

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Coram:

Shri I.S. Jha, Member

Shri Arun Goyal, Member

Shri P.K. Singh, Member

Date of Order: 17.05.2023

Petition No. 287/MP/2022

IN THE MATTER OF:

Petition under Regulation 4(1) of Central Electricity Regulatory Commission (Sharing of Revenue Derived from Utilization of Transmission Assets for Other Business) Regulation, 2020, read with the directions given in the (a) Order dated 30.06.2021 of the Hon'ble Commission in 495/MP/2020 intimating about continuation of Telecommunications and Digital Technology Businesses in accordance with the approvals granted by the Hon'ble Commission under Central Electricity Regulatory Commission (Sharing of Revenue Derived from Utilization of Transmission Assets for Other Business) Regulation, 2007 and other relevant orders & (b) Order dated 10.07.2021 of the Hon'ble Commission in 494/MP/2020 seeking prior approval of the Hon'ble Commission to undertake existing Telecommunications and Digital Technology business of Petitioner, through its wholly owned subsidiary company.

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



Versus

- 1. Ajmer Vidyut Vitran Nigam Ltd.,**
132 KV, GSS RVPNL Sub- Station Building,
Caligiri Road, Malviya Nagar,
Jaipur-302017 (Rajasthan)
- 2. Jaipur Vidyut Vitran Nigam Ltd.,**
132 KV, GSS RVPNL Sub- Station Building,
Caligiri Road, Malviya Nagar,
Jaipur-302017 (Rajasthan)
- 3. Jodhpur Vidyut Vitran Nigam Ltd.,**
132 KV, GSS RVPNL Sub- Station Building,
Caligiri Road, Malviya Nagar,
Jaipur-302017 (Rajasthan)
- 4. Himachal Pradesh State Electricity Board,**
Vidyut Bhawan, Kumar House Complex Building II,
Shimla-171004 (Himachal Pradesh),
Through its Chairman.
- 5. Punjab State Power Corporation Limited,**
The Mall, PSEB Head Office,
PATIALA - 147 001.
Represented By Its Chairman and Managing Director.
- 6. Haryana Power Purchase Centre,**
Shakti Bhawan, Sector-6,
Panchkula- 134109 (Haryana),
Through its S.E./C&R-1.
- 7. Power Development Department,**
Government of Jammu & Kashmir,
Mini Secretariat, Jammu,
Through its Commissioner.
- 8. Uttar Pradesh Power Corporation Ltd.,**
(Formerly Uttar Pradesh State Electricity Board),
Shakti Bhawan, 14, Ashok Marg,



Lucknow - 226001 (Uttar Pradesh),
Through its Chairman.

- 9. BSES Yamuna Power Ltd.,**
B-Block, Shakti Kiran, Bldg. (Near Karkadooma Courte),
Karkadooma 2nd Floor,
New Delhi-110092,
Through its Chief Executive Officer.
- 10. BSES Rajdhani Power Ltd,**
BSES Bhawan, Nehru Place,
New Delhi-110019,
Through its Chief Executive Officer.
- 11. Tata Power Delhi Distribution Limited (TPDDL),**
NDPL house, Hudson Lines Kingsway Camp
Delhi – 110009
Through its Chief Engineer
- 12. Chandigarh Administration,**
Sector -9, Chandigarh,
Through its Chief Engineer.
- 13. Uttarakhand Power Corporation Ltd.,**
Urja Bhawan,
Kanwali Road, Dehradun (Uttarakhand),
Through its Managing Director.
- 14. North Central Railway,**
Allahabad (Uttar Pradesh),
Through its Chief Electrical Distribution Engineer.
- 15. New Delhi Municipal Council,**
Palika Kendra, Sansad Marg,
New Delhi-110002,
Through its Chairman.
- 16. Bihar State Power (Holding) Company Ltd,**
(Formerly Bihar State Electricity Board -BSEB)
Vidyut Bhavan, Bailey Road, Patna – 800 001
Represented By Its Chairman



17. West Bengal State Electricity Distribution Company Limited,

Bidyut Bhawan, Bidhan Nagar,
Block DJ, Sector-II, Salt Lakecity,
Calcutta - 700 091

Represented By Its Chairman

18. Grid Corporation of Orissa Ltd.,

Shahid Nagar, Bhubaneswar - 751 007

Represented By Its Chairman cum Managing Director

19. Jharkhand Bijli Vitran Nigam Limited,

Engineering Bhawan, HEC Building, Dhurwa,
Ranchi – 834002, Jharkhand

Represented By Its Chairman

20. Damodar Valley Corporation,

DVC Tower, Maniktala

Civic Centre, Viproad, Calcutta - 700 054

Represented By Its Chairman

21. Power Department,

Govt. of Sikkim, Gangtok - 737 101

Represented By Its Commissioner & Secretary (POWER)

22. Madhya Pradesh Power Management Company Ltd.,

Shakti Bhawan, Rampur

Jabalpur - 482 008

Represented By Its MD

23. Madhya Pradesh Audyogik Kendra,

Vikas Nigam (Indore) Ltd.

3/54, Press Complex, Agra-Bombay Road, Indore-452 008

24. Maharashtra State Electricity Distribution Co. Ltd.,

Hongkong Bank Building, 3RD Floor

M.G. Road, Fort, Mumbai - 400 001.

Represented By Its MD

25. Gujarat Urja Vikas Nigam Ltd.,

Sardar Patel Vidyut Bhawan,



Race Course Road, Vadodara - 390 007
Represented By Its Chairman

26. Electricity Department,

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

27. Electricity Department,

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

28. DNH Power Distribution Corporation Limited.,

Vidyut Bhawan, 66KV Road, Near Secretariat Amla,
Silvassa - 396 230
Represented By Its Secretary (FIN.)

29. Chhattisgarh State Power Distribution Co. Ltd.,

P.O. Sunder Nagar, Dangania, Raipur,
Chhattisgarh-492 013
Represented by Its Chairman

30. Kerala State Electricity Board (KSEB),

Vaidyuthi Bhavanam,
Pattom, Thiruvananthapuram – 695 004
Represented by its Chairman

31. Tamil Nadu Generation and Distribution Corporation Ltd.,

(Formerly Tamilnadu Electricity Board -TNEB)
NPKRR Maaligai, 800, Anna Salai, Chennai – 600 002
Represented by its Chairman And Others

32. Electricity Department,

Government of Goa,
Vidyuti Bhawan, Panaji,
Goa 403001
Represented by Chief Engineer (Electrical)

33. Electricity Department

Govt of Pondicherry,
Pondicherry - 605001



Represented by its Chief Secretary

34. Eastern Power Distribution Company of Andhra Pradesh Limited (APEPDCL),

P&T Colony,
Seethmmadhara, VISHAKHAPATNAM
Andhra Pradesh,
Represented by its Managing Director

35. Southern Power Distribution Company of Andhra Pradesh Limited (APSPDCL),

D.No: 19-13-65/A, Srinivasapuram, Corporate Office,
Tiruchanoor Road, Tirupati-517503
Represented by its Managing Director

36. Southern Power Distribution Company of Telangana limited (TSSPDCL)

Corporate Office, Mint Compound,
HYDERABAD – 500 063
Telangana
Represented by Its Managing Director

37. Northern Power Distribution Company of Telangana Limited (TSNPDCL),

Opp. NIT Petrol Pump,
Chaitanyapuri, Kazipet,
WARANGAL – 506 004
Telangana
Represented by Its Managing Director

38. Bangalore Electricity Supply Company Ltd., (BESCOM),

Corporate Office, K.R. Circle,
BANGALORE – 560 001, Karnataka
Represented by Its Managing Director

39. Gulbarga Electricity Supply Company Ltd., (GESCOM)

Station Main Road, GULBURGA, Karnataka,
Represented by Its Managing Director

40. Hubli Electricity Supply Company Ltd., (HESCOM)

Navanagar, PB Road, HUBLI, Karnataka
Represented by Its Managing Director

41. MESCOM Corporate Office,

Paradigm Plaza, AB Shetty Circle,
MANGALORE – 575 001, Karnataka



Represented by Its Managing Director

42. 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

43. Assam Electricity Grid Corporation Limited,

(Formerly Assam State Electricity Board)

Bijulee Bhawan, Paltan Bazar,

Guwahati – 781001, Assam

Represented by its Chairman

44. Meghalaya Energy Corporation Limited,

(Formerly Meghalaya State Electricity Board)

Short Round Road, “Lumjingshai”,

Shillong – 793001, Meghalaya

Represented by its Chairman & M. D.

45. Government of Arunachal Pradesh,

Itanagar, Arunachal Pradesh

Represented by its Secretary & Commissioner Power

46. Power and Electricity Department,

Government of Mizoram,

Aizawl, Mizoram

Represented by its Secretary Power

47. Manipur State Power Distribution Corporation Limited ,

(Formerly Electricity Department, Government of Manipur)

Keishampat, Imphal

Represented by its Chairman

48. Department of Power,

Government of Nagaland

Kohima, Nagaland

Represented by its Commissioner and Secretary Power

49. 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, Senior Advocate, PGCIL

Ms. Poorva Saigal, Advocate, PGCIL

Shri Shubham Arya, Advocate, PGCIL

Shri Ravi Nair, Advocate, PGCIL

Ms. Reeha Singh, Advocate, PGCIL

Ms. Shikha Sood, Advocate, PGCIL

Ms. Anumeha Smiti, Advocate, PGCIL

Shri Burra Vamsi Rama Mohan, PGCIL

Shri V C Sekhar, PGCIL

Shri Sudesh Kumar Yadav, PGCIL

Shri Prashant Kumar, PGCIL

Shri Amit Kumar Chachan, PGCIL

Shri Anindya Khare, MPPMCL

ORDER

The Petitioner herein, Power Grid Corporation of India Limited (Petitioner / POWERGRID) has filed the instant Petition in accordance with the (a) Order dated 30.06.2021 of the Commission in Petition No. 495/MP/2020 intimating about continuation of Telecommunications and Digital Technology Businesses under Central Electricity Regulatory Commission (Sharing of Revenue Derived from Utilization of Transmission Assets for Other Business) Regulation, 2007 and other relevant orders and (b) Order dated 10.07.2021 of the Commission in 494/MP/2020 seeking prior approval of the Commission to undertake existing Telecommunications and Digital Technology business of Petitioner, through its wholly owned subsidiary company.

2. The Petitioner has made the following prayers:

- i. Consider the instant petition as an intimation, as directed in order dated 30.06.2021 of the Hon'ble Commission in Petition 495/MP/2020, of the Petitioner under Regulation 4(1) of the CERC (Sharing of Revenue Derived from other businesses) Regulations, 2020 of continuation of Telecommunications and Digital Technology Businesses in accordance with the approvals granted by the Hon'ble Commission under Central Electricity*



Regulatory Commission (Sharing of Revenue Derived from Utilization of Transmission Assets for Other Business) Regulation, 2007 and/or other relevant orders passed by this Hon'ble Commission; and

- ii. For the grant of prior approval of the Hon'ble Commission under Regulation 4(1) of the CERC (Sharing of Revenue Derived from other businesses) Regulations, 2020 to undertake existing Telecommunications business utilizing transmission assets of Petitioner, through the wholly owned subsidiary company "POWERGRID TELESERVICES LIMITED as per the order dated 10.07.2021 passed by this Hon'ble Commission in Petition 494/MP/2020.*
- iii. Pass such other relief as the Hon'ble Commission deems fit and appropriate under the circumstances of the case.*

Submissions of the Petitioner:

3. The Petitioner has made following submissions:

- i. The Petitioner is presently engaged in the activities of undertaking inter-State transmission of electricity, as a Deemed transmission licensee under the regulatory jurisdiction of this Commission.
- ii. The Petitioner has been undertaking Telecommunication business since 2001 consistent with the provisions of Section 41 of the Electricity Act 2003 to undertake other business read with the provisions of Regulations notified and orders passed by the Commission from time to time. Petitioner is registered with Department of Telecom (DoT) as an Infrastructure Provider (IP)-I so as to provide telecom infrastructure e.g. Dark Fibre, Right of Way, Duct space, Tower space etc. to various Telecom service provider. No recurring fee is applicable to IP-I registration. The Petitioner had also obtained Unified License with authorization for providing National Long Distance (NLD) and Internet Service Provider (ISP) -A services from DoT and is paying applicable Licensee Fee to DoT.
- iii. This Commission, on 17.02.2020, has notified the CERC (Sharing of Revenue Derived from Utilization of Transmission Assets for Other Business) Regulations, 2020 (2020



Sharing of Revenue Regulations), wherein, a transmission licensee having already undertaken other businesses such as telecommunication shall give a fresh intimation of continuation and carrying forward the telecom business in accordance with the provisions of the 2020 Sharing of Revenue Regulations. Accordingly, the Petitioner had filed the Petition being No. 495/MP/2020 before this Commission under Regulation 4(1) of the 2020 Sharing of Revenue Regulations seeking intimation of the Petitioner under Regulation 4(1) of the 2020 Sharing of Revenue Regulations for continuation of Telecommunications and Digital Technology Businesses.

- iv. On 30.06.2021, this Commission passed an order in the above Petition No. 495/MP/2020 directing the Petitioner to file a fresh Petition with certain directions.
- v. Simultaneously, the Petitioner had also filed Petition No. 494/MP/2020 seeking grant of approval for incorporating a Wholly Owned Subsidiary (WOS) company to undertake the Telecommunications and Digital Technology business for the works related to telecommunications services & products, infrastructure, system integration, consultancy etc. utilizing transmission assets. Vide Order dated 10.07.2021 in Petition No. 494/MP/2020 the formation of a Wholly Owned Subsidiary company under Regulation 8(4) of the 2020 Sharing of Revenue Regulations was approved subject to the conditions stipulated in Para 23 of the above order. In this regard, Para 21, 22 and 23 of the order dated 10.07.2021 read as under:

“ 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.

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.”

- vi. Subsequently, on 25.11.2021, the Petitioner has incorporated the POWERGRID TELESERVICES LIMITED (POWERTEL), with CIN No. U64200DL2021GOI390464 as a Wholly Owned Subsidiary under the Companies Act, 2013. POWERTEL has obtained the Unified License for authorization to provide NLD, ISP-A & International Long-Distance services from DoT on 11.05.2022. It is submitted that the preparation of Business Transfer Agreement (BTA) and other ancillary agreements for transfer of Telecommunication business from Petitioner to POWERTEL as a going concern by way of slump sale is under preparation. On completion of transfer, the petitioner will eventually surrender the Unified License (NLD and ISP-A service authorisation) to DoT and will only retain Infrastructure Provider-I Registration to enable providing of infrastructure to POWERTEL.
- vii. The head-wise information required under Regulation 4(1) & 4(2) of 2020 Sharing of Revenue Regulations is submitted as under:

a) A. Nature of Other Business: Telecommunication Business

Presently, the Petitioner is undertaking the Telecommunications and Digital Technology business. Upon approval of this Commission, POWERGRID TELESERVICES LIMITED, the wholly owned subsidiary of the Petitioner, shall take over the existing Telecommunications and Digital Technology business of the Petitioner and continue to provide the telecommunication services to various Telecom Service Providers (TSPs), Government Agencies, Public Sector Undertakings, Enterprises, Internet Service Providers, Over-the-top (OTT) Platforms etc. through utilizing spare/idle fiber cores of Optical Fiber Ground Wire (OPGW) laid/to be laid, owned, operated and maintained by the Petitioner on ISTS lines for the purposes of communication under ULDC etc.

B. Transmission Assets Utilized or Proposed to be Utilized:

OPGW (Optical ground wire) laid / under implementation is 77,100 km and the spare



fiber in the said OPGW shall be utilized by the Petitioner for the business of POWERTEL for Telecommunications and Digital Technology business. The space in the associated substations and buildings shall be utilized to house the telecom equipment as per requirement from time to time.

In addition, OPGW to be established by Petitioner under future Transmission projects and the space in future Substations and buildings is also proposed to be utilized by the Petitioner for the business of POWERTEL as per requirement.

C. Cost of Such Transmission Assets Utilized or Proposed to be Utilized;

The Total Cost of Transmission Assets (as on 30 June 2022):

Rs Crs.		
Total Cost	Accumulated Depreciation	Net block cost
2,48,581	(69,564)	1,79,017

Cost of transmission assets (OPGW Fiber and space in sub-stations) utilizing or proposed to be utilizing for Telecommunication business: The cost of OPGW presently is about Rs. 3.5 lakh per km including supply and installation. Further, requisite space is also being utilized for locating the Telecom equipment for Telecommunication business. The cost of these space cannot be segregated separately.

D. Revenue Derived or Estimated to be Derived from Other Business;

The gross revenue earned by the Petitioner from Telecommunication business by utilization of the transmission assets in the past five years is as under:

Rs. Crs.

FY	2017-18	2018-19	2019-20	2020-21	2021-22	2022-23 (Estimated)
Revenue from Telecommunication operation utilising Transmission assets	628.53	727.92	767.89	747.76	648.13	
Revenue from consultancy & other income	50.44	15.02	15.44	36.75	22.42	



FY	2017-18	2018-19	2019-20	2020-21	2021-22	2022-23 (Estimated)
Total Revenue	678.97	742.95	783.34	784.51	670.56	800 Cr

E. Underlying Assumptions and Justifications for Estimated Revenue;

Revenue for the Telecommunication business depends on the market demand for such services. Based on the actual past data and assuming future growth, the revenue for FY 2022-23 has been estimated.

F. Impact, If Any, of Use of Transmission Assets for Other Business on Inter-State Transmission of Electricity;

The Petitioner has been utilizing the transmission assets for Telecommunications and Digital Technology business since 2001 and till date there is no impact observed on inter-State transmission of electricity. The Petitioner further ensures that assets utilized by its WOS for telecommunication business and other businesses shall not in any manner adversely affect its performance or obligation in the transmission business.

G. Any Other Details Required by The Commission.

The Petitioner undertakes to place the information and documents as and when sought by this Commission.

b) Nature of Business: Data Centre Business

Petitioner through its wholly owned subsidiary - POWERGRID TELESERVICES LIMITED is also exploring to undertake the Data Centre business by utilizing the surplus land or space in Building available at different Petitioner's Sub-stations for which Petitioner has already approached the Commission for approval through Petition No. 247/MP/2021 which is yet to be finalised.

c) Nature of Business - Utilization of transmission towers for mounting the telecom antennas, base transceiver system (BTS) and associated auxiliary power supply equipment for mobile communication:

This Commission has granted the approval vide order dated 28.05.2019 passed in Petition No. 180/MP/2017 for sharing of revenue from utilization of Transmission towers



for mounting the telecom antennas, Base Transceiver System (BTS) and associated auxiliary power supply equipment for mobile communication to offer to various Telecom Service Providers (“TSPs”) and Infrastructure Service Providers (“ISPs”). The Petitioner has been exploring the above activity, however, due to non-viability on the commercial front, the same could not be commenced. In future, based on evolving market conditions and opportunities, the Petitioner will file a separate petition seeking approval of this Commission to undertake the said business through wholly owned subsidiary company.

- viii. The Petitioner shall be utilizing transmission assets, including OPGW cables and space in substation etc. of the Petitioner to enable the POWERGRID TELESERVICES LIMITED to undertake Telecommunications and Digital Technology business. As such, it is clarified that the total control and management including operation and maintenance of transmission towers, substations including all core of OPGW cables shall continue to be vested with and controlled by the Petitioner at all times.
- ix. Subsequent to the approval of this Commission, POWERGRID TELESERVICES LIMITED, shall commence its activity in regard to the Telecommunications and Digital Technology business as stated above but the transmission assets including OPGW installed on the transmission towers shall be operated and maintained by and under the control of the Petitioner.
- x. Further, the Petitioner undertakes to share the revenue earned by its subsidiary with the long-term transmission customers (LTTCs) in accordance with the provisions of the 2020 Sharing of Revenue Regulations & orders of this Commission passed from time to time.
- xi. The Petitioner undertakes that it shall ensure that the utilization of its Transmission assets for Telecommunication business shall not in any manner adversely affect its performance or obligation in the transmission business. Further, the Petitioner shall indemnify the LTTCs for any additional cost or losses or damages caused due to creation of wholly owned subsidiary - POWERGRID TELESERVICES LIMITED.

Hearing dated 15.11.2022

- 4. The Petition was admitted during hearing held on 15.11.2022.



Reply of Respondent: MP Power Management Company Limited (MPPMCL)

5. The Respondent MPPMCL vide its reply dated 22.12.2022 has submitted the following:
- i. The Petitioner has not furnished any details as to how the proportionate revenue derived from use of exclusively Telecommunication Assets would be apportioned with the Transmission Assets.
 - ii. The Petitioner would need to justify as to how the RoW in its favour is being transferred to or shared with the third parties dealing in Telecommunication Business. Transferring or sharing of RoW may be violative of the terms and conditions of the same and may be a threat to the Transmission business to grave prejudice to the respective beneficiaries.
 - iii. Petitioner has admitted that Petitioner is not going to undertake the Telecom Business whereas Powergrid Teleservices Ltd (POWERTEL) will be undertaking the Telecom business on behalf of Petitioner(s). It is pertinent to point out here that sole motive behind implementation of the 2020 Sharing of Revenue Regulations that transmission licensee who intends to utilize the transmission assets for other businesses can do it within the regulatory frameworks of the CERC. The passing of 2020 the Sharing of Revenue Regulations was intended to have the effective regulatory control over the Transmission Licenses who intend to utilize the transmission assets for other businesses. If the CERC proposes to grant the approval for telecom business, same shall only be granted to Transmission Licensees.
 - iv. The manner of sharing of revenue as specified in Regulation 5(a) of the 2020 Sharing of Revenue Regulations for Telecom business (i.e.10% of gross revenue) does not apply to the Petitioners' proposed business model as the Petitioners will not be directly associated with the telecom business and a newly formed company i.e POWERTEL will undertake telecommunication and digital technology business. 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.
 - v. 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 POWERTEL which is going to do the telecom business on behalf of the Petitioners. Assigning or authorizing POWERTEL 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.

- vi. A similar type of case is pending before this Commission in Petition no 160/MP/2022, the CERC has sought various information from the Petitioners vide RoP of hearing dated 25-11-22 which is relevant for this Petition also. The commission is requested to hear the similar case together.

Rejoinder of the Petitioner

6. The Petitioner vide Rejoinder dated 09.01.2023 has submitted the following:
 - i. It is wrong and denied that the Petitioner has not furnished details as to how the proportionate revenue derived from use of telecommunications assets would be apportioned and shared for the use of the transmission assets. In this regard, it is submitted that 10% of the gross revenue from the telecommunication business shall be shared with the long-term transmission customers (LTTCs) in terms of Regulation 5(1)(a) of the 2020 Sharing of Revenue Regulations and in terms of the orders passed by this Commission from time to time. The 10% of revenue derived or estimated to be derived from such business by utilizing Transmission assets, shall be utilized 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.
 - ii. It is reiterated that the total control and management including operation and maintenance of the transmission system including all cores of OPGW cables shall continue to be vested with and controlled by the Petitioner at all times. The Right of Way, transmission assets etc. of the Petitioner shall be utilized by POWERGRID Teleservices limited on Long Term Right to Use (LTU), however, the same shall be operated and maintained under the control of the Petitioner.
 - iii. The contention of MPPMCL to the effect that the approval for undertaking Telecom



business shall only be granted to Transmission Licensees is contrary to the express provisions of Regulation 8(4) of the 2020 Sharing of Revenue Regulations, which reads as under:

“(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.”

- iv. Further, as stated by this Commission in the Statement of Reasons for the 2020 Sharing of Revenue Regulations, *Filing of a separate subsidiary to engage in other business will facilitate the Commission to evaluate the impact both commercially and operationally.*
- v. It is wrong and denied that there is transfer of some part of utilities or the utilization of transmission assets etc. by POWERGRID Teleservices Limited is not consistent with Section 17(3) of the Electricity Act, 2003. It is reiterated that the total control and management including operation and maintenance of the transmission system including all cores of OPGW cables shall continue to be vested with and controlled by the Petitioner at all times.
- vi. Thus, even after undertaking Telecommunication Business by WOS, the Petitioner will also be carrying out a telecommunication business by providing the Passive Telecommunication Infrastructure viz OPGW Fibers, Right of Way, Tower Infrastructure etc. to its WOS on LTU Basis under Infrastructure provider category-I (IP-I) registration issued by Department of Telecom (DoT) to Petitioner and would fall in the meaning of “other business” as defined u/s. 2 (6) of the 2020 Sharing of Revenue Regulations or within the meaning of “telecommunication business” as defined u/s. 2 (7) of the said Regulations.
- vii. It is wrong and denied that the sharing of revenue of the telecom business in the present case would be as per Regulation 5 (1) (b) of the 2020 Sharing of Revenue Regulations. The telecom business, whether undertaken by the Petitioner or by POWERGRID Teleservices Limited will be governed by Regulation 5 (1) (a) of the 2020 Sharing of Revenue Regulations.
- viii. There is no relevance of Petition No. 160/MP/2022 to the present Petition. The facts and circumstances of the above case and the present case are different.



Hearing dated 17.1.2023

7. Commission reserved the order in the matter.

Analysis and Decision

8. We have considered the submissions of the Petitioner and the Respondent and have also perused the facts on record. The following issues arises for our consideration:

Issue No. 1 – Whether instant petition can be treated as intimation of the Petitioner under Regulation 4(1) of the 2020 Sharing of Revenue Regulations for continuation of Telecommunications and Digital Technology Businesses.

Issue No. 2 – Whether undertaking existing Telecommunications business utilizing spare or idle fiber cores of Optical Fiber Ground Wire (OPGW) laid or to be laid on ISTS lines of the Petitioner, through the Petitioners' wholly owned subsidiary company be allowed? What should be modalities of revenue sharing?

The above issues are dealt with in the succeeding paragraphs.

Issue No. 1 – Whether instant petition can be treated as intimation of the Petitioner under Regulation 4(1) of the 2020 Sharing of Revenue Regulations for continuation of Telecommunications and Digital Technology Businesses?

9. Regulation 4(1) and 4(2) 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 may be, 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.”

Thus, in accordance with Regulation 4(1) of the 2020 Sharing of Revenue Regulations, a transmission licensee having undertaken other business before the commencement of 2020 Sharing of Revenue Regulations shall give prior intimation along with details as per Regulation 4(2), within two months of coming into force of these regulations.

10. In accordance with Regulation 4(1) and 4(2) of the 2020 Sharing of Revenue Regulations, the Petitioner had filed the petition No. 495/MP/2020 intimating continuation of its telecommunication businesses and digital technology business in accordance with the earlier approvals granted by the Commission under erstwhile Central Electricity Regulatory Commission (Sharing of Revenue Derived from Utilization of Transmission Assets for Other Business) Regulations, 2007. The Commission vide order dated 30.06.2021 in Petition No. 495/MP/2020 observed lack of information in the said petition and non-compliance of Regulation 4(2) of the 2020 Sharing of Revenue Regulations and directed the petitioner to file a fresh petition with complete details. Order dated 30.06.2021 in Petition No. 495/MP/2020 provides as follows:

“19. We have considered the submissions of the Respondent and the Petitioner. We observe that despite clear requirements of Regulation 4(2) of the 2020 Sharing of Revenue Regulations, the details sought by Respondent MPPMCL and as well as by the Commission through ROP, the Petitioner has not provided full details. In response to the details of cost of transmission assets utilised or proposed to be utilised, the Petitioner, instead of providing the cost details, has referred to Section 62 and 63 of the Electricity Act, 2003. Similarly, with regards to revenue derived, instead of providing the revenue details, the Petitioner has stated that it has been filing these details in the Commission annually. However, there are no such records that have been filed by the Petitioner on annual basis. Even if it would have been



submitting, it is the responsibility of the Petitioner to file all the related documents along with the Petition to enable Respondents to respond. The response of Petitioner that it has submitted some estimated revenue details in Petition No. 180/MP/2017 does not absolve the Petitioner of its responsibility from filing the documents in the present Petition. We note, for instance, that the Petitioner has attached the balance sheet for year ending 31.3.2020, without specifically indicating the quantum of revenue derived, leaving it to the Commission and the Respondents to find out details from the said balance sheet. The balance sheet may be attached only as a supporting document, but the details as required under the regulations should have been clearly stated in the affidavit. The Petitioner has also generally referred to the order in Petition No. 68/2010 without specifically indicating the capital cost.

20. Keeping in view the almost lack or only partial replies of the Petitioner and incomplete details provided by it, no cognisance is taken of this intimation, which is an intimation with complete lack of information on many aspects or contains only partial information and does not comply with the Regulation 4(2) of the 2020 Sharing of Revenue Regulations. The Petitioner is, therefore, directed to file a fresh petition with complete details.”

11. Accordingly, the petitioner has filed instant petition with details in accordance with Regulation 4(2) of the 2020 Sharing of Revenue Regulations and has prayed to consider the instant petition as an intimation of the Petitioner under Regulation 4(1) of the 2020 Sharing of Revenue Regulations for continuation of Telecommunications and Digital Technology Businesses.

12. Petitioner has furnished the following in respect of Telecommunications business in compliance with the Regulation 4(2) of the 2020 Sharing of Revenue Regulations:

- i. **Nature of Other Business: Telecommunication Business** - Presently, the Petitioner is undertaking the Telecommunications and Digital Technology business to provide the telecommunication services to various Telecom Service Providers (TSPs), Government Agencies, Public Sector Undertakings, Enterprises, Internet Service Providers, Over-the-top (OTT) Platforms etc. through utilizing spare/idle fiber cores of Optical Fiber Ground Wire (OPGW) laid owned, operated and maintained by the Petitioner on ISTS lines for the purposes of communication under ULDC etc.
- ii. **Transmission Assets Utilized or Proposed to be Utilized**- OPGW laid / under implementation is 77,100 km and the spare fiber in the said OPGW shall be utilized by the Petitioner for the business of POWERTEL for Telecommunications and Digital



Technology business. The space in the associated substations and buildings shall be utilized to house the telecom equipment as per requirement from time to time. In addition, OPGW to be established by Petitioner under future Transmission projects and the space in future Substations and buildings is also proposed to be utilized by the Petitioner for the business of POWERTEL as per requirement.

- iii. **Cost of Such Transmission Assets Utilized or Proposed to be Utilized** - The Total Cost of Transmission Assets (as on 30 June 2022):

Rs Crs.		
Total Cost	Accumulated Depreciation	Net block cost
2,48,581	(69,564)	1,79,017

Cost of transmission assets (OPGW Fiber and space in sub-stations) utilizing or proposed to be utilizing for Telecommunication business- The cost of OPGW presently is about Rs. 3.5 lakh per km including supply and installation. Further, requisite space is also being utilized for locating the Telecom equipment for Telecommunication business. The cost of these space cannot be segregated separately.

- iv. **Revenue Derived or Estimated to be Derived from Other Business** - The gross revenue earned by the Petitioner from Telecommunication business by utilization of the transmission assets in the past five years is as under:

Rs. Crs.						
FY	2017-18	2018-19	2019-20	2020-21	2021-22	2022-23 (Estimated)
Revenue from Telecommunication operation utilising Transmission assets	628.53	727.92	767.89	747.76	648.13	
Revenue from consultancy & other income	50.44	15.02	15.44	36.75	22.42	
Total Revenue	678.97	742.95	783.34	784.51	670.56	800 Cr



- v. **Underlying Assumptions and Justifications for Estimated Revenue** - Revenue for the Telecommunications business depends on the market demand for such services. Based on the actual past data and assuming future growth, the revenue for FY 2022-23 has been estimated.
- vi. **Impact, if any, of Use of Transmission Assets for Other Business on Inter-State Transmission of Electricity** - The Petitioner has been utilizing the transmission assets for Telecommunications and Digital Technology business since 2001 and till date there is no impact observed on inter-State transmission of electricity. The Petitioner further ensures that assets utilized by its WOS for telecommunication business and other businesses shall not in any manner adversely affect its performance or obligation in the transmission business.
- vii. **Any Other Details Required by The Commission** - The Petitioner undertakes to place the information and documents as and when sought by this Commission.

13. Considering the details filed by the Petitioner, the instant petition shall be taken on record as intimation of the Petitioner under Regulation 4(1) of the CERC (Sharing of Revenue Derived from other businesses) Regulations, 2020 of continuation of Telecommunications and Digital Technology Businesses.

14. Petitioner has submitted that vide order dated 28.05.2019 in Petition No. 180/MP/2017, approval was granted for sharing of transmission towers for mounting the telecom antennas, Base Transceiver System (BTS) and associated auxiliary power supply equipment for mobile communication to offer to various Telecom Service Providers (“TSPs”) and Infrastructure Service Providers (“ISPs”). The Petitioner has been exploring the above activity, however, due to non-viability on the commercial front, the same could not be commenced. In future, based on evolving market conditions and opportunities, the Petitioner will file a separate petition seeking approval of this Commission to undertake the said business through wholly owned



subsidiary company.

15. We have considered the submissions of petitioner regarding sharing of transmission towers for mounting the telecom antennas, Base Transceiver System (BTS) and associated auxiliary power supply equipment for mobile communication. We observe that Petitioner has not filed details in accordance with Regulation 4(2) of the 2020 Sharing of Revenue Regulations intimating continuation of this business stating that this business approved vide Order dated 28.05.2019 in Petition No. 180/MP/2017 has not commenced. Since continuation of any other business by a transmission licensee requires prior intimation or approval of the Commission in accordance with Regulation 4(1) and 4(2) of the 2020 Sharing of Revenue Regulations, which the Petitioner has not provided for the said business of sharing of transmission towers for mounting the telecom antennas, Base Transceiver System (BTS) and associated auxiliary power supply equipment for mobile communication, the approval granted vide Order dated 28.05.2019 in Petition No. 180/MP/2017 stands expired. Petitioner is directed to seek approval of the Commission in accordance with the 2020 Sharing of Revenue Regulations before undertaking the said business through itself or its wholly owned subsidiary.

16. This issue is decided accordingly.

Issue No. 2 – Whether undertaking existing Telecommunications business utilizing spare or idle fiber cores of Optical Fiber Ground Wire (OPGW) laid or to be laid on ISTS lines of the Petitioner, through the Petitioners’ wholly owned subsidiary company be allowed? What should be modalities of revenue sharing?

17. The Petitioner vide the instant petition is seeking prior approval of Commission to undertake existing Telecommunications business of Petitioner, through the WOS company “POWERGRID TELESERVICES LIMITED”. Petitioner has submitted that the preparation of



Business Transfer Agreement (BTA) and other ancillary agreements for transfer of Telecommunication business from Petitioner to POWERTEL as a going concern by way of slump sale is under preparation. The Petitioner has undertaken to ensure that the utilization of its Transmission assets for Telecommunications business shall not in any manner adversely affect its performance or obligation in the transmission business. Further, the Petitioner shall indemnify the LTTCs for any additional cost or losses or damages caused due to creation of WOS company- POWERGRID TELESERVICES LIMITED. The Petitioner further submitted that the total control and management including operation and maintenance of transmission towers, substations including all core of OPGW cables shall continue to be vested with and controlled by the Petitioner at all times.

18. Respondent, MPPMCL has raised issues such as (a) Petitioner has not furnished any details as to how the proportionate revenue derived from use of exclusively Telecommunications Assets would be apportioned with the Transmission Assets, (b) Petitioner would need to justify as to how the RoW in its favour is being transferred to or shared with the third parties dealing in Telecommunication Business, (c) The passing of the 2020 Sharing of Revenue Regulations was intended to have the effective regulatory control over the Transmission Licenses who intend to utilize the transmission assets for other businesses and approval for telecom business should only be granted to Transmission Licensees, (d) The manner of sharing of revenue in the present case would be as per Regulation 5(1)(b) (Business other than telecommunication business) and not as per Regulation 5(1)(a) (for Telecom business i.e.10% of gross revenue) of the 2020 Sharing of Revenue Regulations (e) Section 41 of the Electricity Act, 2003 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. Assigning or authorizing petitioner's WOS company POWERTEL 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.

19. Petitioner has submitted the following:

- i. 10% of the gross revenue from the telecommunication business shall be shared with the long-term transmission customers (LTTCs) in terms of Regulation 5(1)(a) of the 2020 Sharing of Revenue Regulations and in terms of the orders passed by this Commission from time to time.
- ii. The total control and management including operation and maintenance of the transmission system including all cores of OPGW cables shall continue to be vested with and controlled by the Petitioner at all times. The Right of Way, transmission assets etc. of the Petitioner shall be utilized by POWERGRID Teleservices Limited on Long Term Right to Use (LTU), however, the same shall be operated and maintained under the control of the Petitioner.
- iii. Even after undertaking Telecommunication Business by WOS, the Petitioner will also be carrying out a telecommunication business by providing the Passive Telecommunication Infrastructure viz OPGW Fibers, Right of Way, Tower Infrastructure etc. to its WOS on LTU Basis under Infrastructure provider category-I (IP-I) registration issued by Department of Telecom (DoT) to Petitioner and would fall in the meaning of "other business" as defined under section 2 (6) of the Revenue Sharing Regulations or within the meaning of "telecommunication business" as defined under section 2 (7) of the said Regulations.
- iv. The telecom business, whether undertaken by the Petitioner or by POWERGRID Teleservices Limited will be governed by Regulation 5 (1) (a) of the 2020 Sharing of Revenue Regulations.

20. We have considered the submission of the Petitioner and the Respondent MPPMCL.

The issues herein are that whether the approval to undertake existing Telecommunications



business of Petitioner, through the WOS company can be granted and what shall be the manner of revenue sharing. These issues are dealt in the succeeding paragraph.

21. The proposal of the petitioner is to undertake the existing Telecommunications business of Petitioner, through its WOS company. Regulation 8(4) of the 2020 Revenue Sharing Regulations, provides as under:

“(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.”

22. Vide order dated 10.07.2021 in the Petition No. 494/MP/2020 Commission granted approval for 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. The relevant extract of the Commission order dated 10.07.2021 in the Petition No. 494/MP/2020 are as under:

“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.

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.”

As per above Order, it was directed that 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.

23. The Commission at above Paragraph 13 has already observed that the Petitioner has submitted the details of existing Telecommunications and Digital Technology business of Petitioner, as per the requirement under Regulation 4(2) of 2020 Sharing of Revenue Regulations. The Petitioner has proposed to allow the existing Telecommunications and Digital Technology business of Petitioner, through its wholly owned subsidiary company. Petitioner has also undertaken to ensure that the utilization of its Transmission assets for Telecommunications business shall not in any manner adversely affect its performance or obligation in the transmission business and shall indemnify the LTTCs for any additional cost



or losses or damages caused due to creation of WOS company.

24. Respondent MPPMCL has submitted that Section 41 of the Electricity Act, 2003 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. It has further submitted that assigning or authorizing petitioner's WOS company POWERTEL 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.

25. We have considered Section 17(3) of the Act which 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. In the present case, the proposal is to allow utilisation of transmission system including OPGW, towers, space in the substation by the Petitioner to its WOS which is a separate legal entity and therefore, approval of the Commission under Section 17(3) is a pre-condition for such use.

26. In view of the details filed by the petitioner, we accord approval to the Petitioner for undertaking of existing Telecommunications and Digital Technology business of Petitioner, through the wholly owned subsidiary company "POWERGRID TELESERVICES LIMITED" under Section 17(3) of the Act subject to a clear understanding between the parties that the



transmission assets including OPGW or space in the substation shall be handed over back to the Petitioner as and when required for its core business. Further the approval is subject to the following conditions:

- i. 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.
- ii. The ownership, control and management including operation and maintenance of the transmission system including all cores of OPGW cables, transmission towers, substations shall continue to be vested with and controlled by the Petitioner at all times.
- iii. Only the spare or idle fiber cores of OPGW shall be provided by the petitioner for use of its WOS company and atleast 6 fiber cores of OPGW shall be kept dedicated at all time for utilization of the purpose of Transmission System.
- iv. The fiber cores of OPGW provided to WOS company for use by the Petitioner shall be utilised by the WOS for Telecommunications business only and the same shall not be sold, transferred, or otherwise used by the WOS for any other purpose.
- v. The Telecommunications business by the Petitioner's Wholly Owned Subsidiary shall not in any manner adversely affect Petitioner's performance or obligations as a transmission licensee.
- vi. The Petitioner shall indemnify all the long-term transmission customers for any additional cost or losses or damages caused due to Telecommunications business being carried by the Petitioner's WOS company.
- vii. Considering the criticality of sub-station and Transmission Line operation, safety and security of the sub-station and Transmission Line shall be duly maintained. Any security breach shall not be acceptable and any incident of security breach shall be reported to the commission immediately.
- viii. The Petitioner and WOS company, as applicable, shall comply with necessary statutory requirements and approvals as required for carrying out the Telecommunications business through utilizing OPGW laid or to be laid on ISTS lines of petitioner from



relevant Government Authorities.

- ix. The Petitioner shall furnish the details to the Commission as per the Sub- Regulation (3) of Regulation 4 of the 2020 Sharing of Revenue Regulations.

27. Another issue which arises is the manner of revenue sharing and charges are to be shared by the WOS for utilizing transmission assets. The same is dealt with in subsequent paragraphs.

28. Petitioner has submitted that 10% of the gross revenue of WOS derived from the telecommunication business shall be shared with the long-term transmission customers (LTTCs) in terms of Regulation 5(1)(a) of the 2020 Sharing of Revenue Regulations and in terms of the orders passed by this Commission from time to time. The 10% of revenue derived or estimated to be derived from such business by utilizing Transmission assets, shall be utilized 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.

29. The Respondent MPPMCL has contended that the manner of sharing of revenue as specified in Regulation 5(1)(a) of the 2020 Sharing of Revenue Regulations for Telecommunications business (i.e.10% of gross revenue) does not apply to the Petitioners' proposed business model as the Petitioner will not be directly associated with the telecommunications business and a newly formed company i.e POWERTEL will undertake telecommunication and digital technology business. The manner of sharing of revenue in the present case would be as per Regulation 5(1)(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.



30. Petitioner has submitted the telecommunications business, whether undertaken by the Petitioner or by POWERGRID Teleservices Limited will be governed by Regulation 5 (1) (a) of the 2020 Sharing of Revenue Regulations.

31. We have considered the submissions of petitioner and respondents. Regulation 5 of the 2020 Sharing of Revenue Regulations provides as under:

“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.”

As per above, Regulation 5(1)(a), covers the case where transmission licensee itself is engaged in Telecommunications business. However, under the instant case petitioner’s WOS company, which is a separate legal entity shall be undertaking the telecommunication business who is not the transmission licensee. The instant case shall be covered under Regulation 5(1)(b) of the 2020 Sharing of Revenue Regulations.

32. We observe that Regulation 5(1)(a) of the 2020 Sharing of Revenue Regulations provides that in case of Telecommunication business by a transmission licensee 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. Explanatory Memorandum (EM) for the “Draft Central Electricity



Regulatory Commission (Sharing of Revenue Derived from Utilisation of Transmission Assets for Other Business) Regulations, 2019” provided rationale for considering such 10%. The extracts of the EM are as under:

*“6.3. In order to assess savings due to use of transmission infrastructure, the comparison of cost of normal Telecom business by Telecom network provider with the laying of Telecom line by the Transmission licensee has been considered. The cost of laying optical ground wire by a telecom network provider without using the transmission infrastructure is estimated to be in the range of Rs. 3.25 – 3.50 lakhs per km. It is observed that the cost of laying optical ground wire with transmission network is estimated to be in the range of Rs. 1.75 lakhs to Rs. 2.00 lakhs per Km. Accordingly, the savings to telecom business works out to be of the order of Rs 1.5 lakhs/km. Thus, the estimated total savings in Capital Cost for approximately 33403 KM of optical ground wire of the largest transmission licensee (PowerGrid Corporation of India) is Rs 501 Crores. Therefore, the total fixed assets of Telecom business including savings in capital cost is worked out as Rs 1420.4 Crores i.e. sum of Rs 919.35 Cr gross fixed assets of 2017-18 as per audited accounts and Rs 501 Crores estimated savings as above. Against this fixed assets of Rs 1420.40 Cr, the net revenue surplus for 2017-18 was Rs. 314.41 Crores i.e. 22.13% of total fixed assets including saving in capital cost to telecom business. Accordingly, contribution of transmission assets towards net revenue surplus works out to approximately Rs 110.9 Crores. (Rs 501.05 *22.13%=110.9 Cr).*

6.4. For Powergrid Corporation of India Ltd., out of total length of Telecom line of 53168 Km, the length of OPGW laid using the transmission infrastructure is 33403 Km (approximately 60%) and balance 19765 Km is laid underground. Hence, the net revenue surplus amount of Rs 110.90 Cr is to be shared in proportion to the overhead transmission line i.e. 60% x Rs 110.90 = Rs 66.54 Cr, which is 9.81% of the gross revenue of Rs 678 Cr of the Telecom business. Accordingly, the Commission is of the view that it will be reasonable to share 10% of Gross Revenue with the long term customers.”

33. We observe that the existing telecom business is being transferred to the WOS. Hence apart from ownership, other parameters can be considered as constant. Considering the calculations already made for the transmission licensee, we direct that the 10% of the gross revenue earned in a given financial year by the petitioner’s WOS company from the Telecommunication business, for which spare or idle fiber cores of Optical Fiber Ground Wire (OPGW) laid or to be laid on Petitioner’s ISTS lines or space in the substation are utilized, shall be utilized towards reduction of monthly transmission charges payable by the Long Term Transmission Customers (LTTCS). The terms and conditions of such revenue sharing shall be



duly covered by the Petitioner in its Agreement with WOS covering other modalities as specified in paragraph 26 of this Order. Further, since the telecommunication sector is evolving, and that approval has been granted under Regulation 5(1)(b) of the 2020 Sharing of Revenue Regulations, sharing of revenue shall be reviewed after a period of four years from date of transfer of existing business to its WOS. Petitioner is directed to file a petition and submit detailed audited accounts for its WOS after four years of transfer of existing business to its WOS along with details of revenues and expenses for the telecom business as well as utilization of fibres of OPGW.

34. Any business other than the existing telecommunication and digital technology business carried out by WOS shall not be covered under the revenue sharing model as specified in paragraph 33 of the instant order.

35. Accordingly, the Petition No. 287/MP/2022 is disposed of in terms of the above.

sd/-

(P. K. Singh)
Member

sd/-

(Arun Goyal)
Member

sd/-

(I.S. Jha)
Member

