

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Review Petition No. 25/RP/2021  
in  
Petition No.135/MP/2021**

**Coram:  
Shri P.K. Pujari, Chairperson  
Shri I.S. Jha, Member  
Shri Arun Goyal, Member  
Shri P.K. Singh, Member**

**Date of order: 14<sup>th</sup> February, 2022**

**In the matter of**

Review Petition seeking review of order dated 31.8.2021 passed in Petition No. 135/MP/2021 under Regulation 103 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations,1999.

**And  
In the matter of**

Warora Kurnool Transmission Limited,  
C 105, Anand Niketan,  
New Delhi-110021

**....Petitioner**

**Vs.**

1. Tamil Nadu Generation and Distribution Corporation Limited,  
144, Anna Salai,  
Chennai-600 002

2. Southern Distribution Company of Andhra Pradesh Limited,  
D.No. 19-13-65/A, Srinivasapuram,  
Tiruchhanur Road, Kesavayana Gunta,  
Tirupati - 517 503, Andhra Pradesh

3. Eastern Distribution Company of Andhra Pradesh Limited,  
P&T Colony, Seethmmadhara,  
Vishakhapatnam - 530013, Andhra Pradesh

4. Southern Distribution Company of Telangana Limited,  
2<sup>nd</sup> Floor, H. No. 6-1-50, Mint Compound,  
Hyderabad - 500063

5. Northern Power Distribution Company of Telangana Limited,  
H. No. 2-5-31/2, Corporate Office,  
Vidyut Bhavan, Hanamkonda,  
Warangal – 506001



6. Bangalore Electricity Supply Company Limited,  
Krishna Rajendra Circle,  
Bangalore - 560001

7. Gulbarga Electricity Supply Company Limited,  
Station Road, Kalaburagi,  
Karnataka - 585102

8. Hubli Electricity Supply Company Limited,  
Corporate Office, P.B. Road, Navanagar,  
Hubli - 580025

9. Mangalore Electricity Supply Company Limited,  
Paradigm Plaza, A. B Shetty Circle,  
Pandeshwar,  
Mangalore - 575001

10. Chamundeshwari Electricity Supply Company Limited,  
No. 29, CESC Corporate Office,  
Hinkal, Vijaynagar 2<sup>nd</sup> Stage,  
Mysuru - 570017

11. Kerala State Electricity Supply Company Limited,  
Vydyuthi Bhawanam, Pettom,  
Tiruvananthapuram,  
Kerala - 695 004

12. Electricity Department,  
Govt. of Puducherry 137, NSC Bose Salai,  
Puducherry - 605001

13. Electricity Department,  
Government of Goa,  
Vidyut Bhavan, Near Mandvi Hotel,  
Panaji, Goa – 403001

14. SBICAP Trustee Company Limited,  
202, Maker tower, 'E', D Cuffe Parade, Colaba,  
Mumbai 400005, Maharashtra.

....Respondents

**Parties Present:**

Shri Amit Kapur, Advocate, WKTL  
Ms. Poonam Verma, Advocate, WKTL  
Ms. Aparajita Upadhyay, Advocate, WKTL  
Ms. Sakshi Kapoor, Advocate, WKTL  
Shri S. Vallinayagam, Advocate, TANGEDCO  
Shri Bhavesh Kundalia, WKTL  
Shri Afak Pothiawala, WKTL



Dr. R. Kathiravan, TANGEDCO  
Ms. R. Ramalakshmi, TANGEDCO  
Shri R. Srinivasan, TANGEDCO

## ORDER

The Review Petitioner, Warora Kurnool Transmission Limited (WKTL) has filed the present petition seeking review of the order dated 31.8.2021 in Petition No. 135/MP/2021 under Regulation 103 of of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999.

### Background of the Case

2. WKTL had filed Petition No. 135/MP/2021 under Section 17 of the Electricity Act, 2003 (hereinafter referred to as “the Act”), *inter-alia*, seeking approval of the Commission for creation of security interest over WKTL’s Transmission System/ assets in favour of new Security Trustee, namely, SBICAP Trustee Company Limited (“Security Trustee”/ “SBICAP Trustee”) in order to secure the rights of new lender, namely, State Bank of India (“SBI”). SBI has sanctioned the following loan facilities of Rs.2368 crore in favour of WKTL for construction of the Transmission System:

S. No.	Facility sanctioned	Amount (Rs. in crore)
1.	Term loan facility	2254
2.	Performance Bank Guarantee (“ <b>BG</b> ”) facility	110
3.	Hedging /Loan Equivalent Risk (“ <b>Hedging</b> ” “ <b>LER</b> ”) facility (for import of transmission system component of Rs.200 crore)	4
<b>Total value of facilities</b>		<b>2368</b>

3. The Commission, after considering the submissions of the parties, by order dated 31.8.2021, allowed creation of security interest in favour of SBICAP Trustee Company Limited for the benefit of lender i.e. SBI. While the Commission allowed creation of security against the term loan facility of Rs.2254 crore, the BG facility of

Rs.110 crore and Hedging facility of Rs.4 crore were excluded from the total facilities availed by WKTL. Aggrieved by the exclusion of BG and Hedging facility, the Review Petitioner has filed the present Review Petition seeking limited review of the order dated 31.8.2021. The Review Petitioner has made the following prayer:

- “(a) Allow the present Petition;*
- (b) Review Paras 18 and 25 of the Impugned Order dated 31.08.2021 passed in Petition No. 135/MP/2021;*
- (c) Allow creation of security interest in the Transmission System Assets of WKTL with respect to the entire loan facility of Rs.2368 Crores sanctioned by SBI which include:*
- (i) Term loan facility of Rs.2254 crore;*
- (ii) BG facility of Rs.110 crore; and*
- (iii) Hedging facility of Rs.4 crore.*
- (d) Pass such other and further orders as may be deemed fit under the facts and circumstance of the present case.”*

4. The matter was heard on 20.1.2022 through video conferencing. During the course of hearing, learned counsel for Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO) objected to maintainability of Review Petition and sought time to file its reply. After hearing the parties, the Commission reserved the order on admissibility. Accordingly, TANGEDCO and Review Petitioner were permitted to file its reply and rejoinder respectively.

5. TANGEDCO vide its reply dated 27.1.2022 has relied on paragraph 18 of the impugned order dated 31.8.2021 and submitted that in response to TANGEDCO's objection regarding creation of encumbrance over Contract Performance Bank Guarantee (hereinafter referred to as 'CPBG' or 'BG'), the Review Petitioner itself had clarified that it had not sought for creation of security on CPBG. Therefore, the Commission has rightly denied the request of the Review Petitioner in respect of CPBG and hedging facility since the Review Petitioner cannot avail loan more than

the loan component of the project. When the Review Petitioner itself withdraws its prayer for creation of security on CPBG, the question of seeking review on this ground is not permissible under law. It has been further contended that the Review Petitioner should keep the CPBG free from encumbrance in terms of Article 15.2.1 of the TSA which mandates that neither party shall create nor permit to subsist any encumbrance over all or any of its rights and benefits under the TSA. It is the right of the LTTCs to encash the CPBG anytime, if there is default on the part of TSP/ violation of terms of the TSA. TANGEDCO has submitted that the contract is under dispute on account of delay in project implementation and the Petitioner is liable to pay liquidated damages.

6. *Per Contra*, the Review Petitioner vide its rejoinder dated 3.2.2022 has submitted that TANGEDCO has misconstrued WKTL's prayer for creation of security interest on the assets of project of WKTL in order to secure the total loan amount. WKTL has not sought creation of security on the BG facility itself. The security is sought to be created on the transmission project assets of WKTL. Such security is required to cover the entire loan amount of Rs.2368 crore sanctioned by SBI, which includes Rs.110 crore towards the BG facility. WKTL has clarified that no encumbrance is sought to be created on the CPBG facility, which shall remain valid and in the hands of LTTCs. WKTL is only seeking that security be created on the assets of transmission project of WKTL to cover the entire loan facilities sanctioned by the lender i.e. State Bank of India (SBI) amounting to Rs.2368 crore (which also includes loan amount of Rs.110 crore towards the BG facility). Details of the security to be created are clearly delineated at Article 8.1 of the Facility Agreement dated 30.1.2021 executed between SBI and WKTL and the same does not include BG. While creation of security interest over the amount of BG facility secures repayment

to lenders, BG issued to LTTCs protect rights of LTTCs towards payment of liquidated damages.

### **Analysis and Decision**

7. We have considered the submissions made by the Review Petitioner and the Respondent, TANGEDCO. At the outset, it is observed that TANGEDCO has made submission with regard to delay in commissioning of the project and consequent liability of liquidated damages on the Review Petitioner. The Review Petitioner has also made contentions on merit. We observe that the issues relating to delay in commercial operation of the project are beyond the scope of the present Review Petition. Accordingly, the said issues along with contentions of the Review Petitioner on merit are not being dealt in the present order. We limit the scope of the present order to the issue raised by TANGEDCO on admissibility.

8. TANGEDCO has mainly objected to admissibility of the Review Petition on the ground that creation of encumbrance over Contract Performance Bank Guarantee is not permissible in terms of the provisions of the TSA. TANGEDCO has also contended that the Article 15.2.1 of the TSA mandates that neither party shall create nor permit to subsist any encumbrance over all or any of its rights and benefits under the TSA. It is the right of the LTTCs to encash the CPBG anytime, if there is default on the part of TSP/ violation of terms of the agreement. Therefore, the Petitioner should keep the CPBG free from encumbrance. *Per Contra*, WKTL has clarified that WKTL has not sought creation of security on the transmission project assets of WKTL and not on the BG facility itself.

9. It is noted that TANGEDCO had raised similar objections in Petition No 135/MP/2021 which were dealt as under:

*“13. .... TANGEDCO has relied on Article 15.2.3 of the TSA to contend that the Petitioner should not be allowed to securitize/ create encumbrances on CPBG issued in favour of the LTTCs. It has been further contended that there shall be no encumbrance on the liability of the Petitioner on account of non-compliance of the obligations of the Petitioner under the TSA.*

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*18. The Respondent, TANGEDCO has raised objection on the creation of encumbrance over CPBG and liability of the Petitioner on account of non-compliance of the obligations of the Petitioner under the TSA. The Petitioner has clarified that the Petitioner has not sought creation of security on CPBG as per the terms of sanction letter dated 11.8.2020 and Article 8.1 of the Facility Agreement dated 30.1.2021. Since the Petitioner cannot avail loan facility more than the loan component of cost of the Project, its request with regards to CPBG and Hedge facility is not being considered.”*

10. In its rejoinder dated 3.2.2022, WKTL has clarified that it is only seeking security to be created on the assets of transmission project to cover the entire loan facilities sanctioned by SBI amounting to Rs.2368 crore (which also includes loan amount of Rs.110 crore towards BG facility). WKTL has further clarified that no encumbrance is sought to be created on the BG facility, which shall remain valid in the hands of the LTTCs.

11. In this regard, security on which encumbrance is sought to be created is defined in the Facility Agreement dated 30.1.2021 as under:

**“8.1 Security**

*The Facility together with all the Outstandings payable to the Lenders and their trustees and agents (if any) and the Account Bank as stipulated under this Agreement or the other Financing Documents, shall be secured by*

- (a) First pari passu Security Interest over the immovable assets including but not limited to towers, conductors, insulators etc. and the Project Land acquired for the Substation, both present and future, of the Borrower;*
- (b) First pari passu Security Interest in favour of the Security Trustee, on entire moveable assets, both present and future, of the Borrower;*
- (c) First pari passu Security Interest in favour of the Security Trustee on the entire Current Assets including but not limited to all operating accounts, deposits, inventory, investments, book debts, operating cash flows, receivables, commissions, revenues of whatsoever nature and whenever arising, both present and future, of the Borrower;*

- (d) *First pari passu Security Interest in favour of the Security Trustee on all the accounts of the Borrower (including the Accounts opened and maintained pursuant to the Trust and Retention Account Agreement), the Debt Service Reserve Account and the monies credited or deposited therein, to the extent of Borrower's interests thereon, both present and future;*
- (e) *First pari passu Security Interest in favour of the Security Trustee on:*
  - (i) *all the rights, title, interest, benefits, claim and demands whatsoever of the Borrower in the Project Documents, Clearances, loss protection covers, if any;*
  - (ii) *all the rights, title, interest, benefits, claim and demands whatsoever of the Borrower in any letter of credit, guarantee, performance bond provided by any counterparty to the Project Documents, in relation to the Project, if any;*
  - (iii) *all the rights, title, interest, benefits, claim and demands whatsoever of the Borrower in the insurance contracts, policies, insurance proceeds, procured by the Borrower or procured by any of its contractors favoring the Borrower in relation to the Project;*
  - (iv) *all the rights, title, interest, benefits, claim and demands whatsoever of the Borrower on the Transmission License, subject to approvals to be obtained from CERC.*
- (f) *First pari passu Security Interest in favour of the Security Trustee on all intangible assets including but not limited to goodwill, rights, undertakings and uncalled capital, both present and future, of the Borrower;*
- (g) *Pledge of 51% (fifty one percent) of the Shares of the Borrower held by the Promoter;*
- (h) *Non disposal undertaking with respect to 25% (twenty five percent) of the Shares of the Borrower held by the Promoter (other than the shares pledged in accordance with sub clause (g) above.*

*The security detailed above shall be collectively referred to as the “**Security**”. The Security shall be duly created and perfected by the Borrower and/or Promoter, as applicable in the form and manner acceptable to the Lenders within the timelines stipulated by the Lenders. The Security created in favour of the Lenders/Security Trustee shall be in a form and manner satisfactory to the Lenders.”*

12. It is evident from Article 8.1 of the Facility Agreement quoted above that CPBG is not included in the definition of the ‘Security’ in terms of the Facility Agreement. Thus, it is evident that the Review Petitioner is not proposing to create security on the CPBG but on the assets, rights and title of the borrower i.e. WKTL against the loan availed by WKTL to this extent.

13. In view of the above, we are of the view that the objections raised by TANGEDCO are not relevant and beyond the scope of the present Review Petition.

14. We note that in the impugned order, while the Commission allowed creation of security against the term loan facility of Rs.2254 crore, the BG facility of Rs.110 crore and Hedging facility of Rs.4 crore were excluded from the total facilities availed by WKTL. Aggrieved by the exclusion of BG and Hedging facility, the Review Petitioner has filed the present Review Petition seeking limited review of the order dated 31.8.2021. In our view, the Review Petitioner has made out a case for review of the impugned order and, therefore, Review Petition is admitted.

15. The Review Petitioner is directed to serve the copy of the Review Petition along with this order on the Respondents immediately. The Respondents shall file their replies by 18.2.2022, after serving a copy to the Review Petitioner, who shall file its rejoinder, if any, by 22.2.2022. The parties shall ensure the completion of pleadings within the due date mentioned above.

16. The Review Petition shall be listed for hearing on 24.2.2022.

Sd/-  
**(P.K. Singh)**  
Member

sd/-  
**(Arun Goyal)**  
Member

sd/-  
**(I.S. Jha)**  
Member

sd/-  
**(P.K. Pujari)**  
Chairperson