

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 494/MP/2020**

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

**Date of Order: 10<sup>th</sup> July, 2021**

**In the matter of:**

Petition under Regulation 8(4) of Central Electricity Regulatory Commission (Sharing of Revenue Derived from Utilization of Transmission Assets for Other Business) Regulation, 2020, seeking prior approval of the Hon'ble Commission for incorporating a wholly owned subsidiary company of the Petitioner to undertake Telecommunications and Digital Technology Businesses.

**And  
In the matter of:**

Power Grid Corporation of India Ltd.  
Registered office: B-9, Qutab Institutional Area,  
Katwaria Sarai, New Delhi and  
Corporate office: "Saudamini", Plot No.: 2,  
Sector-29, Gurgaon (Haryana)- 122 001.

**...Petitioner**

**Vs.**

1. Rajasthan Rajya Vidyut Prasaran Nigam Limited,  
Vidyut Bhawan, Vidyut Marg,  
Jaipur – 302005 (Rajasthan),  
Through its Chairman.
2. Ajmer Vidyut Vitran Nigam Ltd.,  
132 KV, GSS RVPNL, Sub- Station Building,  
Caligiri Road, Malviya Nagar,  
Jaipur-302017 (Rajasthan)
3. Jaipur Vidyut Vitran Nigam Ltd.,  
132 KV, GSS RVPNL Sub- Station Building,  
Caligiri Road, Malviya Nagar,



Jaipur-302017 (Rajasthan)

4. Jodhpur Vidyut Vitran Nigam Ltd.,  
132 KV, GSS RVPNL Sub- Station Building,  
Caligiri Road, Malviya Nagar,  
Jaipur-302017 (Rajasthan)
5. Himachal Pradesh State Electricity Board,  
Vidyut Bhawan, Kumar House Complex Building II,  
Shimla-171004 (Himachal Pradesh),  
Through its Chairman.
6. Punjab State Electricity Board,  
Thermal Shed Tia,  
Near 22 Phatak,  
Patiala-147001 (Punjab),  
Through its Chief Engineer.
7. Haryana Power Purchase Centre,  
Shakti Bhawan, Sector-6,  
Panchkula- 134109 (Haryana),  
Through its S.E./C&R-1.
8. Power Development Department,  
Government of Jammu & Kashmir,  
Mini Secretariat, Jammu,  
Through its Commissioner.
9. Uttar Pradesh Power Corporation Ltd.,  
(Formerly Uttar Pradesh State Electricity Board),  
Shakti Bhawan, 14, Ashok Marg,  
Lucknow - 226001 (Uttar Pradesh),  
Through its Chairman.
10. Delhi Transco Ltd.,  
Shakti Sadan, Kotla Road,  
New Delhi-110002,  
Through its Chairman.
11. BSES Yamuna Power Ltd.,  
B-Block, Shakti Kiran Bldg. (Near Karkadooma Court),  
Karkadooma 2nd Floor,  
New Delhi-110092,  
Through its Chief Executive Officer.
12. BSES Rajdhani Power Ltd,  
BSES Bhawan, Nehru Place,  
New Delhi-110019,  
Through its Chief Executive Officer.
13. Tata Power Delhi Distribution Limited (TPDDL),  
NDPL house, Hudson Lines Kingsway Camp



Delhi – 110009  
Through its Chief Engineer

14. Chandigarh Administration,  
Sector -9, Chandigarh,  
Through its Chief Engineer.
15. Uttarakhand Power Corporation Ltd.,  
Urja Bhawan,  
Kanwali Road, Dehradun (Uttarakhand),  
Through its Managing Director.
16. North Central Railway,  
Allahabad (Uttar Pradesh),  
Through its Chief Electrical Distribution Engineer.
17. New Delhi Municipal Council,  
Palika Kendra, Sansad Marg,  
New Delhi-110002,  
Through its Chairman.
18. Bihar State Power (Holding) Company Ltd  
(Formerly Bihar State Electricity Board -BSEB)  
Vidyut Bhavan, Bailey Road, Patna – 800 001  
Represented By Its Chairman
19. West Bengal State Electricity Distribution Company Limited  
Bidyut Bhawan, Bidhan Nagar  
Block DJ, Sector-II, Salt Lake City  
Calcutta - 700 091  
Represented By Its Chairman
20. Grid Corporation of Orissa Ltd.  
Shahid Nagar, Bhubaneswar - 751 007  
Represented By Its Chairman cum Managing Director
21. Jharkhand State Electricity Board  
In Front of Main Secretariat  
Doranda, Ranchi - 834002  
Represented By Its Chairman
22. Damodar Valley Corporation  
DVC Tower, Maniktala  
Civic Centre, VIP Road, Calcutta - 700 054  
Represented By Its Chairman
23. Power Department  
Govt. of Sikkim, Gangtok - 737 101  
Represented By Its Commissioner & Secretary (POWER)
24. Madhya Pradesh Power Management Company Ltd.  
Shakti Bhawan, Rampur



Jabalpur - 482 008  
Represented By Its MD

25. Madhya Pradesh Power Transmission Company Ltd.  
Shakti Bhawan, Rampur  
Jabalpur - 482 008  
Represented By Its MD

26. Madhya Pradesh Audyogik Kendra  
Vikas Nigam (Indore) Ltd.  
3/54, Press Complex, Agra-Bombay Road, Indore-452 008

27. Maharashtra State Electricity Distribution Co. Ltd.  
Hongkong Bank Building, 3RD Floor  
M.G. Road, Fort, Mumbai - 400 001.  
Represented By Its MD

28. Maharashtra State Electricity Transmission Co. Ltd.  
Prakashganga, 6th Floor, Plot No. C-19, E-Block,  
Bandra Kurla Complex, Bandra (EAST) Mumbai-400 051.  
Represented By Its MD

29. Gujarat Urja Vikas Nigam Ltd.  
Sardar Patel Vidyut Bhawan,  
Race Course Road, Vadodara - 390 007  
Represented By Its Chairman

30. Electricity Department  
Govt. of Goa, Vidyut Bhawan, Panaji,  
Near Mandvi Hotel, Goa - 403 001  
Represented By Its Chief Engineer (Electrical)

31. Electricity Department  
Administration of Daman & Diu  
Daman - 396 210  
Represented By Its Secretary (FIN.)

32. DNH Power Distribution Corporation Limited.  
Vidyut Bhawan, 66KV Road, Near Secretariat Amla,  
Silvassa - 396 230  
Represented By Its Secretary (FIN.)

33. Chhattisgarh State Power Transmission Co. Ltd.  
Office Of The Executive Director (C&P)  
State Load Despatch Building,  
Dangania, Raipur – 492 013

34. Chhattisgarh State Power Distribution Co. Ltd.  
P.O. Sunder Nagar, Dangania, Raipur  
Chhattisgarh-492 013  
Represented by Its Chairman



35. Karnataka Power Transmission Corporation Ltd.,  
(KPTCL), Kaveri Bhavan, Bangalore – 560 009  
Represented by its Chairman
36. Transmission Corporation of Andhra Pradesh Ltd., (APTRANSCO),  
Vidyut Soudha,  
Hyderabad– 500082  
Represented by its Chairman
37. Kerala State Electricity Board (KSEB)  
Vaidyuthi Bhavanam  
Pattom, Thiruvananthapuram – 695 004  
Represented by its Chairman
38. Tamil Nadu Generation and Distribution Corporation Ltd  
(Formerly Tamil Nadu Electricity Board -TNEB)  
NPKRR Maaligai, 800, Anna Salai, Chennai – 600 002  
Represented by its Chairman And Others
39. Electricity Department  
Government of Goa  
Vidyuti Bhawan, Panaji  
Goa 403001  
Represented by Chief Engineer (Electrical)
40. Electricity Department  
Govt of Pondicherry,  
Pondicherry - 605001  
Represented by its Chief Secretary
41. Eastern Power Distribution Company of Andhra Pradesh Limited (APEPDCL)  
P&T Colony,  
Seethmmadhara, VISHAKHAPATNAM  
Andhra Pradesh,  
Represented by its Managing Director
42. Southern Power Distribution Company of Telangana limited (TSSPDCL)  
Corporate Office, Mint Compound,  
HYDERABAD – 500 063  
Telangana  
Represented by Its Managing Director
43. Central Power Distribution Company of Andhra Pradesh limited (APCPDCL)  
Corporate Office, Mint Compound,  
HYDERABAD – 500 063, Andhra Pradesh  
Represented by Its Managing Director
44. Northern Power Distribution Company of Telangana Limited (TSNPDCL)  
Opp. NIT Petrol Pump  
Chaitanyapuri, Kazipet,  
WARANGAL – 506 004  
Telangana.



Represented by Its Managing Director

45. Bangalore Electricity Supply Company Ltd., (BESCOM),  
Corporate Office, K.R.Circle  
BANGALORE – 560 001, Karnataka  
Represented by Its Managing Director
  46. Gulbarga Electricity Supply Company Ltd., (GESCOM)  
Station Main Road, GULBURGA, Karnataka  
Represented by Its Managing Director
  47. Hubli Electricity Supply Company Ltd., (HESCOM)  
Navanagar, PB Road, HUBLI, Karnataka  
Represented by Its Managing Director
  48. MESCOM Corporate Office,  
Paradigm Plaza, AB Shetty Circle  
MANGALORE – 575 001, Karnataka  
Represented by Its Managing Director
  49. Chamundeswari Electricity Supply Corporation Ltd., (CESC)  
927, L J Avenue, Ground Floor, New Kantharaj Urs Road  
Saraswaturam, MYSORE – 570 009, KARNATAKA  
Represented by Its Managing Director
  50. Transmission Corporation of Telangana Limited,  
Vidhyut Sudha, Khairatabad,  
Hyderabad, 500082  
Represented by Its Managing Director
  51. Tamil Nadu Electricity Board (TNEB)  
NPKRR Maaligai, 800, Anna Salai  
Chennai – 600 002  
Represented by its Chairman
  52. Assam Electricity Grid Corporation Limited  
(Formerly Assam State Electricity Board)  
Bijulee Bhawan, Paltan Bazar,  
Guwahati – 781001, Assam  
Represented by its Chairman
  53. Meghalaya Energy Corporation Limited  
(Formerly Meghalaya State Electricity Board)  
Short Round Road, “Lumjingshai”  
Shillong – 793001, Meghalaya  
Represented by its Chairman & M. D.
  54. Government of Arunachal Pradesh  
Itanagar, Arunachal Pradesh  
Represented by its Secretary & Commissioner Power
  55. Power and Electricity Department
- 



Government of Mizoram  
Aizawl, Mizoram  
Represented by its Secretary Power

56. Manipur State Power Distribution Corporation Limited  
(Formerly Electricity Department, Government of Manipur)  
Keishampat, Imphal  
Represented by its Chairman

57. Department of Power  
Government of Nagaland  
Kohima, Nagaland  
Represented by its Commissioner and Secretary Power

58. Tripura State Electricity Corporation Limited  
Vidyut Bhawan, North Banamalipur,  
Agartala, Tripura (W) – 799001, Tripura  
Represented by its Chairman

...Respondents

**Parties Present:**

Shri Manoj Dubey, Advocate, MPPMCL  
Shri Doman Yadav, PGCIL  
Shri V. C. Shekhar, PGCIL  
Shri Sudesh Kumar Yadav, PGCIL  
Shri Anindya Khare, MPPMCL

**ORDER**

The Petitioner, Power Grid Corporation of India Limited, has filed the instant Petition under Regulation 8(4) of the Central Electricity Regulatory Commission (Sharing of Revenue Derived from Utilization of Transmission Assets for Other Business) Regulations, 2020 (hereinafter referred to as “the 2020 Sharing of Revenue Regulations”) seeking approval of the Commission for incorporation of a wholly owned subsidiary company (hereinafter referred to as “WOS”) of the Petitioner to undertake the telecommunication and digital technology business related to telecommunication services & products, infrastructure, system integration and consultancy. The Petitioner has made the following prayers:



a) Grant approval for incorporating a wholly owned subsidiary company to undertake the Telecommunications and Digital Technology business for the works related to telecommunications services & products, infrastructure, system integration, consultancy etc. as elaborated in the contents of the instant Petition; and

b) Pass such other relief as the Hon'ble Commission deems fit and appropriate under the circumstances of the case.”

### **Submissions of the Petitioner**

2. The Petitioner has made the following submissions:

a) The Petitioner owns and operates inter-State transmission network of 1,62,489 circuit km of transmission lines and 248 sub-stations.

b) The Petitioner holds a deemed transmission licensee under the provisions of Section 14 of the Electricity Act, 2003 (hereinafter referred to as “the Act”).

c) Section 41 of the Act provides that a transmission licensee may engage in other businesses which may optimize the utilization of the transmission assets by giving a prior intimation to the Appropriate Commission.

d) The telecommunication activities in the country is regulated by the Department of Telecommunication (DoT). DoT is also the nodal agency for grant of telecom licenses to carry out various activities associated with the telecom business as well as for issue of policy guidelines for development, implementation and utilization of telecom assets.

e) The Petitioner has obtained the following licenses from DoT:

a.	Infrastructure Provider Category-II (IP-II) license taken in 2001 migrated to National Long Distance (NLD) in 2006	Now migrated to Unified License with Service Authorization for NLD and ISP-A in May-2017.
b.	Internet Service Provider – Class A (ISP-A) in 2003	





f) The Petitioner is also registered as an IP-I (Infrastructure Provider) with DoT for leasing out passive telecom infrastructure to other Telecom Service Providers (TSPs) and Infrastructure Service Providers (ISPs).

g) In accordance with the licenses and registrations obtained from DoT and the Regulations framed by this Commission, the Petitioner has been undertaking telecommunication business and offering the bandwidth to various TSPs and other customers by utilizing the idle/ spare cores of the Optical Fiber Ground Wire (OPGW) laid out for the purposes of grid monitoring and control under schemes viz. ULDC. In some cases, OPGW is laid exclusively for telecommunication business. The Petitioner is also in the process to provide limited lease rights on the vacant spaces over the transmission towers for installation of telecom antennas and BTS equipment for various Telecom Service Providers and Infrastructure Service Providers.

h) As per provisions of the 2020 Sharing of Revenue Regulations, a transmission licensee is required to obtain prior approval of the Commission in case it intends to form a subsidiary company, as defined under Companies Act, 2013, for engaging in other businesses for utilizing the transmission assets. The Petitioner intends to incorporate a wholly owned subsidiary which shall take over the existing telecommunication business of the Petitioner and continue to provide the telecommunication services. The wholly owned subsidiary of the Petitioner shall also take over the business of offering transmission towers for installation of telecom antennas and BTS equipment to various Telecom Service Providers and Infrastructure Service Providers.

3. The Petitioner has submitted that the information required under the 2020 Sharing of Revenue Regulations is as under:

a) Transmission assets utilized or proposed to be utilized: The Petitioner has been utilizing the following assets and it is expected that the subsidiary company shall have the same scope over utilizing the transmission assets as that of the Petitioner:

- Spare optical fibre as available in OPGW and space in sub-station for installation of Telecom equipment.
- Right of Way to deploy OPGW.



- Vacant space over transmission tower.

b) Cost of such transmission assets utilized or proposed to be utilized:

Assets implemented by the Petitioner are under the provisions of Section 62 or Section 63 of the Act. The transmission charges for these assets are either approved under the provisions of relevant Regulations notified by the Commission from time to time or are implemented by its wholly owned subsidiaries/ SPVs under the provisions of Section 63 of the Act.

c) Revenue derived or estimated to be derived from other business:

The Petitioner has been submitting detailed accounts and statements of the revenue earned from the telecommunication businesses since 2001 and the Commission has already considered the records and the reports submitted by the Petitioner in the past. The Petitioner has been sharing the revenues in terms of various directions issued by this Commission from time to time.

d) The Petitioner, in compliance with the requirements of DoT and the Regulations of this Commission has been maintaining independent books of accounts, separate balance sheet and profit & loss statements for its telecommunication business and the same have been submitted for the consideration of the Commission on an annualized basis.

e) Considering the growth prospects, the Petitioner seeks to venture into telecom and OPGW network Expansion, creation of Data Centres, enabling International Long Distance Services and undertake System Integrator works, apart from other activities as may be deemed necessary in future.

f) The Petitioner has considered the scope of telecom business in light of the policies of DoT and the Statement of Objects and Reasons issued along with the 2020 Sharing of Revenue Regulations. The Petitioner, being the largest transmission service provider, foresees opportunity in the telecom business as a means to integrate two parallel services and provide its transmission assets to enable a robust telecom network throughout the country.

g) Accordingly, in order to maintain clarity in business operations & transparency in revenue of two businesses and for better control and



management of the two businesses, the Petitioner proposes to incorporate a wholly owned subsidiary company, which shall also hold all telecom licenses, currently held by the Petitioner, and undertake all telecom activities.

h) The Board of Directors of the Petitioner, in its meeting held on 07.11.2019, has approved the proposal to form a wholly owned subsidiary company to undertake Telecommunications and Digital Technology business for the works related to telecommunications services & products, infrastructure, system integration, consultancy etc. which was subsequently granted approval by Ministry of Power, Government of India (MOP) in consultation with NITI Aayog.

i) Incorporation of a wholly owned subsidiary company for undertaking the telecommunications and digital technology business by utilizing the transmission assets will not affect the core activity of electricity transmission of the Petitioner.

j) It is intended to allow limited access to transmission assets, including OPGW to its wholly owned subsidiary for undertaking the telecom business. Total control and management including operation and maintenance of transmission towers, sub-stations including all core of OPGW shall continue to be vested with the Petitioner at all times. The Petitioner intends to execute an agreement granting limited access rights to the wholly owned subsidiary for utilization of the transmission assets.

k) The Petitioner undertakes to share the revenue earned by its wholly owned subsidiary with LTTCs (long term transmission customers) in accordance with the provisions of the 2020 Sharing of Revenue Regulations.

l) The Petitioner undertakes that it shall ensure that the utilization of its transmission assets for telecommunication business under the proposed subsidiary company shall not in any manner adversely affect its performance or obligation in the power transmission business. Further, the Petitioner shall indemnify all the long term transmission customers for any additional cost or losses or damages caused due to creation of the subsidiary company.



### **Proceedings during Hearing dated 15.4.2021**

4. The matter was heard on 15.4.2021 through video conferencing. In response to the query of the Commission as regards the rationale behind incorporating a separate wholly owned subsidiary company, the representative of the Petitioner submitted that it is being proposed to maintain clarity in business operations and transparency in revenue of two businesses and for better control and management of two businesses. The Petitioner submitted that the beneficiaries will not be prejudiced in any way by incorporation of wholly owned subsidiary company as the Petitioner will continue to share 10% of the gross revenue earned by its subsidiary company with the beneficiaries in accordance with the provisions of the 2020 Sharing of Revenue Regulations.

5. The Respondent No. 24, Madhya Pradesh Power Management Company Limited (MPPMCL) submitted that the instant Petition, *inter alia*, involves an issue as to whether the subsidiary company to be incorporated by the Petitioner would be a transmission licensee. MPPMCL sought additional time to file reply to the Petition which was allowed by the Commission and after hearing the parties, the Order was reserved.

### **Reply of MPPMCL (Respondent No. 24)**

6. MPPMCL vide affidavit dated 29.4.2021 has mainly submitted as under:

a) The Petitioner has not clarified whether carrying out telecommunication business by forming a fully owned subsidiary company would fall under the meaning of "other business" as defined under the Regulation 2(6) of the 2020 Sharing of Revenue Regulations or it would be covered under telecommunication business as defined under Regulations 2(7) of the said Regulations.

b) The 2020 Sharing of Revenue Regulations does not provide for an arrangement of forming a fully owned subsidiary company. The fully owned



subsidiary company would not remain a transmission licensee and would rather require a telecommunication license by Telephone Regulatory Authority of India (TRAI). Under such circumstances, the subsidiary company would be disassociated from the Petitioner company and none of the provisions of the 2020 Sharing of Revenue Regulations would be applicable. Therefore, in order to keep the wholly owned subsidiary company covered within the provisions of the 2020 Sharing of Revenue Regulations, the Petitioner shall need to carry on the “other business” including the “Telecommunication Business” under its own name and title and not by formation of a subsidiary company.

c) The Petitioner has not complied with the provisions of Clause 2 of Regulation 4 of the 2020 Sharing of Revenue Regulations in terms of the following:

- i. The Petitioner has not clarified as to whether it will itself carry out the “other business” or deploy separate management and executive staff for its proposed subsidiary company. The ratio of apportioning the Board level and below Board level expenditure has not been clarified. The proposed ‘other business’ ought not to increase the expenditure of the Petitioner.
- ii. The Petitioner has neither not provided the exact details of the assets and spare capacities available therein to be utilized for the other business nor has the Petitioner submitted the proportionate cost of the said assets proposed to be utilized through its proposed subsidiary company. The Petitioner has not submitted as to whether the undivided and spare capacities of the respective assets to be so utilized would be leased out or transferred in favour of the proposed subsidiary company. The Petitioner has not furnished the likely revenue to be derived by formation of a subsidiary company. The details of the transmission assets along with the respective tariff petitions where tariff has been approved, should be furnished by the Petitioner. A composite petition, such as the present one, combining all the transmission assets may lead to difficulty in ascertaining and apportioning the expected or actual revenue derived from each block of assets.



- iii. The Petition is silent on the issue of underlying assumptions and justifications for estimated revenue while the same is required under the Regulation 4(2)(e) of the 2020 Sharing of Revenue Regulations.
- iv. The Petitioner has not provided details of any impact that may be witnessed by the use of the transmission assets for the other business while the same is required under the Regulation 4(2)(f) of the 2020 Sharing of Revenue Regulations.

d) For the reasons that the Petitioner proposes to form a subsidiary company and carry out other business, including telecommunication business, by utilizing the spare capacities of the assets of the Petitioner company, it is clear that it may be foreseeing a revenue that may be much higher than the revenue that may be expected from a pure telecommunication business. In that case, the Petitioner ought to share at least 50% of the gross revenue derived from such other business because in case of other businesses a substantial portion of the regulated assets would have to be sacrificed/ shared with the proposed subsidiary company. Further, in case of loss, if any, suffered from such other business, a reasonable compensation towards regulated assets so utilized ought to fall in the share of the beneficiaries.

### **Rejoinder of the Petitioner to the replies of Respondents**

7. PGCIL vide its rejoinder dated 13.5.2021 to the reply filed by MPPMCL has submitted as under:

a) The Petitioner is only seeking to carry out telecommunication services by forming a wholly owned subsidiary company. Subsequent to the formation of wholly owned subsidiary, the businesses for which the Petitioner holds licenses/ registrations, the wholly owned subsidiary shall obtain fresh Unified License with service authorization of NLD and ISP-A and shall obtain IP-1 registration.

b) In order to comply with the Regulation 8(3) of the 2020 Sharing of Revenue Regulations, the ownership of transmission assets utilized for telecommunication business and its operation and maintenance shall remain with Petitioner even after formation of a subsidiary as these transmission assets will be provided on a long-term indefeasible right of use (IRU) basis under IP-1



registration. This would be covered under the meaning of “other business” as defined under Regulation 2(6) of the 2020 Sharing of Revenue Regulations or within the meaning of “telecommunication business” as defined under Regulation 2(7) of the said Regulations.

c) The Petitioner undertakes to protect the transmission system and safeguard the interest of LTTCs in compliance to Regulation 8 of the 2020 Sharing of Revenue Regulations.

d) The control of subsidiary company shall remain with Petitioner. Various services related to power systems operations and IT related work of the Petitioner are running on the Petitioner’s telecom network as ULDC & telecom are utilizing the fibers of same cable. Therefore, to maintain the reliability and security of power system operations, manpower (i.e. management and executive staff including the board members in subsidiary company) will be deputed on secondment basis by the Petitioner. The structure of subsidiary will remain same as that of existing telecom business of the Petitioner and, therefore, any major excess expenditure is not envisaged at this stage.

e) It is expected that the subsidiary company would be utilizing the same transmission assets as are being used by the Petitioner viz. spare optical fibre as available in OPGW and space in sub-station for installation of telecom equipment; and Right of Way to deploy OPGW. Relevant paragraph from decision of the Government of India in PIB meeting held on 12.10.2001 as regards sharing of OPGW between ULDC scheme and telecom projects is as under:

*“....Six(6) out of 12/24 fibres installed under this project shall be utilized for ULDC project only. The balance fibres shall be utilized by POWERGRID for telecom purpose.”*

f) The subsidiary will also use the assets of the Petitioner such as underground optical fiber and overhead fiber mainly to create access network and deploy telecom equipment (DWDM, SDH, MPLS etc.) and auxiliary systems (DCPS, Battery, Air conditioners DG Sets etc.) as per system requirement at various locations such as telecom repeaters, POP locations and customer locations.



g) The subsidiary shall have the same scope related to utilizing transmission assets for telecommunication business and will share the revenue earned from telecom business as per Regulation 5(a) of the 2020 Sharing of Revenue Regulations. The Petitioner has laid about 5446 kms OPGW exclusively for use of telecommunication business; 7460 km OPGW for use of telecommunication business (these fibers are also shared by ULDC); and 26650 km of fibers for telecommunication business from the OPGW laid under ULDC and other schemes. The capital cost sharing towards portion of OPGW Fiber utilized by ULDC/ other transmission line project is as per the order of the Commission in Petition No. 68/2010.

h) In addition to OPGW, the Petitioner is also utilizing 39,556 km (5446 km + 7460 km + 26650 km) of Right-of-way used for laying of OPGW of the transmission assets and it is expected that the Petitioner will provide these transmission assets to the subsidiary on IRU Basis.

i) It is proposed that all telecommunication business carried-out by Petitioner will be transferred to WOS and the revenue derived shall remain same as that of Petitioner's revenue from telecom business.

j) The Petitioner is already in the telecommunications business since 2001. The detailed account and statement of the actual revenue earned from the telecommunication businesses for the year ended 31.03.2020 has been submitted in compliance with Record of Proceeding (ROP) dated 18.07.2020. The Petitioner expects that the telecom business will be carried-out by WOS and existing manpower involved in telecommunication business will be deputed in WOS.

k) The Petitioner has been utilizing the transmission assets for telecom application since 2001 and till date, no impact is observed on inter-State transmission of electricity. Further, the Petitioner will ensure that assets utilized for telecommunication business by WOS shall not in any manner adversely affect its performance or obligation in the transmission business. Also, to further ensure compliance to these responsibilities, ownership of transmission assets being utilized by WOS will remain with the Petitioner and also their operation and maintenance will be carried-out by the Petitioner. The Petitioner shall





ensure that manpower deployed in subsidiary will be interchangeable with the parent company (the Petitioner) in order to ensure that WOS employees have the required experience to handle transmission assets.

l) There will be no significant change in structure during transfer of business from the Petitioner to the subsidiary company. Further, in compliance to Regulation 5(a) of the 2020 Sharing of Revenue Regulations, the Petitioner has already undertaken to share 10% of the gross revenue earned from telecommunication business by WOS. Further, in case the revenue of subsidiary will increase, the proportionate revenue sharing portion to beneficiaries shall also increase.

### **Analysis and Decision**

8. The instant Petition has been filed by the Petitioner under the Central Electricity Regulatory Commission (Sharing of Revenue Derived from Utilization of Transmission Assets for Other Business) Regulations, 2020 seeking approval of the Commission for incorporation of a wholly owned subsidiary company of the Petitioner in order to undertake the telecommunication and digital technology business for the works related to telecommunication services & products, infrastructure, system integration and consultancy, etc.

9. The Petitioner has submitted that in order to maintain clarity in its business operations, transparency in revenue of two businesses and for better control and management of the two businesses, it has proposed to incorporate a wholly owned subsidiary company, which shall also hold all the telecom licenses and registrations from competent authorities, that are currently being held by the Petitioner, and shall undertake all telecom activities.

10. The Petitioner has submitted that its Board of Directors, in its meeting held on 07.11.2019, has approved the proposal to form a wholly owned subsidiary company to undertake Telecommunications and Digital Technology business for the works



related to telecommunications services & products, infrastructure, system integration, consultancy etc. which was subsequently granted approval by Ministry of Power, Government of India (MOP) in consultation with NITI Aayog.

11. The Petitioner has also submitted that total control and management including the operation and maintenance of transmission towers, sub-stations including all core of OPGW cables shall continue to be vested with the Petitioner at all times. The Petitioner has further undertaken to share the revenue earned by its subsidiary with LTTCs in accordance with the provisions of the 2020 Sharing of Revenue Regulations.

12. Respondent, MPPMCL has raised issues such as a) whether carrying out telecommunication business by formation of a fully owned subsidiary company would fall under “other business” as defined under Regulation 2(6) or within the meaning of “telecommunication business” as defined under Regulations 2(7) of the 2020 Sharing of Revenue Regulations; b) whether the fully owned subsidiary company will lose its character of a transmission licensee as it may be granted a telecommunication license by Telephone Regulatory Authority of India; c) applicability of provisions of the 2020 Sharing of Revenue Regulations to the wholly owned subsidiary; d) non-furnishing of information (details of assets to be used, impact on transmission system etc.) as required under Regulation 4 of the 2020 Sharing of Revenue Regulations; e) sharing of revenue to the extent of 50% from telecom business instead of currently specified 10%; and f) management of the subsidiary company and if additional expenditure would be incurred on running the subsidiary.

13. In response, the Petitioner has given some details and provided some justifications as sought by MPPMCL. The Petitioner has submitted that the wholly owned subsidiary shall obtain licenses/ registrations for telecom businesses for which



the Petitioner holds licenses/ registrations viz. Unified License with service authorization of NLD and ISP-A and IP-1 registration. The ownership of transmission assets utilized for telecommunication business and its operation and maintenance shall remain with Petitioner even after formation of a subsidiary as these transmission assets will be provided on a long-term indefeasible right of use (IRU) basis under IP-1 registration. This would be covered under the meaning of “other business” as defined under Regulation 2(6) of the 2020 Sharing of Revenue Regulations or within the meaning of “telecommunication business” as defined under Regulation 2(7) of the said Regulations. The Petitioner has undertaken to protect the transmission system and safeguard the interest of LTTCs. Manpower (i.e. management and executive staff including the board members in subsidiary company) will be deputed on secondment basis by the Petitioner and the structure of subsidiary will remain same as that of existing telecom business of the Petitioner. No major expenditure is envisaged at this stage. The subsidiary company would be utilizing the same transmission assets as are being used by the Petitioner viz. spare optical fibre as available in OPGW and space in sub-station for installation of telecom equipment and Right of Way to deploy OPGW. The subsidiary shall have the same scope related to utilizing transmission assets for telecommunication business and will share the revenue earned from telecom business as per Regulation 5(a) of the 2020 Sharing of Revenue Regulations. The revenue derived is likely to remain the same as that of the Petitioner’s revenue from telecom business. In case the revenue of subsidiary will increase, the proportionate revenue sharing portion to beneficiaries shall also increase. The Petitioner has been utilizing the transmission assets for telecom application since 2001 and till date, no impact has been observed on inter-State transmission of electricity. Further, the Petitioner will ensure that assets utilized for



telecommunication business by WOS shall not in any manner adversely affect its performance or obligation in the transmission business.

14. We have considered the submission of the Petitioner and the Respondent MPPMCL. The prayer of the Petitioner “Grant approval for incorporating a wholly owned subsidiary company to undertake the Telecommunications and Digital Technology business for the works related to telecommunications services & products, infrastructure, system integration, consultancy etc.....” has three components: (a) approval for incorporating a wholly owned subsidiary company which may carry out business utilizing transmission assets or any other business not utilizing transmission assets; (b) approval to undertake the Telecommunications business; and (c) approval to undertake the Digital Technology business, which is business other than telecommunication business.

15. The Petitioner has filed the Petition under Regulation 8(4) of 2020 Sharing of Revenue Regulations seeking approval for incorporating a wholly owned subsidiary company to undertake the Telecommunications and Digital Technology business for the works related to telecommunications services & products, infrastructure, system integration, consultancy etc.

16. Regulation 8(4) of the 2020 Sharing of Revenue Regulations provides as under:

*“8. Restrictions:*

*.....*

*(4) In case the transmission licensee intends to form a subsidiary company, as defined under Companies Act, 2013, for engaging in other business utilizing the transmission assets, the transmission licensee shall seek prior approval of the Commission:*

*Provided that the transmission licensee shall indemnify the long term customers for any additional cost or losses or damages due to such subsidiary company.”*



17. Regulation 8(4) of the 2020 Sharing of Revenue Regulations requires that transmission licensee shall indemnify the long term customers for any additional cost or losses or damages due to forming a subsidiary company. The Petitioner has undertaken to ensure that the utilization of its transmission assets for telecommunication business under the proposed subsidiary company shall not in any manner adversely affect its performance or obligation in the power transmission business and that the Petitioner shall indemnify all the long-term transmission customers for any additional cost or losses or damages caused due to creation of the subsidiary company.

18. Regulation 4 of the 2020 Sharing of Revenue Regulations provides as under:

*“4. Intimation of other business:*

*(1) A transmission licensee proposing to undertake other business shall give prior intimation to the Commission:*

*Provided that if other business is not telecommunication business, the transmission licensee shall seek prior approval of the Commission by filing a petition, as regards sharing of revenues derived from such other business;*

*Provided further that a transmission licensee having undertaken other business before commencement of these regulations shall give prior intimation or seek approval, as the case maybe, within two months of coming into force of these regulations*

*(2) While giving intimation or seeking approval in terms of clause (1) of this regulation, the transmission licensee shall furnish the following details:*

- a) nature of other business;*
- b) transmission assets utilized or proposed to be utilized for other business;*
- c) cost of such transmission assets utilized or proposed to be utilized;*
- d) revenue derived or estimated to be derived from other business;*
- e) underlying assumptions and justifications for estimated revenue;*
- f) impact, if any, of use of transmission assets for other business on inter-State transmission of electricity ;and*
- g) any other details required by the Commission.*

*(3) The details specified under clause (2) of this regulation shall thereafter be furnished by the transmission licensee to the Commission for every financial year.”*

19. Thus, we observe that once approval for incorporating a wholly owned subsidiary company to undertake the Telecommunications and Digital Technology business for the works related to telecommunications services & products, infrastructure, system integration, consultancy etc. is obtained under Regulation 8(4) of 2020 Sharing of



Revenue Regulations, such wholly owned subsidiary company (which would be a separate legal entity) is required to take approval of Commission under Regulation 4(1) of 2020 Sharing of Revenue Regulations.

20. The Petitioner through the instant Petition is also seeking approval under Regulation 4(1) of 2020 Sharing of Revenue Regulations to undertake, through the proposed wholly owned subsidiary company, the Telecommunications and Digital Technology business for the works related to telecommunications services & products, infrastructure and system integration utilizing transmission assets. Therefore, details are required to be furnished under Regulation 4(2) of 2020 Sharing of Revenue Regulations. We observe that the Petitioner in the instant Petition has not furnished such details as required under Regulation 4(2) of 2020 Sharing of Revenue Regulations.

21. Further, the Petitioner through the instant Petition is seeking approval under Regulation 4(1) of 2020 Sharing of Revenue Regulations to undertake, through the proposed wholly owned subsidiary company business such as consultancy or any other business which does not utilize the transmission assets. However, for undertaking business such as consultancy or any other business which does not utilize the transmission assets, no approval is required to granted by the Commission.

22. In view of the above, we approve the formation of a wholly owned subsidiary company by the Petitioner under Regulation 8(4) of the 2020 Sharing of Revenue Regulations, to undertake the Telecommunications and Digital Technology business for the works related to telecommunications services & products, infrastructure, system integration utilizing transmission assets as prayed in the Petition, with the condition that such a wholly owned subsidiary company by the Petitioner licensee shall not be a transmission licensee or a deemed transmission licensee under the provisions of Section 14 of the Act.

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23. The approval in paragraph 22 above is subject to further conditions that (a) the Petitioner shall not, through the wholly owned subsidiary company, undertake any Telecommunications and Digital Technology business for the works related to telecommunications services & products, infrastructure, system integration by utilizing the transmission assets without the approval of the Commission under Regulation 4(1) of 2020 Sharing of Revenue Regulations; (b) the Petitioner shall indemnify all the long-term transmission customers for any additional cost or losses or damages caused due to creation of the subsidiary company; and (c) the Petitioner shall maintain the accounts of the wholly owned subsidiary company separately.

24. The Petition No. 494/MP/2020 is disposed of in terms of above.

**Sd/  
(P.K. Singh)  
Member**

**Sd/  
(Arun Goyal)  
Member**

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

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

