

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 187/MP/2023

Coram:

Shri Jishnu Barua, Chairperson

Shri I.S. Jha, Member

Shri Arun Goyal, Member

Shri P.K. Singh, Member

Date of Order: 23rd November, 2023

In the matter of

Petition under Sections 79(1)(c), (e) and (k) read with 17(3) and 18 of the Electricity Act, 2003 seeking amendment and transfer of Petitioner's Inter-State Transmission Licence.

And

In the matter of

Essar Power Transmission Company Limited,
Essar House, 11, KK Marg,
Mahalaxmi, Mumbai-400034

Petitioners

Vs.

1. Central Transmission Utility of India Limited,
Plot No. 2, Near IFFCO Chowk Metro Station,
Sector 29, Gurugram-122 001, Haryana

2. Adani Transmission Limited,
Adani Corporate House,
Shantigram, Near Vaishnodevi Circle,
S G Highway, Khodiyar,
Ahmedabad-382421, Gujarat

3. Essar Transco Limited,
Essar House, 11, KK Marg,
Mahalaxmi, Mumbai 400034

4. Essar Power Limited
27th KM, Surat Hazira Road
Hazira Surat-394270, Gujarat

.. Respondents

The following were present:

Shri Sanjay Sen, Sr. Advocate, EPTCL
Ms. Mandakini Ghosh, Advocate, EPTCL
Ms. Neha Dabral, Advocate, EPTCL

Ms. Swapna Seshadri, Advocate, EPTCL
Shri Aman Nair, Advocate, EPTCL
Ms. Shivani Verma, Advocate, EPTCL
Ms. Kritika Khanna, Advocate, EPTCL
Shri Hemant Singh, Advocate, ATL
Shri Lakshyajit Singh, Advocate, ATL
Ms. Lavanya Panwar, Advocate, ATL
Shri Shaurya Kumar, Advocate, ATL
Shri Siddharth Sharma, CTUIL
Shri R. Sricharan, CTUIL

ORDER

The Petitioner, Essar Power Transmission Company Limited, has filed the present Petition under Sections 79(1)(c), (e) and (k) read with 17(3) and 18 of the Electricity Act, 2003 (hereinafter referred to as 'the Act') read with the Transmission Service Agreement dated 23.10.2019 seeking, *inter-alia*, an amendment to the inter-State transmission licence bearing No.4/Transmission/CERC dated 8.4.2008 granted to the Petitioner by the Commission vide its order dated 10.4.2008 in Petition No. 157 of 2007. The Petitioner is seeking to transfer its Stage-II Assets to Respondent No.3, Essar Transco Limited (ETL) through a scheme of demerger to be approved by the National Company Law Tribunal, Indore, along with the corresponding licence. Learned senior counsel submitted that subsequent to the above, the Petitioner will transfer its entire equity shareholding in ETL to Respondent No.2, Adani Transmission Limited, or its subsidiary. The Petitioner has made the following prayers:

“(a) Amend the ISTS License (bearing No.4/Transmission/CERC) dated 08/04/2008 and permit transfer of Stage-II Assets (set out in ANNEXURE B) in order that the license corresponding to the said assets stand transferred and vested in the Respondent No. 3 Essar Transco Limited in terms of inter alia S. 17 of the Electricity Act, 2003 to take effect as on the appointed date of the scheme of demerger, i.e., 01/04/2023;

(b) Amend and declare that ISTS License No.4/Transmission/CERC dated 08/04/2008 shall continue to remain operative and effective in relation to the corresponding Stage-I Assets (set out in ANNEXURE C) in the name of the Petitioner; and/or

(c) Pass any other orders as may be deemed necessary in the interest of justice.”

Background

2. The Commission, vide its order dated 10.4.2008 in Petition No. 157 of 2007 granted an inter-State transmission licence to the Petitioner company consisting of the following assets:

Transmission lines

| S. No. | Transmission lines | Approximately Line length (kms) |
|--------|---|---------------------------------|
| (i) | 400 kV D/C (triple conductor) transmission line from Mahan to Sipat Pooling sub-station | 315 |
| (ii) | LILO of existing 400 kV S/C Vindyachal-Korba transmission line of Powergrid at Mahan. | 20 |
| (iii) | 400 kV D/C (twin conductor) transmission line from Gandhar NTPC switchyard to Hazira | 97 |

A. Sub-stations:

| | |
|-------|--|
| (i) | 3X500 MVA 400/220 kV sub-station at Hazira |
| (ii) | 2X50 MVAR line reactors at Sipat pooling sub-station |
| (iii) | 2X50 MVAR line reactors at Mahan |
| (iv) | 1X80 MVAR, 420 kV switchable bus reactor at Mahan TPS along with its associated 400 kV bay |
| (v) | 2 Nos. 400 kV line bays at Sipat pooling sub-station |
| (vi) | 2 Nos. 4000 kV line bays at Gandhar (NTPC) switchyard |
| (vii) | 4 Nos. 400 kV line bays at Mahan TPS |

3. Subsequently, the transmission licence granted to the Petitioner company was amended vide order dated 15.9.2009 and accordingly, modified the configuration from Triple conductor to Quad Moose conductor for the 400 kV D/C Mahan-Sipat transmission line.

4. The assets covered in the transmission licence were put into commercial operation by the Petitioner in two stages i.e., Stage-I (including LILO) and Stage-II as under:

Stage-I Assets

| I | Transmission Lines | Length (in km) |
|-----------|--|--|
| 1 | 400 kV D/C (twin conductor) transmission line from Gandhar (NTPC) switchyard to Hazira | 104.6 |
| II | 400/220 kV GIS Sub-station at Hazira | Number of bays |
| 1 | 500 MVA Transformers | 3 (Only 2 have been installed and commissioned) |
| 2 | 220 kV Bays at Hazira | 2 |
| 3 | 400 kV Sub-station and line bays (GIS) at Hazira (including tie bays) | 5* |
| 4 | 400 kV line bays (AIS) at Gandhar** | 2 |

*2 Line Bays, 2 ICTs Bays & 1 Bus coupler and Metering Bay

**Ownership of these bays lies with NTPC, Gandhar

LILO

| I | Transmission Lines | Length (in km) |
|-----------|---|--------------------------|
| 1 | LILO of 400 kV S/C Vidhyachal-Korba transmission line of Powergrid at Mahan | 22.4 |
| II | Line Bays | Units (in Number) |
| 1 | 400 kV LILO Bays at Mahan Switchyard | 2 |

Stage-II Assets

| I | Transmission Lines | Length (in km) |
|------------|--|--------------------------|
| 1 | 400 kV (Quad Moose Conductor) D/C transmission line from Mahan Thermal Power plant to Sipat Pooling Sub-station (Presently at Bharari, Bilaspur) | 336.50 |
| II | Line Bays | Units (in Number) |
| 1 | 400 kV line bays at Mahan and Sipat | 4 |
| III | Reactors | Units (in Number) |
| 1 | 50 MVAR integrated line reactor at Sipat Pooling Sub-Station | 2 |
| 2 | 50 MVAR switchable line reactor at Mahan TPP along with associated bays | 2 |
| 3 | 80 MVAR switchable bus reactor at Mahan TPP along with associated bays | 1 |

Submissions of the Petitioner

5. The Petitioner, has mainly submitted as under:

(a) The Petitioner has entered into a definitive agreement with Adani Transmission Limited (ATL) for the sale and transfer of the Stage-II assets, subject to completion of corporate, lender and regulatory approvals.

(b) The Stage-II Assets will be transferred to Essar Transco Limited (ETL) through a scheme of demerger (with effect from the appointed date i.e. 1.4.2023) to be approved by the National Company Law Tribunal, Indore Bench, along with its corresponding licence.

(c) Post-transfer of Stage-II Assets along with its corresponding licence to ETL and post carving out of LILO, the Petitioner will continue to own and operate the Stage-I Assets under its present ISTS licence. Licence No.4/Transmission/CERC dated 8.4.2008 may be amended to this limited extent in order to enable the Petitioner to continue to operate Stage-I Assets. The limited amendment to the existing transmission licence would be to only carve out the relevant Stage-II Assets and LILO and in all other respects i.e., the Stage-I Assets along with its corresponding licence will continue in the hands of the Petitioner.

(d) The transfer/demerger of the Stage-II Assets along with its corresponding licence into ETL is sought to be justified *inter alia* for the following reasons:

(i) The Stage-I and Stage-II Assets are geographically distinct and are not connected to each other.

(ii) Both Stage-I and Stage-II Assets have achieved commercial operation date, and the Commission determines the tariffs thereof through separate and distinct tariff orders.

(iii) The amendment of the transmission licence and transfer of Stage-II Assets along with its corresponding licence contemplated in the instant Petition would not be detrimental to public interest since the tariff for both

Stage-I and Stage-II Assets will not be impacted as a result of the amendments sought in this Petition.

(iv) The proposed amendment of the transmission licence and transfer of Stage-II Assets along with its corresponding licence will result in better coordination and will ensure that the respective transmission assets are operated and maintained efficiently and economically, which would further public interest.

(iv) ETL is a 100% subsidiary of an existing transmission licensee, to which the Stage-II Assets, along with its corresponding licence, will be transferred, possesses the technical know-how and manpower to be able to discharge the obligations of a licensee. In fact, since the transfer of the Stage-II Assets from the Petitioner to ETL is being done (through a scheme of demerger to be duly approved by the NCLT) on a going concern basis along with the entire regulated asset base and employees, the management and technical expertise which were part and parcel of the Petitioner for Stage-II Assets, will vest in their entirety in ETL. ETL will ultimately be owned by ATL which currently has numerous subsidiaries with the transmission licensees.

(iv) The scheme of demerger filed by the Petitioner to transfer Stage-II Assets into ETL has an appointed date of 1.4.2023. The appointed date of 1.4.2023 is the date on which the demerger scheme shall become effective, but shall only be operative after the present Petition is approved by this Commission.

(v) Post order dated 1.6.2022, LILO has been opened but the same continues to remain as a component of the ISTS licence of the Petitioner. Post carving out and separation of LILO from the ISTS licence, the Petitioner proposes to transfer LILO to EPOL or its subsidiary, since no licence is required any longer for the LILO.

Hearing dated 18.8.2023

6. Notice was issued to the Respondents to file their respective replies. The Petitioner, vide Record of proceedings for the hearing dated 18.8.2023, was directed

to comply with the procedures laid down under Section 18(2)(a) of the Electricity Act, 2003 read with Regulations 19 and 7 of the Transmission Licence Regulations. The Petitioner was further directed to clarify whether the demerger of EPTCL and vesting of Stage-II assets in ETL have been approved by NCLT along with documentary proof. The Commission directed CTUIL to submit its recommendation for an amendment to the transmission licence of the Petitioner.

7. In compliance with the direction of the Commission, CTUIL has submitted its recommendations dated 21.9.2023 vide affidavit dated 25.9.2023.

8. The Petitioner, vide its affidavit dated 9.10.2023, has submitted as under:

(a) EPTCL has duly complied with Regulations 19 and 7 of the Transmission Licence Regulations by publishing a notice on 21.8.2023 in the Business Standard daily newspaper.

(b) On 17.5.2023, EPTCL filed the First Motion Petition (hereinafter referred to as the "FMP") bearing No. CA(CAA)/3 (MP) of 2023 in relation to the Scheme of Arrangement (hereinafter being referred to as the "Scheme") for the proposed demerger of the Stage II Assets to ETL, before the NCLT, seeking directions for the convening of the meetings of equity shareholders, secured creditors and unsecured creditors. The NCLT, *vide* order dated 6.7.2023, allowed EPTCL's FMP and *inter alia* directed EPTCL to convene

a meeting of its equity shareholders, secured creditors and unsecured creditors on 16.8.2023 to seek their approval of the Scheme.

(c) Subsequently, the equity shareholders (with consent from 100% equity shareholders present and voting) and unsecured creditors (with consent from 100% unsecured creditors present and voting) approved the Scheme in their meetings held on 16.8.2023, respectively. The secured creditors (with consent from 100% secured creditors present and voting) approved the Scheme during their meeting held on 23.8.2023.

(d) After complying with the NCLT's directions, on 22.9.2023, EPTCL filed the Second Motion Petition (hereinafter referred to as the "SMP") before the NCLT seeking the sanction of the Scheme. The SMP is currently pending scrutiny before the Registry, NCLT, Indore Bench. The order passed by the NCLT in the SMP filed by EPTCL for sanctioning the scheme will become effective once it is filed by EPTCL with the jurisdictional Registrar of Companies. The appointed date of the demerger scheme is 1.4.2023.

(e) Further, ETL has also filed FMP bearing No. CA(CAA)/6(MP) of 2023 before NCLT, Indore Branch on 9.8.2023 seeking dispensation of meetings of equity shareholders and creditors (secured and unsecured). The NCLT, *vide* order dated 21.9.2023, allowed ETL's FMP, *inter-alia*, holding that the meetings of the equity shareholders, secured creditors and unsecured creditors of ETL are dispensed with, in light of the consent affidavits provided by 100% shareholders of ETL and ETL not having any secured or unsecured creditors.

(f) After complying with the directions of the NCLT, Indore, ETL will file its SMP within seven days from the receipt of a certified copy of the order dated September 21, 2023, i.e. by October 11, 2023, for seeking the NCLT's sanction to the Scheme. Once the SMP is filed by ETL, the NCLT will direct ETL to *inter alia* re-issue notices to statutory authorities. The order passed by the NCLT pursuant to the SMP filed by the ETL for sanctioning the Scheme will become effective once it is filed by ETL with the jurisdictional Registrar of Companies.

(g) The scheme will become effective once it is also approved by the NCLT pursuant to the aforementioned applications filed by ETL.

(h) As regards CTUIL's recommendations that the company to which the transmission assets shall be transferred would have to acquire a transmission licence, the Stage II Assets are proposed to be transferred to ETL, which is a 100% subsidiary of an existing licensee (i.e. EPTCL). Being a 100% subsidiary of an existing transmission licensee, ETL would possess the technical know-how and manpower to be able to discharge the obligations of a licensee. In fact, since the transfer of the Stage-II Assets from the Petitioner to ETL is being carried out through a demerger to be duly approved by the NCLT, Indore Bench, on a going concern basis along with the entire regulated asset base and

employees, the management and technical expertise which were part and parcel of EPTCL for Stage-II Assets, will vest in the entirety in ETL. Subsequently, EPTCL shall transfer its entire equity shareholding in ETL to Adani Transmission Limited or its subsidiary, which owns multiple transmission licences with extensive experience in owning and operating transmission lines.

(i) CTUIL has not opposed the structure proposed by EPTCL and left the decision on public interest to this Commission. The present petition meets the test of public interest as the tariff for both Stage I and Stage II Assets will not be impacted as a result of the amendments sought.

(j) With regard to CTUIL's submission about the pending recovery of the balance amount of Rs. 15.52 crore from EPTCL in terms of the order dated 14.3.2022 in Petition Nos. 145/TT/2018 and order dated 12.1.2023 in Petition No 195/MP/2022, both the rights and liabilities of the parties as per the above orders are presently *sub judice* before the APTEL in Appeal No. 71 of 2023 and are subject to the outcome of the Appeal.

(k) In the interregnum, during the process of splitting the licence, EPTCL undertakes to continue with the O&M of the subject assets. There will be no interruptions in transmission services, and EPTCL will continue to ensure the availability of the lines as per the required regulatory standards.

(l) All the licensed assets would be set up including the 3rd ICT as part of the Stage -I assets and the present transfer will not affect the installation of the 3rd ICT, since the Stage -I Assets including the 3rd ICT will continue to be owned, operated and maintained by EPTCL post the transfer of Stage-II assets.

9. Adani Transmission Limited, in its reply dated 10.10.2023, has mainly submitted as under:

(a) Subsequent to the scheme of demerger to be approved by the National Company Law Tribunal along with the corresponding licence, the Petitioner will transfer its entire equity shareholding in ETL to the Adani Energy Solutions Limited ('AESL') (formerly known as Adani Transmission Limited), or its subsidiary. However, such equity transfer is not the subject matter of the present Petition.

(b) AESL has no objection to the instant Petition to the extent of the relief sought by the Petitioner qua amendment and transfer of its transmission licence. If this Commission allows the relief to the Petitioner (*i.e., transfer of licence qua Stage-II*) thereby effectuating the amendment of its licence and the consequent transfer of the same to the other entity (*i.e., ETL*), then the same ought to mean that the ETL shall have the transmission licence qua the transmission assets transferred in lieu of the present Petitioner, and there should not be an occasion that ETL has to again approach this Commission seeking for an independent licence. In fact, there have been certain precedents in the past where a transmission company holding a transmission licence is acquired by a third company, where, along with such acquisition, the third company becomes the owner of a such transmission licensee

(c) Thus, when AESL acquires the equity shareholding of EPTCL in ETL, then the same would mean that AESL (being the owner of ETL) would have the transmission licence for Stage-II assets, and would also be liable to be paid with the transmission tariff/ charges for the said assets by CTUIL from the pool. In this regard, reference is made to Licence No. 4/Transmission/ CERC dated 08.04.2008 issued by this Commission in favour of EPTCL whereby the Commission has held that the licence is not transferable, except in accordance with the provisions of the Act, the rules and the regulations, and the licensee shall not at any time assign its licence, or transfer its utility, or any part thereof by sale, lease or otherwise without the prior approval of the Commission.

(d) Therefore, EPTCL is allowed to assign its licence in case the same is *inter-alia* in accordance with the provisions of the Act and takes prior approval for the same from the Appropriate Commission (being this Commission in the present case). Section 17(3) of the Act does not bar any licensee from transferring its transmission licence (or any part thereof) in favour of any other entity if it seeks approval from the Appropriate Commission.

(e) Further, Section 17(3) also entails that the licensee (EPTCL) can transfer its utility or any part of the same, to any other entity subject to the approval of the Appropriate Commission. As per Section 2(75) of the Act, 'Utility' means either a generating company or a licensee. The Petitioner/ EPTCL is not a generating company and is a licensee, and thus, the Petitioner can transfer its

entire utility/ licence or any part thereof to a third party. Thus, it is clear that the Act allows the transfer of transmission licences from one entity to the other.

(f) With regard to the effect of such transfer of transmission licence, whenever a licensee seeks a transfer of its transmission licence/ transmission assets in favour of the other entity, the said transfer of assets comes with the licence as well.

(g) Under the framework of the Act, for transmission, there could either be dedicated transmission lines or transmission lines. A dedicated transmission line is allowed to be constructed, maintained or operated either by a Captive Generating Plant (Section 9) or a Generating Station (Section 10). No other entity is allowed to construct such dedicated transmission lines. The transmission lines, however, are allowed to be constructed, established and operated by transmission licensees for the purpose of transmission of power. However, for such construction, establishment and operation of transmission Licence for the purpose of transmission of electricity, an entity necessarily needs to have a licence, without which no such transmission activity cannot take place. In terms of the above, in the present case, the issue does not deal with dedicated transmission lines; instead, the transfer is taking place from one transmission licensee (EPTCL) to the other entity (ETL), which would be engaged in the business of transmission of electricity only.

(h) Therefore, once the transmission licence is transferred from one entity to the other, the entity upon whom such transfer is effectuated becomes the owner of the licence as well as the owner of the transmission assets because the licenced activity of transmission of electricity is asset-based, unlike the distribution of electricity for which the licence to distribution is area based.

(i) In other words, in terms of Sections 17 and 18 of the Act, there cannot be a scenario where a licenced transmission asset is transferred from one entity to the other without there being a transfer of licence.

(j) If this Commission allows the Petition of EPTCL, thereby granting the relief sought thereunder [prayer (a)], then the same would mean that the assets are transferred to Respondent No. 3 viz., Essar Transco Limited, along with transmission licence. Subsequently, once AESL acquires the equity

shareholding of EPTCL in ETL, then the same would mean that AESL (being the owner of ETL) would have the transmission licence for Stage-II Assets, and would also be liable to be paid the transmission tariff/ charges for the said assets by CTUIL from the pool.

Hearing dated 11.10.2023

10. During the course of the hearing, the learned counsels and the representative of the parties argued at length. The parties were permitted to file their respective written submissions. Written submissions have been filed by the Petitioner and the CTUIL, and the same have not been repeated herein for the sake of brevity.

11. Vide Record of Proceedings for the hearing dated 11.10.2023, NLDC/Grid Controller of India Limited was directed to file its comments/ suggestions on the amendment/modification of the inter-State transmission licence granted to the Petitioner with respect to its technical and operational appropriateness. Grid Controller of India Limited vide its affidavit dated 20.10.2023 has submitted as under:

(a) Stage-I and Stage-II Assets of the Petitioner are geographically located in the States of Madhya Pradesh and Gujarat. The demerger is unlikely to impact the operation of elements. Thus, the change in ownership is not expected to impact any operational aspects. Since multiple licensees will be involved for coordination purposes of Stage-II elements, the site responsibility schedule as per the provisions of the Central Electricity Authority (Technical Standards for Connectivity to the Grid) Regulations, 2007 needs to be prepared after the transfer of licence and shared with NLDC/WRLDC.

(b) In case the licence is amended, the Petitioner is required to comply with the provisions of Regulation 28 (7) of the Grid Code specifically laying down the responsibilities of the transmission licensee owning a transmission line but not the connected sub-station.

(c) Presently, the Petitioner is a registered 'user' of the WRLDC and is sharing WRLDC fees and charges with respect to its transmission elements. Once the Stage-II assets are transferred, ETL will also become a 'user' of WRLDC by virtue of the CERC order/grant of licence. Accordingly, ETL shall register itself with WRLDC as a 'user' as per the provisions of the Central Electricity Regulatory Commission (Fees and Charges of Regional Load Despatch Centre and other related matters) Regulations, 2019 and shall be liable for payment of the WRLDC fees and charges. In the event ETL takes over the ownership of the asset, ETL shall be responsible for payment of all pending bills raised to the Petitioner company.

Analysis and Decision

12. We have considered the submissions made by the Petitioner and the Respondents.

13. The licence was subsequently amended vide order dated 15.9.2009 to allow modification of configuration from Triple conductor to Quad Moose conductor for the 400 kV D/C Mahan-Sipat transmission line.

14. The assets covered in the transmission licence were put into commercial operation by the Petitioner in two stages i.e., Stage-I (including LILO) and Stage-II as under:

Stage-I Assets

| I | Transmission Lines | Length (in km) |
|-----------|--|--|
| 1 | 400 kV D/C (twin conductor) transmission line from Gandhar (NTPC) switchyard to Hazira | 104.6 |
| II | 400/220 kV GIS Sub-station at Hazira | Number of bays |
| 1 | 500 MVA Transformers | 3 (Only 2 have been installed and commissioned) |

| | | |
|---|---|----|
| | | |
| 2 | 220 kV Bays at Hazira | 2 |
| 3 | 400 kV Sub-station and line bays (GIS) at Hazira (including tie bays) | 5* |
| 4 | 400 kV line bays (AIS) at Gandhar** | 2 |

*2 Line Bays, 2 ICTs Bays & 1 Bus coupler and Metering Bay

**Ownership of these bays are lying with NTPC, Gandhar

LILO

| I | Transmission Lines | Length (in km) |
|-----------|---|--------------------------|
| 1 | LILO of 400 kV S/C Vidhyachal-Korba transmission line of Powergrid at Mahan | 22.4 |
| II | Line Bays | Units (in Number) |
| 1 | 400 kV LILO Bays at Mahan Switchyard | 2 |

Stage-II Assets

| I | Transmission Lines | Length (in km) |
|------------|--|--------------------------|
| 1 | 400 kV (Quad Moose Conductor) D/C transmission line from Mahan Thermal Power plant to Sipat Pooling Sub-station (Presently at Bharari, Bilaspur) | 336.50 |
| II | Line Bays | Units (in Number) |
| 1 | 400 kV line bays at Mahan and Sipat | 4 |
| III | Reactors | Units (in Number) |
| 1 | 50 MVAR integrated line reactor at Sipat Pooling Sub-Station | 2 |
| 2 | 50 MVAR switchable line reactor at Mahan TPP along with associated bays | 2 |
| 3 | 80 MVAR switchable bus reactor at Mahan TPP along with associated bays | 1 |

15. The Petitioner has filed the present Petition praying for amendment of ISTS licence to implement the following proposed scheme:

(a) To transfer Stage-II Assets to Essar Transco Limited (ETL) through a scheme of demerger (with effect from the appointment date i.e. 1.4.2023) to be approved by the National Company Law Tribunal, Indore bench along with its corresponding licence.

(b) Stage-I Assets shall be retained in the existing licence and shall continue to be owned and controlled by the Petitioner.

(c) Since LILO has already been disconnected pursuant to the Commission's orders culminating in the order dated 1.6.2022, LILO is to be removed from the Petitioner's ISTS Licence.

16. Subsequently, the Petitioner shall transfer its entire equity shareholding in ETL to the Respondent No. 2 Adani Energy Solutions Limited (formerly known as Adani Transmission Limited), (hereinafter referred to as AESL) or its subsidiary. The Petitioner has entered into a definitive agreement with ATL for the sale and transfer of the Stage-II Assets, subject to completion of corporate, lender and regulatory approvals.

17. As per the Petitioner, EPTCL shall continue to own and operate the Stage-I Assets under its present ISTS Licence after carving out Stage II Assets and LILO.

18. The Petitioner has justified the transfer/demerger of the Stage-II Assets along with its corresponding licence into ETL stating that the Stage-I Assets and Stage-II Assets are geographically distinct and are not connected to each other. Further, both Stage I as well as, Stage II have achieved commercial operation and receive tariffs under separate and distinct tariff orders issued by the Commission. Therefore, the amendment of the ISTS Licence and transfer of Stage-II Assets along with its corresponding licence would not be detrimental to public interest since the tariff for both Stage-I Assets and Stage-II Assets will not be impacted as a result of the amendments sought in this petition. The Petitioner has further contended that the proposed amendment of the ISTS Licence and transfer of Stage-II Assets along with its corresponding licence will result in better coordination and will ensure that the

respective transmission assets are operated and maintained efficiently and economically, which would further public interest.

19. Section 18 of the Act deals with the amendment of licence as under

(1) Where in its opinion the public interest so permits, the Appropriate Commission, may, on the application of the licensee or otherwise, make such alterations and amendments in the terms and conditions of his licence as it thinks fit:

Provided that no such alterations or amendments shall be made except with the consent of the licensee unless such consent has, in the opinion of the Appropriate Commission, been unreasonably withheld.

(2) Before any alterations or amendments in the licence are made under this section, the following provisions shall have effect, namely: -

(a) where the licensee has made an application under sub-section (1) proposing any alteration or modifications in his licence, the licensee shall publish a notice of such application with such particulars and in such manner as may be specified;

.....

(d) the Appropriate Commission shall not make any alterations or modification unless all suggestions or objections received within thirty days from the date of the first publication of the notice have been considered.

20. Further, Regulation 19 of the Transmission License Regulations, 2009, provides as under with regard to the amendment of the licence.

“19. Amendment of Licence

(1) The Commission may of its own motion or on an application made by the licensee or otherwise make such alterations and amendments in the terms and conditions of licence if the Commission is of the opinion that the public interest so requires:

.....

(2) The procedure specified in regulation 7 shall mutatis mutandis be applicable in case the licensee makes an application for any alteration of or modification to the terms and conditions of the licence.

(3) Where the licensee has made an application proposing any alteration and modification of its licence, it shall publish a notice of such application, with the following particulars, namely:-

- (a) name of the applicant;
- (b) that an application for alteration and modifications has been made before the Commission;
- (c) details of alteration and modifications proposed in the application,
- (d) reasons for seeking such alterations and modifications;
- (e) a statement that the application made before the Commission has been posted on the web site and can also be inspected in the office of the applicant;
- (f) a statement that any suggestion to the proposal for alteration and modifications made in the application may be submitted to the Secretary of the Commission within one month of publication of the notice...”

21. Regulation 7 of the Transmission Licence Regulations read with the order dated 22.1.2022 passed in Petition No.1/SM/2022 [whereby the Commission, in the exercise of ‘Power to Relax’ under Regulation 24 of the Transmission Licence Regulations, modified/amended Clause (4), Clause (7), Clause (9) and Clause (12) and dispensed with Clause (10) of Regulation 7] provide for the procedure for grant of transmission licence as under:

“(1) The application for grant of transmission licence shall be made to the Commission in Form-I appended to these regulations and shall be accompanied by such fees as may be prescribed by the Central Government from time to time.

(2) In case of the person selected for implementation of the project in accordance with the guidelines for competitive bidding, the application shall also contain such additional information, as may be required under these guidelines.

(3) The application shall be supported by affidavit of the person acquainted with the facts stated therein.

(4) Before making an application, the applicant shall submit the original application in electronic form along with annexures and enclosures on the e-filing portal of the Commission so that the same is served electronically on all the long-term customers of the project registered on the e-filing portal of the Commission. Also, a copy of the same be served through e-mail on the long term customers of the project not registered on the e-filing portal of the

Commission. Further, the applicant shall also post the complete application along with annexures and enclosures in English and in the vernacular language, on its website.

(5) The application shall be kept on the website till such time the licence is issued or the application is rejected by the Commission.

(6) Immediately on making the application, the applicant shall forward a copy of the application to the Central Transmission Utility.

(7) The applicant shall, within 7 days after filing the application, post the application on the e-filing portal of the Commission and on its website in Form II attached to these regulations in English language and in Vernacular language of the State or Union Territory where an element of the project or a long-term customer is situated, inviting comments from the general public.

(8) As far as possible, within 7 days of receipt of the application the Secretariat of the Commission shall convey defects, if any, if noticed on preliminary scrutiny of the application for rectification and the defects conveyed shall be rectified by the applicant in such time as may be indicated in the letter conveying the defects.

(9) In the notice published on the e-filing portal of the Commission and on the applicant's website under clause (7) it shall be indicated that the suggestions and objections, if any, on the application, may be filed before the Secretary, Central Electricity Regulatory Commission, Third Floor, Chanderlok Building, Janpath, New Delhi-110001 (or the address where the office of the Commission is situated), with a copy to the applicant, by any person, including the long-term customers, within 30 days of publication of the notice.

.....

(10) The Central Transmission Utility shall send its recommendations, if any, to the Commission on the proposal made in the application within a period of thirty days from the date of receipt of application by it: Provided that copy of the recommendations, if any, made by the Central Transmission Utility shall always be forwarded to the applicant: Provided further that these recommendations of the Central Transmission Utility shall not be binding on the Commission.

(11) The applicant may file its comments, duly supported by an affidavit, on the recommendations made by the Central Transmission Utility and the suggestions and objections, if any, received in response to the notice posted on the e-filing portal of the Commission and on the applicant's website by him, within 45 days of service of copy of the application on the Central Transmission Utility or publication of notice posted on the e-filing portal of the Commission and on the applicant's website, with an advance copy to the Central Transmission Utility or the person who has filed the suggestions and objections on the proposal made in the application, as the case may be.

(12) The Commission after considering the suggestions and objections received in response to the public notice published by the applicant and the recommendations, if any, of the Central Transmission Utility may, propose to grant transmission licence or for reasons to be recorded in writing, reject the application.....”

22. Section 18 (2)(a) of the Act read with Regulations 19 and 7 of the Transmission Licence Regulations, 2009, requires the transmission licensee to publish a public notice inviting comments on the proposed amendment in the licence.

23. The Petitioner, vide its affidavit dated 9.10.2023, has placed on record the relevant copies of the notices wherein notices were published in terms of Regulation 7(7) of the Transmission Licence Regulations. The Petitioner published notices on 21.8.2023 in both English and Hindi in the Business Standard Daily newspaper, having circulation in New Delhi, Mumbai, Lucknow, Kolkata, Pune, Chandigarh, Bhopal, Kochi, Hyderabad, Chennai, Bangalore, Bhubaneswar and Ahmedabad. No objection has been received in response to the public notice.

24. The Petitioner vide affidavit dated 9.10.2023 has also submitted that the EPTCL has filed a Second Motion Petition (SMP) before the NCLT, Indore Bench seeking sanction of the NCLT for the proposed demerger of Stage II assets to ETL scheme. A similar SMP shall be filed by ETL before NCLT seeking sanctioning of the scheme. The scheme will become effective once the SMPs filed by EPTCL and ETL are approved by the NCLT. The appointed date of the demerger scheme is 1.4.2023.

25. CTUIL, vide its letter dated 21.9.2023, has made the following recommendations.

“This is with reference to RoP dated 18.08.2023 in the Petition No. 187/MP/2023 filed before CERC seeking amendment and transfer of the EPTCL’s inter-state transmission license, wherein CTU has been directed to file its

recommendations on the sought amendment to the transmission license. In this regard, the following is submitted:

1. M/s Essar Power Transmission Company Limited (EPTCL) has filed a petition under Sections 79(1)(c), (e) and (k) read with 17(3) and 18 of the Electricity Act, 2003 and Regulation 19 of CERC (Procedure, Terms and Conditions for grant of Transmission License and other related matters) Regulations, 2009 seeking inter alia amendment and transfer of partial assets of the EPTCL's inter-state transmission license (bearing No. 4/Transmission/CERC) granted by CERC vide order dated 10.04.2008 in Petition No. 157/2007 (subsequently amended vide CERC order dated 15.09.2009). The scope of work under the transmission system for which the transmission license was granted to EPTCL vide the above order is enclosed at Annexure-I. Copy of CERC order dated 10.04.2008 in Petition No. 157/2007 is enclosed at Annexure-II. Copy of CERC order dated 15.09.2009 is enclosed at Annexure-III.

2. Vide Petition No. 187/MP/2023 filed before CERC, M/s EPTCL has sought to amend and transfer its transmission license as detailed below:

a. The 400 kV (Quad Moose Conductor) D/c transmission line from Mahan Thermal Power plant to Sipat Pooling Sub-station (presently at Bharari, Bilaspur) along with associated bays (4 Nos.), 50MVAR line reactors at Sipat PS (2 Nos.), 50 MVAR line reactors at Mahan TPP (2 Nos.) and 80 MVAR 420kV switchable bus reactor at Mahan TPS along with its associated 400kV bay shall be transferred from EPTCL to Essar Transco Limited (ETL) through a scheme of demerger (with effect from the appointment date, 01/04/2023) to be approved by the Hon'ble National Company Law Tribunal (NCLT), Indore bench. Subsequently, the Petitioner has submitted that it shall transfer its entire equity shareholding in ETL to Adani Transmission Limited (ATL) or its subsidiary.

b. The 400 kV D/c (twin conductor) transmission line from Gandhar (NTPC) switchyard to Hazira, 3x500MVA, 400/220kV sub-station at Hazira (2 Nos. SOOMVA, 400/220kV ICTs) were installed and commissioned out of 3x500MVA, 400/220kV ICTs) and 400 kV line bays (AIS) at Gandhar (2 Nos.) shall be retained by M/s EPTCL and shall continue to be owned and controlled by M/s EPTCL.

c. The LILO of 400 kV S/c Vindhychal — Korba (Twin Moose Conductor) transmission line of POWERGRID at Mahan Power Plant along with associated line bays (2 Nos.) at Mahan Switchyard shall be removed from the ISTS license existing with M/s EPTCL (bearing No.4/Transmission/CERC).

3. In line with directions of CERC vide RoP dated 18.08.2023 in the above Petition, the recommendations of CTU on the sought splitting of the transmission assets and transfer of license are as follows:

a. In respect of 2(a) above, the company to which the transmission assets shall be transferred would have to acquire transmission license for the corresponding assets. Further, CTU to recover an amount of Rs.301.46 Cr from EPTCL for its assets mentioned at para 2(a) above which was earlier billed to pool DICs and the same shall have to be refunded back to pool DICs in line with

CERC Order dated 14.03.2022 in Petition No. 145/TT/2018. Further, the said amount is being recovered as per the Hon'ble Commission order dated 12.01.2023 in Petition No. 195/MP/2022. As on 12.09.2023, CTU has recovered an amount of Rs 285.94 Cr and the balance amount of Rs 15.52 Cr is to be recovered from EPTCL.

b. During the process of splitting of the transmission assets and transfer of license, there should not be any discontinuation of O&M i.r.o the subject transmission assets.

c. In respect of 2(c) above, the LILO of 400kV S/c Vindhyachal — Korba (Twin Moose Conductor) transmission line of POWERGRID at Mahan Power Plant has been disconnected vide CERC order dated 01.06.2022. Accordingly, the LILO of 400 kV Sic Vindhyachal - Korba (Twin Moose Conductor) transmission line of POWERGRID at Mahan Power Plant along with associated line bays (2 Nos.) at Mahan Switchyard may be removed from the existing transmission license of M/s EPTCL (bearing No.4/Transmission/CERC). Copy of CERC order dated 01.06.2022 is enclosed at Annexure-IV.

4. Further, the Hon'ble Commission may note that, as per the transmission license issued to M/s EPTCL vide CERC order dated 10.04.2008, the Hazira(GIS) Sis was to be established with 3x500MVA, 400/220kV ICTs to facilitate drawl of 700 MW power (under LTOA) from Mahan TPS of EPMPPL to Essar group's steel plant at Hazira in the State of Gujarat. Out of 3x500MVA, 400/220kV ICTs envisaged at Hazira(GIS) Sis, only 2x500MVA 400/220kV ICTs were commissioned by EPTCL and EPTCL had submitted before CERC in Petition No. 173/TT/2013 & 111/TT/2015 that they were in the process of installing the 3 ICT and an undertaking in this regard had been submitted to CERC. However, M/s EPTCL has not yet taken up installation of 3rd ICT as per the transmission license granted to them.

5. That in addition to above, it is submitted that the Petitioner had earlier filed Petition No. 342/MP/2022 before the Commission seeking transfer of its present transmission license to its various entities. CTU vide its compliance affidavit dated 22.03.2023 in Petition No. 342/MP/2022, had submitted its observations to the Petitioner's proposal, the contents of which are being summarized below for the sake of brevity and for kind consideration of the Commission for the purposes of the present application/petition as well: -

a) As per CTU's understanding, "amendment" of the license refers to a "modification" in terms of technical scope of work as illustrated under the grant of transmission license such as the modification in the configuration, design, layout, etc. The amendment of the transmission license under the extant regulatory framework may not be inclusive of transfer of the assets of the transmission licensee as provided under Section 18 of the Electricity Act, 2003.

b) In view of the extant statutory and regulatory scheme and the facts and circumstances of the case, it is submitted that this Commission may consider the "public interest" requirement under Section 18 of the Electricity Act,

2003.

c) *The Petitioner has submitted in its Petition about having entered into certain 'Definitive agreements' and transactions for acquisition of its assets, which may be considered by the Commission in terms of the statutory mandate of Section 17 of the Electricity Act, 2003.*

d) *Furthermore, it is requested that the Commission may also seek suggestions of National Load Despatch Centre [NLDC] with respect to the technical and operational appropriateness of the splitting of the license granted to the Petitioner.*

True copy of CTU's compliance affidavit dated 22.03.2023 in Petition No. 342/MP/2022 is annexed as Annexure- V to the present license recommendation for kind reference of the Commission."

Transfer of assets

26. CTUIL in its recommendation has submitted that "amendment" of the licence refers to a "modification" in terms of the technical scope of work such as modification in the configuration, design, layout, etc. and the amendment of the transmission licence under the extant regulatory framework may not be inclusive of transfer of the assets of the transmission licensee as provided under Section 18 of the Act.

27. However, Section 17(3) of the Act allows the transfer of utility or a part of the utility by a licensee with the approval of the Commission by way of sale, lease, exchange or otherwise. The relevant extract of Section 17 is as under.

"Section 17. (Licensee not to do certain things): ---

(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."

28. Therefore, the above provisions of the Act allow the licensee to transfer its utility or a part of the utility by way of sale, lease, exchange or otherwise to any other entity subject to the approval by the Commission. The same condition was incorporated in

Para 4 of the licence granted to EPTCL. In the past, the Commission has allowed the transfer of utility along with the license under Section 17(3) of the Act in various orders. By order dated 27.1.2021 in Petition No 71/MP/2020, the Commission had allowed the transfer of utility i.e. Warora Kurnool Transmission Limited (WKTL) from Essel Infra to Adani Transmission Limited. The relevant extract of the order is as under

“45. Further, the Commission has already considered the change in ownership by way of transfer of the equity shareholding under Section 17(3) of the Act in its order dated 7.8.2017 in Petition No.31/MP/2017 (Reliance Infrastructure Limited v. PGCIL and Ors.). The Commission in the said order permitted transfer of entire shareholding of Reliance Infrastructure Limited in transmission licensees, Western Transco Power Limited and Western Transmission (Gujarat) Limited to Adani Transmission Limited under Section 17(3) of the Act.

46. In view of the above, we are of the view that transfer of 100% shareholding of Essel Infra in WKTL by the lenders to their nominee ATL is permissible under Section 17(3) of the Act read with Article 15.3.2 of the TSA and Regulation 12 of the Transmission Licence Regulations.”

29. It is also apparent from the text 'transfer his utility, or any part thereof' used in Section 17 (3) of the Act that a part of the utility may also be transferred with the approval of the Commission. Accordingly, there is no restriction on the following transaction under Section 17(3) of the Act, subject to the approval of this Commission.

(a) Transfer of the following assets to ETL and thereafter to AESL

Stage-II Assets

| I | Transmission Lines | Length (in km) |
|------------|--|--------------------------|
| 1 | 400 kV (Quad Moose Conductor) D/C transmission line from Mahan Thermal Power plant to Sipat Pooling Sub-station (Presently at Bharari, Bilaspur) | 336.50 |
| II | Line Bays | Units (in Number) |
| 1 | 400 kV line bays at Mahan and Sipat | 4 |
| III | Reactors | Units (in Number) |
| 1 | 50 MVAR integrated line reactor at Sipat Pooling Sub-Station | 2 |
| 2 | 50 MVAR switchable line reactor at Mahan TPP along with associated bays | 2 |

| | | |
|---|--|---|
| 3 | 80 MVAR switchable bus reactor at Mahan TPP along with associated bays | 1 |
|---|--|---|

(b) **Removal of following assets from the license granted to EPTCL**

| I | Transmission Lines | Length (in km) |
|-----------|---|--------------------------|
| 1 | LILO of 400 kV S/C Vidhyachal-Korba transmission line of Powergrid at Mahan | 22.4 |
| II | Line Bays | Units (in Number) |
| 1 | 400 kV LILO Bays at Mahan Switchyard | 2 |

Amendment of licence

30. Further, the transfer of a part of the utility shall require an amendment of the transmission licence under Section 18 of the Act by way of carving out a part of the assets for which the licence was granted by the Commission. In this regard, CTUIL has requested the Commission to consider the “public interest” requirement under Section 18 of the Act.

31. With regard to CTUIL’s submission regarding public interest, the Petitioner, vide its affidavit dated 14.11.2023, has submitted that the amendment sought by the Petitioner satisfies the test of public interest since prayers sought in the present Petition would not affect the tariff for either Stage-I Assets or the Stage-II Assets. The Petitioner has further submitted that the Maharashtra Electricity Regulatory Commission (MERC) by its order dated 28.6.2019 in Case No. 139 of 2017 had approved a similar structure i.e. the assignment of transmission licence granted to R-Infra and transfer of assets of the transmission system of RInfra to Reliance Electric Generation and Supply Private Limited (REGSL) which was a 100% subsidiary of RInfra.

32. Vide affidavit dated 14.11.2023, the Petitioner has also submitted that it is facing a financial crunch. As per the Petitioner, the financial difficulties would be largely

resolved with the completion of the transaction which would assist it in better servicing its remaining transmission assets.

33. We have considered the submissions made by the Petitioner and the Respondents. EPTCL is facing a financial crunch, and the transfer of Stage II Assets to ETL and subsequently to Adani Energy Solutions Limited (AESL) would assist it in better servicing its remaining transmission assets. AESL has been operating inter-State and intra-State 400 kV to 765 kV transmission lines. AESL is the holding company of various SPVs that have been granted inter-State and intra-State transmission licences. AESL is also constructing and operating various transmission systems under a competitive bidding route. Therefore, in our view, AESL possesses the necessary qualifications and expertise to carry out the business of transmission.

34. The present transmission system is associated with the Mahan Thermal Power Plant constructed by the Petitioner's sister company, namely Essar Power MP Limited (EPMPL). It is also noted from the proceedings of Review Petition No 27/RP/2022 that the said Thermal Power Plant has also gone through IBC proceedings initiated by the lenders against EPMPL and has been acquired by Adani Power Limited.

35. The transmission system is one of the most critical elements of the entire value chain of power supply in respect of grid security and smooth operation of the power system. Thus, the operation and maintenance of the transmission system cannot be compromised in any circumstances.

36. In view of the above, considering the financial difficulties being faced by the Petitioner, it would be in the public interest to allow the Stage II Assets to ETL and subsequently to AESL who is more experienced in the transmission sector and better

equipped to operate and maintain the transmission assets. It may also be noted that in the present case, amendment of EPTL's existing transmission licence as sought for, insofar as it relates to Stage II Assets, is a direct corollary of the transaction proposed to be undertaken under Section 17(3) of the Act and for such transaction(s) a stringent public interest is not a prerequisite. In any case, we have already noted that allowing the transfer of Stage II Assets to ETL and then ultimately to AESL would be in the public interest. Further, the Petitioner is also seeking the removal of LILO of 400 kV S/C Vidhyachal-Korba transmission line of Powergrid at Mahan and associated 400 kV LILO Bays at Mahan Switchyard in terms of order dated 1.6.2022 in IA No 4/IA/222 filed in Petition No 92/MP/2021. As per the Petitioner, the prayer sought in the Petition would not affect the tariff of either Stage I Assets or Stage II Assets. However, it is noted that the removal of LILO shall also result in a reduction of tariff on Stage I Assets, which would be in the public interest. Grid India, vide its affidavit dated 20.10.2023 has also opined that the change in ownership is not expected to impact any operational aspects.

37. In the exercise of our power under Section 18 (1) of the Act and Regulation 19 (1) of the Transmission Licence Regulations, we approve the transfer of Stage II Assets [as detailed in Para 25 (a) above] to ETL, subject to acquisition of the same by AESL subsequently, and the removal of LILO [as detailed in Para 29(b) above] from the licence granted to EPTCL. The licence bearing No. 4/Transmission/CERC shall be split into 4A/Transmission/CERC for Stage I and 4B/Transmission/CERC for Stage II respectively. The Staff of the Commission is, accordingly, directed to issue two separate licences in the name of EPTCL and ETL respectively. It is clarified that the said transaction is allowed subject to the approval of the scheme by NCLT and shall be implemented prospectively from the date of the two licences. The transmission

licensees shall comply with the provisions of the Act and the Regulations issued by the Commission from time to time.

38. For the implementation of the above scheme, the Petitioner is directed to comply with the following directions of the Commission.

(a) During the process of splitting of the transmission assets and transfer of licence, there should not be any discontinuation of O&M in respect of the subject transmission assets.

(b) EPTCL shall execute the remaining ICT Hazira (GIS) sub-station within six months from the date of this order.

(c) The CTUIL has submitted that it has to recover an amount of Rs.301.46 crore from EPTCL for Stage II assets which was earlier billed to pool DICs and the same shall have to be refunded back to pool DICs in line with the Commission's order dated 14.3.2022 in Petition No. 145/TT/2018. The said amount is being recovered by CTUIL as per the Commission's order dated 12.1.2023 in Petition No. 195/MP/2022. As on 12.9.2023, CTUIL has recovered an amount of Rs 285.94 crore, and the balance amount of Rs 15.52 crore is to be recovered from EPTCL. In order to avoid unnecessary litigations, the Petitioner is directed to have absolute clarity between EPTCL and AESL with regard to the scope of work and pending litigations. Once the transmission licence is bifurcated, the liability, if any, shall fall upon the new licensee.

(d) As committed by EPTCL, there shall be no change in the transmission charges being paid/to be paid by the beneficiaries of EPTCL pursuant to this process which shall continue to be governed as per the provisions of the TSA.

(e) Needless to add, after the assets are transferred, both the licensees shall comply with the provisions of the Act, Rules made by the Government of India, Ministry of Power and relevant Regulations of the Commission and the provisions of the Central Electricity Authority including the Central Electricity Authority (Technical Standards for Connectivity to the Grid) Regulations, 2007, the Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2022 and the Central Electricity Regulatory Commission (Fees and Charges of Regional Load Despatch Centre and other related matters) Regulations, 2019 as indicated by Grid India.

39. Let 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.

40. Petition No. 187/MP/2023 is disposed of in terms of the above.

Sd/-
(P.K. Singh)
Member

sd/-
(Arun Goyal)
Member

sd/-
(I.S. Jha)
Member

sd/-
(Jishnu Barua)
Chairperson