



**FICCI's Representation on
“Draft Central Electricity Regulatory
Commission (Sharing of Revenue Derived
from Utilization of Transmission Assets for
Other business) Regulations, 2019”**

Submitted to:

Central Electricity Regulatory Commission



Recommendations on 'Draft Central Electricity Regulatory Commission (Sharing of Revenue Derived from Utilization of Transmission Assets for Other business) Regulations, 2019'

- A) A Notification on 'Draft Central Electricity Regulatory Commission (Sharing of Revenue Derived from Utilization of Transmission Assets for Other business) Regulations, 2019' was published by Central Electricity Regulatory Commission on 25th September 2019. CERC had invited comments/suggestions from the stakeholders on the Draft Regulation due for submission by 31st October 2019.
- B) In this regard, we have solicited the feedback of our industry members. Based on the feedback, FICCI's comments/suggestions are the following:

Sl. No.	Regulation No.	Existing Regulation (Sharing Regulation, 2007)	Proposed Regulation (Draft Sharing Regulation, 2019)	Comments
1. Short title, extent and commencement.				
A	Regulation 1 - Short title, extent and commencement	These regulations shall be applicable to the owners of the inter-State transmission system, including any element thereof, transmission charges of which are determined by the Commission on cost-plus basis.	These regulations shall be applicable to the inter-State transmission licensees, whose transmission charges is determined by the Commission under Section 62 of the Act or adopted by the Commission under Section 63 of the Electricity Act, 2003.	<ul style="list-style-type: none"> The tariff under Section 63 i.e. competitive bidding projects are determined on certain assumptions and principles which take into account all revenue streams including revenue from other business. Hence, sharing of revenue with the beneficiaries, for competitive bidding projects, will deplete the rights of bidders and subsequently impact financial statements of the bidder. For projects where tariff has been determined under Section 63, the transmission service provider will be seriously disadvantaged as such sharing would not allow revisions of tariff under any scenario. <p><i>Hence, it is requested to exclude the section 63 projects from the Sharing Regulations.</i></p>
2. Definitions and interpretation.				
B	New Addition Regulation 2 (A) Gross Revenue	-	-	Define Gross Revenue as draft regulation does not provide for definition of gross revenue. We would like to draw your attention towards experiences of disputes in other sectors due to unclear terms related to revenue. A related sector i.e. telecommunication, has been facing disputes over what constitutes adjusted gross revenue and litigations



				<p>have been going on between DoT and TSPs, for more than a decade. To avoid any differing interpretations over a period of time leading to disputes in power sector, we are of the firm view that before moving to gross revenue-based sharing, the definition of gross revenue should be explicitly specified along with its inclusions, exclusions and illustration. It is suggested that 'gross revenue' can be defined on the following lines:</p> <p><i>“The gross revenue to be the revenue generated by a transmission licensee, emanating from the business which directly uses the transmission assets/ RoW (like leasing of OPGW, ‘Telecommunication Business’, space on tower/substation etc.). It should not include any other revenue from business which can be done, without being a transmission asset holder as well (like maintenance revenue, supply or installation of telecom equipment etc.). “</i></p> <p><i>It is requested that the Commission to issue draft definition of gross revenue and provide opportunity to all stakeholders for providing comments on the same.</i></p>
4. Intimation of Other Business:				
C	Regulation 4 (1) – Intimation of Other Business	The transmission owner proposing to undertake the other business for optimum utilization of its assets shall give prior <u>intimation, in writing</u> , to the Commission of its intention to undertake such other business.	A transmission licensee proposing to undertake Other Business for optimum utilization of its assets shall give prior intimation to the Commission by <u>filing a petition</u> , of its intention to undertake such Other Business.	<ul style="list-style-type: none"> • It may kindly be noted that prior intimation to the Hon'ble Commission regarding other business is indeed required and which is in line with Section 41 of the Electricity Act 2003. • Section 41 is kind of a pre-approval subject to undertaking compliance to the proviso's i.e. (a) proportion of revenues specified by the Appropriate Commission should be utilised for reducing the transmission charges; (b) transmission licensee to maintain separate accounts (c) no transmission licensee shall enter into contract or engage in business of trading in electricity. • Therefore, the prior intimation has to be made in line with Section 41 of Electricity Act 2003 and it should neither impinge upon nor be contrary to the rights available to a transmission licensee through the



				<p>Electricity Act 2003.</p> <ul style="list-style-type: none"> • Hon'ble Commission in order related to petition no. 54/2005 had ordered not look in to the telecommunication business and specified transmission service providers to earlier intimate the intention of other business to Hon'ble Commission only. • Considering the above and in interest of Ease of Doing Business, we request the following may please be suitably clarified and/or incorporated in the draft Regulation <ul style="list-style-type: none"> ○ Cases where revenue share is specified (let's say for OPGW): A written letter addressed to Secretary, CERC along with an affidavit as specified at Regulation 4(2) of the draft Regulation, should meet the purpose of prior intimation. This should be unambiguously captured in the Regulation. ○ Cases where revenue sharing Not specified: All possible options of prior intimation should be allowed viz. (a) through a written letter along with an undertaking to comply with the revenue share rate as specified by the Commission subsequently; (b) through filing a petition with a prayer to determine revenue share. <p>As a recommendation, following ways of Prior Intimation can be adopted:</p> <ul style="list-style-type: none"> • Cases where revenue sharing specified: A written letter addressed to Secretary, CERC along with an affidavit as specified at Regulation 4(2) of the draft Regulation, should meet the purpose of prior intimation.
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				<ul style="list-style-type: none"> • Cases where revenue sharing Not specified <ul style="list-style-type: none"> ○ Written letter along with an undertaking to comply with the revenue share rate as specified by CERC subsequently; or ○ Filing a petition with a prayer to determine revenue share. • Proposed changes in the Regulation is therefore suggested in following lines: <p><i>A transmission licensee proposing to undertake Other Business for optimum utilization of its assets shall give prior intimation, in writing, to the Commission by filing a petition, of its intention to undertake such Other Business.</i></p> <p><i>Provided that for Other businesses where revenue share has been specified through this regulation, such prior intimation can be through a written letter addressed to Secretary, Central Electricity Regulatory Commission along with an affidavit as specified at Regulation 4(2). For Other businesses where revenue share has not been specified, prior intimation can be done either through written letter addressed to Secretary Central Electricity Regulatory Commission along with an affidavit as specified at Regulation 4(2) and an undertaking to comply with the revenue share rate as subsequently specified by the Commission or else through filing a petition.</i></p> <p><i>Provided that such intimation/petition shall also contain a proposal for sharing of revenues derived from Other Business for approval of the Commission, for the cases where revenue share rate has not been specified.</i></p>
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5. Manner of sharing of revenue from Other Business:		
E	Regulation 5(1)(a) – Manner of sharing of revenue from Other Business	<p>The <u>transmission owner shall share revenue @ Rs.3000/- per year per km of the right-of-way utilised for laying one optical fibre cable or optical fibre composite overhead ground' wire over the transmission towers and the revenue shared may be apportioned between the users of the optic fibre cable or optical fibre composite overhead ground wire in proportion to the number of fibres identified for utilization.</u></p>
		<p>Manner of sharing of revenue from Other Business:</p> <p>(1) The transmission licensee shall share the revenue from the Other Business in the following manner:</p> <p>(a) For Telecommunication Business: In case the transmission licensee engages in telecommunication business, an amount equal to 10% of the gross revenue from such business in a given financial year shall be shared with the Long Term Customers.</p> <p>(b) For Business Other than Telecommunication Business: In case Other Business is not Telecommunication Business, the sharing of revenue shall be decided by the Commission on case-to-case basis based on consideration of the value of transmission assets utilised for such Other Business, the revenue derived therefrom, and other details furnished by the transmission licensee under Regulation 4 of these regulations:</p> <p>Provided that before deciding the sharing of revenue, the</p>
		<p>Manner of sharing of revenue from Other Business: (1) The transmission licensee shall share the revenue from the Other Business in the following manner:</p> <p>(a) For Telecommunication Business:</p> <p>(i) In case the transmission licensee engages in telecommunication business providing space on towers and/or substation for telecommunication equipment/antenna, sharing of which being in nascent stage, the Commission has already held discussions and hearings under Petition no. 180/MP/2017 and gave its determination vide order dated 28.05.2019. We request that same should continue and specified through this regulation.</p> <p>(ii) In case the licensee engages in telecommunication business using right of way (RoW) under transmission license, to provide optical fibre/ OPGW/ bandwidth for telecommunication traffic, the transmission licensee shall share revenue @ Rs 3000/- per year per km*(n/m), where 'n' is the number of fibres utilised for telecommunication business and 'm' being total fibres in OPGW. Utilised fibres in this case would be those having running telecommunication traffic.</p> <p>(b) For Business Other than Telecommunication Business :In case Other Business is not Telecommunication Business, the sharing of revenue shall be decided by the Commission on case-to-case basis based on consideration of the value of transmission assets utilised for such Other Business, the revenue derived therefrom and other details furnished by the transmission licensee, through prior intimation as per under Regulation 4 of these regulations:</p> <ul style="list-style-type: none"> • Provided that before deciding the sharing of revenue, the Commission shall provide an opportunity of being heard to the transmission



			<p>Commission shall provide an opportunity of being heard to the transmission licensee and the Long Term Customers of the assets.</p>	<p>licensee and the Long Term Customers of the assets.</p> <p>A. <u>Revenue share at 10% of gross revenue from telecommunication business</u></p> <p><i>In our view, the revenue share of 10% for Optical Ground wire/ optical fibre composite overhead ground wire (OPGW) fibre is huge increase over the existing regulated revenue share vide Regulation 2007 and same would discourage optimum utilization of resources by the transmission licensees. We request the Hon'ble Commission to kindly consider following submissions:</i></p> <p>1. Revenue share to be proportionate to Right of Way (RoW) costs:</p> <p><i>The cost to put in place OPGW resources generally has following major elements i.e. OPGW cable, deployment and maintenance and RoW. Cost of obtaining RoW is higher in urban and within city areas as compared to rural or city outskirts, highways. In case of Inter-circle transmission licensees, the transmission lines generally cut across rural areas, highway and non-urban areas, where RoW cost is substantially lower.</i></p> <p><i>The transmission licensee uses the RoW to deploy spare OPGW fibre pairs, in addition to what has been envisaged under the Transmission Service Agreement (TSA). All other capital costs of fibre, its deployment, operation and maintenance till it is leased, is incurred by the transmission licensee. The right of revenue sharing emanates only from the usage of RoW as such, revenue sharing of 10% gross revenue on the basis of RoW, is too high.</i></p> <p>2. Concerns related to Demand – Market yet not matured</p> <p>i. Resources Deployed v/s Demand</p>
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				<p><i>For a given route, generally there are multiple transmission lines, all of which would be having OPGW however, all do not get utilised. TSPs generally have their own fibres deployed for their network purposes, though they take the fibres from power sector operators for their critical routes that too, 1-2 fibres at a time.</i></p> <p><i>In case of OPGW, while the transmission licensee incurs cost to deploy OPGW for the entire planned route length however, not the entire route has demand from the TSPs. We have experienced demand of around 25% of available infrastructure in an intra-state transmission network, after few years. Further, not every pair of OPGW gets utilized for telecommunication purposes. In case of dark fibre, we have seen that TSPs generally takes 1/2 pairs of fibre at a time.</i></p> <p><i>Thus, while cost would be proportionate to route KMs of OPGW, the demand and thus the revenue will not be in same proportion.</i></p> <p>ii. Power assets are alternate option for TSPs</p> <p><i>OPGW is the primary resource which can be used for telecommunication needs of the TSPs. The consumers i.e. telecom sector, primarily rely upon deploying fibre themselves which is largely underground and at places over-ground. There is already a reluctance in TSPs to utilise such assets placed above transmission lines.</i></p> <p><i>For power sector assets (like OPGW) to appear lucrative to TSPs, it has to be cost effective and lower than their existing cost models.</i></p>
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				<p>iii. Reduced Consumers</p> <p>Presently, the telecom industry has only three major TSPs, who can consume such OPGW whereas in 2007-10 period the number was far higher from 10 to 14 TSPs. This has reduced negotiating power with Transmission licensees while leasing the OPGW fibre to such TSPs.</p> <p>iv. Telecom sector being heavily taxed:</p> <p>It is known publicly that Indian telecom sector is heavily taxed, with more than 30% of every rupee industry gets, going back to the Government. Putting such high revenue share on transmission assets utilized for telecommunication purposes, will indirectly lead to onerous rise in cost for TSPs and thus, drop in their interests towards this fibre options.</p> <p>3. Matured model v/s niche model for other transmission licensees</p> <p>As per our understanding, CTUs business model is quite matured whereby due to its large OPGW route availability across geographies, it is into bandwidth business and also taken related license from DoT. It takes years to build such network and routes and is also a premium offering versus the dark fibre offering.</p> <p>In case of other transmission licensees like us, this segment of leasing dark fibre, is a niche and upcoming business. It would be unfair to impose a revenue share based on financials from CTU's bandwidth business.</p> <p>4. Licensee fee to DoT:</p>
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				<p>For using the assets for bandwidth business, it is mandatory to take a license from DoT, for which license fee @ 8% of adjusted gross revenue is to be paid to DoT. This is a substantial cost for utilising the transmission assets in other business.</p> <p><u>Our Recommendation</u></p> <p>Considering the above, would like to recommend that:</p> <ol style="list-style-type: none"> 1. Revenue share of 10% of gross revenue should not be prescribed as it would be counter-productive and would discourage business opportunities and utilisation of power sector assets for telecom purposes. 2. For OPGW, existing revenue sharing rate (specified in Regulation, 2007), should continue i.e. Rs 3000 per km*(n/m) where 'n' is the number of fibres utilised for telecommunication business and 'm' being total fibres in OPGW. Utilised fibres in this case would be those having running telecommunication traffic. 3. For space on towers and/ or sub-station, sharing of which being in nascent stage, the Commission has already held discussions and hearings under Petition no. 180/MP/2017 and gave its determination vide order dated 28.05.2019. We request that the same should continue and specified through this regulation.
F	New Regulation Materiality	-	-	<ul style="list-style-type: none"> It is requested to also consider Materiality as a factor for compliance to the Regulation. There should be a revenue threshold and revenue share should get triggered only post crossing such a threshold. In initial stages, when very minimal assets have been utilised, the revenue would be low and eventually, the revenue share would be



				<p>much lower. In such case, the cost of effort to be undertaken for settlement and reconciliation both at transmission licensee and LTC's end, would be much higher than the revenue share amount itself.</p> <ul style="list-style-type: none"> • We recommend above said materiality to be fixed at utilisation of >= 25 kms for 2 pair in case of OPGW fibre and >= 10 towers in case of space on transmission towers. The revenue share would start once above-said thresholds are reached by a transmission licensee. <p>On the above lines Regulations can be drafted:</p> <p>5A. Materiality: Materiality for triggering revenue share, would be utilisation of >= 25 kms for 2 pair OPGW fibre in case of OPGW fibre and >= 10 towers in case of space on transmission towers. The revenue share would start once above-said thresholds are reached by a transmission licensee.</p>
Explanatory Memorandum 2019				
G	6.3	-	<p>....</p> <p>Accordingly, the savings to telecom business works out to be of the order of Rs 1.5 lakhs/km. Thus, the estimated total savings in Capital Cost for approximately 33403 KM of optical ground wire of the largest transmission licensee (PowerGrid Corporation of India) is Rs 501 Crores. Therefore, the total fixed assets of Telecom business including savings in capital cost is worked out as Rs 1420.4 Crores i.e. sum of Rs 919.35 Cr gross fixed assets of 2017-18 as per audited accounts and Rs 501 Crores estimated savings as above. Against this fixed assets of Rs 1420.40 Cr, the net</p>	<ol style="list-style-type: none"> 1. Facts considered for working out the revenue sharing norm of 10% largely corresponds to one major licensee i.e Power Grid. Though new lines are being allotted by way of competitive bidding but have very small proportion in total assets being put up. 2. Hence, forming a base based on financial facts of such major licensee may further skew up the results and thus, would not be an appropriate practice to form the norm which in turn may be against the practices of competition. 3. Also, it has to be noted that the norm so formed is mainly premised on the facts of one financial year which does not seem to be an appropriate approach esp. considering the recent judgment by Hon'ble SC against all telecom operators, the financial health of generators is likely to further deteriorate. 4. Hence, it is proposed:

			<p>revenue surplus for 2017-18 was Rs. 314.41 Crores i.e. 22.13% of total fixed assets including saving in capital cost to telecom business. Accordingly, contribution of transmission assets towards net revenue surplus works out to approximately Rs 110.9 Crores. (Rs 501.05 *22.13%=110.9 Cr).</p>	<p>a. The current sharing norm of Rs 3000/km may be retained for all existing contracts/agreements of existing other businesses. For prospective contracts/agreements of other businesses, mechanism of revenue sharing shall be replaced by cost sharing mechanism which shall be based on such proportion of costs which may be arrived at by segregating the costs incurred in Transmission License business and are getting utilised for other businesses.</p>
H	6.4	-	<p>For Powergrid Corporation of India Ltd., out of total length of Telecom line of 53168 Km, the length of OPGW laid using the transmission infrastructure is 33403 Km (approximately 60%) and balance 19765 Km is laid underground. Hence, the net revenue surplus amount of Rs 110.90 Cr is to be shared in proportion to the overhead transmission line i.e. $60\% \times \text{Rs } 110.90 = \text{Rs } 66.54 \text{ Cr}$, which is 9.81% of the gross revenue of Rs 678 Cr of the Telecom business. Accordingly, the Commission is of the view that it will be reasonable to share 10% of Gross Revenue with the long term customers.</p>	<p>The existing norm of revenue sharing stipulates a norm of Rs 3000/km (per km) and thus the existing contracts with telecom operators are likely to have been entered are mainly based on such specific norm. However, it would be difficult to apportion the revenue due to a limited patch of network which would be required by telecom for use. Hence clarity is needed to understand the applicability of such norm.</p>