

CENTRAL ELECTRICITY REGULATORY COMMISSION

NEW DELHI

Petition No. 247/MP/2021

Coram:

Shri I. S. Jha, Member

Shri Arun Goyal, Member

Shri P.K. Singh, Member

Date of Order: 30th November 2022

In the matter of:

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.

And

In the matter of:

Power Grid Corporation of India Limited,
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 Limited,
132 KV, GSS RVPNL, Sub- Station Building,
Caligiri Road, Malviya Nagar,
Jaipur-302017 (Rajasthan)
3. Jaipur Vidyut Vitran Nigam Limited,
132 KV, GSS RVPNL Sub- Station Building,
Caligiri Road, Malviya Nagar,
Jaipur-302017 (Rajasthan)



4. Jodhpur Vidyut Vitran Nigam Limited,
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 Limited,,
(Formerly Uttar Pradesh State Electricity Board),
Shakti Bhawan, 14, Ashok Marg,
Lucknow - 226001 (Uttar Pradesh),
Through its Chairman.
10. Delhi Transco Limited,
Shakti Sadan, Kotla Road,
New Delhi-110002,
Through its Chairman.
11. BSES Yamuna Power Limited,
B-Block, Shakti Kiran Bldg. (Near Karkadooma Court),
Karkadooma 2nd Floor,
New Delhi-110092,
Through its Chief Executive Officer.
12. BSES Rajdhani Power Limited,
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 Limited,
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 Limited,
(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 Limited,
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 Limited,
Shakti Bhawan, Rampur
Jabalpur - 482 008
Represented By Its MD
25. Madhya Pradesh Power Transmission Company Limited,
Shakti Bhawan, Rampur
Jabalpur - 482 008
Represented By Its MD
26. Madhya Pradesh Audyogik Kendra Vikas Nigam (Indore) Limited,
3/54, Press Complex, Agra-Bombay Road, Indore-452 008
27. Maharashtra State Electricity Distribution Co. Limited,
Hongkong Bank Building, 3RD Floor M.G.
Road, Fort, Mumbai - 400 001.
Represented By Its MD
28. Maharashtra State Electricity Transmission Co. Limited,
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 Limited,
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. Limited,
Office Of The Executive Director (C&P)
State Load Despatch Building,



Dangania, Raipur – 492 013

34. Chhattisgarh State Power Distribution Co. Limited,
P.O. Sunder Nagar, Dangania, Raipur
Chhattisgarh-492 013
Represented by Its Chairman
35. Karnataka Power Transmission Corporation Limited,
(KPTCL), Kaveri Bhavan, Bangalore – 560 009
Represented by its Chairman
36. Transmission Corporation of Andhra Pradesh Limited,, (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 Limited,
(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
Saraswatipuram, 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 - 791111
Represented by its Secretary & Commissioner Power
55. Power and Electricity Department
Government of Mizoram
Aizawl, Mizoram - 796441
Represented by its Secretary Power
56. Manipur State Power Distribution Corporation Limited
(Formerly Electricity Department, Government of Manipur)
Keishampat, Imphal - 795001
Represented by its Chairman
57. Department of Power,
Government of Nagaland,
Kohima, Nagaland – 797001.
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 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



ORDER

The Petitioner, Power Grid Corporation of India Limited, has brought the instant Petition purported to be 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. The Petitioner has made the following prayers:

- a Approve the proposed scheme for allowing the use of the land/ space in Buildings at Petitioner's Transmission Sub-stations to Petitioner's Wholly Owned subsidiary (WOS) on lease basis to undertake Data Centre activities as required under Section 17(3) of the Electricity Act, 2003.*
- b Allow the petitioner to share rental/lease received from WOS for the use of land/Space in Building to undertake Data Centre activities in accordance with provisions applicable for non-Tariff income as per Regulation 62 of Tariff Regulations, 2019.*
- c Pass such further order or orders as this Hon'ble Commission may deem just and proper in the circumstances of the case.*

Submissions of the Petitioner

2. The Petitioner vide affidavit dated 12.11.2021 has made the following submissions:
 - a) The Petitioner is presently engaged in the activities of undertaking Inter-State Transmission of electricity, as a Transmission Licensee under the jurisdiction of CERC. The Petitioner is governed in terms of Section 40 of the Electricity Act, 2003 and other provisions applicable to a transmission licensee under the Electricity Act, 2003 and Rules & Regulations notified therein.
 - b) The Commission vide order dated 10.7.2021 in Petition No. 494/MP/2020 on 10.07.2021 has allowed Petitioner to form a Wholly Owned Subsidiary (WOS) for carrying out the Telecommunications and Digital Technology business. Accordingly, the Petitioner is in the process of formation of WOS.
 - c) The Government of India has launched various Digital India programmes with a vision to transform India into a digitally empowered society and knowledge economy. Under the Digital India Initiatives, the Government has launched various applications such as MyGov.in, Digi Locker, e-hospital, e-education,



e-Courts, National Scholarship Portal (NSP), Bharat Net, Wi-Fi Hotspots, e-Aadhaar Card, BHIM App etc. There are also various other e-applications and activities which can promote significant economic developments in India.

- d) With the growing e-governance model of the Government of India, the need for Data Centres have rapidly increased to store the data consumption in the cloud and application-based services.
- e) A Data Centre is a physical space that is used to store their critical applications and data. A Data Centre's design is based on a network of computing and storage resources that enable the delivery of shared applications and data. The major components of a Data Centre include racks, routers, firewalls, storage systems, servers, and application-delivery controllers. These Data Centres can operate with negligible physical interaction with public at large and the operation restricted in a well-defined area.
- f) The Petitioner, in the course of its activities of Inter-State Transmission of electricity, amongst others, has established sub-stations, other infrastructure and facilities at different places throughout India. For the said purpose, the Petitioner has acquired land and constructed buildings and facilities at different places. The land, buildings and other facilities are being essentially used by Petitioner for the inter-state transmission of electricity activities.

It is submitted that the Petitioner is required to acquire land surrounding the sub-stations more than the plinth area on which sub-stations are located for reasons of allowing necessary surrounding area safety to the public at large and the necessity to prevent access to the sub-station, Administrative building, colony quarters etc. for security measures. Such land that is available with the Petitioner at its sub-stations cannot be sold, transferred, or otherwise freely commercially exploited as an activity proposition as in the case of land which is, otherwise, available free of such restrictions.



- g) The Petitioner is, however, in a position to allow such land and buildings which were acquired for the licensed transmission activities for other use in a limited way without in any manner affecting or interfering with the discharge of its duties and functions as an Inter-State Transmission Licensee. The Petitioner has been exploring the ways and means of optimum utilisation of such land and buildings.
- h) On the backdrop of need of Data Centres and availability of extra land that is available with Petitioner at its sub-stations which cannot be sold, transferred, or otherwise freely commercially exploited as an activities proposition, the Petitioner is exploring the options of allowing its Wholly Owned Subsidiary to undertake the Data Centre activities by utilizing the above land or space in Buildings available at different Sub-stations in a limited way without in any manner affecting or interfering with the discharge of its duties and functions as an Inter-State Transmission Licensee.
- i) The utilization of the transmission assets for Data Centres is only to the extent of setting up facilities in the land or the building available which can be effectively used for placing Data Centres with least interference by third parties.
- j) The Data Centre activities will be engaged in by the subsidiary in a phased-manner. In the first phase, the subsidiary is proposing to set-up a Data Centre at Manesar Substation. In this regard, details about Manesar Substation are provided below:
- a. the Appellant had implemented the Manesar Substation under the Northern Region Strengthening Scheme, namely, NRSS- XIII project.
 - b. For implementing the Manesar Substation, a total of 21.01 acres of land was acquired in the Village – Gwalior, Tehsil Manesar, District – Gurugram, Haryana in year 2010.
 - c. The total land requirement of proposed Data Centre at Manesar Substation will be approx. 1.02 Acres/4100 Sq. Mtrs.



- k) The telecommunication connectivity for the Data Centres is proposed to be provided by Telecom Operators/Petitioner's Telecom Department or a wholly owned subsidiary.
- l) The power supply for the Data Centre is proposed to be availed through independent connection taken from the Distribution Licensees in the area or through Open Access based on the load requirement and availability of infrastructure with the Distribution Licensee. The charges towards power supply is proposed to be directly settled with the Distribution Licensee. Further, it will be ensured that any other existing facility of the Petitioner shall not be used for Data Centre Activities. However, in the event of any such existing facility at Sub-station is directly or indirectly used, the proportionate cost of such services will be evaluated separately and shared on arm's length and on a transparent basis to ensure that there is no cross subsidization by the transmission activities to the Data Centre Activities.
- m) The only asset that is proposed to be utilized for the purposes of establishing the Data Centre activities is the land and the building to be constructed on such land entirely at the cost and expense of subsidiary and/or space in existing building. The other infrastructure required by the Data Centre shall be established separately. There will be no interference in any manner with the operation of the licensed transmission activities of Petitioner.
- n) The use of the land and the building by subsidiary for Data Centre shall at all times be in a manner that the Petitioner's transmission activities will always have the priority and the subsidiary shall make appropriate adjustments/modifications etc. as the Petitioner may require from time to time as per requirement of Transmission business. The ownership of land will remain with the Petitioner and will only be given on lease basis to the subsidiary without any proprietary interest otherwise being transferred or vested in subsidiary.
- o) In the facts and circumstances mentioned above, the proposal of the Petitioner does not in any manner involve use of any of functional transmission assets such as transmission towers, transmission lines, the



plant, machinery, equipment and facilities forming part of the sub-station activities or any other functional assets related to any operation incidental or ancillary to undertaking inter-state transmission of electricity, in which Petitioner has made any significant investment.

- p) As the assets of the Petitioner that would be utilized for Data Centre are only the land which is not otherwise required for undertaking licensed transmission activities, the consideration for sharing of any proportion of the revenue derived from the activities of Data Centre business proposed to be undertaken by WOS is not within the scope of the provisions of Section 41 of the Electricity Act, 2003 read with the Regulation 64 of the Tariff Regulations, 2019. The arrangement proposed is more in the nature of the land being given on lease within the scope of Section 17(3) of the Electricity Act, 2003 read with Regulation 62 of the Central Electricity Regulatory Commission (Terms and Conditions for determination of tariff) Regulations, 2019.
- q) In view of the above, the Petitioner may be permitted to give the land/space in Building on lease to WOS for Data Centre Activities. The lease charges shall be shared by the Petitioner with the beneficiaries.
- r) Further, lease charges for Land and/or Building space shall be determined through a certified external valuer to transparently determine the lease charges to be paid by the subsidiary on arm's length basis at the time utilization for Data Centre activities.
- s) The Commission at the time of truing up stage may apply the prudence check on the reasonableness of the lease or rental income determined as per above process.
- t) The land/space in building that is proposed to be given on lease by the Petitioner at its Sub-Stations and proposed to be utilized by WOS for establishing the Data Centres shall not be sold, transferred, or otherwise used for any other purpose. Such land /space in existing building with the Petitioner is not freely marketable either by way of sale or lease or in any form of collaboration to exploit the market potential of the land. These lands



can be used only in the restrictive manner and that too under the supervision and control of the Petitioner.

- u) The sharing of revenue from the other business as applicable to telecommunication businesses is not applicable to the above proposed arrangement for Data Centre activities. As stated above, the telecommunication business would involve the use of the transmission towers, lines and other infrastructure facilities to much larger extent, almost in parallel to use of such towers, lines and infrastructure for transmission business and considering the same, the Commission has decided on 10% of the gross revenue to be shared in Regulation 5(a) of the Sharing of Revenue Regulations, 2020.
- v) There is no impact envisaged from the Data Centre activities on the Inter-State transmission of electricity. The Petitioner undertakes to ensure that the Data Centre activities 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 establishing the Data Centres by WOS in the Petitioner's sub-stations.
- w) The Petitioner is approaching this Commission to allow to approve sharing of rental or lease charges (Non-Tariff Income) as the revenue to the LTTCs (Long Term Transmission Customers) arising out of limited use of Land or space in Buildings of the Petitioner by the WOS of Petitioner for Data Centre activities in line with Regulation 62 of the Tariff Regulations 2019.

Submissions of Respondent No. 9/Uttar Pradesh Power Corporation Ltd.

- 3. Respondent No. 9, Uttar Pradesh Power Corporation Ltd. vide affidavit dated 14.12.2021 has mainly submitted as follows:
 - a) The Commission vide order dated 10.7.2021 in Petition No. 494/MP/2020 has allowed Petitioner to form a Wholly Owned Subsidiary (WOS) for carrying out the Telecommunications and Digital Technology business. Accordingly, in pursuance of directions as contained in order dated 10.7.2021, the



Petitioner has approached the Commission while it is in the process of formation of WOS.

- b) The Petitioner had approached the Commission not in terms of Regulation 4(1) of the Sharing of Revenue Regulations, 2020 but under Section 17(3) of the Electricity Act, 2003.
- c) Section 41 of the Electricity Act, 2003 provides that a transmission licensee can utilise its transmission assets for other business and share proportion of revenue for reduction of transmission charges. For such business, the Commission is required to determine the proportion of the revenues towards reduction of transmission charges.
- d) The petition is for use of Transmission Assets held by the petitioner. Thus, application for use of assets of licensee should be filed under permission granted by the Act under Section 41 or any Regulations framed thereunder, which in the instant case are 'Central Electricity Regulatory Commission (Sharing of Revenue Derived from Utilization of Transmission Assets for Other Business) Regulations, 2020' which were notified on 17th February, 2020.
- e) The Petition filed by the Petitioner is not maintainable under 17(3) of the Act and hence may be rejected.
- f) If Petitioner is allowed to modify the petition or instant petition is allowed, answering respondent craves liberty to file response to the amended petition/instant petition.

Hearing dated 21.01.2022

4. The Petition was admitted and the Commission directed the petitioner to file the following information/clarification on affidavit:

“Whether instant case is covered under the provisions of the Central Electricity Regulatory Commission (Sharing of Revenue Derived from Utilization of



Transmission Assets for Other Business) Regulations, 2020, which provides modalities for obtaining approval and intimation of “other business”.

Submission of Petitioner

5. In compliance to RoP of hearing dated 21.01.2022, the Petitioner vide affidavit dated 04.02.2022 has mainly submitted as follows:
 - a) The proposed Data Centre activity is not an activity of a nature of engaging in any business for optimum utilization 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. Accordingly, the instant case is not covered under the provisions of Section 41 of the Electricity Act, 2003 read with Central Electricity Regulatory Commission (Sharing of Revenue Derived from Utilization of Transmission Assets for Other Business) Regulations, 2020 (Sharing of Revenue Regulations, 2020) which provides modalities for obtaining approval and intimation of “other business”.
 - b) In order to substantiate the above submission, the Petitioner has submitted as follows:
 - i. The Central Electricity Regulatory Commission (Sharing of Revenue Derived from Utilization of Transmission Assets for Other Business) Regulations, 2020 (hereinafter ‘Sharing of Revenue Regulations, 2020’), inter-alia, provides as under:
 - The Title to the Regulations refers to Utilisation of transmission assets for other business [Regulation 1 (1)];
 - The ‘transmission assets’ is defined in Regulation 2(8) as any assets forming part of the inter-State transmission system.
 - Regulation 2(9) defines ‘transmission business’ as construction, operation and maintenance of the inter-State transmission system.



- While the term 'inter-State transmission system' is not defined in the Regulations itself. The said term is defined in Section 2(36) of the Electricity Act, 2003 which means a system for conveyance of electricity.
- Regulations 5 of the Sharing of Revenue Regulations, 2020 deals with the requirement to share the revenue from the other business, in the case of such other business, (being not telecommunication business), in such manner as may be decided by the Commission on a case-to-case basis based on the transmission asset utilized for such other business.
- A combined reading of the above provisions does indicate that the Sharing of Revenue Regulations, 2020 will apply when there is a utilisation of transmission assets forming part of inter-State transmission system. The assets should, therefore, be a part and parcel of the inter-state transmission system, namely, the conveyance of electricity to be a transmission asset.
- The Electricity Act, 2003 does not provide for any restriction on a transmission licensee to undertake various other businesses. The transmission business need not be the only work to be undertaken by the transmission licensees. The only restriction contained in the Act for a transmission licensee (other than CTU) is prohibition from undertaking trading in electricity as provided under Section 41 of the Act.
- The extra land are buffer lands acquired in connection with the security of the transmission assets.
- The appropriate provision applicable in the present case is, therefore, Section 17(3) of the Electricity Act, 2003, and not Section 41 of the Electricity Act, 2003.
- An asset which is covered only under section 17(3) but not under section 41 of the Act which is to be considered for optimum utilisation may not



be covered under the Sharing of Revenue Regulations, 2020. These assets are not being considered for optimum utilisation.

- Even taking the Sharing of Revenue Regulations, 2020 as applicable, the same has been duly complied by the Petitioner. In fact, Sharing of Revenue Regulations, 2020 can also be interpreted and applied qua Section 17 (3) independent of Section 41 of the Act.
- ii. Further the Regulation 5(a) and 5(b) of the Sharing of Revenue Regulations, 2020 provides the manner of sharing the revenue from the other businesses by transmission licensee.
- a. Regulation 5(a) deals with sharing of revenue from “Telecommunication business” and Regulation 5(b) deals with the requirement to share the revenue from the businesses other than Telecommunication business, in such manner as may be decided by the Commission on a case-to-case basis based on the transmission asset utilized for such other business.
 - b. Further, Regulation 2(7) defines “telecommunication business” as:
*“any business of telecommunication services by utilizing transmission assets:
Provided that “Telecommunication Service” shall have the same meaning as defined in sub-clause (k) of clause (1) of Section 2 of the Telecom Regulatory Authority of India Act, 1997;”*
 - c. sub-clause (k) of clause (1) of Section 2 of the Telecom Regulatory Authority of India (TRAI) Act, 1997 defines "telecommunication service" to mean service of any description (including electronic mail, voice mail, data services, audio tex services, video tex services, radio paging and cellular mobile telephone services) which is made available to users by means of any transmission or reception of signs, signals, writing, images and sounds or intelligence of any nature, by wire, radio, visual or other electro-magnetic means but shall not include broadcasting services.
 - d. Services provided in Data Centre are not covered under any telecommunication service defined above. Also, for Data Centre



business, there is no requirement of License/registration from Department of Telecom (DoT) as in case of Telecommunication services. Accordingly, it is evident that Data Centre business does not fall under Regulation 5(a) of the Sharing of Revenue Regulations, 2020.

- e. Fundamental Transmission Assets i.e., OPGW are required for Telecommunication Business [Regulation 5(a)] which provides unique advantages like dedicated ROW for laying of OPGW, high reliable OPGW Fibres as compared to Under Ground Fibre which are to damage in case of road expansion, rodent activities etc. Due to its unique advantage, is helpful to get the business.
 - f. Similarly, for business other than Telecom business covered under regulation 5(b) such as “utilisation of transmission tower for installation of Mobile Antenna” also enjoy advantages like existing transmission towers for installation BTS System, reliable Power from earth wire etc.
- iii. In addition to above, the cost of functional transmission assets utilising for Telecom Business /installation of passive Telecom infra is substantial as compared to Telecom Assets. However, the establishment of Data Centre requires substantially high degree of new capital expenditure and cost of transmission assets utilised i.e. Land or space in existing building constitute very small portion of the same. In case of proposed Data Centre at Manesar, the land cost is estimated to be less than 1% of overall Capital expenditure of Data Centre.
- iv. Considering the above facts, establishment of Data Centre in sub-station buffer land/space in building is a pure case for leasing of land/space in building only, as the same will not get any inherent benefit of transmission system to increase the business.
- v. Regarding the issue of giving details of the revenue derived or estimated to be derived relates to the use of transmission assets to ascertain as what benefit the transmission asset utilisation is accruing to the other business, the Petitioner has stated clearly that the only aspect to be considered is the



lease money to be paid for the extra land/space in building given to undertake the business of Data Centre and lease rental will be evaluated through an independent agency.

- a) The present case is not covered under the provisions of the Central Electricity Regulatory Commission (Sharing of Revenue Derived from Utilization of Transmission Assets for Other Business) Regulations, 2020.
- b) However, without prejudice to above if present case is considered as utilisation of transmission assets, the lease rental is the appropriate revenue sharing in accordance with Regulation 5(b) of Sharing of Revenue Regulations, 2020, and the sharing of lease rental may be considered on similar terms as provided under regulation 62 of the Tariff Regulations, 2019.

Hearing dated 28.04.2022

6. In regard to the query of the Commission to clarify as to whether the instant case is covered under the provisions of the Sharing of Revenue Regulations, 2020 which provide for modalities for obtaining approval and intimation of 'other business', the Petitioner submitted that the detailed clarification on the same has been furnished vide its affidavit dated 4.2.2022. The Petitioner 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 the Sharing of Revenue Regulations, 2020.
7. During the hearing, the Commission raised the following queries to the Petitioner:
 - i. Since the petitioner is now able to spare land to lease its WOS for data centre activity, does it mean that initially extra/surplus land was bought, which is not required now and which is being spared to the WOS.



- ii. The land is either a Government land or a Private land. Normally the land is given with clear stipulation as to the purpose it can be used. Is there any restrictions with respect to land use for cases where Petitioner is proposing to use for data centre.
 - iii. Will the total rent collected after leasing out the portion of land go to the Powergrid or will it be transferred to the beneficiaries or a part of it will be transferred to the beneficiaries?
 - iv. Petitioner's WOS is going to enter into the Data Centre business then what will be the modalities of the profit, whether petitioner would retain the whole profit or will share the profit with the beneficiaries.
 - v. If the Petitioner wants to build a Mall or Shopping complex on such substations whether it will be allowed or not?
 - vi. How the lease value of land will be decided?
8. In response to the above queries of the Commission, learned senior counsel for petitioner mainly submitted the following:
- a) The Petitioner did not acquire the extra/surplus land in the first place. In case of electricity transmission business, there is requirement to have minimum amount of set-back (buffer land) from the road which have to be given whereas set-back can be utilized within the control of the company only but cannot be commercially utilized. 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 like mall, shopping complex etc. and for the purpose other than as prescribed by the local authority while allotting such land. Therefore, the Petitioner is required to take the permission of the local authority for utilization of this land for the space of Data Centre. 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 the Tariff Regulations, 2019 (50:50 basis). However, the Commission may decide the extent of sharing of such revenue as deemed fit. Further, even under Sec 41 it is not the entire but only the portion of the such revenue but Commission may decide to share either primarily a principal part or may be 90% of the such revenue with the LTTCs.
- 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.
- e) The lease value of the land will be decided by an expert valuer. Petitioner will submit a report of lease valuation whatever external expert valuer derives, to the Commission. Commission may decide the percentage to be shared with the LTTCs, it may vary from city to city or place to place. Petitioner also stated that tomorrow if transmission business requires this land /building back, WOS will not claim any right over the same.
9. In reply to queries of the Commission that the opening of Data Centre will require the approval of Department of Telecommunication, learned counsel of the Petitioner submitted that there is no requirement of license or approval from DoT for Data Centre activity and only has to inform to DoT regarding the Data Centre activity.



10. The Commission directed the Petitioner to furnish the following details/information on affidavit:
- 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.

Submission of Petitioner

11. In compliance to the RoP of hearing dated 28.04.2022, the Petitioner vide affidavit dated 21.06.2022 has mainly submitted as under:
- a) The Petitioner submitted copy of the award letter as issued by the Land Acquisition Collector, Urban Estates, Haryana Gurgaon on 24.05.2010 and the mutation of land was issued on 8.11.2012. The land was acquired by the Petitioner for public purpose for construction of Manesar Sub-Station.
 - b) In order to establish the Data Centre, following major permissions are required from various Govt Authorities:
 - i. Environmental clearance
 - ii. Clearance from Ground water Boards
 - iii. NOC from Airport Authority of India
 - iv. Forest department permission for tree cutting
 - v. IGBC Green Rating System from IGBC



- vi. Clearances from CEIG (Chief Electrical Inspector to Government) for electrical system
- vii. NOC and Commencement Certificate (CC) from Fire Deptt.
- viii. Approval of water and power connection for construction
- ix. Road Crossing/Cutting permissions for laying water supply line (Right of Way from PWD)
- x. Approval for DG set as per latest CPCB norms
- xi. Approval of Water Connection for permanent use
- xii. Drainage Connection plan & approval
- xiii. Licence / NOC from concerned deptt. for HSD Yard
- xiv. Occupation Certificate and completion certificate

Further, regarding permission required from Central Government/ Haryana Government/ Local Authorities for utilisation of land for establishing the proposed Data Centre at Manesar Sub-Station, the Petitioner has submitted that the main utilisation of land at sub-stations continues to remain for the Transmission System. Further, Data Centre activities are for the optimal utilisation of a small portion of the said land. Moreover, the ownership of the land in question shall continue to rest with POWERGRID and utilisation continues to remain mainly for transmission system, therefore, Change in Land Use (CLU) is not envisaged.

- c) The Petitioner has submitted the copy of Model/draft licence agreement to be entered into between the Petitioner and its wholly owned subsidiary company. The same shall be executed after receipt of approval from the Commission.
- d) Presently the utilisation of land and/or space in buildings at sub-stations built under cost plus basis (RTM) are only contemplated for undertaking Data Centre activities.

Analysis and Decision

12. The instant Petition has been filed by the Petitioner 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 available at the



sub-stations of the Petitioner to its wholly owned subsidiary company for undertaking data centre activities.

13. The Commission vide order dated 10.7.2021 in Petition No. 494/MP/2020 has allowed the Petitioner to form a Wholly Owned Subsidiary (WOS) for carrying out the Telecommunications and Digital Technology business. Accordingly, the Petitioner is in the process of formation of WOS.
14. The Petitioner has submitted that the Petitioner is exploring the options of allowing its Wholly Owned Subsidiary to undertake the Data Centre activities by utilizing the land or space in Building available at different Sub-stations on lease basis. The power supply for the Data Centre is proposed to be availed through independent connection taken from the Distribution Licensees in the area or through Open Access based on the load requirement and availability of infrastructure with the Distribution Licensee. The charges towards power supply is proposed to be directly settled by the WOS with the Distribution Licensee.
15. The Petitioner has submitted that the assets of the Petitioner that would be utilized for Data Centre activities are only the spare land/space in the building available in the Substations of the Petitioner and no functional transmission assets as in the case of utilization of transmission towers, OPGW, lines etc. for telecommunication business will be utilized for data centre activities. The Petitioner has further submitted that there is no impact envisaged from the Data Centre activities on the Inter-State transmission of electricity being undertaken by the Petitioner. In order to ensure that the Data Center activities shall not in any manner adversely affect its performance or obligation in the power transmission business, the Petitioner has undertaken to indemnify all the long-term transmission customers for additional cost or losses or damages, if any, caused due to establishing the Data Centres by WOS in the Petitioner's sub-stations. The Petitioner has also submitted that the Commission at the time of truing up stage may apply the prudence check on the reasonableness of the lease or rental income determined.



16. The Petitioner has further clarified that presently the utilisation of spare land and/or space in buildings at sub-stations built under cost plus basis (RTM) are only contemplated for undertaking Data Centre activities.
17. The Petitioner has prayed that the present Petition be considered under Section 17 (3) of the Electricity Act, 2003 read with Tariff Regulations, 2019 and not under Section 41 of the Act read with the Sharing of Revenue Regulations, 2020.
18. The Respondent, UPPCL in its submission has objected to the proposal of the petitioner on the ground that the Petitioner has approached the Commission not in terms of Regulation 4(1) of the Sharing of Revenue Regulations, 2020 but under Section 17(3) of the Electricity Act, 2003. The Respondent has submitted that the application for use of assets of licensee should be filed under Section 41 of the Electricity Act, 2003 or the Regulations framed thereunder, which in the instant case are the Sharing of Revenue Regulations, 2020.
19. We have considered the submissions of the Petitioner and the Respondent UPPCL. The following issues arise for our consideration:

Issue No.1: Whether the proposal of the Petitioner for providing on lease or licence basis the spare land or spare space in buildings at Petitioner's Transmission Sub-stations to its WOS to undertake data centre activities is permissible under Section 17 or under Section 41 of the Electricity Act, 2003?

Issue No. 2: What shall be the methodology for sharing rental/lease received from WOS for such business?

20. The above issues are being dealt in the succeeding paragraphs.

Issue No.1: Whether the proposal of the Petitioner for providing on lease or licence basis the spare land or spare space in buildings at Petitioner's Transmission Sub-stations to its WOS to undertake data centre activities is permissible under Section 17 or under Section 41 of under the Electricity Act, 2003?



22. The Petitioner has submitted that Data Centre activity is not an activity of a nature of engaging in any business for optimum utilization of the functional transmission assets, and spare land/ buildings are the only assets which the Petitioner intends to utilize for the Data Centre activities. According to the Petitioner, the Data Centre business proposed to be undertaken by its WOS is not within the scope of the provisions of Section 41 of the Electricity Act, 2003 read with Sharing of Revenue Regulations, 2020 which provides modalities for obtaining approval and intimation of “other business”. The arrangement proposed is more in the nature of the land being given on lease within the scope of Section 17(3) of the Electricity Act, 2003 read with Regulation 62 of the Central Electricity Regulatory Commission (Terms and Conditions for determination of tariff) Regulations, 2019 (Tariff Regulations, 2019).

21. To substantiate its contention, the Petitioner has submitted that the title to the Sharing of Revenue Regulations, 2020 refers to ‘Utilisation of transmission assets for other business’ [Regulation 1 (1)] and the ‘transmission assets’ is defined in Regulation 2(8) as any assets forming part of the inter-State transmission system. Further, Regulation 2(9) defines ‘transmission business’ as construction, operation and maintenance of the inter-State transmission system. While the term ‘inter-State transmission system’ is not defined in the Regulations itself, the said term is defined in Section 2(36) of the Electricity Act, 2003, which means a system for conveyance of electricity. A combined reading of the above provisions does indicate that the Sharing of Revenue Regulations, 2020 will apply when there is a utilisation of transmission assets forming part of the inter-State transmission system. The asset in order to be considered as part and parcel of the inter-State transmission system should be utilised for the conveyance of electricity. The appropriate provision applicable in the present case is, therefore, Section 17(3) of the Electricity Act, 2003, and not Section 41 of the Electricity Act, 2003.

22. The Respondent UPPCL has submitted that the Petitioner’s proposal cannot be considered under Section 17(3) of the Act and should be covered under Section 41 of the Act.

23. During the hearing held on 28.4.2022, in reply to query of the Commission to clarify as to whether the instant case is covered under the provisions of the Sharing of Revenue Regulations, 2020, the Petitioner reiterated that 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 provisions of Section 41 of the Act read with Sharing of Revenue Regulations, 2020.

24. We have considered the submissions of the Petitioner and the Respondent UPPCL. The issue herein is whether the proposed leasing or licensing of spare land/building by the Petitioner for Data Centre is covered under Section 17(3) of the Act read with Tariff Regulations, 2019 or under Section 41 of the Act read with Sharing of revenue Regulations, 2020. This issue has been examined in detail in the succeeding paragraphs.

25. The term 'utility' has been defined in sub-section (75) of Section 2 of the Act as under:

(75) "utility" means the electric lines or electrical plant, and includes all lands, buildings, works and materials attached thereto belonging to any person acting as a generating company or licensee under the provisions of this Act;

26. The above definition of utility covers the assets of a generating company as well as of a licensee. Under the Act, licence can be granted for transmission, distribution and trading activities. The term "electric line" has been defined in Section 2(20) of the Act as under:

(20) "electric line" means any line which is used for carrying electricity for any purpose and includes-

(a) any support for any such line, that is to say, any structure, tower, pole or other thing in, on, by or from which such line is, or may be supported, carried or suspended; and

(b) any apparatus connected to any such line for the purpose of carrying electricity".

Further, "electrical plant" has been defined in Section 2(22) of the Act as under:



“(22) “electrical plant” means any plant, equipment, apparatus or appliance or any part thereof used for, or connected with, the generation, transmission, distribution or supply of electricity but does not include-

- (a) An electrical line; or
- (b) a meter used for ascertaining the quantity of electricity supplied to any premises; or
- (c) An electrical equipment, apparatus or appliance under the control of a consumer;”

The term “works” has been defined in Section 2(77) of the Act as under:

“(77)““works” includes electric lines or any building, plant, machinery, apparatus and any other thing of whatever description required to transmit distribute or supply electricity to the public and to carry into effect the objects of a licensee or sanction granted under this Act or any other law for the time being in force.”.

27. From the definition of utility, it emerges that in case of generating company, utility would include electrical plants, all lands, buildings, works and materials attached thereto which belong to the said generating company. In case of a licensee, utility would cover electric lines, all lands, buildings, works and materials attached thereto which belong to the said licensee. Thus, utility in cases of both generating company or licensee includes “all lands” attached to the electric lines or electrical plant. Therefore, any land attached to any “apparatus connected to electric line for the purpose of carrying electricity” shall be covered under the definition of utility. Sub-station has been defined in Section 2(69) of the Act as under:

“(69) “sub-station” means a station for transforming or converting electricity for the transmission or distribution thereof and includes transformers, converters, switchgears, capacitors, synchronous condensers, structures, cable and other appurtenant equipment and any buildings used for that purpose and site thereof.”

It is noticed that the site of the sub-station is included in the definition of sub-station. Since sub-station is in the nature of an “apparatus connected to electric



line for the purpose of carrying electricity”, the site of the sub-station shall also be considered as part of utility.

28. From the above, we observe that the lands, buildings, works and materials attached to the electric lines and belonging to a licensee are included under the definition of ‘utility’. Since the sub-station is attached to the electric lines, the land on which sub-station is situated is covered under the definition of utility. Further, the definition talks about “all lands” which has to be given a purposive interpretation. Whenever a sub-station is planned, land is acquired for not only housing the sub-station but also keeping in view the requirement for future expansion, the land for housing colony of the personnel manning the sub-station and a buffer zone between the sub-station and normal human habitation from the point of view of safety and security. “All lands” will include the entire land acquired for the sub-station even though the sub-station may be utilising a portion of the said land for housing its equipment. The Petitioner while seeking the approval of the Commission for the tariff of the sub-station includes the entire land in the capital cost only because it forms part of the sub-station. If the interpretation of the Petitioner that the spare land in the vicinity of the sub-station does not constitute part of the transmission asset is accepted, then the Petitioner will be granted tariff only for the cost of the land on which the sub-station is physically situated and not for the spare land. Further, if the spare land is not considered part of the utility of the transmission licensee, then prior approval under Section 17(3) will not be necessary. In our view, the interpretation of the Petitioner contradicts the definition of ‘utility’ in respect of a transmission licensee and the provisions of Section 17(3) of the Act. Therefore, the sub-station of a transmission licensee being in nature of a utility shall include all lands at the sub-station, and not merely the land on which the sub-station is physically situated.

29. The Petitioner has submitted that its case is covered under Section 17(3) of the Act and not under Section 41 of the Act Section 17(3) of the Act is extracted below:

“17 Licensee not to do certain things.-

.....



(3) No licensee shall at any time assign his licence or transfer his utility, or any part thereof, by sale, lease, exchange or otherwise without the prior approval of the Appropriate Commission.

.....”

From the above provision of the Act, we observe that a transmission licensee is prohibited to assign its licence or transfer its utility or part thereof by sale or lease or exchange or otherwise without the prior approval of the Commission. “Lease” has been defined in Section 105 of the Transfer of Property Act as under:

“105. A lease of immovable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms.”

In the present case, the proposal is to rent out the unutilised land/ building in the sub-station by the Petitioner to its WOS which is a separate legal entity and therefore, it is covered under lease and the approval of the Commission under Section 17(3) is a pre-condition for such transfer through lease.

30. The Petitioner has argued that renting out of the surplus land to its WOS for Data Centre is not covered under other business and therefore, approval under Section 41 of the Act is not necessary. Section 41 of Electricity Act 2003 provides as follows:

“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.”

From the above provision, it emerges that the transmission licensee may engage in any business for the optimum utilisation of its assets, the only exception being that such business should not relate to trading in electricity. The spare land/building available at the sub-station being an integral part of the sub-station forms the part of the transmission assets. If the spare or buffer land or building at the sub-station is put to any business for its optimum utilisation, it will be squarely covered under Section 41 of the Act.

31. The question that arises is whether the Petitioner is required to take approval under Section 17(3) or Under Section 41 or under both provisions in this case. As already discussed, Section 17(3) comes into play whenever transfer of a licensee utility or part thereof in whatever means takes place to another legal entity. Had the Petitioner been setting up the Data Centre on its own in the spare land in the sub-station, there was no requirement to take prior approval under Section 17(3) of the Act as no transfer of the utility or part thereof is involved. On the other hand, the Data Centre is proposed to be set up and managed by the WOS of the Petitioner which is a separate legal entity in the eyes of law and it does not have any right on the sub-station of the Petitioner. Only when transfer of right through lease takes place from the Petitioner to its WOS, then only the WOS acquires the right to put the said land into intended use. WOS being a separate legal entity, the Petitioner is bound to seek prior approval of the Commission for transferring a part of its utility on lease to its WOS. On the other hand, Section 41 of the Act deals with optimum utilisation of its assets by a licensee for which it has to give a prior intimation to the Commission. Section 41 does not mandate that the licensee has to necessarily engage in other business.



It may itself engage in other business or allow any other legal entity to carry on the other business by utilising its assets. In both cases, prior intimation is necessary and sharing of revenues earned from the other business with the beneficiaries is mandatory as per the decision of the Commission. In our view, Section 17(3) and Section 41 do not operate in mutually exclusive zones. In some cases, they may operate independently and in other cases, they will operate together. For example, in a case of mortgage of utility by a licensee to financial institutions for raising of loans, approval under Section 17(3) is only necessary. In case, the licensee itself engages in other business for optimum utilisation of its assets, only prior intimation under Section 41 is necessary and there is no necessity for taking prior approval under Section 17(3) of the Act as no transfer of utility is involved. But where the other business is undertaken by an entity other than the licensee, two processes are involved. Firstly, the right over the utility or part of the utility is required to be transferred to the entity undertaking other business for which prior approval under Section 17(3) is required. Secondly, for undertaking other business by another entity by utilising the assets of the licensee, intimation under Section 41 is required to be given and sharing of revenues has to be specified by the Commission. Therefore, in the present case, the requirements of approval under Section 17(3) have to be complied with.

32. Having decided that the case of the Petitioner is covered under 41 of the Act, in addition to Section 17(3) of the Act, we proceed to consider whether the Petitioner fulfils the conditions of Section 41 read with the relevant provisions of Sharing of Revenue Regulations. *Regulation 4* the Sharing of Revenue Regulations, 2020 provides for the procedure for intimation with regard to other business 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 may be, within two months of coming into force of these regulations.”

Thus, for business other than telecommunication business, Regulation 4 of the Sharing of Revenue Regulations provides that transmission licensee shall seek prior approval of the Commission by filing petition in regards to sharing of revenues derived from such other business.

33. Regulation 4 (2) & (3) of the Sharing of Revenue Regulations provides as under:

“(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.”

34. We observe that Petitioner has not furnished entire details as required vide Regulation 4(2) & (3) of the Sharing of Revenue Regulations for its proposed ‘other business’ for all sub-stations. However, the Petitioner has submitted the required details for its Pilot Data Centre at Manesar. Accordingly, the Petitioner’s proposal is being considered only for the pilot data centre at Manesar. For approval for other sub-stations, the Petitioner is directed to file separate petitions with entire details in accordance with the Sharing of Revenue Regulations.



35. The submissions of Petitioner for Pilot Data Centre at Manesar under regulation Regulations 4 (2) & (3) of the Sharing of Revenue Regulations are as follows:

- i ***nature of the other business***: is the leasing of the spare land/Space in building available in Petitioner sub-station to the Petitioner's WOS for Data Centre activity.
- ii ***transmission assets utilized or proposed to be utilized for other business***: Total land of 21.01 acres at a value of Rs 10.63 Crores was acquired for Manesar sub-station out of which approximately 1.02 acre/4100 sq. mtrs. would be utilised for Pilot Data Centre.
- iii ***cost of such transmission assets utilized or proposed to be utilized***: Net cost of land to be utilised for Pilot Data Centre works out to Rs 0.52 Crores, as per the books.
- iv ***revenue derived or estimated to be derived from other business***: the revenue to be derived from leasing out or licensing of the portion of the land/space in the building in the substation is not yet determined and the same shall be determined through a certified external valuer to transparently determine the lease charges to be paid by the subsidiary on arm's length basis at the time utilization for Data Centre activities.
- v ***impact, if any, of use of transmission assets for other business on inter-State transmission of electricity***: There is no impact envisaged from the Data Centre activities on the inter-State transmission of electricity and the Petitioner undertakes to ensure that the Data Centre activities 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 establishing the Data Centre by WOS in the Petitioner's sub-stations.

36. The Petitioner has also submitted as follows:



- vii. Ownership of the land in question shall continue to rest with POWERGRID and utilisation continues to remain mainly for transmission system. Therefore, Change in Land Use (CLU) is not envisaged.
- viii. The Petitioner cannot use such land for the commercial exploitation like mall, shopping complex etc. and for the purpose other than as prescribed by the local authority while allotting such land. Petitioner is required to take the permission of the local authority for utilization of this land for the space of Data Centre and the Petitioner is in process of approaching the local authority of Haryana Government in respect of utilisation of land available at Manesar Sub-station.
- ix. The Petitioner has also stated that if transmission business requires this land /building back in future, WOS will not claim any right over the same.

37. The Commission specifically enquired from the petitioner during hearing held on 28.4.2022 about the land use requirements of the State Government. In this regard Petitioner has submitted Gazette Notification of Haryana Government dated 20.11.2009 which provides as follows:

“No. 20/7/2009-5 Power-Whereas, it appears to the Governor of Haryana, that the land in the locality specified below is needed urgently by the Government, partly at public expense and partly at the expense of the Power Grid Corporation of India Limited (A Government of India Enterprise), for a public purpose, namely, for the construction of 400/220KV Power sub-station in Village Gwalior, Tehsil Manesar, District Gurgaon, Haryana under Northern Region System Strengthening Scheme-XIII (NRSS-XIII). It is hereby notified that the land in the locality described in the specification below is needed urgently for the above purpose.”

As per the above, the land use has been specified “for public purpose” namely construction of 400/220KV substation. The Petitioner has submitted that it shall obtain necessary approvals, as required by the authorities of Haryana Government for setting up of the Data Centre.



38. In the light of the above, we accord approval to the Petitioner for entering into lease of the vacant land and space in building of its sub-station at Manesar with its WOS under Section 17(3) of the Act subject to a clear understanding between the parties that the land and building shall be handed over back to the Petitioner as and when required for its core business. We have also noted the intimation given by the Petitioner in terms of Section 41 of the Act for setting up the Data Centre through its WOS at Manesar for optimum utilisation of the vacant/spare land and building at the sub-station subject to the following conditions:

- x. The primary business of the Petitioner as transmission licensee shall not be compromised under any condition and also the commercial interest of the long-term transmission customers shall be protected.
- xi. The ownership of the leased or licensed portion of the land or space in the building shall continue to rest with the Petitioner.
- xii. The main utilisation of land or space in the building at sub-station shall continue to be for the Transmission System.
- xiii. The leased or licensed land or space in the building shall be utilised by Petitioner's WOS for establishing the Data Centre only and the said land or space shall not be sold, transferred, shared or otherwise used by the WOS for any other purpose.
- xiv. The proposed Data Centre activity by the Petitioner's Wholly Owned Subsidiary shall not in any manner adversely affect Petitioner's performance or obligations as a transmission licensee.
- xv. The Petitioner shall indemnify all the long-term transmission customers for any additional cost or losses or damages caused due to Data Centre activity being carried by the Petitioner's WOS.
- xvi. Considering the criticality of sub-station operation, safety and security of the sub-station shall be duly maintained. Any security breach in sub-station



security shall not be acceptable and any incident of security breach shall be reported to the commission immediately.

- xvii. The power supply and associated infrastructure for Data Centre activity shall be taken through independent connection from the Distribution Licensees in the area or through Open Access and the charges towards such power supply shall be directly settled by the WOS with the supplier.
 - xviii. The Petitioner shall not use any other existing facility of the Petitioner's sub-station for Data Centre Activities.
 - xix. The Petitioner and WOS, as applicable, shall comply with necessary statutory requirements and approvals as required, including that for use of land for data centre activity, from relevant Government Authorities.
 - xx. The Petitioner shall furnish the details to the Commission as per the Sub-Regulation (3) of Regulation 4 of the Sharing of Revenue Regulations, 2020, every year.
 - xxi. The Petitioner shall ensure that in case of requirement of leased out or licensed land for its transmission business, the same shall be returned back by the WOS to the Petitioner in the same condition as it was taken over, within the time-period as stipulated by the Petitioner in its Agreement with WOS.
 - xxii. The amount of rent to be paid by WOS to the Petitioner for use of the land and building at the sub-station shall be evaluated by a certified external valuer at least once in two years based on prevailing market rates and transaction shall be at arms' length.
39. The Petitioner has submitted a copy of Model Agreement to be entered into between the Petitioner and its wholly owned subsidiary company and has sought its approval from the Commission. In this regard, we are not inclined to examine the model agreement or accord approval, as the agreement may require changes based on conditions stipulated in the approvals granted by other relevant government bodies/ agencies. However, the Petitioner shall ensure



compliance with the applicable Regulations and directions in this Order while finalizing the Agreement with its WOS.

Issue No. 2: What should be methodology for sharing rental/lease received from WOS for such business?

40. The Petitioner has prayed to allow the sharing of rental/lease amount received from its wholly owned subsidiary for the use of land/building 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). During hearing held on 28.4.2022, the Petitioner submitted that the Commission may decide the extent of sharing of such revenue as deemed fit, which may be 90:10 basis with principal part of such revenue to be shared with LTTCs.
41. We have held that the case of the Petitioner is covered under Section 17(3) of the Act (with regard to prior approval to lease the surplus land at the sub-station to WOS) and under Section 41 of the Act in so far as undertaking the other business of Data Centre is concerned. It is a settled principle of law that a special provision shall prevail over the general provision. The Sharing of Revenue Regulations being a special legislation compared to the sharing provisions in Section 62 of the Tariff Regulations 2019, we are of the view that sharing of revenue shall be governed as per Regulations 5 and 6 of the Sharing of Revenue Regulations, and not in terms of Regulation 62 of the Tariff Regulations 2019 as made out by the Petitioner.
42. Regulation 5 and Regulation 6 of the Sharing of Revenue Regulations provides as under:

“Regulation 5. Manner of sharing of revenue from other business: (1) The transmission licensee shall share the revenue from the other business in the following manner:



(a) Telecommunication business: In case the transmission licensee engages in telecommunication business, an amount equal to 10% of the gross revenue from such business in a given financial year shall be shared with the long term customers.

(b) Business other than telecommunication business: In case other business is not telecommunication business, the sharing of revenue shall be decided by the Commission on case-to-case basis based on transmission assets utilized for such other business, the revenue derived or estimated to be derived from such other business and other details furnished by the transmission licensee under Regulation 4 of these regulations:

Provided that the Commission shall provide an opportunity of being heard to the transmission licensee and the long-term customers of the assets before deciding the manner of sharing of revenue.

Regulation 6. Reduction in Transmission Charges: The revenue to be shared by the transmission licensee in accordance with these regulations shall be utilised towards reduction of monthly transmission charges payable by the long term customers of the transmission assets in proportion to the transmission charges payable by them to the transmission licensee:

Provided that for a financial year, the revenue to be shared of the previous financial year shall be considered for reduction of monthly transmission charges.”

43. We observe that the proposed business of the Petitioner under consideration is limited to allowing use of land or space in the building which is covered under “Business other than telecommunication business” as per Section 41 of the Electricity Act and Regulation 5(1)(b) of the Sharing of Revenue Regulations for which the sharing of revenue shall be decided by the Commission on case-to-case basis.
44. We observe that the data centre activities are being undertaken by the WOS in a phased manner and the business proposed by the Petitioner is at a nascent stage. Further, the Petitioner has not provided estimate of lease rent for the land or building at its Manesar substation based on evaluation by the external independent valuer. We further observe that the Petitioner shall not incur any expenditure towards the data centre business and the same shall be taken up by the WOS. Accordingly, we are of the view that entire gross rental/ lease revenue (based on evaluation of external independent valuer) as received by the Petitioner from its WOS for use of the land and building at Manesar substation in terms of the Agreement, shall be fully shared by the Petitioner with the long term customers. Applicable taxes for such rental revenue shall be paid



separately by the WOS to the Petitioner. Accordingly, such revenue shall be utilised towards reduction of monthly transmission charges payable by the long term customers of the transmission assets in proportion to the transmission charges payable by them to the Petitioner as per Regulation 6 of the Sharing of Revenue Regulations.

45. The Petition No. 247/MP/2021 is disposed of in terms of above.

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

**Sd/-
(Arun Goyal)
Member**

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

