

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Coram:

**Shri Bhanu Bhushan, Member
Shri R. Krishnamoorthy, Member**

Petition No 54/2005

In the matter of

Sharing of revenue derived from utilisation of transmission assets for other business – Framing of Regulations

And in the matter of

Consideration of objections/comments/suggestions

Section 41 of the Electricity Act, 2003, hereinafter referred to as “the Act”, authorises a transmission licensee to engage in any business for optimum utilisation of its assets, with prior intimation to the Appropriate Commission. The first proviso to Section 41, however, lays down that a proportion of the revenue derived from such other business, as may be specified by the Appropriate Commission, shall be utilised for reducing its charges for transmission and wheeling. The second proviso enjoins upon the transmission licensee to maintain separate accounts for each such business undertaking to ensure that the transmission business neither subsidises the other business undertaking nor does it encumber the transmission assets to support the other business. Accordingly, in keeping with the provisions of the Act, a draft of the regulations on sharing of revenue derived from utilisation of transmission assets for other business, as regards the transmission utilities within the regulatory jurisdiction of the Commission was published through a public notice dated 31.10.2007 to invite comments/suggestions/objections on the proposed regulations by 23.11.2007. The

date for submission of comments/suggestions/objections was, however, extended to 10.12.2007, vide a further public notice dated 19.11.2007.

2. The comments on the draft regulations have been received from -

- (i) Power Grid Corporation of India Ltd
- (ii) Maharashtra State Electricity Distribution Co. Ltd
- (iii) M.P. Power Trading Company Ltd
- (iv) Tata Teleservices Ltd
- (v) Ms Mallika Sharma Bezbaruah

3. The responses, though very limited in number are from a cross-section of stakeholders, representing the largest transmission utility in the country, the state beneficiaries, a telecom company and the consumer. We, therefore, proceed to finalise the regulations after considering these responses since the matter does not brook any delay, though we would have been happier if more stakeholders had responded to the proposals made in the draft regulations.

4. We propose to consider the suggestions, etc. with reference to the specific proposals made in the draft regulations. However, before doing so, we propose to summarily deal with the response from Tata Teleservices Ltd. It is pointed out that Tata Teleservices has not specifically commented on any of the proposals made in the draft regulations or further suggestions for incorporation in the final regulations. On the contrary, it mainly seeks clarifications from the Commission on certain questions which do not arise out of the draft published by the Commission and even on the issues falling outside the jurisdiction of the Commission. The issues raised by them

are not really relevant to the matter on hand. The response appears to have proceeded on the assumption that the Commission is to provide the right-of-way permission to inter-city telecom operators, which is not the case. The Commission does not propose to go into these arrangements. The principal objective behind the proposed regulations is to specify the amount of revenue sharable by a transmission licensee undertaking other business for optimum utilisation of the transmission assets so as to reduce the liability of the beneficiaries of such assets for the transmission charges payable to the transmission licensee. We do not, therefore, propose to enlist all the questions raised by Tata Teleservices to seek clarifications.

5. We now propose to examine the issues raised in other responses.

Commencement

6. In the draft it was proposed that the regulations would come into force on 1.1.2008. M.P. Power Trading Company Ltd has suggested that the income earned by the transmission licensee even prior to 1.1.2008 may also be passed on to the beneficiaries.

7. The suggestion made by M.P. Power Trading Company Ltd has been examined. Any direction for adjustment of income earned prior to 1.1.2008 is liable to be construed as giving retrospective effect to the regulations. In our opinion, this is not permissible since the Act, the parent statute, does not permit to make regulations retrospectively. Any such scheme has to be applied prospectively after due notification in the Official Gazette. We have to adopt a practical approach in the matter. What is important at this stage is that the scheme is introduced without further

delay. Accordingly, we do not propose any change in the proposal contained in the draft, as regards the date of commencement.

Applicability

8. The regulations when notified, will govern the transmission utilities within the regulatory jurisdiction of the Commission. M.P. Power Trading Company Ltd has sought a clarification regarding associated transmission system of the State transmission licensee. To remove any doubts in this regard, it is being incorporated in regulation 1(2) that these regulations shall be applicable to inter-State transmission system, transmission charges of which are determined by the Commission on cost-plus basis.

9. M.P. Power Trading Company Ltd has also suggested that the transmission licensee should have discretion to enter into any business.

10. The draft regulations neither widen nor restrict the discretion of the transmission licensee to enter into any business. This is a matter governed by the Act. Section 41 of the Act authorises the transmission licensee to engage in any business for optimum utilisation of its assets after prior intimation to the Appropriate Commission. However, the third proviso to Section 41 prohibits the transmission licensee to undertake the business of trading in electricity. Every transmission licensee is bound by the provisions of the Act and any other law for the time being in force.

Definitions

11. In the draft the term “assets” are defined as any assets forming part of the inter-State transmission system. Ms. Mallika Sharma Bezbaruah has suggested widening of the definition by relating it to payment of depreciation, return on equity and other elements of the transmission charges. We do not consider it proper to unnecessarily stretch the definition on the lines suggested by Ms. Mallika since what has been suggested by her is implicit in the definition given in the draft.

Intimation of other business

12. In the draft published it was provided that the transmission licensee proposing to undertake the other business shall give prior intimation to the Commission of its intention. While giving such intimation, the transmission licensee is required to furnish the details, such as,

- (a) nature of other business:
- (b) capital investment in other business;
- (c) revenue derived or estimated to be derived from other business;
- (d) assets utilized or proposed to be utilized for other business, such as length of right-of-way utilised or proposed to be utilised in case of telecommunication business; and
- (e) cost of the assets utilized or proposed to be utilized; and
- (f) impact, if any, of use of assets for other business on inter-State transmission of electricity.

13. Power Grid Corporation of India Ltd in its response has objected to the provision requiring the transmission owner to furnish details regarding (i) capital

investment in the other business, and (ii) revenue derived or estimated to be derived from the other business, as, in its view, sharing of such details infringes on the concept of business confidentiality, and because these details are not relevant when revenue sharing is specified in Rupees per km of the right-of-way. M.P. Power Trading Company Ltd has suggested that information to be furnished to the Commission may be shared with the beneficiaries also and they should be given opportunity to react. A similar suggestion has been made by Ms. Mallika Sharma Bezbaruah who has further suggested that the details should also be published in accordance with the provisions of Section 64 of the Act as it has a bearing on the transmission charges payable by the beneficiaries and the consumers.

14. We do not find any merit in the objection raised by Power Grid Corporation of India Ltd. It is true that details regarding capital investment and revenue of telecommunication business are not required when revenue sharing is on Rupees per km per year basis (as proposed in the draft). However, application of the regulations shall not be limited to Power Grid Corporation of India Ltd but shall be relevant to other transmission utilities also. Such other transmission utilities owning the inter-State transmission system may not necessarily undertake the business of telecommunications for optimum utilisation of their assets but may undertake any other business. Similarly, Power Grid Corporation of India Ltd itself may undertake the business other than that of telecommunications. The details proposed to be called for will be relevant for deciding the revenue sharable from the business, other than telecommunications. Power Grid Corporation of India Ltd. is already furnishing information regarding capital cost, etc in respect of its transmission assets while seeking the Commission's approval for transmission tariff. In our view, as a Central

Government company and the Central Transmission Utility, it must operate with transparency that it is readily able to provide the limited information proposed to be sought. For similar reason, we accept the suggestion made by M.P. Power Trading Company Ltd and Ms. Mallika regarding sharing of information with the beneficiaries of the transmission assets utilised for undertaking other business by a transmission licensee and are so providing in the regulations to be notified. However, we are not inclined to accept the suggestion of Ms. Mallika for publication of the details in terms of Section 64 of the Act since there is no such specific requirement under the provisions of the Act quoted.

Sharing of revenue

15. In the draft it was provided that in case the other business is the telecommunication business the criterion for sharing of revenue shall be the length of the right-of-way used for laying optical fibre cable or optical fibre ground wire (OPGW) over the transmission towers owned by the transmission owner for telecommunication business @ Rs.3000/- per year per km of the right-of-way utilised. Length of the right-of-way existing on 1st April was proposed to be considered for calculation of revenue sharable for the period 1st April to 30th September and that existing on 1st October for the period from 1st October to 31st March of the relevant financial year. As regards business other than the telecommunications business, it was proposed that the sharing of revenue shall be decided by the Commission on case-to-case basis on consideration of the value of the assets utilised in such other business, the revenue derived therefrom. However, before deciding the question of sharing of revenue, the Commission proposed to provide an opportunity of representation to the transmission owner and the beneficiaries of the assets.

16. Power Grid Corporation of India Ltd has suggested that the length of OPGW laid for ULDC projects may be excluded for revenue-sharing, which should be graded, to allow gestation period of telecommunication business. Power Grid Corporation of India Ltd has also objected to the rate of Rs. 3000/- per km per year as it considers it too high and has suggested for its scaling down. Power Grid Corporation of India Ltd has stated that the Commission should retain a flexibility to be able to specify revenue-sharing judiciously and equitably.

17. Maharashtra State Electricity Distribution Co. Ltd has opined that an exhaustive list of “other businesses” should be given in the regulations, specifying which require the Commission’s approval and which are only for prior intimation. It has further pointed out that while Section 41 of the Act requires transmission and wheeling charge reduction in proportion of revenues derived from such other business, the Commission has specified only an ad-hoc figure of Rs. 3000/- per km per year (unrelated to revenue). It has also raised the question of sharing of revenue when utilization of assets starts during the year.

18. M.P. Power Trading Company Ltd has pointed out that mentioning of telecommunication business at a fixed rate and making provision of deciding other business on case-to-case basis is discriminatory and has suggested that the rates for sharing be mutually decided by the parties and there should be escalation each year. It has stated that the Act provides for sharing of a proportion of the revenue.

19. Firstly, we take up the issues raised by Power Grid Corporation of India Ltd. We cannot accept the suggestion for exclusion of length of OPGW laid for ULDC

projects for the purpose of sharing of revenue since they are also being used for telecommunication business. However, reduction of transmission charges shall only be in proportion to the number of fibres assigned for telecommunication business and this is being clarified through an explanation added to regulation 4. Regarding graded revenue sharing to allow gestation period for telecommunication business, it is pointed out that the Commission does not propose to look into its telecommunication business. It is accordingly proposed to specify transmission charge reduction only related to the usage of the transmission line for optic fibre laying, and not to relate it to the revenue out of such usage. In such an approach, the revenue sharing cannot be graded. While Power Grid Corporation of India Ltd has represented that the rate of Rs. 3000 per km per year is too high, we have been made to understand that it is already paying to some State utilities at around this rate for laying optical fibre cables on the latter's transmission lines. We feel that the proposed rate is reasonable, at least to start with. The Commission would not like to introduce subjectivity in the matter in the name of retaining flexibility. However, we would like to state that the Commission may review the matter after gaining some experience on the issue, and may revise the rate and/or approach subsequently after taking into account the experience gained on the working of the regulations proposed to be notified.

20. The suggestions made by Maharashtra State Electricity Distribution Co. Ltd and M.P. Power Trading Company Ltd are being considered together since they are generally on the same lines. It is stated that as of now, the usage of inter-State transmission system assets for other business is limited to laying of optical fibre cables, and the same is the focus of the proposed regulations. It is neither possible nor desirable to lay down an exhaustive list of other businesses that may be

undertaken by a transmission licensee. For these reasons it was proposed to specify a definite amount in case of the telecommunication business, leaving the revenue sharable from other businesses to be decided by the Commission on case-to-case basis. As and when some other type of use starts, the Commission would take notice of that and if considered necessary incorporate in the regulations. As for start of usage during a year, the Commission has already proposed half-yearly updating in case of the telecommunication business and has left it to be decided on case-to-case basis in other businesses. We consider it sufficient to start with. The Commission does not propose to get involved in revenue, profitability, etc. of the other businesses of transmission owners. Besides, revenue from other business would vary from year to year, and will be known only *post facto*. The Commission would, however, like to have more regulatory certainty in respect of transmission charge reduction. It is for this reason that the Commission has proposed revenue sharing in terms of Rupees per km per year rate considering the length of transmission lines over which optical fibre cables are laid. The primary objective is reduction in transmission charge. Its immediate implementation is the need of the hour, which can be expedited by applying a simple scheme as proposed in the draft. As the Act lays down that the proportion of revenue for reducing the transmission charges is to be specified by the Commission, it cannot be left to the parties' mutual agreement. Therefore, the suggestion of M.P. Power Trading Company Ltd is impracticable.

Maintenance of accounts

21. The draft proposed that the transmission owner shall maintain separate books of accounts for each of the other business, and separately from those of the transmission business and submit copies of the balance sheet, profit and loss account

for the period ending 31st March, the auditors reports and notes on accounts to the Commission annually on or before 31st October of the year. The books of accounts for the other business shall, inter alia, contain the details of revenue, cost, asset, liability, reserve, provision charged from or to the other business together with the basis for apportionment or allocation of charges between the transmission business and the other business.

22. Some comments on this aspect have been made by Maharashtra State Electricity Distribution Co. Ltd and Ms. Mallika Sharma Bezbaruah. We are unable to make out the purpose of these comments when the draft regulations are in conformity with the provisions of the Act.

Miscellaneous

23. Maharashtra State Electricity Distribution Co. Ltd has suggested that if capacity addition is done primarily for the other business, but in course of expansion if it augments transmission capacity, such capital expenditure should not be considered in the ARR of the transmission owner. Further, if transmission system is damaged due to the activities of other business, the treatment of liability determination should be specified. According to Maharashtra State Electricity Distribution Co. Ltd., under power granted to it in Sections 79 and 178 of the Act, the Commission may direct its officers to ensure compliance of the regulations and thus the Commission will also monitor the other business. According to M.P. Power Trading Company Ltd, the draft regulations are silent over utilization of band width.

24. Any transmission capacity addition has to be within C.E.A.'s overall national plan, and has to be agreed to by the States. Maharashtra State Electricity Distribution Company's apprehension regarding transmission capacity addition as a byproduct of other business is, therefore, not well-founded. If a transmission system is damaged due to the activities of the other business, it would be counted as non-availability and transmission charge payment would correspondingly come down. The Commission, therefore, need not get involved in liability determination between different businesses of the transmission owner. As already indicated, the Commission does not propose to regulate the other business in any manner. For this reason, the suggestion of M.P. Power Trading Company Ltd. does not call for any consideration.

25. After having considered the responses received, and as briefly discussed above, the Commission concludes that the regulations finalised in the light of above discussion with certain changes made to add clarity to the provisions made in the draft, be notified in the Official Gazette to come into force on 1.1.2008.

Sd/-
(R. KRISHNAMOORTHY)
MEMBER

Sd/-
(BHANU BHUSHAN)
MEMBER

New Delhi, dated the 27th December 2007