



31st October 2019

Mr Sanoj Kumar Jha
Secretary, Central Electricity Regulatory Commission
3rd & 4th Floor, Chanderlok Building
36, Janpath
New Delhi- 110001

Sub: Comments/ Suggestions on Draft Central Electricity Regulatory Commission (Sharing of Revenue Derived from Utilisation of Transmission Assets for Other Business) Regulations, 2019

Dear Sir,

C (Encl.)
This is with reference to the public notice issued by CERC on 'Proposed framework for Real-Time Market for Electricity' having reference no: No. L-1/246/2019/CERC dated 25th August 2019, inviting comments/ suggestions on the same.

Tata Power's comments to the said publication are elaborated under **Annexure I**, enclosed herewith. We further request the Hon'ble Commission to grant an opportunity to all stakeholders to share their views by conducting a public hearing on the above matter.

Yours sincerely,

Ms. Paramita Sahoo
(Head- Policy Advocacy)

TATA POWER

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Annexure I: Observations and Queries on Draft Central Electricity Regulatory Commission (Sharing of Revenue Derived from Utilisation of Transmission Assets for Other Business) Regulations, 2019

S No.	Extracts from Discussion Paper	Views/Observations and Recommendation (if any)
1	<p>Explanatory Memorandum 2019 6.3 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 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>	<ol style="list-style-type: none"> As far as the mechanism being followed to arrive at the norm of 10% of revenue sharing, we, in the section below, would like to share our views w.r.t mechanism being proposed. Our views are mainly premised on three grounds: Firstly, we would like to humbly submit that while section 41 of the Act envisages for Transmission Licensee to engage in any business for optimum utilisation of its assets, it stipulates that Transmission business shall not in any way subsidise any such business undertaking. In this respect, we would also like to draw your kind attention to Hon'ble APTEL's judgment dated 4th April 2007 in Appeal No: 251 of 2006. The relevant extracts of the judgement are reproduced below for ready reference: <p align="center"><i>"32. We see force in the arguments put forth by the counsel for the appellant as truing up for the years 2004-05 and 2005-06 has to be carried out only as per the Sixth Schedule. <u>The consumers in the licensee's area must be kept in a water tight compartment from the risks of other business of the licensee and the Income Tax payable thereon....."</u> (Emphasis supplied)</i></p> <p>From the above judgment, it may be inferred that the accounts of different businesses shall be maintained separately and shall not subsidise each other. In other words, the intent of such provisions of the Act is that in no way the License business shall be subsidizing the other business which further implies that no part of cost incurred on assets utilised for other businesses should be borne by the consumers of the power sector. It is to be noted that intent of such section is to protect/safeguard the interest of consumers of Electricity sector and in no way envisages for benefitting the electricity business from such other business. Whereas, the mechanism now proposed by Hon'ble Commission is in a way causing the other business (which is not a regulated business under Electricity Act and is not under the jurisdiction of Hon'ble Commission) to subsidise the transmission business of the licensee. Hence, while we agree that Transmission License business of the Licensee shall be able to recover the due costs (if any) incurred on transmission assets utilised for such other business, it may not be an appropriate methodology to consider any share of revenue of such other business for subsidising the Transmission Licensee business. Furtherance to</p>

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		<p>above, we would like to mention that for such a circumstance, it would be appropriate to consider the approach adopted by this Hon'ble Commission in CERC (Terms and Conditions of Tariff) Regulations 2019-24, whereby, it stipulates for reduction of capital cost of the project to the extent, land cost is shared by generating station based on renewable energy. This may be referred from Regulations 19 (5) (d) of CERC (Terms and Conditions of Tariff) Regulations 2019-24. Thus, in view of the above, we humbly propose that the mechanism of revenue sharing should 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. This in effect would mean that the intent of the section 41 i.e the cost of transmission assets utilised by other businesses is offset by the revenues from other businesses without getting/providing any subsidy from/to such business. Hence, there should not be any need for providing turnover data for unregulated business.</p> <ol style="list-style-type: none"> 3. Secondly, We would like to humbly submit that the facts been considered for working out the revenue sharing norm of 10% largely corresponds to one major licensee i.e Power Grid. We all are aware that Transmission sector since inception has been majorly dominated by Power Grid and it is only a recent development that Transmission Licenses for new lines are being allotted by way of competitive bidding that too for a very small proportion of total assets being put up, which has now opened the route of investment for private investment. 4. Hence, forming a norm 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 particularly when other licensees may adopt completely different business model with different asset turnover ratios than the one derived from PGCIL operations. This may be against the practices of competition that too in a regulated sector. 5. 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. 6. Hence, we propose that:

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		<p>a. The current sharing norm of Rs 3000/km may be retained for all existing contracts/agreements of existing other businesses as they are premised on this norm.</p> <p>b. For prospective contracts/agreements of other businesses, mechanism of revenue sharing may 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>
2	<p>Explanatory Memorandum 2019</p> <p>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. $60\% \times Rs\ 110.90 = Rs\ 66.54\ Cr$, 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.</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>
3.	<p>Explanatory Memorandum 2019</p> <p>5. Regulation 4. Intimation of other business</p> <p>5.1. Based on the existing scope of the Current Regulations, a transmission licensee is obligated to provide prior intimation to the Commission. In order to facilitate the Commission to enquire about the nature and manner of business and to issue appropriate directions, it is proposed that a transmission licensee may seek <u>approval by filing an appropriate petition</u>. Accordingly, clause (1) of Regulation 4 of the draft Regulations is proposed.</p> <p>Read with</p>	<p>As mentioned above as well, we humbly reiterate that such other businesses which are not regulated business under Electricity Act do not fall in the jurisdiction of this Hon'ble Commission and thus shall not be subjected to approval from this Hon'ble Commission and the purpose shall be kept limited to information/intimation purpose.</p>

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	<p>Regulation 4(1) of Draft Central Electricity Regulatory Commission (Sharing of Revenue Derived from Utilization of Transmission Assets for Other Business) Regulations, 2019</p> <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>	
4.	<p>Regulation 5(1)(b) of Draft Central Electricity Regulatory Commission (Sharing of Revenue Derived from Utilization of Transmission Assets for Other Business) Regulations, 2019</p> <p>"(b) For Business Other than Telecommunication Business :In case Other Business is not Telecommunication Business, <u>the sharing of revenue shall be decided by the Commission on case-to-case basis</u> 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>The Draft Regulation stipulates that revenue sharing mechanism for other business other than telecommunication, shall be decided subsequently on a case to case basis. We would like to humbly submit that it may not be an appropriate approach as this would put the Transmission Licensees to uncertainty as far as the feasibility of such new businesses are concerned as they would not be able to factor the share which would have to be shared with Transmission License business. Hence, the rational approach would be to define the sharing mechanism upfront for such other businesses which accordingly may be considered while entering into any such new business.</p>

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5.		It is also to be clarified that such proposed cost sharing norm shall be made applicable only to prospective contracts in which the Transmission licensee enters subsequently and thus, shall not hamper the existing contracts.