

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No.160/MP/2022

- Subject : Petition under Sections 79(1)(c), 79(1)(d) and 79(1)(k) of the Electricity Act, 2003 read with Regulation 4 of the Central Electricity Regulatory Commission (Sharing of Revenue Derived from Utilization of Transmission Assets for Other Business) Regulations, 2020 for giving prior intimation of undertaking the telecommunication business by the Petitioners in compliance with the Commission's letter dated 4.5.2022.
- Date of Hearing : 25.11.2022
- Coram : Shri I. S. Jha, Member
Shri Arun Goyal, Member
Shri P. K. Singh, Member
- Petitioners : Khargone Transmission Limited (KTL) and 3 Ors.
- Respondents : Madhya Pradesh Power Management Co. Ltd. (MPPMCL) and 19 Ors.
- Parties Present : Shri M. G. Ramachandran, Sr. Advocate, KTL
Shri Deep Rao Palepu, Advocate, KTL
Shri Arjun Agarwal, Advocate, KTL
Shri Aryaman Saxena, KTL
Shri Ravi Sharma, Advocate, MPPMCL
Shri Swapnil Verma, CTUIL
Ms. Muskan Agarwal, CTUIL

Record of Proceedings

Learned senior counsel for the Petitioner submitted that the present Petition has been filed for giving prior intimation of undertaking the telecommunication business by the Petitioners in accordance with the Regulation 4 of the Central Electricity Regulatory Commission (Sharing of Revenue Derived from Utilisation of Transmission Assets for Other Business) Regulations, 2020 ('Sharing of Revenue Regulations'). Learned senior counsel mainly submitted the following:

- (a) The Petitioners intend to optimize the utilization of the unutilized capacity on spare pairs of the optical ground wire containing optical fiber ('OPGW') of existing OPGW fiber assets owned by the respective Petitioners for services to be provided to interested entities including Infrastructure Providers Category-I registration holding entities ('entities') that are engaged in the business of providing/ utilising telecommunication infrastructure.
- (b) As per the proposed business model, the Respondent No. 20, Sterlite Interlinks Limited ('SIL'), holding an IP-1 registration to undertake the coordination and management of telecommunication business dealing, will act as interface between the Petitioners and the entities interested in availing the telecommunication infrastructure services being offered by the Petitioners.

(c) Accordingly, the Petitioners and SIL will enter into separate services agreements for utilization of unutilized OPGW capacity. Whereas, SIL will perform the activities such as marketing to, negotiating with and executing agreements with interested Communication Service Providers (CSPs) on behalf of the individual Petitioners. Accordingly, the ten percent (10%) of the gross revenue received by SIL from the utilization of the spare assets of each Petitioner shall be distributed to each Petitioner's respective LTTCs in compliance with Regulation 5(1)(a) of the Revenue Sharing Regulations. In this regard, the reliance was placed on the flowchart depicting the Petitioners' proposed business model and schematic diagram summarizing the roles of Petitioners, SIL and CSPs as annexed to the affidavit dated 5.8.2022.

(d) The revenue estimated to be derived on per unit basis is Rs. 8000 per fiber pair per km per annum for OPGW fiber actually utilized for providing services to the entities.

(e) The operation, maintenance et al. of the OPGW fibers shall be undertaken by the respective Petitioners and shall not be outsourced to either SIL or any other agency. Moreover, the Petitioners have already undertaken to implement all the reasonable precautions to ensure that the use of transmission assets for the other business does not affect the transmission operation.

2. Learned counsel for the Respondent, MPPMCL mainly submitted the following:

(a) The present Petition is not-maintainable, *inter-alia*, on the grounds of (i) Doctrine of waiver, (ii) principles of constructive res-judicata, and (iii) the similar Petition earlier filed by the Petitioners, bearing Petition No. 544/MP/2020, having been decided by the four members Bench and the smaller Bench of 3 members cannot decide/review the settled issue by 4 members Bench as it being against the judicial propriety & discipline.

(b) The manner of sharing of revenue as specified in Regulation 5(a) of the Revenue Sharing Regulations for Telecom business (i.e.10% of gross revenue) does not apply to the Petitioners' proposed business model as the Petitioners are not directly associated with the telecom business and it is a third party, namely SIL, who is holding the IP-1 licence. The manner of sharing of revenue in the present case would be as per Regulation 5(b) (Business other than telecommunication business) wherein the sharing of revenue is to be decided by the Commission on case-to-case basis based on the utilization of the transmission assets for such other business.

(c) Section 41 of the Electricity Act, 2003 ('the Act') allows only a transmission licensee to engage in the any business for optimum utilization of its assets but does not allow the other entities to use its transmission lines. As per the proposed business model, it is SIL who is going to do the telecom business on behalf of the Petitioners. Assigning or authorizing SIL to undertake the telecom business on behalf of the Petitioners means certain type of transfer of some part of 'utilities' which includes but not limited to use of its OPGW fibers of the Petitioners to some other persons, which is not consistent with Section 17(3) of the Act.

(d) CEA's Standing Committee meeting on Communication System Planning in Power Sector dated 9.3.2021 has categorically discussed the point that the communication network of transmission system which is predominantly used for

the purpose of SCADA and internal communication don't have the firewall and other security system in place and the cyber security on the SCADA and internal communication which took place either through OPGW cables or PLCC cable are not proper and weak. Hence, if OPGW fibers are being leased out or authorized use of OPGW fibers by the third party will pose a great cyber security threat. Since SIL is a third party, this Commission will not have any control over it.

3. After hearing the learned senior counsel for the Petitioners and the learned counsel for the Respondent, the Commission *prima facie* expressed its apprehensions with regard to nature of activities to be undertaken by the Petitioners. In response, learned senior counsel for the Petitioners vehemently submitted that providing of unutilized OPGW capacity (for transmission or reception of signs, signals etc.) for the purpose of rendering services to facilitate existing telecommunication business of IP-1 entities squarely qualifies as 'telecommunication business' as defined in the Telecom Regulatory Authority of India Act, 1997. Learned senior counsel sought liberty to file a brief note to address the various concerns of the Commission in this regard.

4. Accordingly, the Commission permitted the Petitioners to file their brief written note addressing the following aspects on affidavit within three weeks:

- (i) How the proposed business model of the Petitioners falls under Section 41 of the Electricity Act, 2003 as the Section envisages other business by the transmission licensee?
- (ii) How the proposed business model of the Petitioners falls under the category of "Telecommunication Business" as per the Central Electricity Regulatory Commission (Sharing of Revenue Derived from Utilization of Transmission Assets for Other Business) Regulations, 2020?
- (iii) How the gross revenue earned from such business in a given financial year shall be shared with the Long-Term Customers, the Petitioners and the Respondent No. 20. A clear Illustration of the same may be provided?
- (iv) How the issue of cyber threat in the proposed business model of the utilization of the unutilized capacity of OPGW shall be controlled by the Petitioners.
- (v) Impact, if any, of use of transmission assets for other business on inter-State transmission of electricity;

5. The Petitioners is further directed to submit the following information on affidavit within three weeks:

- (a) Cost of such transmission assets proposed to be utilized for the proposed business. The estimated revenue from assets to be utilized in the proposed business as required under Regulation 4(2) of CERC (Sharing of Revenue Derived from Utilization of Transmission Assets for Other Business) Regulations, 2020.

(b) Copy of the draft agreement of the Petitioners with the Sterlite Interlinks Limited ('SIL').

6. The matter remained part-heard. The Petition shall be listed for hearing on 14.2.2023.

By order of the Commission

**Sd/-
(T.D. Pant)
Joint Chief (Law)**