

**CENTRAL ELECTRICITY REGULATORY COMMISSION**

**NEW DELHI**

**Coram:  
Shri P.K. Pujari, Chairperson  
Shri I.S. Jha, Member**

**No. L- 1/246/2019/CERC**

**Date: 3<sup>rd</sup> March, 2020**

**Statement of Reasons**

**Subject :** In the matter of Central Electricity Regulatory Commission (Sharing of Revenue Derived from Utilization of Transmission Assets for Other Businesses) Regulations, 2020.

**Introduction**

The Commission is empowered to make regulations under Section 178 of the Electricity Act, 2003 (hereinafter referred as “the Act”). The Commission, vide notification dated 25<sup>th</sup>September 2019, issued the Draft Central Electricity Regulatory Commission (Sharing of Revenue Derived from Utilization of Transmission Assets for Other Business) Regulations,2019 (here after referred to as the “Draft Regulations”) along with Explanatory Memorandum and issued public notice in this regard inviting comments/ suggestions/ observations from the stakeholders.

2. Comments were received from Adani Transmission Ltd, BSES Rajdhani Power Ltd, FICCI, Maharashtra State Electricity Distribution Co Ltd , Power Company of Karnataka Ltd, Powergrid Corporation of India Ltd, Sterlite Power Grid Ventures Ltd, Tata Power Company Ltd and Torrent Power Ltd which are available on the website of the Commission ([www.cercind.gov.in](http://www.cercind.gov.in)). The Commission also conducted a public hearing on 13<sup>th</sup> January 2020 at CERC Court Room (Fourth Floor) Chandralok Building, 36, Janpath, New Delhi. After due considerations of the comments/ suggestions/ objections received, the Commission has finalized the Regulations.

3. The deliberations on the comments/suggestions offered by the stakeholders on the proposed amendments and the reasons for decisions of the Commission are given in the succeeding paragraphs.

#### **Regulation 1(2): Applicability to Section 63 projects**

4. Clause (2) of Regulation (1) of the Draft Regulations provides that these regulations shall be applicable to the projects whose tariff is determined under Section 62 and Section 63 of the Act. Some transmission licensees have suggested that the applicability of these regulations should be restricted to the projects whose tariff is determined under Section 62 of the Act, since tariff quoted under section 63 of the Act is based on assumptions which includes revenue stream of other business. Further, the rationale for including Section 63 projects has also not been specified by the Commission.

5. We have considered the objections of the stakeholder and provisions of the Act. As per Section 14 of the Act, the transmission licensee is authorised to transmit electricity and Section 17 of the Act restricts the activities of the licensee to divest the assets or

use for other purpose either through transfer, merger, acquisition, sale, lease, exchange or otherwise without the approval of the Commission. The transmission license is granted to eligible transmission company irrespective of manner of determination of tariff under Section 62 and Section 63 of the Act. Section 41 of the Act deals with other business. Relevant provision is extracted below:

***"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:"*

It may be observed that while prohibiting transmission licensee to divest or use the assets for other purpose, Section 41 of the Act permits any transmission licensee to engage in other businesses provided such activities are utilized for reduction of transmission charges. It does not distinguish transmission assets based on the manner of the tariff determination i.e. tariff determination under Section 62 or Section 63 of the Act. As the above sections have equal applicability for all the projects irrespective of the manner of tariff determination, the proposed regulations are applicable on all ISTS licensees.

## **Regulation 2: Definition of Gross Revenue**

6. As per the draft regulations, the transmission licensee is required to share 10% of the gross revenue with the long term customers. In this regard, several stakeholders have pointed that the definition of gross revenue should be included in order to remove any ambiguity. It has been pointed out that disputes have arisen in other sectors due to lack of clarity. The Commission has considered the suggestion. The Commission is of the view that gross revenue from telecommunication business alone should be considered for sharing. In all other cases, the Commission proposes to decide on a case to case basis. Accordingly, the following definition has been incorporated:

**“gross revenue”** in respect of telecommunication business means the gross revenue recognized in the Statement of Profit and Loss of the transmission licensee from such business during a financial year;

## **Regulation 4: Intimation of other business**

7. The draft regulations specify that transmission licensees, in order to engage in another business, are required to file a petition for the approval of the Commission. Various transmission licensees have suggested that this should not be mandated as it reduces the ease of doing business. Instead, provision in the existing regulation which requires the transmission licensee to only intimate in writing to the Commission should be retained. We have considered the suggestions. The purpose of this clause is to enable the Commission to enquire about the nature of business as well as assess its impact on the transmission system. It also provides a mechanism to incorporate the views and concerns of long term customers while issuing appropriate directions. However, the Commission recognizes that such mechanism may not be relevant for

settled business such as Telecommunication business, but may be more relevant for new business. Accordingly, the proposed regulation has been modified for filing petitions only for new businesses and intimation for Telecommunication business.

### **Regulation 5: Manner of sharing of revenue**

8. The draft regulations propose that in case the transmission licensee engages in telecommunication business, the licensee shall have to share 10% of the gross revenue. Comments have been received from both transmission and distributions licensees. The key comments are summarized below.

8.1 The transmission licensees have suggested that –

- a) A minimum threshold for usage should be introduced before revenue sharing is triggered;
- b) Demand in telecom sector has reduced and the number of TSPs have reduced from 14 to 3. Further, the utilization of OPGW for telecom purposes experiences competition from deployment of underground fibres;
- c) Proposed sharing of revenue is based on CTU model, which cannot be uniformly adopted for all transmission licensees.
- d) Instead of gross revenue, the net revenue should be shared, which takes into account all direct and indirect costs.
- e) Revenue share should be proportionate to Right of Way (RoW) costs, as the right of revenue sharing emanates only from the usage of RoW.
- f) Sharing of revenue should take into account the historical data, escalation of RoW charges using inflation rates and 3% of revenue.

8.2 The distribution licensees have suggested that –

- a) Revenue should be shared in 70:30 or 50:50 ratio between beneficiaries and transmission licensees.
- b) The net revenue surplus from Telecom business has increased 234% during last 5 years, whereas sharing @ Rs 3000 per year per km has remained constant.
- c) Saving in cost (Rs 1.50 lakh/KM) appears to have been worked out based on existing practice of adjusting 50% OPGW cost between Telecom and Transmission. Capitalization of OPGW cost in transmission business may be capped at maximum of 50%.
- d) The net revenue sharing of 22% is derived based on total asset and after adjusting cost of underground line. Therefore, second apportionment of saving based on length of underground line (excluding underground line) is not required.
- e) The revenue sharing (%) should be grossed up with the relevant tax rate on the similar principle of grossing of return on equity.

9. The Commission has considered the comments and suggestions by the stakeholders. The Commission has observed that earlier regulation providing sharing was based on limited experience. Further, Section 41 of the Act envisages optimal utilization of assets for rationalizing the transmission charges.

10. In the proposed revenue sharing methodology, the Commission has factored all aspects related to market uncertainty as well as concerns related to the current demand situation in telecom sector. The Commission recognizes that revenue sharing

mechanism needs to be so designed to as facilitate the entry of other transmission licensees into the Telecommunication business. Accordingly, the sharing of revenue has been proposed in a manner so that it can be applied to all transmission licensees. As regards the suggestions of distribution licensee to review sharing percentage based on the factors such as grossing up with tax rate and underground line, we are of the view that it may not be relevant for all cases. The proposed sharing is to be specified on generic basis applicable to all cases. For example, in case of competitive bidding, grossing up of tax rate is not followed. Further, case of underground line may not be applicable to all cases. In view of the above, the Commission finds the proposed sharing mechanism reasonable without affecting competitiveness of the transmission licensees. The proposed sharing methodology is, therefore, retained.

### **Regulation 8: Restrictions**

11. Draft regulation restricts creation of any encumbrance of the transmission asset. Further, in case the transmission licensee seeks to create any subsidiary company for engaging in other business utilizing the transmission assets, the transmission licensee needs to file a separate petition. One of the transmission licensees have suggested to allow an encumbrance on transmission assets for other business purpose since revenue will be shared with the beneficiaries. Some distribution licensees have stated that creation of any subsidiary company should not increase additional financial burden on the consumers.

12. The Commission has noted both the arguments. Section 17 of the Act restricts the activities of the licensee to divest or use the assets for other purpose either through transfer, merger, acquisition, sale, lease, exchange or otherwise without the approval of

the Commission. Filing of a separate subsidiary to engage in other business will facilitate the Commission to evaluate the impact both commercially and operationally. This provision, thus, helps in addressing the concerns of the distribution licensees. The Commission is of the view that allowing the creation of encumbrance will increase the financial risk of the transmission assets and hence, has not allowed the same. Further, to protect any adverse implication on operations of transmission assets on account of operation through a separate subsidiary company, the Commission has included a provision which shall indemnify long term customers against any cost increase or loss or damage.

*Sd/-*  
**(I.S. Jha)**  
**Member**

*Sd/-*  
**(P.K. Pujari)**  
**Chairperson**