

To,
Shri. Sanoj Kumar Jha
Secretary,
Central Electricity Regulatory Commission,
3rd & 4th Floor, Chanderlok Building,
36, Janpath, New Delhi -110 001

30 Oct 2019

Subject: Draft CERC (Sharing of Revenue Derived from Utilization of Transmission Assets for Other business) Regulations, 2019 – Comments from Sterlite Power Grid Ventures Ltd

Dear Sir,

This is in reference to the public notice dated 25th Sept 2019, inviting comments on the Draft CERC (Sharing of Revenue Derived from Utilization of Transmission Assets for Other business) Regulations, 2019.

Please find enclosed our comments for your kind consideration.

Warm regards,



Namrata Mukherjee
Sr VP – Policy Advocacy
Sterlite Power Grid Ventures Ltd

Encl:

1. Comments on the Draft Regulations

Sterlite Power Grid Ventures Limited's Submissions on Draft Central Electricity Regulatory Commission (Sharing of Revenue Derived from Utilization of Transmission Assets for Other business) Regulations, 2019

At the outset, Sterlite Power is thankful to the Hon'ble Commission for issuing the Draft Central Electricity Regulatory Commission (Sharing of Revenue Derived from Utilization of Transmission Assets for Other business) Regulations, 2019 and giving us opportunity to provide our comments.

Preamble

In power sector, participation of private players has come post Tariff Based Competitive Bidding (TBCB) guidelines and there have been various projects successfully bid and commissioned by private players.

We are grateful for the vision of utilising the power assets for other businesses, encapsulated through enabling provisions under Section 41 of Electricity Act, 2003 as well as Central Electricity Regulatory Commission (Sharing of revenue derived from utilization of transmission assets for other business), Regulations 2007 (hereinafter referred as Regulation, 2007).

We would also like to draw your attention towards the Digital India Program of Government of India, which envisages mobile connectivity and fibre to the home deployment. This initiative includes plans to connect rural areas with high speed internet. Two key pillars of the program are Broadband Highways and Universal Access to Mobile Connectivity. In this light, Department of Telecommunication (DoT) has also formulated National Digital Communications Policy, 2018 whereby under the Strategy of 'Fibre First Initiative' (extract given below), it has recognised the role of power sector and sought to leverage power sector assets to improve connectivity, affordability and sustainability.

Strategies 1.1 (b): Implementing a 'Fibre First Initiative' to take fibre to the home, to enterprises and to key development institutions in Tier I, II and III towns and to rural clusters:

.....

iv. Leveraging existing assets of the broadcasting and power sector to improve connectivity, affordability and sustainability

In this regard, we would like to submit that such Government programs would get fulfilled with participation from all related sectors, their ministries, regulators and operators. To fulfil such objective, the cost of utilisation of fibre assets by transmission companies should be kept reasonable (including revenue share) else, it would either have cascading effect or else it would no longer remain an alternative option for telecom access licensees/ISPs in lieu of self-deployment of such fibre.

Further, the other business segment under private transmission licensees is a niche service play presently. For this segment to grow and even look appealing to its consumers (i.e. Telecom Service Providers), it should be encouraged and kept as a cost-effective option.

Ease of Doing Business:

The Government and the Central Commission have been very pro-active and some of the major reformatory initiatives have been undertaken in power sector, which have led to ease of doing business thus, attracting significant investments in this infrastructure based sector. Also, World Bank has recently released its Ease of doing business rankings whereby India has moved 14 places up and is now at 63rd position¹. Also, India has figured among the top 10 performing countries on the list, for the third time in a row. This is an acknowledgment of the steps being undertaken in almost all sectors by Government of India, respective Regulators/Commissions and other bodies.

In light of the same, we request the Hon'ble Commission to look at various provisions of this draft regulation from the prism of Ease of Doing Business as well and thus, aim to simplify regulatory processes and procedures, mitigate challenges thereto and support the cause of doing business.

Therefore, we most humbly request the Hon'ble Commission, as follows:

- a) To take a balanced view on the extent of revenue share to be passed on by transmission licensees to the Long-Term Customers (LTCs).**
- b) In Interest of Ease of Doing Business, aim to simplify regulatory processes and procedures.**

¹ <https://openknowledge.worldbank.org/handle/10986/32436>

Section I: General Comments

With regard to the above-mentioned draft Regulations, we would like to make the following submissions on key provisions i.e. revenue share at 10% of gross revenue and filing of petition as prior intimation, for Hon'ble Commission's kind consideration:

A. Revenue share at 10% of gross revenue from telecommunication business

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:

1. Revenue share to be proportionate to Right of Way (RoW) costs:

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.

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.

2. Concerns related to Demand – Market yet not matured

i. Resources Deployed v/s Demand

For a given route, generally there are multiple transmission lines, all of which would be having OPGW however, all do not get utilised. Telecom Service Providers 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.

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 Telecom Service Providers. 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 Telecom Service Providers generally takes 1/2 pairs of fibre at a time.

Thus, while cost would be proportionate to route KMs of OPGW, the demand and thus the revenue will not be in same proportion.

ii. Power assets are alternate option for Telecom Service Providers

OPGW is the primary resource which can be used for telecommunication needs of the Telecom Service Providers. 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 Telecom Service Providers to utilise such assets placed above transmission lines. For power sector assets (like OPGW) to appear lucrative to Telecom Service Providers, it has to be cost effective and lower than their existing cost models.

iii. Reduced Consumers

Presently, the telecom industry has only three major Telecom Service Providers, who can consume such OPGW whereas in 2007-10 period the number was far higher from 10 to 14 Telecom Service Providers. This has reduced negotiating power with Transmission licensees while leasing the OPGW fibre to such Telecom Service Providers.

3. Matured model v/s niche model for other transmission licensees

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.

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.

Our Recommendation

Considering the above, would like to recommend that:

- 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.**

B. Prior intimation through filing of Petition

1. Section 41 of the Electricity Act, 2003 (extract reproduced below) mentions that with prior intimation to the Commission, transmission licensee can engage in any business for optimum utilisation of assets.

“Section 41. (Other business of transmission licensee): - A transmission licensee may, with prior intimation to the Appropriate Commission, engage in any business for optimum utilisation of its assets:

Provided that a proportion of the revenues derived from such business shall, as may be specified by the Appropriate Commission, be utilised for reducing its charges for transmission and wheeling:

Provided further that the transmission licensee shall maintain separate accounts for each such business undertaking to ensure that transmission business neither subsidises in any way such business undertaking nor encumbers its transmission assets in any way to support such business:

Provided also that no transmission licensee shall enter into any contract or otherwise engage in the business of trading in electricity.”

2. 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.
3. Regulation 3(1) of the existing Regulation, 2007 (extract reproduced below) also mentions that prior intimation is to be given by a transmission licensee to the Commission. However, the proposed draft regulation mentions that the prior intimation has to be made **by filing a petition**, which is a new requirement as compared to the existing Regulation, 2007.

“3. Intimation of other business

*(1) The transmission owner proposing to undertake the other business for optimum utilization of its assets shall give **prior intimation, in writing,** to the Commission of its intention to undertake such other business:*

.....”

4. In our view, 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 Electricity Act 2003. We believe that same may also not be the intention of the draft Regulation. More specifically, in case where revenue share has been specified, we do neither envisage any need of filing a petition nor are sure what could be prayer/locus in such petitions.
5. Considering 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:

- i. **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.
- ii. **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.

Our Recommendation: Considering the above, would like to recommend following ways of Prior Intimation:

1. **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.
2. **Cases where revenue sharing Not specified**
 - a. Written letter along with an undertaking to comply with the revenue share rate as specified by CERC subsequently; **or**
 - b. Filing a petition with a prayer to determine revenue share.

C. Definition of Gross Revenue:

The 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 have been going on between DoT and Telecom Service Providers, for more than a decade. While effort was being made by all stakeholders to resolve however, it is difficult to undo at a later stage.²

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 illustrations.

In our view, the gross revenue in this case would 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.).

We request the Commission to issue draft definition of gross revenue and provide opportunity to all stakeholders for providing comments on the same.

² <https://www.mydigitalfc.com/plan-and-policy/dot-explores-single-telecom-fee-define-agr-cut-disputes>

D. Materiality

We request Commission 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 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.

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.

Section II - Specific recommended amendments to Draft Regulation and comments

#	2019 Draft Regulations dated 25 th Sept, 2019	Recommended Amendments to Draft Regulations / Comments
2. Definitions and interpretation:		
A.	Gross revenue	<p>The gross revenue would 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.).</p> <p><u>{We request the Commission to issue draft definition of gross revenue and provide opportunity to all stakeholders for providing comments on the same.}</u></p>
4. Intimation of Other Business:		
B.	<p>(1) A transmission licensee proposing to undertake Other Business for optimum utilization of its assets shall give prior intimation to the Commission by filing a petition, of its intention to undertake such Other Business.</p> <p>Provided that such petition shall also contain a proposal for sharing of revenues derived from Other Business for approval of the Commission.</p> <p>Provided further that the transmission licensee having undertaken Other Business before commencement of these regulations shall give such intimation within two months of coming into force of these regulations.</p>	<p>(1) 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.</p> <p>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.</p> <p>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.</p> <p>Provided further that the transmission licensee having undertaken Other Business before commencement of these regulations shall give such intimation within two months of coming into force of these regulations.</p>

#	2019 Draft Regulations dated 25 th Sept, 2019	Recommended Amendments to Draft Regulations / Comments
5. Manner of sharing of revenue from Other Business:		
C.	<p>5. 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: 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 Commission shall provide an opportunity of being heard to the transmission licensee and the Long-Term Customers of the assets.</p>	<p>5. 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> <p>Provided that before deciding the sharing of revenue, the Commission shall provide an opportunity of being heard to the transmission licensee and the Long-Term Customers of the assets.</p>

#	2019 Draft Regulations dated 25 th Sept, 2019	Recommended Amendments to Draft Regulations / Comments
D.	< Materiality - Not specified >	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.