value of the assets. The total value of the assets of WRSSS-II B and WRSSS-II C projects as on 31.3.2017 was Rs.947 crore and Rs. 623 crore respectively. The debt outstanding in WRSSS B (WRTM) and WRSSS C as on 31.3.2017 was Rs. 517 crore and Rs. 180 crore respectively. In support, RInfra has placed on record the audited financial statements as certified by the statutory auditors. The transfer of WRSSS-II B and WRSSS-II C undertakings from RInfra to WTPL and WTGL respectively shall be carried out in accordance with Business Transfer Agreement (BTA). RInfra has submitted that the sale of 100% shareholding of WTPL and WTGL by RInfra to ATL is being done at a valuation determined based on Discounted Cash Flow (DCF) valuation method. RInfra has submitted that the enterprise value for both projects combined works out to be approximately Rs. 1000 crore as on 1.1.2017 which has been disclosed by the Petitioners to stock exchanges namely, BSE Ltd. and National Stock Exchange on 7.12.2016. RInfra has placed on record the Binding Term Sheet and Share Purchase Agreement signed between RInfra and APL in a sealed envelope separately claiming confidentiality for commercial information.

14. With regard to details in chronological order of events, RInfra has submitted the same from November, 2005 (i.e. date of notification of RFP by PGCIL) till 26.12.2016 (incorporation of SPV, namely WTPL and WTGL). RInfra has also submitted the chronological steps towards completing the proposed transaction as under:

(a) Approval of CERC and lenders for transfer of WRSSS-II B and C undertakings from RInfra to WTPL and WTGL, and transfer of shareholdings in WTPL and WTGL from RInfra to ATL.

(b) Execution of Business Transfer Agreement (BTA) between RInfra and WTGL/WTPL. Draft BTA has been placed on record.

(c) Transfer of WRSSS-II B and C undertakings from RInfra to WTPL and WTGL respectively after completion of conditions precedent specified under BTA and any conditions precedent specified by lenders under the financial documents/approvals for such transfer of undertakings.

(d) Completion of Conditions Precedent under Share Purchase Agreement [including execution of Transmission Service Agreement (TSA), Revenue Sharing Agreement (RSA)] and any conditions precedent specified by lenders under the financing documents/approvals for transfer of shareholding.

(e) Simultaneous transfer of,-

(i) Shares of WTPL and WTGL from RInfra to ATL on receipt of equity consideration by RInfra from ATL.

(ii) Outstanding loans in WTGL from CA-CIB and MB to Standard Chartered Bank.

Analysis and Decision:

15. The present petition has been filed under Section 17 (3) of the Act for seeking approval of the Commission to transfer the WRSSS-II B and C undertakings from RInfra

alongwith security interests to WTPL and WTGL, two SPVs incorporated as fully owned subsidiaries of RInfra and assignment of licence of erstwhile WRTMPL and WRTGPL (now assigned to RInfra) in favour of WTPL and WTGL. Approval has also been sought under Section 17(3) of the Act for permission to transfer 100% shareholdings in WTPL and WTGL to Adani Transmission Limited (ATL) in terms of the Term Sheet Agreement and Share Purchase Agreement between RInfra and ATL. Permission has been further sought for certain incidental activities to be carried out pursuant to the above proposed transfers.

16. Section 17 of the Act provides as under:

“17. Licensee not to do certain things: (1) No licensee shall, without prior approval of the Appropriate Commission,

(a) undertake any transaction to acquire by purchase or takeover or otherwise, the utility of any other licensee; or

(b) merge his utility with the utility of any other licensee:

Provided that nothing contained in this sub-section shall apply if the utility of the licensee is situate in a State other than the State in which the utility referred to in clause (a) or clause (b) is situate.

(2) Every licensee shall, before obtaining the approval under sub-section (1), give not less than one month's notice to every other licensee who transmits or distributes, electricity in the area of such licensee who applies for such approval.

(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.

(4) Any agreement, relating to any transaction specified in sub-section (1) or sub-section (3), unless made with the prior approval of the Appropriate Commission, shall be void.”

As per clause (1) of Section 17 of the Act, a licensee cannot acquire the utility of any other licensee nor merge its utility with the utility of any other licensee without the prior approval of the Appropriate Commission. Sub-section (3) of Section 17 of the Act

provides that no licensee shall transfer its utility by sale, lease, exchange or otherwise and assign its licence without the prior approval of the Appropriate Commission. Sub-section (4) of Section 17 further states that any agreement relating to any transaction in terms of sub-section (1), i.e. for acquisition and merger of the utility and in terms of sub-section (2) i.e. transfer of utility or assignment of licence, without obtaining the prior approval of the Appropriate Commission shall be void. In the present case, RETL was selected as the IPTC through international Competitive Bidding to execute the WRSSS-II Projects B and C for which RETL incorporated two fully owned subsidiaries namely, WRTMPL and WRTGPL respectively. WRTMPL and WRTGPL were granted transmission licences by this Commission vide order dated 30.12.2008. Therefore, this Commission is the Appropriate Commission to accord approval in terms of Section 17 of the Act.

17. WRTMPL and WRTGPL entered into Implementation Agreements with PGCIL and Transmission Service Agreements with the respective beneficiaries of WRSSS-II Project B and Project C. As per the Implementation Agreements, PGCIL was required to provide assistance for obtaining necessary consents, provide connectivity to the inter-State transmission system and exercise supervision and control during construction phase. WRTMPL and WRTGPL were required to provide “development security” and “Parent/Affiliate Company Guarantee” which were to be released after COD of the projects and 1st anniversary of the COD of the projects respectively. WRSSS-II Project B achieved COD on 1.1.2014 and WRSSS-II Project C achieved COD on 29.12.2015 and PGCIL is stated to have returned the bank guarantee in both cases to WRTMPL and WRTGPL. As per the Transmission Service Agreements, WRTMPL and WRTGPL

are required to make available entire capacity in both projects to the beneficiaries and receive transmission charges.

18. Both WRTMPL and WRTGPL raised loans from the financial institutions for part financing of the projects. They have also resorted to refinancing of the loans. On all occasions, both WRTMPL and WRTGPL had sought and were granted approval by this Commission under Section 17(3) of the Act. WRTMPL has last financed the loan of Rs.601 crore from IDFC Limited by creating security in favour of SBICAP Trustee Limited. WRTGPL has last financed the loan CA-CIB and MB and created security in favour of IDBI Trusteeship Limited as Security Trustee.

19. As per the Scheme of Amalgamation approved by the High Court of Judicature at Bombay, WRTMPL and WRTGPL were merged with RInfra on 29.9.2015 after obtaining approval from this Commission. Pursuant to the merger, IDFC Limited became a lender of RInfra in respect of WRSSS-II Project B and CA-CIB and MB became the lenders of RInfra in respect of WRSSS-II Project C and necessary agreements were executed between RInfra and the lenders. As per the affidavit dated 23.6.2017 filed by RInfra, merger of WRTMPL and WRTGPL with RInfra with effect from 1.4.2014 was on the basis of the valuation at book value of the assets which were Rs. 1,127 crore and Rs.618 crore as on 31.3.2014 for WRSSS B and WRSSS C respectively. The external debts outstanding in WRSSS B and WRSSS C projects as on 31.3.2014 were Rs.589 crore and 259 crore respectively.

20. The proposal in the present petition is in two parts: (a) demerger of WRSSS B & C from RInfra to WTPL and WTGL at the book value of the assets and (b) transfer of

WTPL and WTGL to ATL in terms of the Term Sheet Agreements and Share Purchase Agreements between RInfra and ATL. RInfra has submitted that as on 31.3.2017, the total value of assets of WRSSS B and WRSSS C were Rs.947 crore and Rs.623 crore respectively and debt outstanding as on 31.3.2017 are Rs.517 crore and Rs.180 crore respectively. RInfra has submitted audited financial statements in support of the value of assets and debt outstanding as on 31.3.2017. According to RInfra, transfer of WRSSS B and WRSSS C undertakings to WTPL and WTGL respectively shall be carried out in accordance with the terms of the Business Transfer Agreement between RInfra and WTPL and RInfra and WTGL. WTPL and WTGL have been incorporated as public companies and are wholly owned and controlled subsidiaries of RInfra. RInfra has placed on record the Memorandums of Association and Articles of Association of WTPL and WTGL which show that the main object of the companies are to “carry on the business of establishing, commissioning, setting up, operating and maintaining electric power transmission systems/network,.....and to acquire in any manner power transmission system/networks.....”.RInfra has also placed on record the draft Business Transfer Agreements in respect of WTPL and WTGL. As per the BTAs, RInfra as the Transferor intends to sell, assign, transfer, convey and deliver all rights, title, ownership, possession and economic interest in the WRSSS Project B and Project C to WTPL and WTGL respectively which are the Transferee Companies on Slump Sale basis. BTA defines “Slump Sale as “transfer of the Undertaking from the Transferor to the Transferee, as a going concern such that the consideration is a single undivided lump sum consideration for the Undertaking and no independent value is assigned to each or any of the components of the Undertaking.” We have also considered the submissions

of PGCIL, the beneficiaries such as MPPMCL and GUVNL, the lenders of WRSSS-II Project C, namely CA-CIB and MB. None of these parties have any objection to the transfer of WRSSS-II Project B and Project C to WTPL and WTGL which are the wholly owned subsidiaries of RInfra. MPPMCL and GUVNL have expressed the view that the proposed transfer of utilities and assignment of licences in favour of WTPL and WTGL should not result in additional financial obligations to the beneficiaries. PGCIL has submitted that it should not suffer any cost in pursuance of the approval of the arrangement sought by RInfra and should not be exposed to any harassment with reference to any work to be done in accordance with the agreements. CA-CIB and MB have stated that they have entered into ARCA 2 on 12.6.2017 with RInfra and WTGL and they have no objection to the transfer of utility from RInfra to WTGL on the basis that RInfra and WTGL will continue to be compliant with the terms of the finance documents. RInfra in its rejoinder has submitted that RInfra is not seeking any change in the TSA and the other terms of the TSA and other Agreements between the beneficiaries and transmission companies (WRTMPL and WRTGPL/RInfra). RInfra has further submitted after approval of the Commission, the new entities, namely WTPL and WTGL pursuant to the transfer shall sign fresh agreements with the beneficiaries and terms of the Agreements shall remain the same.

21. After taking note of the submission of the parties and on perusal of the documents on record, we approve the transfer of the WRSSS Project B and Project C from RInfra to WTPL and WTGL respectively under Section 17(3) of the Act subject to the following conditions:

(a) There shall be no change in the terms and conditions of the agreements between erstwhile WRTMPL and WRTGPL (subsequently RInfra) and the beneficiaries and PGCIL pursuant to the transfer of WRSSS Project B and Project C to WTPL and WTGL respectively;

(b) No extra liability or obligations shall accrue to PGCIL on account of the Implementation Agreement between erstwhile WRTMPL and WRTGPL with PGCIL pursuant to the transfer of the WRSSS Project B and Project C to WTPL and WTGL respectively;

(c) There shall be no change in the terms and conditions of the TSAs between the erstwhile WRTMPL and WRTGPL and the beneficiaries including the transmission charges payable under the TSAs pursuant to the transfer of the WRSSS Project B and Project C to WTPL and WTGL respectively;

(d) RInfra shall ensure that the transfer of all rights, title, ownership, possession and economic interest in the WRSSS Project B and Project C vest in WTPL and WTGL, respectively in terms of the Business Transfer Agreements;

(e) Pursuant to the transfer, WTPL and WTGL shall enter into Transmission Service Agreement, Revenue Sharing Agreement and other Agreements as required under the applicable regulations of the Commission to inter-State transmission licensees;

(f) RInfra and WTPL and WTGL shall protect the interest of the lenders of erstwhile WRTMPL and WRTGPL through appropriate contractual instruments;

(g) It shall be the responsibility of RInfra to ensure that all legal and contractual requirement for and pursuant to the transfer of WRSSS Project B and Project C vest in WTPL and WTGL respectively are complied with and any instance of non-compliance shall be construed as contravention of the directions of the Commission and shall be dealt with in accordance with law.

(h) The Commission in its order dated 1.4.2012 in Suo Motu Petition No. 176/2011 had decided as under:

“14. In view of the above, we direct that the tariff of the WRSSS-II Project 'B' and Project 'C' after the concession period of 25 years (3 years for construction and 22 years for operation) shall be determined on the basis of the buy-out price of Rs. 5 crore quoted by the licensees at the time of submitting their bids for the project.”

WTPL and WTGL shall comply with the directions contained in the said order.

(i) Within one month of the completion of transfer, RInfra alongwith WTPL and WTGL shall file the status report on the transfer of WRSSS Project B to WTPL and WRSSS Project C to WTGL.

22. After the transfer of WRSSS Project B to WTPL and WRSSS Project C to WTGL in terms of the directions above, licence granted to erstwhile WRTMPL and WRTGPL shall stand assigned in favour of WTPL and WTGL on the same terms and conditions as the original licences.

23. The second part of the proposal in the present petition is transfer of WTPL and WTGL to ATL in terms of the Term Sheet Agreements and Share Purchase Agreements between RInfra and ATL. RInfra has submitted that 100% shareholding together with

economic interest of WTPL and WTGL by RInfra to ATL is being done on Discounted Cash Flow (DCF) valuation method. The enterprise value for both projects combined works out to Rs.1000 crore as on 1.1.2017. RInfra has entered into Share Purchase Agreement with ATL for divestment of its transmission assets in WRSSS Project B and C. RInfra vide its letter dated 7.12.2016 has made a disclosure to that effect to BSE Ltd and National Stock Exchange of India Limited in terms of Regulation 30 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015. RInfra has placed on record copies of the Term Sheet Agreement and Share Purchase Agreement in sealed cover. We have gone through the Agreements and do not express any view thereon as it is contractual issue between RInfra and ATL and does not affect the tariff to be paid by the beneficiaries under the TSA. After the issue of this order, we direct the staff to return the documents in sealed cover to RInfra.

24. In terms of the Share Purchase Agreement, ATL is acquiring 100% of shareholding of RInfra in WTPL and WTGL alongwith the liabilities to the lenders. The present lenders of WRSSS project B are IDFC Limited with security interest created in favour of SBICAP Trustee Limited. The same shall be vested in WTPL and after transfer of 100% equity in WTPL, the ATL through WTPL shall be liable for the said loan. The present lenders of WRSSS Project C are CA-CIB and MB which are the lenders to WRTGPL in terms of ARCA 1 and to RInfra in terms of ARCA 2. Both CA-CIB and MB have categorically stated that for sale of equity shareholdings by WTGL to ATL, they would expect their credit facility to be transferred to another lender on or prior to transfer of shares of WTGL to ATL. RInfra has submitted that ATL has tied up with Standard Chartered Bank who has agreed to provide the credit facility in place of the credit facility

of CA-CIB and MB. A letter dated 17.5.2017 from Standard Chartered Bank has been placed on record. The relevant portion of the letter is extracted as under:

“ATL is proposing to arrange refinancing or transfer/assignment of the existing project debt (USD 27.70 million as on March 31, 2017) on the date of acquisition of WTGL by ATL, through External Commercial Borrowing of same tenor or a longer tenor (“Facility”).

We, Standard Chartered Bank (“SCB”) , refer to the Facility and are pleased to confirm SCB has obtained internal credit approvals to lend upto USD 27.7 million of the Facilities subject to satisfactory documentation and terms outlined in Term Sheet (the “Commitment”). This Commitment shall expire on 30 September 2017”

During the hearing of the Petition, learned counsel for CA-CIB and MB confirmed that they are satisfied with the arrangement and have no objection to the proposed transfer of equity shares by RInfra in WTGL to ATL, subject to compliance with the commitment by SCB. RInfra in its affidavit dated 23.6.2017 has submitted that share transfer of WTPL and WTGL from RInfra to ATL and transfer of outstanding loan from CA-CIB and MB to SCB shall take place simultaneously. We expect the parties to comply with the above arrangement and commitment so that transfer of loan and substitution of lenders take place smoothly and ATL after share transfer in WTPL and WTGL discharges its obligations towards servicing of loan in respect of WRSSS Project B and Project C.

25. GUVNL has submitted that the transmission project was vested in the Petitioner pursuant to the tariff based competitive bid undertaken for the development of the transmission project and selection of the bidder was based on qualification and criteria fulfilled by the bidder as well as the competitive bid which the selected bidder has given. GUVNL has requested the Commission to take an informed view before granting

permission for transfer of the utility or for assignment of the licence. Rlnfra has submitted that ATL is already in the business of transmission and is operating inter-State and intra-State transmission lines of 400 kV, 765 kV, etc. and is also constructing various transmission systems under TBCB route. We have considered the submissions of GUVNL and Rlnfra. While selecting a project developer for development and operation of transmission system, two aspects are mainly seen, namely whether the bidder possesses technical qualifications and experience to undertake the business of transmission and whether the bidder has quoted the lowest bid price. We have to consider whether these conditions based on which RETL was selected as IPTC and its subsidiaries, namely the erstwhile WRTMPL and WRTMGL were granted licences are likely to be altered or modified on account of the proposed transfer of WTPL and WTGL to ATL. As regards the first condition, it is noted that ATL has been incorporated as a company to carry out transmission business. This Commission had granted licence to Adani Power Limited for its dedicated transmission system of 400 kV D/C Mundra-Dehgam Transmission Line +_ 500 kV Bipole Mundra-Mohindergarh HVDC transmission line including associated 400 kV lines and Mundra to Dehgam which was subsequently assigned to ATIL which is subsidiary company of ATL. Based on competitive bidding, ATL was declared as the successful bidder and acquired three companies, namely Raipur-Rajandgaon-Warora Transmission Ltd., Chhattisgarh-WR Transmission Ltd., and Sipat Transmission Ltd. who have been granted transmission licences on Build, Own, Operate and Maintain basis for the following transmission systems:

(a) Additional System Strengthening for Chhattisgarh IPPs-Part-B;

- (b) Additional System Strengthening for IPPs in Chhattisgarh and other Generation Projects in Western Region;
- (c) Additional System Strengthening for Sipat STPS.

Apart from the above, ATL is also having business of intra-State transmission based on the licences granted by MERC and RERC. Therefore, ATL possesses the necessary qualification and expertise to carry out the business of transmission. As regards the second condition, tariff of WRSSS Project B and Project C are being paid by the beneficiaries at the rates discovered through competitive bidding in terms of the TSAs. Both GUVNL and MPPMCL have submitted that the proposed transfer shall not result in change in tariff. RInfra has submitted on affidavit that consequent to the transfer of the WTPL and WTGL, there will be no additional burden by way of revision of tariff on the beneficiaries. It is clarified that since, the tariff of WRSSS Project B and Project C were discovered through competitive bidding, they shall remain in force throughout the terms of the TSAs and no mid-course revision in tariff shall be made, subject to the provisions of the TSAs.

26. In view of the above discussion, there are no technical and legal impediments to permit transfer of entire equity shareholdings of RInfra in WTPL and WTGL to ATL. We approve the transfer of entire shareholding of RInfra in WTPL and WTGL in favour of ATL under Section 17(3) of the Act subject to the following conditions:

- (a) On transfer of entire shareholdings of RInfra in WTPL and WTGL to ATL, both WTPL and WTGL shall become fully owned subsidiaries of ATL. It is directed that ATL shall ensure that such transfer does not contravene any provisions of the applicable laws.

(b) Since, after the transfer, WTPL and WTGL shall become the wholly owned subsidiaries of ATL, the transmission licences to be assigned in favour of WTPL and WTGL shall not be further assigned in favour of ATL without approval of the Commission.

(c) ATL shall ensure that WTPL and WTGL comply with all their obligations under the various Agreements in force and Agreements to be entered including the obligations towards their respective lenders.

(d) ATL shall not divest its interest in WTPL and WTGL or otherwise part with these companies without the prior approval of this Commission.

(e) There shall be no change in the transmission service charges being paid by the beneficiaries of WRSSS Project B and WRSSS C Project which shall continue to be governed as per the charges discovered through Tariff Based Competitive Bidding.

(f) ATL shall comply with our direction contained in order dated 4.1.2012 in Petition No. 176/2011.

27. After transfer of the entire shareholdings of RInfra in WTPL and WTGL to ATL, ATL shall file a status report about WTPL and WTGL including compliance of all legal and contractual requirements by these entities and ATL.

28. In the light of the above discussions, the prayers in the petition are disposed of as under:

(a) Prayers (1), (2) , (3) and (7) are disposed of in terms of para 21 of this order.

(b) As regards prayers (4) and (6), WTPL and WTGL shall enter into the necessary agreements under the IEGC and Sharing Regulations in place of erstwhile WRTMPL and WRTGPL after transfer of the WRSSS Project B and Project C from RInfra to WTPL and WTGL respectively.

(c) As regards prayer (5), this approval shall stand transferred in terms of Business Transfer Agreement.

(d) As regards prayers (8) and (9), the consents, permits, permissions, exemptions, registration etc. relating to WRTMPL and WRTGPL shall stand transferred in terms of Business Transfer Agreement.

(e) Prayer (10) is disposed of in terms of para 26 above.

29. It is directed that all concerned shall comply with the directions contained in this order for transfer of WRSSS Project B and Project C to WTPL and WTGL respectively and transfer of entire shareholdings of RInfra in WTPL and WTGL to ATL. If the necessary transactions do not materialise within a period of three months, the same shall be reported to the Commission.

30. The Petition is disposed of in terms of the above.

Sd/-
(Dr. M.K. Iyer)
Member

sd/-
(A.S. Bakshi)
Member

sd/-
(A.K. Singhal)
Member

sd/-
(Gireesh B. Pradhan)
Chairperson