



Transmission

Ref: ATIL/CERC/25102019

Date: October 25, 2019

To

The Secretary

Central Electricity Regulatory Commission

3rd and 4th Floor, Chanderlok Building

36 Janpath, New Delhi -110001

Subject: Comments on Draft CERC (Sharing of Revenue Derived from Utilization of Transmission Assets of Other Business) Regulations, 2019

Dear Sir

With reference to the comments invited by the Hon'ble Commission on the above mentioned Draft Regulations, we hereby submit our comments on the same with a request to kindly take the same on record.

For Adani Transmission (India) Ltd.

P. Sundarlingam

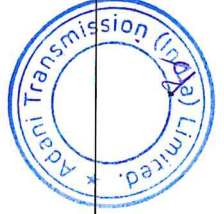
Authorized Signatory

Encl: As mentioned above

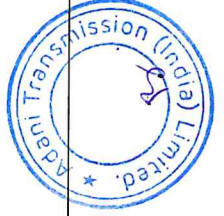


Comments on Draft CERC (Sharing of Revenue Derived from Utilisation of Transmission Assets for Other Business) Regulation, 2019

| Regulation No. | Existing Regulation (Sharing Regulation, 2007) | Proposed Regulation (Draft Sharing Regulation, 2019) | Comments |
|---|--|--|--|
| Regulation 1 - Short title, extent and commencement | <p>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.</p> | <p>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.</p> | <ul style="list-style-type: none"> The Projects under Section 63 i.e. competitive bidding projects are based on assumptions taken at the time of bid submissions and tariff is quoted considering such assumptions which are on the discretion of Bidders. However, the Hon'ble Commission in its draft regulation for sharing of revenue has specified that projects under competitive bidding shall also share the revenue earned out of other business. <p>In this regards, we would like to submit that bids are submitted based on various assumption like revenue from telecommunication business, revenue from other business and etc. By virtue of these assumptions the quoted tariff becomes viable for the bidders. Hence, sharing of revenue with the beneficiaries, for competitive bidding projects, will deplete the rights of bidders and subsequently impact the competitiveness of the bidder. This will further dilute the whole motive of competitive bidding process.</p> <ul style="list-style-type: none"> Further, Section 63 of the Act reads as under: <ul style="list-style-type: none"> <i>"Section 63: Notwithstanding anything contained in section 62, the Appropriate Commission shall</i> |



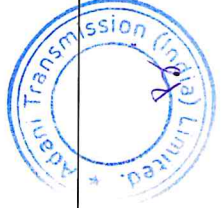
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| | | | <p><i>adopt the tariff if such tariff has been determined through transparent process of bidding in accordance with the guidelines issued by the Central Government."</i></p> <p>It is clear from the above that Section 63 directs the Hon'ble Commission to adopt the tariff if such tariff has been determined through Competitive bidding. Hence, Hon'ble commission has to abide by the law to bring no alteration of the tariff of section 63 projects. Therefore, the proposal of the Hon'ble Commission to share the revenue of competitive bidding projects is against the Law.</p> <ul style="list-style-type: none"> • It may further be noted that the proposal of Hon'ble Commission for applicability of the sharing regulation to Section 63 projects is unreasonable. The Hon'ble Commission has even not specified for such change in its Explanatory Memorandum. Such modification in the Regulations will wipe out add on income considered by the bidders at the time of submission of bids, which will be breach of promissory estoppel. • Hence, we request Hon'ble Commission exclude the section 63 projects from the Sharing Regulations, which is even beyond regulatory power of the commission and not supported by the Act, as the |



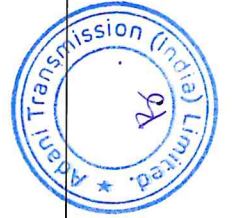
| Regulation No. | Existing Regulation (Sharing Regulation, 2007) | Proposed Regulation (Draft Sharing Regulation, 2019) | Comments |
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| Regulation 4 (1) – Intimation of Other Business | The transmission owner proposing to undertake the other business for optimum utilization of its assets shall give prior intimation, in writing, 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 filing a petition, of its intention to undertake such Other Business | <p>Hon'ble Commission cannot make regulations for which no express delegation is granted under the Electricity Act, 2003.</p> <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. However, procedural formalities of filing a petition for intimating the commission about other business will be time consuming and hence, considered unnecessary pertaining to the cause. Further, it was envisaged by the Hon'ble Commission to not look in to the telecommunication business as per order in petition no. 54/2005 and accordingly, it was specified earlier to intimate the intention of other business to Hon'ble Commission. However, the draft notification contradicts the applicability of the earlier issued orders. Thus, we request the commission to retain the existing regulation with respect to intimation of other business. |
| Regulation 4 (1) – Intimation of Other Business | Provided that the transmission owner undertaking the business commencement of these regulations shall give such intimation within two months | 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. | <ul style="list-style-type: none"> It may kindly be noted here that the licences had already intimated to the Hon'ble Commission regarding other businesses as per existing regulation. The referred proviso in the existing regulation was justified as the Sharing Regulation, 2007 was notified first time. However, continuing with the proviso of intimation of any prevailing other business will end up in duplication of work as licences have already |



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| | <p>from the date of such commencement.</p> | | <p>intimated the Hon'ble Commission regarding other business as per Sharing regulation, 2007.</p> |
| <p>Regulation 5(1)(a) – Manner of sharing of revenue from Other Business</p> | <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</u> 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.</p> | <p>For Telecommunication Business: In case the transmission licensee engages in telecommunication business, <u>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.</u></p> | <ul style="list-style-type: none"> Hence, we request the Hon'ble Commission to delete the referred proviso from the Sharing Regulation, 2019 We would like to submit that the Hon'ble Commission has determined the percentage of share on the basis of actual revenue of PGCIL. It may kindly be noted that every asset has different revenue stream based on location, area etc. Further, PGCIL, being the largest player in transmission segment, have large volume of network and economies of scale that would not be comparable to other licensees. Further, the Hon'ble Commission had specified, vide its order in Petition no. 54/2005, that to allow the gestation period for telecommunication business, commission proposed to specify transmission charges related to usage of the transmission line for optical fibre laying, and not relate it to the revenue out of such usage. Hence, we would like to submit that transmission licensees at an initial stage to explore the options of other business do not fall in the likes of PGCIL which has comparatively a wider network through number of years in telecommunication business as an internet service provider. Therefore, separate consideration should be given to other |



| Regulation No. | Existing Regulation, 2007 (Sharing Regulation, 2007) | Proposed Regulation, (Draft Sharing Regulation, 2019) | Comments |
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| | | | <p>transmission licensees in form of gestation/moratorium period as it has happened in the case of PGCIL.</p> <ul style="list-style-type: none"> The precedence cited in the Explanatory Memorandum has been taken from PGCIL which is an A class ISP/Operator in the country. Drawing parallels with any transmission licensee with an IP1 registration for telecommunication passive infra business cannot be considered a right comparison. Therefore, we request the Hon'ble Commission to retain the existing regulation with respect to the sharing of revenue of telecommunication business. Without prejudice to our above request, it may kindly be noted that it will be reasonable to share Net revenue, after considering specific cost incurred pertaining to telecom business, with the beneficiaries instead of Gross revenue as proposed by the Hon'ble Commission as the transmission licences may end up making loss in telecommunication business which will in turn discourage the licenses to engage in to telecommunication business for optimum utilisation of its assets. |



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| | | | <ul style="list-style-type: none"> • Further, the Hon'ble Commission has proposed to intimate following regarding other business: <ul style="list-style-type: none"> ○ <i>g) All direct and indirect costs attributed to such Other Business;</i> <p>We believe that the intention of this Hon'ble Commission is to look in to the expenses related to other business. Hence, it is appropriate to consider the Net revenue while sharing revenue from telecommunication business.</p> |

