



**THE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION  
LUCKNOW**

**Petition No. 2128 of 2024**

**QUORUM**

Hon'ble Shri Arvind Kumar, Chairman

Hon'ble Shri Sanjay Kumar Singh, Member

**IN THE MATTER OF**

Petition under Section 17(3) of the Electricity Act, 2003 read with Regulations 4.3.1 and 4.13.4 of the UPERC (General conditions of Transmission Licensee) Regulations, 2005 and Article 15 of the Transmission Service Agreement dated 20.01.2012 seeking regulatory approval for creating charge over assets and pledge of shares in favour of lender and security trustee by way of mortgage, hypothecation and pledge.

**AND**

**IN THE MATTER OF**

**South East U.P. Power Transmission Company Ltd.**

Through its Authorized Representative  
Plot No. 409, 4th Floor, Shalimar Titanium  
Vibhuti Khand, Gomti Nagar, Lucknow  
Uttar Pradesh, Pin-226010.

..... **Petitioner**

**VERSUS**

1. **U.P Power Transmission Corporation Ltd.**

through its Managing Director 7th Floor, Shakti Bhawan, 14,  
Ashok Marg,  
Lucknow, Uttar Pradesh-226001

2. **State Bank of India**

Through its Director-Finance  
Neville House, 3rd Floor,

by



m



J. N. Heredia Marg, Ballard Estate,  
Mumbai, Maharashtra, Pin-400 001

3. **Paschimanchal Vidyut Vitran Nigam Ltd.**

through its Managing Director, Urja Bhawan, Victoria Park,  
Meerut, Uttar Pradesh-250001

4. **Madhyanchal Vidyut Vitran Nigam Ltd.**

through its Managing Director 4-A, Gokhale Marg, Lucknow,  
Uttar Pradesh-226001

5. **Purvanchal Vidyut Vitran Nigam Ltd.**

through its Managing Director 132 KV S/S Bhikari Vidyut Nagar,  
Varanasi, Uttar Pradesh-221004

6. **Dakshinanchal Vidyut Vitran Nigam Ltd.**

through its Managing Director Urja Bhavan, NH - 2  
(Agra - Delhi Bypass Road), Sikandra, Agra,  
Uttar Pradesh-282002

7. **Kanpur Electricity Supply Co. Ltd.**

Through its Managing Director  
Headquarter, Kesa House,  
14/71, Civil Lines, Kanpur, Uttar Pradesh

8. **SBI CAP Trustee Company Limited**

Through its Director-finance  
Plot No. 202, Maker Tower E, Cuffe Parade,  
Mumbai, Maharashtra, Pin- 400 005

..... Respondents

**THE FOLLOWING WAS PRESENT**

1. Sh. Ashutosh Kumar Srivastava, Advocate, SEUPPTCL
2. Sh. Aashwyn Singh, Advocate, SEUPPTCL



by .

m



3. Md. Altaf Mansoor, Advocate, UPPTCL
4. Sh. Tanay Chaudhary, Advocate, UPPTCL
5. Sh. S.C. Joshi, SE, UPPCL
6. Sh. Rakesh Kumar, SE, UPPTCL
7. Sh. Rajiv Singh, EE, UPPCL
8. Sh. Jatin Mahani, Group Head-Regulatory, SEUPPTCL
9. Sh. Utkarsh Saxena, Lead-Legal, SEUPPTCL

### ORDER

**(DATE OF HEARING: 23.01.2025)**

1. The instant Petition has been filed under Section 17(3) of the Electricity Act, 2003 read with Regulations 4.3.1 and 4.13.4 of the UPERC (General conditions of Transmission License) Regulations, 2005 and Article 15 of the Transmission Service Agreement dated 20.01.2012 seeking regulatory approval for creating charge over assets and pledge of shares in favour of lender and security trustee by way of mortgage, hypothecation and pledge. The prayers of the Petition are as follows:
  - a) Admit the present Petition.
  - b) Grant in-principle approval under Article 15 of the TSA read with Section 17(3) of the Act and Regulations 4.3.1 read with 4.13.4 of the Transmission Regulations 2005 in favour of the Petitioner for creation of security by way of a first ranking exclusive security interest over (i) Transmission License (ii) the immovable assets (present and future); (iii) the movable assets (present and future) (tangible and intangible) and (iv) Shares of the Petitioner by way of Mortgage, Hypothecation and Pledge in favour of the Lender and the Security Trustee pursuant to the revised Sanction Letter dated 19.03.2024 and the new Facility Agreement dated 21.03.2024; AND/OR
  - c) Pass any other Order that the Hon'ble Commission may deem fit.

#### **Brief of the Petition**

2. Under the present Petition, the Petitioner has sought an approval for the purpose of creating charge over the assets of the 765kV S/C Mainpuri-Bara Transmission Line with 765 /400kV AIS at Mainpuri and associated schemes ("Project") and pledge of shares for availing financial facility in light of a new

by



3



Facility issued by SBI ("Lender" / "Respondent No. 2") vide the revised Sanction Letter dated 19.03.2024, in addition to the earlier Facility Agreements dated 15.09.2022 and 02.03.2023 ("Facility Agreements"), that were executed with the Lender towards refinancing the loan facilities availed earlier from PFC, REC Limited and Bank of India (collectively referred as "Earlier Lenders") and working capital requirements.

3. As part of the Financial Facilities availed by the Petitioner, the Lender had issued revised sanctioned Financing Facilities of Rs. 3,981 Crores in favour of the Petitioner through Letter dated 19.03.2024. In terms thereof, the Revised Financing Facility together with all interest, default interest, additional interest, liquidated damages, fees, commissions, charges and remuneration payable to the SBI CAP Trustee Company Limited ("Security Trustee") is required to be secured for the benefit of Lender by:
- (a) First charge by way of Mortgage of all immovable properties (in case of leasehold land, mortgage over leasehold rights) of the Petitioner together with all appurtenances thereon, both present and future;
  - (b) First charge by way of hypothecation, on all current assets, including but not limited to, book debts, operating cash flows, receivables, commissions and revenue of whatsoever nature and wherever arising, both present and future;
  - (c) First charge by way of Hypothecation over Petitioner's movable assets including movable plant and machinery, machinery spares, equipment, tools and accessories, furniture, fixtures, vehicles and all other movable assets wherever situated, both present and future;
  - (d) First charge on the Transmission License of the Petitioner;
  - (e) First charge on all intangible assets of the Petitioner including but not limited to goodwill, rights, undertaking and uncalled capital, both present and future;
  - (f) First charge on the Petitioner's benefits, rights, titles and interests under all the Project documents, including but not limited to LCs, Guarantees, Warranties, Construction Contracts, permits, approvals, insurance policies(to the extent possible); and



by

3



(g) Pledge of 51% of the equity shares of the Petitioner.

4. As per Article 15 of the TSA, the Petitioner has been permitted to assign its rights and obligations under the TSA with prior approval of the Commission as required under Section 17(3) of the Act.
5. The Commission, vide its Order dated 14.09.2023 in Petition No. 1970 of 2023, had already approved creation of charge in terms of aforementioned Facility Agreements, wherein the Lender had created facility for Rs. 2,205 crores. The present Petition has been filed with respect to the additional facilities sanctioned by the Lender vide the revised Sanction Letter dated 19.03.2024 wherein the existing facility of Rs. 2,205 crores has been increased to Rs. 3,981 crores. The factual background leading up to the present Petition is detailed in the subsequent paragraphs.
6. On 11.09.2009, the Petitioner was incorporated as a SPV to build, own, operate & maintain and transfer the specified Intra State Transmission System under Public Private Partnership model.
7. Thereafter, M/s Isolux Corsan Concesiones S.A. ("Isolux"), the original parent company of the Petitioner has been selected as the TSP through a competitive bidding process carried out by UPPTCL.
8. On 20.01.2012, the Petitioner had executed a TSA with the LTTCs, to build, own, operate & maintain and transfer the Project.
9. In order to fund the initial capital expenditure for the Project, on 29.08.2012, the Petitioner had executed a Facility Agreement ("First Facility Agreement") for availing an initial financial Facility to the extent of Rs. 420 Cr.
10. On 30.10.2012, the Petitioner had filed a Petition bearing No. 844 of 2012 ("Security Approval Petition") under Section 17(3) of the Act and Clause 4.3.1 of the Transmission Regulations, 2005 towards seeking approval for creation of security over (i) TSA (ii) the immovable assets (present and future) and (iii) movable assets (present and future) in favour of the Security Trustee appointed by the Earlier Lenders pursuant to the First Facility Agreement by way of Mortgage and Hypothecation on Project assets and Pledge of shares.
11. While the Security Approval Petition was pending, on 29.04.2013, the Commission had granted Transmission License under Section 15 of the Act to

by



3



the Petitioner and subsequently by Order dated 30.05.2013, the tariff for the Project was adopted.

12. UPPTCL on 12.12.2013, revised the Scheduled COD of the Group-1 elements of the Project till 31.12.2014 and Group-2 elements of the Project till 31.08.2015.
13. The Petitioner had availed additional Facility to the extent of Rs 3713.25 Crores from the consortium of lenders led by PFC for the purpose of funding the capital expenditure for the Project.
14. In order to avail the above Facility, on 28.02.2014, the Petitioner executed a Common Rupee Loan Term Agreement with the Earlier Lenders.
15. On 10.03.2014, the Commission allowed the Security Approval Petition and granted an approval in favour of the Petitioner under Section 17(3) of the Act. By the said order, the Petitioner was allowed to create security in favour of Earlier Lenders/Security Agent by way of Mortgage and Hypothecation on assets by execution of Indenture of Mortgage and Pledge of shares.
16. On 12.07.2018, in terms of order in Petition no. 1328 of 2018, the Commission had approved the COD of Group-1 elements of the Project as 27.10.2017.
17. On 09.06.2018, the Petitioner and LTTC's had executed a Supplementary TSA after obtaining approval from this Commission specifying that the Project commissioning would be carried out in two groups i.e., Group-1 elements by 31.12.2014 and Group-2 elements by 31.08.2015.
18. On 29.07.2022, the Commission granted approval under Section 17(3) of the Act for change in shareholding of the Petitioner. On 15.09.2022, Resurgent Power Ventures PTE Ltd (RVPL) took over the ownership and management of the Petitioner.
19. On 15.09.2022 and 02.03.2023, the Petitioner and the Lender executed Facility Agreements to provide the Facilities to the Petitioner for the purposes of refinancing and settling of outstanding due amount of the Earlier Lenders and meeting working capital expenditure requirements
20. On 24.03.2023, the Petitioner filed Petition No. 1970 of 2023 before the, Commission seeking approval under Article 15 of the TSA read with Section 17(3) of the Act and Regulation 4.3.1 of the Transmission Regulations,



by

2



2005 for the creation of security. This security was to be established through a exclusive security interest over (i) Transmission License; (ii) the immovable assets (present and future); (iii) the movable assets (present and future); and (iv) Shares of the Petitioner by way of Mortgage, Hypothecation and Pledge in favour of the Lender and the Security Trustee pursuant to the Facility Agreements for the financing facilities of Rs. 2205 Crores.

21. On 05.10.2023, UPPTCL had issued a Letter to the Petitioner, thereby, withdrawing the Pre-Termination Notice ("PTN") dated 06.09.2016 for Group-2 elements and specifying that the withdrawal of PTN would be treated as the date of commencement of work for Group-2 elements.
22. On 15.09.2023, based on the approval granted by GOUP, UPPTCL shared the proposed Second STSA with the Petitioner to be executed between the parties for incorporating amendments related to Group-2 of the Project. UPPTCL had also requested the Petitioner to seek approval from the Commission for the adoption and execution of the Second STSA with LTTCs.
23. On 05.10.2023, the Petitioner filed Petition No. 2024 of 2023 ("Approval Petition") before the Commission for prior approval of the Commission for the purpose of executing the Second STSA. On 12.01.2024, the Commission had passed its Order in Petition No. 2024 of 2023.
24. On 19.03.2024, SBI had issued the revised Sanction Letter thereby approving the increase of credit facilities to the Petitioner as follows: -

[Rs in crore)

S.no.	Facilities	Existing	Proposed
1.	Rupee Term Loan (RTL)	1,950.00	3,681.00
2.	Working Capital Limits (WCL)	115.00	60.00
3.	Capex Letter of Credit	300.00 (interim facility)	(1,260.00)*
4.	Letter of Credit	(70.00)	(50.00)#
5.	Performance Bank Guarantee	140.00	240.00
	<b>Total</b>	<b>2,505.00</b>	<b>3,981.00</b>

\*Capex LC limit has been extended to the company as a sub-limit within the overall RTL limit.

#NFBWC (LC) limit has been extended to the company as a sub-limit within the overall NFBWC (BG) limit.

by



3



25. Pursuant thereto, on 21.03.2024, the Petitioner entered into the new Facility Agreement with the Lender for providing financial assistance to enable it to, inter alia, fund the capital expenditure and working capital requirements for the Project. Notably, the new Facility Agreement stipulated the creation of security in favour of the lenders.
26. In view thereof, the Petitioner had filed the present Petition to seek approval of the Commission for the creation of security in favour of the lender for the new financial facility being availed by the Petitioner.

**UPPTCL Reply dated 21.01.2025**

27. Article 15.2.2 of the TSA allows TSP to create any encumbrance over all or part of the receivables, Letter of Credit or other assets of the Project in favour of the Lenders or the Lenders' Representative as security for amounts payable under the Financing Agreements. Article 15.2.4 clearly mandates that neither the TSP nor the Long Term Transmission Customer can relinquish or transfer their rights and obligations, without approval of the Appropriate Commission. Further, Article 15.3 places a clear and explicit embargo on the assignments and charges of the transmission license granted by the Appropriate Commission to any party. Further, Article 15.3 specifically provides the procedure to be adopted in case of default on the part of TSP in debt repayments.
28. Section 17(3) of the Act clearly places a bar on the licensee to assign its license or transfer its utility or part thereof by sale, lease, exchange or otherwise without prior approval of the appropriate Commission.
29. Hypothecation/mortgage of movable and immovable assets and pledge of share are not an issue as the same may be done with approval of the Commission. In the case of a transmission license, the TSA itself provides an exclusive bar to the charge creation on the license.
30. The Petitioner has relied on a previous order passed by the Commission in Petition No. 844 of 2012 wherein it sought creation of charge. This petition was filed by the Petitioner Company under the ownership of 'Isolux'. The said petition sought the assignment of the TSA, immovable assets (present and future) and movable assets (present and future). The Commission while considering the provisions of Article 15 held that the TSP could assign (1) TSA as per Article 15 of the TSA (2) immovable assets (present and future) (3)



by

h





movable assets (present and future) and shares of the company. However, the Commission also noted that the transmission license could not be assigned without prior approval of the Commission.

31. Further, the Commission also provided that in case of a default in debt repayment, the Commission on joint application by the licensee, lenders, security agent and the nominee may approve the assignment of license to a nominee of lenders. Therefore, specific prior approval of the Commission for assignment of license to the nominee of security trustee or transfer of any assets to them would always be needed. Approval for assignment of transmission license cannot be granted to the Petitioner. However, considering the nature of financing agreements, the Commission had previously already provided that in case of default, it would always be open to the lenders to approach the Commission.

**Reply dated 22.01.2025 on behalf of Respondents No 3 to 7**

32. UPPCL vide affidavit dated 22.01.2025 on behalf of UP Discoms/LTTC's i.e. PUVNL, MVVNL, PuVVNL, DVVNL, and KESCO adopted the reply dated 21.01.2025 submitted by UPPTCL and requested the Commission to take the reply on record for consideration.

**Commission's View**

33. The Commission has considered the submissions made by the parties and perused the documents available on record. The Petitioner has filed the present petition under Article 15 of the TSA read with Section 17(3) of the Act and Clause 4.3.1 and 4.13.4 of the Transmission License Regulations, 2005 and Article 15 of the Transmission Service Agreement dated. 20.01.2012 seeking regulatory approval for creating charge over assets and pledge of shares in favour of lender and security trustee by way of mortgage, hypothecation and Pledge in favour of the State Bank of India (New Lender) and the SBI CAP Trustee Company Limited (Security Trustee) pursuant to the Facility Agreements. The Lender has agreed to grant revised financial assistance of Rs. 3981 Crores from existing facility of Rs. 2205 Crores in favour of the Petitioner.
34. It is pertinent to note that the Petitioner had in past also sought in-principle approval of the Commission for creation of security. Earlier, the Petitioner executed a Facility Agreement and Working Capital Facility Agreement with

by



m



State Bank of India ("New Lender") on 15.09.2022 and 02.03.2023 respectively for the purposes of refinancing and settlement of outstanding due amount of the earlier Lenders along with working capital requirement of Rs. 2205 Crores. As per the Facility Agreement, financial assignment of Rs. 1950 Crores was agreed by State Bank of India along with additional Rs. 140 Crores as Performance Bank Guarantee. An additional Working Capital facility Agreement is executed for providing Rs. 115 Crores to meet its working capital requirement.

35. In the present case, the Petitioner entered in to new facility agreement and additional facilities sanctioned by the Lender "State Bank of India (SBI)" vide the revised Sanction Letter dated 19.03.2024 wherein the existing facility of Rs. 2,205 Crores has been increased to Rs. 3,981 Crores. As per the Facility Agreement, financial assignment of Rs. 3681 Crores is agreed by SBI along with additional Rs. 240 Crores as Performance Bank Guarantee. An Additional Working Capital Facility Agreement is executed for providing Rs. 60 Crores to meet its working capital requirement. Thereafter, the Petitioner approached the Commission under Section 17(3) of the Electricity Act, 2003 read with Regulation 4.3.1 of UPERC Transmission License Regulations, 2005 and Article 15 of the Transmission Service Agreement for creating charge as prayed by the Petitioner in its Petition.

36. In order to deal with the prayers of the Petitioner, it is pertinent to deliberate upon the relevant provisions of the Electricity Act 2003, UPERC Transmission License Regulations, 2005 and the Transmission Service Agreement in subsequent paras.

37. Sub-sections (3) and (4) of Section 17 of the Act provide as under:

*"(3) No licensee shall at any time assign his license or transfer his utility, or any part thereof, by sale, lease, exchange or otherwise without the prior approval of the Appropriate Commission.*

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

*Further, Regulation 4.3.1 of UPERC Transmission License Regulations 2005 provides as under:*

*"4.3.1 The Transmission Licensee shall not, without prior approval of the Commission:*



by

m



(iii) at any time assign his license or transfer his utility, or any part thereof, by sale, lease, exchange or otherwise without the prior approval of the Commission.

*Provided that any agreement relating to any transaction specified in subsection (i) to (iii), unless made with, the prior approval of the Commission, shall be void."*

In accordance with the above provisions, a licensee is required to obtain prior approval of the Commission for assigning its license or transferring its utility or any part thereof by way of sale, lease, exchange or otherwise and also for the purposes of entering into an agreement relating to any of these transactions. Thus, any agreement relating to any transaction for assignment of license or transfer of utility, without obtaining the prior approval of the Commission shall be void.

38. Articles 15.2.1 and 15.2.2 of the TSA provides as under:

**15.2. Permitted Charges:**

*15.2.1 Neither Party shall create or permit to subsist any encumbrance over all or any of its rights and benefits under this Agreement.*

*"15.2.2 However, the TSP may create any encumbrance over all or part of the receivables, Letter of Credit or the other assets of the Project in favour of the Lenders or the Lenders' Representative on their behalf, as security for amounts payable under the Financing Agreements and any other amounts agreed by the Parties.*

*Provided that:*

*i. the Lenders or the Lenders' Representative on their behalf shall have entered into the Financing Agreements and agreed in writing to the provisions of this Agreement; and*

*ii. any encumbrance granted by the TSP in accordance with this Article 15.2.2 shall contain provisions pursuant to which the Lenders or the Lender's Representative on their behalf agrees unconditionally with the TSP to release from such encumbrances upon payment by the TSP to the Lenders of all amounts due under the Financing Agreements."*

In accordance with the provisions of Article 15.2.2, the Transmission Service Provider has been allowed to create encumbrance over all or part of the receivables, Letter of Credit or other assets of the Project in favour of the lenders or the lender's representatives, as security for amounts payable under the Financing Agreements and any other amounts agreed by the parties.

39. Articles 15.3 of the TSA provides as under:

**15.3 Substitution Rights of the Lenders**

by



m



15.3.1 The TSP would need to operate and maintain the Project under the provisions of the Transmission License granted by the Appropriate Commission and the provisions of this Agreement and cannot assign the Transmission License or transfer the Project or part thereof to any person by sale, lease, exchange or otherwise, without the prior approval of the Appropriate Commission.

15.3.2 However, in the case of default by the TSP in debt repayments, the Appropriate Commission may, on an application from the Lenders, assign the Transmission License to the nominee of the Lenders subject to the fulfilment of the qualification requirements and provisions of the Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of Transmission License and other related matters) Regulations, 2006/1 Uttar Pradesh Electricity Regulatory Commission (General Conditions for Transmission License) Regulations, 2005 (as the case may be) or as amended from time to time."

Therefore, in accordance with Article 15.3.2 of the TSA, in case of default in debt repayments, the lenders have to approach the Commission for assignment of license and the Commission may on such application by the lenders, assign the transmission license to the nominee of the lenders subject to the fulfilment of the essential qualification requirements and other provisions under the Transmission License Regulations.

40. The Commission is of the view that transmission projects are capital intensive projects requiring huge capital investment and are financed through loans. It is a normal practice followed by financial institutions/ banking industry to ask for sufficient security from the borrower to back the loan in order to mitigate the credit risk of lenders. In the instant case, New Lender, namely State Bank of India has agreed to increase the facilities to Petitioner.
41. In accordance with Article 15.2 of the TSA, the Petitioner has been allowed to create encumbrance over all or part of the receivables, Letter of Credit or other assets of the Project in favour of the lender(s) or the lender's representative, as security for amounts payable under the Financing Agreements and any other amounts agreed by the parties. Accordingly, the Commission accords in-principle approval allowing the Petitioner to create security interest in favour of State Bank of India/ SBI CAP Trustee Company Limited (Security Trustee) subject to execution of Security Trustee Agreement, by way of mortgage/ hypothecation on Project assets through execution of an Indenture of Mortgage and financing documents of the Project. The Petitioner is directed to submit a signed copy of the Indenture of Mortgage and other financing documents for the Project immediately after its execution.




by

3



42. This in-principle approval is being accorded with the observation that the transmission license granted by the Commission to the Petitioner and the underlying assets cannot be assigned in favour of the nominee of the lender/ Security Trustee, without prior approval of the Commission, at the time of creating rights in favour of such a nominee. For assignment of the license and the assets of the Petitioner to the lender/ nominee of the lender, the Commission will evaluate such a nominee's experience in the development, design, construction, operation and maintenance of transmission lines, and ability to execute the Project and undertake transmission of electricity.
43. Accordingly, in case of default by the licensee in debt repayment, the Commission may, on a joint application made by the licensee, lender, Security Trustee and the nominee, approve the assignment of the license to a nominee of the lender subject to proper due diligence of the process as Commission has to satisfy itself of the circumstances necessitating such transfer and also regarding the capability of the nominee to carry out the project execution and transmission related activities as spelt out in para 42. It is again stressed at the cost of repetition that specific prior approval of the Commission is always needed for assigning the license to the nominee of the lender or transferring any assets. Lastly, financial documents and statements may be filed by the Petitioner as and when required by the Commission for any specific purpose.
44. Accordingly, the Petition is disposed of.

  
(Sanjay Kumar Singh)  
Member

  
(Arvind Kumar)  
Chairman

Place: Lucknow

Dated: 20.02.2025

