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Ref: RA/2019-20/01/A/ **394**

Date: 31-Oct-19

To,
The Secretary
Central Electricity Regulatory Commission
3 rd & 4 th Floor, Chanderlok Building,
36, Janpath, New Delhi- 110001

Sub: Suggestions/comments/objections on Draft Central Electricity Regulatory Commission (Sharing of Revenue Derived from Utilization of Transmission Assets for Other business) Regulations, 2019.

Ref.: Public notice of Draft Central Electricity Regulatory Commission (Sharing of Revenue Derived from Utilization of Transmission Assets for Other business) Regulations, 2019.

Dear Sir,

We refer the Hon'ble Commission's above-mentioned Notice on Draft Central Electricity Regulatory Commission (Sharing of Revenue Derived from Utilization of Transmission Assets for Other business) Regulations, 2019. In this regard, please find attached our comments attached as **Annex-1**.

We sincerely thank the Hon'ble Commission for reviewing the existing framework for sharing of revenue from other business derived from utilization of the transmission assets.

We hope that our comments shall be considered by the Hon'ble Commission while finalizing Regulations.

Thanking You,

Yours faithfully
For BSES Rajdhani Power Limited

Shashi Goyal

Shashi Goyal
DGM-Regulatory Affairs

Encl: As above

S.No.	Draft Regulations	BRPL's Comments
1.	<p>1. Short title, extent and commencement.</p> <p>(1) These regulations may be called the Central Electricity Regulatory Commission (Sharing of Revenue Derived from Utilization of Transmission Assets for Other Business) Regulations, 2019.</p> <p>(2) 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> <p>(3) These regulations shall come into force on its publication in the official gazette.</p>	<p>Commission has also proposed that ISTS Projects covered under Section 63 whose tariff is adopted by Commission shall be also being covered under this Regulation.</p> <p>As these projects are not cost plus projects, we request Commission to introduce separate provision that the Beneficiaries will be getting 100% revenue sharing.</p>
2	<p>4. Intimation of Other Business</p>	<p>Commission has proposed single model for sharing of revenues from telecom business where as there are various business models which are presently being followed in telecom business. These models are as below:-</p> <ol style="list-style-type: none"> a. Total Cost of Telecommunication assets is borne by beneficiaries and is being used for telecom business b. Part of Cost of Telecommunication assets is borne by beneficiaries and being used for telecom business c. Total Cost of Telecommunication assets is borne by Telecom Business and being used for telecommunication business d. Total Cost or part cost of Telecommunication assets is borne by Beneficiaries and not being used for telecommunication business. <p>We propose the commission to specify different profit sharing for each category of business model. Same Should also be applicable for TBCB projects also.</p>

<p>3. 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: (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. (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: 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>A. Mandate of Section 41 of the Electricity Act, 2003:</p> <p>(a) Section 41 of the Electricity Act, 2003 provides that a transmission licensee can utilize its transmission assets for other business and share proportion of revenue for reduction of transmission charges.</p> <p>“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:”</p> <p>(b) Hon'ble Commission has to specify a “proportion” of the revenues to be taken towards the transmission charges as a percentage/ratio of the revenues rather than a static number which is against the spirit of the Electricity Act, 2003. We therefore request the Hon'ble Commission to allow the revenue sharing on proportionate basis and not on absolute basis.</p> <p>B. No rationale for providing an amount equal to 10% of the Gross Revenue to be shared with the Long-Term Customers.</p> <p>(c) Hon'ble Commission by the Draft Regulation 5(1) (a) has allowed sharing of revenue derived from telecommunication business only to “an amount equal to 10% of the gross revenue from such business in a given financial year”. However, Hon'ble Commission has failed to consider the fact that:</p> <ol style="list-style-type: none"> I. Hon'ble Commission has not conducted an independent analysis of the telecom business of PGCIL in order to arrive at a figure of 10%. II. That the present CERC 2007 Regulation had only considered the OPGW business of PGCIL as “telecom business” however that is not correct interpretation of PGCIL's telecommunication business which has been
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	<p>III. dealt in detail in the subsequent paragraphs.</p> <p>Hon'ble Commission while arriving at the figure of 10%, has only considered the OPGW business of PGCIL and not the other businesses that PGCIL does as part of telecommunication business which is evident from the analysis as provided by Hon'ble Commission in the Explanatory Memorandum as under:</p> <p><i>"6.3. In order to assess savings due to use of transmission infrastructure, the comparison of cost of normal Telecom business by Telecom network provider with the laying of Telecom line by the Transmission licensee has been considered. The cost of laying optical ground wire by a telecom network provider without using the transmission infrastructure is estimated to be in the range of Rs. 3.25 – 3.50 lakhs per km. It is observed that the cost of laying optical ground wire with transmission network is estimated to be in the range of Rs. 1.75 lakhs to Rs. 2.00 lakhs per Km. 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 6 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 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</i></p>
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towards net revenue surplus works out to approximately Rs 110.9 Crores. (Rs 501.05 *22.13%=110.9 Cr). 6.4. 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%x Rs 110.90= Rs 66.54 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.

IV. The telecommunication business of PGCL is not restricted only to the laying of OPGW, which has already been brought to the notice of the Hon'ble Commission by Petition No. 215/MP/2018 as referred to by Hon'ble Commission in the Explanatory Memorandum of Draft Regulations.

V. Also, the view of Hon'ble Commission is contrary to its own draft Regulation, wherein Hon'ble Commission in the definition clause does not restrict the telecom business of transmission licensee only to laying of OPGW wires, it however, includes the telecom services as defined under clause 1(k) of TRAI Act, 1997 as under:

"means any business of telecommunication services by utilizing transmission assets" Provided that "Telecommunication Service" shall have the same meaning as defined in sub-clause (k) of clause (1) of Section of the Telecom Regulatory Authority of India Act, 1997;"

(d) As such, PGCL telecom business is not restricted to laying of OPGW in terms of which Hon'ble Commission has derived figure of 10%. Accordingly there is a wide range of services that PGCL offers and can offer under

"telecommunication business". However, by restricting the sharing of revenue only to 10% by considering OPGW is totally incorrect and arbitrary.

C. Annual Reports of PGCL:

(e) Also noteworthy is the fact that Hon'ble Commission has also not considered the fact that on account of the evolution of the telecommunication sector and the enormous increase in the revenue earned by PGCL from the telecommunication business from 2007 till date. The Annual Revenue of PGCL has increases manifold to the tune of 546% but the sharing of the revenues with the beneficiaries has only increased by 110%. On the basis of the Annual Reports of PGCL, the growth in revenue from the telecommunication business from 2007 onwards is tabulated as under: -

Financial Year	Revenue of PGCL from telecommunication business	% increase
2006-2007	77.10	-
2007-2008	123.53	60%
2008-2009	148.93	93%
2009-2010	157.72	105%
2010-2011	187.20	143%
2011-2012	201.19	161%
2012-2013	231.39	200%

2013-2014	276.14	258%
2014-2015	274.89	257%
2015-2016	392.25	409%
2016-2017	503.83	553%

(f) As such there are a number of services that PGCL is offering and would offer as part of telecom business and the sharing from the revenue derived from said business by utilizing the transmission assets is very less, it's a meager amount as compared to the businesses that PGCL is and will undertake as part of its telecom wing. PGCL has is deriving huge profits from the assets which have been erected in terms of the tariff provided by the beneficiaries and consequently the consumers. Accordingly, the present percentage if allowed by CERC would be against the consumer interest.

(g) As such be it 2007 Sharing Regulations or the Draft Regulation 5(1) (a) if not revised in view of the aforesaid submission would render Section 41 otiose which provides that the income from other business of the transmission licensee should be utilized for reducing the transmission cost. For instance, as of now PGCL is sharing the benefit less than 5% of net telecom income with the beneficiaries and consumers.

(h) The shared telecom income over the last decade has just increased doubled as compared to the total telecom income which has increased by 6 times and the benefit of which has not been shared with the beneficiaries. Further, the

	<p>CAG Report had highlighted the fact that PGCIL has not been sharing the revenue in terms of the CERC 2007 Regulations between 2012-2017¹ as under:</p> <p><i>Thus, the Company shared revenue for a part of the network with transmission beneficiaries. The revenue shared was short by `3.18 crore during the period from 2012-13 to 2016-17.</i></p> <p><i>The Management stated (November 2017) that as per CERC Regulations, right-of-way charges of only OPGW links which were used for telecom business were to be shared and the same was being complied with.</i></p> <p><i>The reply is not acceptable. CERC regulations provide for revenue sharing on the basis of right-of-way utilised for laying the cable and not only for those used for telecom business."</i></p> <p>(i) The Hon'ble Commission has therefore not considered the revenue generated by PGCIL which is huge in terms of the sharing of the same done with the beneficiaries that also in contravention of the present CERC 2007 Regulations. Accordingly, Hon'ble Commission should consider increasing the sharing of revenue from telecom business instead of limiting the same to an amount equal to 10% of the gross revenue in a financial year.</p> <p>(j) As per Audited accounts of PGCIL ratio of Profits to the revenue of telecom business is 40% to 45% whereas commission has proposed sharing of only 10% of revenue from telecom business. It means PGCIL will share 20% to 25% of its net revenues with beneficiary and will retain 80% to 75% where as we propose for sharing of 70% of net revenues with beneficiaries</p> <p>(k) Hence the Revenue earned by PGCIL from other Business should be shared with the beneficiaries in justifiable ratio and for the past years same ratio</p>
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		<p>should be followed so that huge burden of Transmission charges on the beneficiaries can be reduced.</p> <p>(i) In the light of the above submissions, we request this Hon'ble Commission to allow sharing of revenue shall be in the ratio of 70:30 between beneficiaries and Transmission licensee of the net revenue as per the mandate of Section 41 of the Electricity Act, 2003.</p>
4.	8. Restrictions	<p>Any Revenue earned under these Regulations by Transmission Licensee should be "Market Competitive" across the respective industry. In case, the revenue earned less than market average of that industry, then Average Revenue of Industry is to be considered for sharing purpose in these Regulations</p>