

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No.187/MP/2023

Subject : 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.

Date of Hearing : **11.10.2023**

Coram : Shri Jishnu Barua, Chairperson
Shri I. S. Jha, Member
Shri Arun Goyal, Member
Shri P. K. Singh, Member

Petitioner : Essar Power Transmission Co. Ltd. (EPTCL)

Respondents : Essar Transmission Utility of India Limited (CTUIL) and 3 Ors.

Parties 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

Record of Proceedings

Learned senior counsel for the Petitioner submitted that the present Petition has been filed 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. Learned senior counsel submitted that the Petitioner seeks 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. Learned senior counsel submitted that, insofar as the Stage-I Assets are concerned, they will continue to be owned and controlled by the Petitioner as per the existing transmission licence.

2. In response to the specific query of the Commission with regard to ETL being an eligible entity for possession of a transmission licence for Stage II Assets, learned senior counsel submitted that ETL, being 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. Learned senior counsel further submitted that since the transfer of Stage-II assets from the Petitioner to ETL is being done (through a scheme of demerger to be duly approved by NCLT) on a going concern basis along with the entire regulated asset base and employees, the management & technical expertise that were part & parcel of the Petitioner for Stage-II Assets will vest in their entirety in ETL. Also, ETL will ultimately be owned by Adani Transmission Limited, which has numerous subsidiaries with transmission licences.

3. The representative of CTUIL mainly submitted as under:

(a) Technically, CTUIL has no objection to an amendment to the inter-State transmission licence granted to the Petitioner;

(b) The amendment of the transmission licence under the extant regulatory framework may not include the transfer of assets of the transmission licence as provided under Section 18 of the Electricity Act, 2003 ('the Act').

(c) The Commission may also consider the 'public interest' requirement under Section 18 of the Act.

(d) In the Petition, the Petitioner has indicated that it has entered into certain 'Definitive Agreements' and transactions for the acquisition of its assets, which may be considered by the Commission in terms of the statutory mandate of Section 17 of the Act,

(e) The Commission may seek the suggestion of NLDC with respect to the technical and operational appropriateness of the splitting of the licence granted to the Petitioner.

4. In response, learned senior counsel for the Petitioner submitted that the transfer as proposed by the Petitioner will not take effect prior to the approval of this Commission under the Act as well as the sanction of NCLT for the entire demerger scheme. Learned senior counsel further submitted that Section 17(1)(a) of the Act permits a licensee to undertake any transaction to acquire, by purchase, takeover, or otherwise, the utility of any other licensee with the prior approval of the Appropriate Commission whereas Section 17(3) of the Act also permits the assignment of a licence or transfer of a utility, including part thereof, by sale, lease exchange, or otherwise, after the approval of the Appropriate Commission. Learned senior counsel submitted that the transaction in question would entail the recognition of ETL as a transmission licensee for Stage-II Assets and, consequently, the amendment of the existing transmission licence of the Petitioner for carving out Stage-II Assets and restricting it to Stage-I Assets.

5. Learned counsel for Respondent No.2, ATL, submitted that the transfer of utility under Section 17(3) of the Act has to be along with the transfer of the corresponding licence and not *de hors* the licence.

6. The Commission directed the NLDC to file its comments/ suggestions within a week on the amendment/modification of the inter-State transmission licence granted to the Petitioner with respect to its technical and operational appropriateness.

7. The Commission also permitted the Respondents to file their respective written submissions, if any, within a week.

8. Subject to the above, the Commission reserved the order in the matter.

By order of the Commission

**SD/-
(T.D. Pant)
Joint Chief (Law)**