

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 247/MP/2021

Subject : Petition under Section 17(3) of the Electricity Act, 2003 read with the Regulation 62 of the Central Electricity Regulatory Commission (Terms and Conditions for determination of tariff) Regulations, 2019 seeking approval for providing on lease/licence basis the Land and/or space in Building of the Petitioner to its Wholly Owned Subsidiary Company (WOS) for undertaking Data Centre activities.

Date of Hearing : 28.4.2022

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

Petitioner : Power Grid Corporation of India Limited (PGCIL)

Respondents : Rajasthan Rajya Vidyut Prasaran Nigam Limited and 57 Ors.

Parties Present : Shri M.G. Ramachandran, Sr. Advocate, PGCIL
Shri Shubham Arya, Advocate, PGCIL
Ms. Poorva Saigal, Advocate, PGCIL
Shri Ravi Nair, Advocate, PGCIL
Shri Nipun Dave, Advocate, PGCIL
Shri V. C. Sekhar, PGCIL
Shri Prashant Kumar, PGCIL
Ms. Supriya Singh, PGCIL
Shri Arjun Malholtra, PGCIL
Ms. Adya Verma, PGCIL
Shri Doman Yadav, PGCIL
Shri Anindya Khare, MPPMCL

Record of Proceedings

Case was called out for virtual hearing.

2. Learned senior counsel for the Petitioner submitted that the present Petition has been filed under Section 17(3) of the Electricity Act, 2003 ('the Act'), *inter alia*, seeking approval for providing on lease/ licence basis the land and/or space in the building of the Petitioner to its wholly owned subsidiary company for the undertaking data centre activities. Learned senior counsel submitted that the Commission vide Record of Proceedings for the hearing dated 21.1.2022 had asked the Petitioner to clarify as to whether the instant case is covered under the provisions of the Central Electricity Regulatory Commission (Sharing of Revenue Derived from Utilisation of Transmission Assets for Other Business) Regulations, 2020 ('Sharing of Revenue Regulations, 2020') which provide for modalities for obtaining approval and intimation of 'other business'. The Petitioner vide its affidavit dated 4.2.2022 has furnished the detailed clarification on the above aspect. He added that the proposed

data centre activity is not an activity of a nature of engaging in any business for optimum utilisation of the functional transmission assets and will be utilizing only land/space, which is not otherwise required for undertaking licensed transmission activities for inter-State transmission and therefore, the instant case, according to the Petitioner, is not covered under the provision of Section 41 of the Act read with Sharing of Revenue Regulations, 2020.

3. In response to the certain queries of the Commission regarding the Petitioner having acquired to the extra/surplus land in the first place, stipulation by local authority regarding usage of land allocated for sub-station, sharing/retention of the rental/lease received from its wholly owned subsidiary company and sharing of profit of its wholly owned subsidiary, learned senior counsel mainly submitted the following:

(a) The Petitioner did not acquire the extra/surplus land in the first place. The land being provided on lease/licence basis to its wholly owned subsidiary is a part the set-back (buffer land) as required for the transmission elements under the various rules/regulations.

(b) The Petitioner cannot use such land for the commercial exploitation and for the purpose other than as prescribed by the local authority while allotting such land. Therefore, the Petitioner is required to inform/approach the local authority in this regard. In fact, the Petitioner is in process of approaching the local authority of Haryana Government in respect of utilisation of land available at Manesar Sub-station.

(c) Presently, the Petitioner has prayed to allow the sharing of rental/lease received from its wholly owned subsidiary for the use of land to undertake the data centre activities in accordance with the provisions applicable for non-tariff income as per Regulation 62 of Tariff Regulations, 2019 (50:50 basis). However, the Commission may decide the extent of sharing of such revenue as deemed fit.

(d) The Petitioner has as such not proposed to share the profits of its wholly owned subsidiary company. Except for the land, all other infrastructure as required for the data centre is to be established by its subsidiary company. No part of the business risk of the data centre business to be undertaken by its wholly owned subsidiary company is to be passed on to the Petitioner and thus, the sharing of profits of such company is not relevant. Section 41 of the Act only provides for sharing of a proportion of the revenue derived and not the profit.

4. After hearing the learned senior counsel for the Petitioner, the Commission directed the Petitioner to furnish the following details/information on affidavit by 20.5.2022:

(a) Copy of the Lease Agreement/Title Deed in respect of the sub-station land at Manesar by Haryana Government/ Local Authority, if any, along with details of relevant provisions/clauses indicating the permitted usage of the such land;

(b) Permissions required from the Central Government/ Haryana Government/ Local Authorities for establishing the proposed data Centre at Manesar Sub-Station

(c) Model/draft lease/licence agreement to be entered into between the Petitioner and its wholly owned subsidiary company; and

(d) Whether the Petitioner's assets only under cost plus are proposed to be utilized or the Petitioner's assets under its TBCB subsidiaries are also proposed to be utilized in the instant Petition.

5. Subject to the above, the Commission reserved the matter for order.

By order of the Commission

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