

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 173/MP/2024

Coarm:

Shri Jishnu Barua, Chairperson

Shri Ramesh Babu V., Member

Shri Harish Dudani, Member

Date of order 3rd October, 2024

In the matter of:

Application under Section 17(3) of the Electricity Act, 2003 read with Regulation 9(21) of the Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of trading licence and other related matters) Regulations, 2020 and other applicable Regulations seeking approval of this Commission to transfer the inter-State trading licence held by the Applicant to Adani Energy Solutions Step-Thirteen Limited.

And

In the matter of

1. Adani Enterprises Limited,

Adani Corporate House, Adani Shantigram,
Near Vaishnodevi Circle, S G Highway,
Ahmedabad – 382421, Gujarat.

2. Adani Energy Solutions Step-Thirteen Limited,

Adani Corporate House, Adani Shantigram,
Near Vaishnodevi Circle, S G Highway,
Ahmedabad – 382421, Gujarat,

...Petitioners

Parties Present:

Shri Hemant Singh, Advocate, AEL

Shri Chetan Garg, Advocate, AEL

Ms. Lavanya Panwar, Advocate, AEL

Ms. Ankita Bafna, Advocate, AEL

Shri Jay Lal, Advocate, AEL

Shri Pawan Singh, Advocate, AEL

Shri Gyanendra Singh, Advocate, AEL

Shri Sandeep Kumar, Advocate, AEL

Shri Ramesh Kumar, Advocate, AEL

Shri Rohit Raj, Advocate, AEL

ORDER

Based on the application made under sub-Section (1) of Section (15) of the Electricity Act, 2003 (hereinafter referred to as 'the Act'), Adani Export Limited was on

9.6.2004 granted licence as a Category 'F' electricity trader under the Central Electricity Regulatory Commission (Procedure, Terms and Conditions of Trading Licence and other related matters) Regulations, 2004 for undertaking inter-State trading for whole of India, subject to the terms and conditions contained in the licence. Subsequently, on the request of Adani Export Limited, the Commission, vide its order dated 7.9.2006 changed the name of the licensee from Adani Export Limited to Adani Enterprises Limited. Consequent to the notification of the Central Electricity Regulatory Commission (Procedure, Terms, and Conditions of Trading Licence and other related matters) Regulations, 2009 (in short, 'the 2009 Trading Licence Regulations'), the licence granted to the Applicant stood re-categorised as Category "I".

2. The 2009 Trading Licence Regulations has since been repealed, and the Central Electricity Regulatory Commission (Procedure, Terms, and Conditions for grant of trading licence and other related matters) Regulations, 2020 (hereinafter referred to as "the 2020 Trading Licence Regulations") has been notified. Accordingly, Adani Enterprises Limited (hereinafter referred to as "AEL/First Petitioner"), a Category 'I' inter-State trading licensee, filed the present Petition seeking permission to transfer the inter-State trading licence granted to AEL to Adani Energy Solutions Limited.

3. Subsequently, the Petitioner craved leave of the Commission to amend the Petition. The Commission vide Record of Proceedings for the hearing dated 4.7.2024, permitted the Petitioner to file an amended Petition. AEL filed the amended Petition on 18.7.2024 seeking permission to transfer the inter-State trading licence granted to

AEL to Adani Energy Solutions Step-Thirteen Limited (hereinafter referred to as the “AESSTL/Second Petitioner”). The Petitioners have made the following prayers:

“(a) Grant approval to transfer the Trading License held by the Adani Enterprises Limited to Adani Energy Solutions Step-Thirteen Limited.

(b) Condone any inadvertent omissions/ errors/ shortcomings and permit the Applicant to add/ change/ modify/ alter this Application and make further submissions, if required; and

(c) Pass any order/ or any such orders as this Commission may deem appropriate.”

4. AEL has submitted the following documents and facts in support of its case for the transfer of the trading licence to Adani Energy Solutions Step-Thirteen Limited:

(a) A copy of the inter-State trading licence issued in the name of Adani Exports Limited;

(b) A copy of the order passed by the Commission in IA No. 66 of 2006 in Petition No. 22 of 2004, along with the change of name certificate dated 10.8.2006, issued by the Registrar of Companies, Gujarat, Dadar & Nagar Haveli, reflecting the name change from “Adani Export Limited” to “Adani Enterprise Limited”.

(c) Copies of the Certificate of incorporation of AESSTL along with the Memorandum and Article of Association;

(d) Copies of the details of the persons possessing the requisite qualifications;

(e) A copy of the Statutory Auditor Certificate for supporting the net worth and current ratio & liquidity ratio;

(f) A copy of the affidavit issued by the AESSTL supporting the facts and figures and that it will abide by the terms of the licence along with the Electricity Act 2003, Rules and Regulations made thereunder. Furthermore, AESSTL

have submitted that it does not attract any disqualifications as specified in Regulation 4 of the Trading Licence Regulations.

Hearing Dated 13.6.2024 and 4.7.2024

5. The matter was first heard on 13.6.2024, wherein the learned counsel for the Petitioner sought liberty to amend the present Petition. Subsequently, the matter was listed on 4.7.2024, during which learned counsel for the Petitioner requested additional time to file the amended petition.

Hearing dated 8.8.2024

6. During the course of the hearing, learned counsel for the Petitioners submitted that pursuant to the liberty granted by the Commission vide Record of Proceedings dated 13.6.2024, the Petitioner filed IA (Diary) No. 363 of 2024 seeking to amend the Petition. The amendment replaces the transferee company from Adani Energy Solutions Limited to Adani Energy Solutions Step-Thirteen Limited. Learned counsel urged that the IA be allowed and the amended Petition be taken on record. Additionally, the First Petitioner published notice of the amended application in two daily newspapers on 30.7.2024, in compliance with Regulation 9(21) of the 2020 Trading licence Regulations, inviting suggestions or objections by 29.08.2024.

7. Vide Record of Proceedings dated 8.8.2024, the Commission allowed the IA 60/2024 and directed that the amended Petition be taken on record. Accordingly, IA 60/2024 was disposed of.

8. Additionally, Vide Record of Proceedings dated 8.8.2024, the AEL was directed to submit the following information/documents on an affidavit:

- a) Copies of the publication along with its response to the suggestions or objections received, if any.

b) An undertaking to the effect that the proposed transferee company, i.e., Adani Energy Solutions Step-Thirteen Limited, will not engage in the transmission business without surrendering the trading licence, if allowed to be transferred.

Hearing dated 9.9.2024

9. Vide Record of Proceedings for the hearing dated 9.9.2024, the First Petitioner was directed to file an Audited Special Balance Sheet on any date falling within 30 days immediately preceding the filing of the amended application, in support of the compliance of net worth requirement for Category 'I' Trading Licence.

10. The First Petitioner, AEL, vide affidavit dated 16.9.2024, has placed on record the Audited Special Purpose Balance Sheet, Independent Auditor's Report, Profit & Loss Account, along with notes and schedules for AESSTL as on 30th June 2024.

Analysis and Decision

11. We have considered the submissions of the Petitioners. The present Petition has been filed under Section 17(3) of the Act, read with Regulation 9(21) of the 2020 Trading Licence Regulations and other applicable Regulations seeking approval of the Commission to transfer the inter-State trading licence held by the Adani Enterprises Limited to Adani Energy Solutions Step-Thirteen Limited.

12. Sub-section (3) of Section 17 of the Act provide 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.”

As per the above provision, the licensee is required to obtain “prior” approval of the Commission for assigning the licence or transfer of its utility.

13. Regulation 9 (21) of the 2020 Trading Licence Regulations provides as under:

“9(21) The Trading Licensee can transfer or assign its licence only to such person who fulfils the conditions of Regulations 3 and 4 of these regulations with prior approval of the Commission:

Provided that the Trading Licensee shall make an appropriate application before the Commission containing the details of the person to whom the licence is proposed to be transferred or assigned, its eligibility to hold the licence under these regulations, and an affidavit from the proposed transferee or assignee that it will abide by all the terms and conditions of licence and comply with the provisions of the Act, Rules and Regulations made thereunder and the orders of the Commission as may be issued from time to time:

Provided further that the Trading Licensee shall be required to publish in brief in two daily newspapers having circulation in each of the five regions in addition to those published from Delhi, including one economic daily newspaper about its application for transfer or assignment of its licence and invite suggestions or objections within 30 days and submit the copies of the publication along with its response to the suggestions or objections, if any, within 45 days from the date of publication.”

14. As per proviso to Regulation 9(21) of the Trading Licence Regulations, the licensee is required to publish in brief in two daily newspapers having circulation in each of the five regions in addition to those published from Delhi, including one economic daily newspaper about its application for transfer or assignment of its license and invite suggestions/objections within 30 days and submit the copies of the publication along with its response to the suggestions/objections, if any, within 45 days from the date of publication. The First Petitioner has placed on record the relevant copies of newspapers in which notice for transfer of inter-State trading licence has been issued. The notices under Regulation 9(21) of the Trading Licence Regulations have been published by the AEL on 30.7.2024 in all editions of ‘The Indian Express’ (Ahmadabad, Vadodara, Mumbai, Kolkata, Chandigarh, New Delhi, Jaipur, Lucknow, Nagpur, Pune) and all editions of ‘The Financial Express’ (Ahmadabad, Bengaluru, Mumbai, Kolkata, Chandigarh, Kochi, New Delhi, Hyderabad, Lucknow, Chennai and Pune), and ‘The Assam Rising’ Guwahati edition.

It has been submitted by the Petitioners that no objection has been received in response to the public notices.

15. The AESSTL was incorporated under the Companies Act, 2013 on 13.2.2024. Proviso to Clause (1) of Regulation 3 of the Trading Licence Regulations provides that the Petitioner should have been authorized to undertake trading in electricity by its Memorandum of Association. We note that trading in electricity is covered under its Memorandum of Association of the AESSTL. The relevant portion of the same is extracted below:

“[A] (b) To carry on in India or abroad the business of purchase, sale, supply, import, distribute, export, or transfer / exchange and to deal as trader, agent, broker, representative or otherwise deal in all forms of electricity and in other forms of energy from any source whatsoever, both conventional and nonconventional and any other commodities, products, goods, etc.”

16. In view of the above, it has been submitted by the First Petitioner, AEL, that the AESSTL fulfils the requirements specified in Clause (1) of Regulation 3 of the 2020 Trading Licence Regulations.

17. In accordance with Clause (2) of Regulation 3 of the 2020 Trading Licence Regulations, the Petitioner should have at least one full-time professional with qualifications and experience in power system operation and commercial aspects of power transfer, finance, commerce, and accounts. With regard to full-time professionals, the Petitioner has submitted that Mr. Kandrap Patel, CEO, B. Tech (Electrical) and MBA in Finance, has 28 years of experience in Power Trading, Fuel Management, Legal and Regulatory and Commercial aspects of Power Business, Customer relationship management, Electricity Trading, Power exchange activities, regulatory and Mr. Kunjal Mehta, Chief Financial (Chartered Accountant and Cost Accountant) has 25 years' experience in Finance Resource mobilization, working capital management, financial planning and analysis, auditing and budgetary controls

and compliance and risk management. Accordingly, as per the information submitted by the First Petitioner, AEL, the AESSTL fulfils the requirements of Clause (2) of Regulation 3 of the 2020 Trading Licence Regulations.

18. In accordance with Regulation 3(3) of the Trading Licence Regulations, a category 'I' trading licensee should have a net worth of Rs. 50 crore and should have maintained a minimum current ratio and liquidity ratio of 1:1 as on the date of the audited special balance sheet accompanying the application. The First Petitioner has submitted that the net worth of AESSTL is as under:

Net Worth Computation	As per the Special Purpose Audited Balance Sheet as on 30.6.2024 (Rs. in lakh)
Equity including share application (A)	8,001
Reserves and Surplus (B)	(0.07)
Total Net Worth	Rs. 8,000.93

19. The First Petitioner has submitted that the current ratio of AESSTL as under:

Current Ratio Computation	As per the Special Purpose Audited Balance Sheet as on 30.6.2024 (Rs. in lakh)
Current Assets (A)	8,001
Current Liability (B)	0.07
Current Ratio	1,14,300 Times

20. The First Petitioner has submitted that the liquidity ratio of AESSTL as under:

Liquidity Ratio Computation	As per the Special Purpose Audited Balance Sheet as on 30.6.2024 (Rs. in lakh)
Current Assets	8,001
Less: Inventory	-
Current Liabilities	0.07
Liquidity Ratio	1,14,300 Times

21. The First Petitioner has submitted that the proposed transferee company (AESSTL) shall fulfill the requirements of Regulations 3 and 4 of the Trading Licence

Regulations without any further act or deed since the Petitioner, as on the date, fulfills all the requirements, specified in the Regulations 3 and 4 of the 2020 Trading Licence Regulations. AESSTL shall comply with all the requirements pertaining to net worth, current ratio, and liquidity ratio as prescribed under Regulation 3 of the 2020 Trading Licence Regulations.

22. The First Petitioner has submitted an undertaking to the effect that AESSTL will not engage in the transmission business without surrendering the trading licence if it is transferred.

23. The AESSTL, on an affidavit, has submitted that it shall comply with all the requirements pertaining to net worth, current ratio, and liquidity ratio as prescribed under Regulation 3 of the Trading Licence Regulations. Accordingly, in terms of sub-section (3) of Section 17 of the Act read with Regulation 9(21) of the 2020 Trading Licence Regulations, we accord in-principle approval for the transfer of the trading licence of AEL to AESSTL. Consequent to the transfer of the trading licence, all rights, assets, liabilities, and obligations of AEL in respect of the trading licence shall vest in AESSTL, which shall also remain bound by the terms and conditions of the trading licence granted to AEL, provisions of the 2020 Trading Licence Regulations, as amended from time to time, and all applicable regulations issued by the Commission from time to time. The Petitioners shall also ensure that all the executory contracts entered into by the Petitioner No.1 for the purpose of inter-State trading shall transferred to and vested in the Petitioner No.2, and consequently, the performance of obligations of the trading licensee under such contracts are duly fulfilled by the Petitioner No.2.

24. An extract copy of this order be sent to the Central Government in the Ministry of Power and the Central Electricity Authority in terms of sub-section (7) of Section 15 of the Electricity Act, 2003, for their information and record.

25. We direct that the necessary endorsement be made on the licence issued to the AEL with regard to the transfer of licence/utility.

26. Petition No. 173/MP/2024 is disposed of in terms of the above.

Sd/-
(Harish Dudani)
Member

sd/-
(Ramesh Babu V.)
Member

sd/-
(Jishnu Barua)
Chairperson