

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition Number: 83/MP/2023

Coram:

Shri Jishnu Barua, Chairperson

Shri Arun Goyal, Member

Shri P. K. Singh, Member

Date of Order: 27.03.2024

In the matter of:

Petition under Sections 17(3) of the Electricity Act, 2003 read with the Regulation 5(1)(b) 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 Order dated 30.11.2022 of the Commission in petition 247/MP/2021, seeking approval for providing on Lease/License basis the Land at various substations of Petitioner to its Wholly Owned Subsidiary Company (WOS)- POWERGRID TELESERVICES LIMITED for undertaking Data Center activities viz. Trivandrum, Yelahanka, Chennai, Puducherry, Hyderabad, Mapusa, Pune, Padghe, Indore, Bachau, Jhatikara, Kishenpur, Subhashgram, Pandiabili, Silchar.

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. 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),
5. Punjab State Power Corporation Limited
The Mall, PSEB Head Office, PATIALA - 147 001
6. Haryana Power Purchase Centre,
Shakti Bhawan, Sector-6, Panchkula- 134109 (Haryana),
7. Power Development Department, Government of Jammu & Kashmir,
Mini Secretariat, Jammu,
8. Uttar Pradesh Power Corporation Ltd., (Formerly Uttar Pradesh State Electricity Board), Shakti Bhawan, 14, Ashok Marg, Lucknow - 226001 (Uttar Pradesh),
9. BSES Yamuna Power Ltd.,
B-Block, Shakti Kiran, Bldg. (Near Karkadooma Courte), Karkadooma 2nd Floor,
New Delhi-110092,
10. BSES Rajdhani Power Ltd, BSES Bhawan, Nehru Place, New Delhi-110019,
11. Tata Power Delhi Distribution Limited (TPDDL),
NDPL house, Hudson Lines Kingsway Camp, Delhi – 110009
12. Chandigarh Administration, Sector -9, Chandigarh,
13. Uttarakhand Power Corporation Ltd.,
Urja Bhawan, Kanwali Road, Dehradun (Uttarakhand),
14. North Central Railway, Allahabad (Uttar Pradesh),
15. New Delhi Municipal Council,
Palika Kendra, Sansad Marg, New Delhi-110002,
16. Bihar State Power (Holding) Company Ltd (Formerly Bihar State Electricity Board -BSEB), Vidyut Bhavan, Bailey Road, Patna – 800 001
17. West Bengal State Electricity Distribution Company Limited,
Bidyut Bhawan, Bidhan Nagar, Block DJ, Sector-II, Salt Lakecity,
Calcutta-700 091
18. Grid Corporation of Orissa Ltd.
Shahid Nagar, Bhubaneswar - 751 007
19. Jharkhand Bijli Vitran Nigam Limited
Engineering Bhawan, HEC Building, Dhurwa, Ranchi – 834002, Jharkhand
20. Damodar Valley Corporation
DVC Tower, Maniktala, Civic Centre, VIP road, Calcutta - 700 054
21. Power Department, Govt. of Sikkim, Gangtok - 737 101

22. Madhya Pradesh Power Management Company Ltd.
Shakti Bhawan, Rampur, Jabalpur - 482 008
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.
25. Gujarat Urja Vikas Nigam Ltd.
Sardar Patel Vidyut Bhawan, Race Course Road, Vadodara - 390 007
26. Electricity Department, Govt. of Goa,
Vidyut Bhawan, Panaji, Near Mandvi Hotel, Goa - 403 001
27. Electricity Department, Administration of Daman & Diu, Daman - 396 210
28. DNH Power Distribution Corporation Limited.
Vidyut Bhawan, 66KV Road, Near Secretariat Amli, Silvassa - 396 230
29. Chhattisgarh State Power Distribution Co. Ltd.
P.O. Sunder Nagar, Dangania, Raipur, Chhattisgarh-492 013
30. Kerala State Electricity Board (KSEB)
Vaidyuthi Bhavanam, Pattom, Thiruvananthapuram – 695 004
31. Tamil Nadu Generation and Distribution Corporation Ltd, (Formerly Tamilnadu
Electricity Board -TNEB), NPKRR Maaligai, 800, Anna Salai, Chennai – 600 002
32. Electricity Department, Govt of Pondicherry, Pondicherry – 605001
33. Eastern Power Distribution Company of Andhra Pradesh Limited (APEPDCL),
P&T Colony, Seethmadhara, VISHAKHAPATNAM, Andhra Pradesh, 530001
34. Southern Power Distribution Company of Andhra Pradesh Limited (APSPDCL),
D.No: 19-13-65/A, Srinivasapuram, Corporate Office, Tiruchanoor Road,
Tirupati-517503
35. Southern Power Distribution Company of Telangana limited (TSSPDCL),
Corporate Office, Mint Compound, HYDERABAD – 500 063, Telangana
36. Northern Power Distribution Company of Telangana Limited (TSNPDCL),
Opp. NIT Petrol Pump, Chaitanyapuri, Kazipet,
WARANGAL – 506 004, Telangana
37. Bangalore Electricity Supply Company Ltd., (BESCOM),
Corporate Office, K.R.Circle, BANGALORE – 560 001, Karnataka
38. Gulbarga Electricity Supply Company Ltd., (GESCOM)
Station Main Road, GULBURGA, Karnataka- 585102
39. Hubli Electricity Supply Company Ltd., (HESCOM)

Navanagar, PB Road, HUBLI, Karnataka- 580025

40. MESCOM Corporate Office,
Paradigm Plaza, AB Shetty Circle, MANGALORE – 575 001, Karnataka
41. Chamundeswari Electricity Supply Corporation Ltd., (CESC)
927, L J Avenue, Ground Floor, New Kantharaj Urs Road, Saraswatipuram,
MYSORE – 570 009, KARNATAKA
42. Assam Electricity Grid Corporation Limited, (Formerly Assam State Electricity
Board), Bijulee Bhawan, Paltan Bazar, Guwahati – 781001, Assam
43. Meghalaya Energy Corporation Limited, (Formerly Meghalaya State Electricity
Board), Short Round Road, “Lumjingshai”, Shillong – 793001, Meghalaya
44. Government of Arunachal Pradesh
Itanagar, Arunachal Pradesh- 791111
45. Power and Electricity Department, Government of Mizoram
Aizawl, Mizoram- 796001
46. Manipur State Power Distribution Corporation Limited, (Formerly Electricity
Department, Government of Manipur), Keishampat, Imphal- 795001
47. Department of Power, Government of Nagaland
Kohima, Nagaland - 797001
48. Tripura State Electricity Corporation Limited
Vidyut Bhawan, North Banamalipur, Agartala,
Tripura (W) – 799001

...RESPONDENTS

Parties Present:

Shri Shubham Arya, Advocate, PGCIL
Shri Devanshu Sharma, Advocate, PGCIL
Shri Ravi Sharma, Advocate, MPPMCL
Shri Sudesh Yadav, PGCIL
Shri V. C. Shekhar, PGCIL
Shri Prashant Kumar, PGCIL

ORDER

The Petitioner, Power Grid Corporation of India Limited, has filed the instant Petition under Section 17(3) of the Electricity Act, 2003 ('the Act') and Regulation 5(1)(b) of the Central Electricity Regulatory Commission (Sharing of Revenue Derived from Utilization of Transmission Assets for Other Business) Regulation, 2020 inter alia, seeking approval for providing on a lease/licence basis the land at various sub-stations of the Petitioner to its Wholly Owned Subsidiary (WOS) Company, Powergrid Teleservices Limited (PTL) for undertaking Data Centre



activities viz. Trivandrum, Yelahanka, Chennai, Puducherry, Hyderabad, Mapusa, Pune, Padghe, Indore, Bachau, Jhatikara, Kishenpur, Subhashgram, Pandiabili, Silchar and to allow the petitioner to share rental/lease received from WOS-POWERGRID TELESERVICES LIMITED for the use of land at substations of Petitioner in line with the directions given in the Order dated 30.11.2022 in petition 247/MP/2021.

2. The Petitioner has made the following prayers:

- a) *Approve the proposed scheme for allowing the use of the land at Petitioner's various 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 as mentioned at Para 14.*
- b) *Allow the petitioner to share rental/lease received from WOS-POWERGRID TELESERVICES LIMITED for the use of land at substations of Petitioner as mentioned in Para 14(b) above to undertake Data Centre activities with Regulation 5(1)(b) 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 Order dated 30.11.2022 of the Hon'ble Commission in petition 247/MP/2021.*
- c) *Pass such further order or orders as this Commission may deem just and proper in the circumstances of the case.*

Para 14 of the petition as referred in the prayer is at Paragraph 3(e) of this order.

Submissions of the Petitioner:

3. The Petitioner has submitted as follows:

- a) The Petitioner is presently engaged in the activities of undertaking Inter-State Transmission of electricity as a Transmission Licensee under the jurisdiction of this Commission.
- b) Petitioner has established sub-stations and other infrastructure facilities at different places throughout India. For the said purpose, the Petitioner has acquired land and constructed buildings and facilities at different places. 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 safety to the public at large and the necessity to prevent access to the sub-station for security measures, Administrative building, colony quarters etc. 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. 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.

- c) On the backdrop of the need for Data Centres and the availability of extra land that is available with Petitioner at its sub-stations, the Petitioner is exploring the options of allowing its Wholly Owned Subsidiary-POWERGRID TELESERVICES LIMITED to undertake the Data Centre activities by utilizing the above land available at different Sub-stations. The utilization of the transmission assets for Data Centres is only to the extent of setting up facilities in the land available which can be effectively used for placing Data Centres with the least interference by third parties.
- d) This Commission vide order on 30.11.2022 in Petition No. 247/MP/2021 has been pleased to allow setting up of Data Centre in the vacant land of Petitioner's substation at Manesar subject to the conditions laid down by this Commission in the above order and that the 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 at Manesar substation in terms of the Agreement, shall be fully shared by the Petitioner with the long term transmission customers. As regards the implementation of Data Centres at other substations, the Commission had directed to file separate Petitions in compliance with the Central Electricity Regulatory Commission (Sharing of Revenue Derived from Utilization of Transmission Assets for Other Business) Regulation, 2020 (hereinafter "2020 Sharing of Revenue Regulations").
- e) The head-wise information required under Regulation 4(1) & 4(2) of 2020 Sharing of Revenue Regulations are as under:

(i) nature of other business;

A Data Centre is a physical space that is used to store 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 Building, Electrical & UPS System, Air-conditioning system, racks, routers, firewalls, storage systems, servers, and application-delivery controllers. These Data Centres can operate with negligible physical interaction with the public at large, and the operation is restricted to a well-defined area.

(ii) transmission assets utilized or proposed to be utilized for other business;

The utilization of the transmission assets for Data Centres is only to the extent of setting up facilities in the land available, which can be effectively used for placing Data Centres with the least interference by third parties. The details of the Land proposed to be utilized at the Petitioner sub-stations are as under:

S. No.	Name of the Sub-Station	Total Land of Substation (Acres)	Proposed Area for Data Centre (Acres)
1	Trivandrum	56.69	2
2	Yelahanka	35	2
3	Sriperumbudur, Chennai	45.32	4
4	Ramanathapuram, Puducherry	25.16	1
5	Hyderabad,	111.37	10
6	Mapusa	76.46	2
7	Pune	41.48	2
8	Padghe	47.12	4
9	Indore	96.31	2.00
10	Bachau	40	1
11	Jhatikara	103.35	4
12	Kishenpur	136.31	2.00
13	Subhashgram	43.01	2.00
14	Pandiabili	36	2
15	Silchar	40.26	1

(iii) cost of such transmission assets utilized or proposed to be utilized;

The total net cost of land proposed to be utilized for Data Centres as per the land acquisition cost are as under

S. No.	Name of the Sub-Station	Total cost of Land of Substation (Lakhs)	Cost of Land utilized for Data Centre (Lakhs)
1	Trivandrum	441.45	15.57
2	Yelahanka	3317.19	189.55
3	Sriperumbudur, Chennai	7	0.62
4	Ramanathapuram, Puducherry	231.81	9.21
5	Hyderabad,	161.71	14.52
6	Mapusa	47.07	1.23
7	Pune	1138.787	54.91
8	Padghe	1725.14	146.45
9	Indore	172.22	3.58
10	Bachau	639.41	15.99
11	Jhatikara	8104	313.65
12	Kishenpur	123.19	1.81
13	Subhashgram	223.05	10.37
14	Pandiabili	758.92	42.16
15	Silchar	109.18	2.71

(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 in the substations 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) underlying assumptions and justifications for estimated revenue;

Lease or licensing charges of the portion of the land in the substations to be utilized for Data Centre Business will be determined through a certified external valuer to transparently determine the lease charges to be paid by the WOS on an arm's length basis at the time of actual utilization for Data Centre activities.

(vi) impact, if any, of use of transmission assets for other business on interstate transmission of electricity; and

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, if any, caused due to establishing the Data Centre by WOS in the Petitioner's sub-stations.

(vii) any other details required by the Commission.

The Petitioner undertakes to place the information and documents as and when sought by this Commission. Petitioner undertakes to comply with all the conditions mentioned in the order in petition No. 247/MP/2021, passed by the commission on 30.11.2022 including the following:

- 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 of the leased or licensed portion of the land or space in the building shall continue to rest with the Petitioner.
- iii. The main utilisation of land or space in the building at sub-station shall continue to be for the Transmission System.
- iv. 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.
- v. 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.
 - vi. The Petitioner shall indemnify all long-term transmission customers for any additional costs losses, or damages caused due to Data Centre activity being carried by the Petitioner's WOS.
 - vii. Considering the criticality of the sub-station operation, the 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.
 - viii. 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.
 - ix. The Petitioner shall not use any other existing facility of the Petitioner's substation for Data Centre Activities.
 - x. The Petitioner shall not use any other existing facility of the Petitioner's substation for Data Centre Activities.
 - xi. The Petitioner and WOS, as applicable, shall comply with necessary statutory requirements and approvals as required, including that for the use of land for data centre activity, from relevant Government Authorities.
 - xii. 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.
 - xiii. 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.
 - xiv. 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 the transaction shall be at arms' length.

- xv. The Agreement entered into between the Petitioner and WOS shall be in compliance with the applicable Regulations and directions in the Order dated 30.11.2022 passed by this Commission in Petition No. 247/MP/2021.

Hearing Dated 25.05.2023

4. The Petition was admitted on a hearing dated 25.05.2023. In response to a specific query of the Commission regarding approval/clearance from the concerned State Authorities for the utilisation of land at the concerned sub-stations for the proposed activity of the data centre, learned counsel for the Petitioner submitted that they will proceed to obtain the same after approval of the Commission. Further, the Commission directed the Petitioner to submit the following information:
- a. Whether permission is required from the Central Government/State Government/Local Authorities for changing the use of land by establishing the proposed Data Centre at the Sub-Station.
 - b. Model/draft lease/licence agreement to be entered into between the Petitioner and its wholly owned subsidiary company.
 - c. The layout of the mentioned sub-stations showing the existing and all future extensions of the switchyard along with the spare space as well as the proposed land which is to be leased for Data Centre activity.
 - d. How will the Petitioner account for the usage of additional infrastructure that is already present at the sub-station, such as security personnel deployed, a boundary wall, a buildings, etc. from the revenue sharing point of view?
 - e. As per the direction given by the Commission in the order of Petition No. 247/MP/2021 the Petitioner has to take approval from the relevant Government authorities for the use of sub-station land for Data Centre activity. Has the Petitioner approached the concerned district or State authority to take such approval, if yes, the copy of approval accorded by such authority?

Submissions of the Respondent

5. The Respondent M P Power Management Company Limited (MPPMCL), vide affidavit dated 21.06.2023, has submitted as follows:
- a) The transmission licensee is prohibited from assigning its licence or transferring its utility or part thereof by sale lease 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 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"

Therefore, land is given to the Petitioner with clear stipulation as to the purpose it can be used. This Commission vide its order dated Vide order dated 30.11.2022 passed in Petition No. 247/MP2021 made it clear that Land and Building 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 the sub-station is situated is covered under the definition of utility. Hence. The present case of the Petitioner proposing 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 by Restriction given in Regulation 8 of Sharing of Regulations.

- b) From Regulation 8 of the Sharing of Revenue Regulations, it is crystal clear that PGCIL, being a Transmission Licensee, cannot in any way, directly or indirectly, encumber its transmission assets to support other businesses to third parties. However, in the present case, Petitioner has proposed a business model based on giving a limited license over the vacant spaces of sub-stations and Right of Way ("RoW") through WOS to various entities eligible under the telecom regulatory framework and similar entities engaged in the business of providing and utilizing telecommunication infrastructure by way of the data centre. Transactions between the Petitioner, PGCIL and WOS company qualify as related party transactions and need to comply with the relevant restrictions on related party transactions. It may range from disclosure of interest, abstention from voting or obtaining approval of a specific majority of shareholders before entering into the transactions. To enter into a relationship between a holding company and a subsidiary company, the concerned entities have to abide by the rights and liabilities as enshrined under the Companies Act 2013. They have to frame Articles of Association and Memorandum of Association accordingly and duly get them registered with the Registrar of Companies. However, Petitioner has failed to provide any such information to beneficiaries vis-a-vis before this Commission.

- c) Further, the business model as proposed by Petitioner is covered under the Principal-Agent relationship within the meaning of the Indian Contract Act 1872. The Indian Contract Act of 1872 lays down a series of rights and liabilities for such a Principal-Agent relationship. However, Petitioner has failed to advise or propose the details of any such relationship.
- d) Granting such 'limited license or providing such limited right' to another person to use assets would not happen unless certain types of encumbrances are created in favour of such 'other person' which is contrary to Regulation 8 of the Sharing of Revenue Regulations, which prohibits the creation of encumbrances on the transmission assets. This Commission has made the law settled on Limited License or providing limited right very clear that the same can't be granted to WOS or to any third party in its order dated 08.01.2022 passed in Petition No 544/MP/2020.
- e) Leasing of land would create undue hardship in the transmission business as spare land available at the substation cannot be used for capacity addition. It is not out of place to submit here that 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. Therefore, if in the future. Petitioner's substation will require capacity expansion, the same may not be possible due to the proposed establishment of a Data Centre. Therefore, the possibility will be that Petitioner may again burden the beneficiaries with additional acquisition of land at the cost of the public exchequer vis-a-vis the general public.
- f) Petitioner has failed to give estimated Revenue to be derived from the Business. Petitioner has given round and round replies while comparing with revenue figures but failed to give any concrete reply.
- g) Section 41 of the Act entitles only a transmission licensee to engage in any business for optimum utilization of its assets but does not allow other entities to use its transmission lines. WOS, who is going to do the Telecom business on

behalf of Petitioners, is not a "transmission licensee" and is rather a subsidiary company of the Petitioner, which, in fact, is engaged in the business of transmission of electricity and is granted a license for that purpose.

- h) In terms of the Sharing of Revenue Regulations, only transmission licensees can intimate or seek approval of the other business from the Commission.
- i) Section 17(3) of the Electricity Act, 2003 provides that no licensee shall at any time assign its license or transfer its utility or any part thereof by sale, lease, exchange or otherwise without the prior approval of the appropriate Commission. Therefore, assigning or authorizing WOS to undertake the Telecom Business on behalf of Petitioners means a certain type of transfer of some part of 'utility', which includes but is not limited to the use of its lands at sub-stations of the Petitioner to some other person.

Alternate Submission

- j) Sharing of 100% Revenue from Data Centre Business - Petitioner and its WOS relationship falls within the ambit of related party transaction. Therefore, revenue earned by its WOS from data centre business shall be of revenue of Petitioner PGCIL. The basic philosophy behind Section 41, read with Section 17(3) of the Electricity Act, 2003, is to reduce the burden of transmission charges upon LTTCs/end beneficiaries.
- k) 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. Therefore, the proposed data centre business model for which Petition is seeking approval from this Commission falls under the category of other businesses.
- l) Regulation 5(1)(b) of the Sharing of Revenue Regulations does not specify the percentage of revenue share and leaves the discretion upon this Commission to propose revenue sharing on a case-to-case basis. Since Petitioner has already recovered the cost of sub-stations lands subject matter of present Petition under Section 62 of Electricity Act, 2003, therefore, 100% of revenue earned by Petitioner or its WOS shall be passed upon to the end beneficiaries.

Submissions of the Petitioner

6. In compliance with the RoP of hearing dated 25.05.2023, the Petitioner vide affidavit dated 22.06.2023 has submitted as follows:
- a) In compliance with the directions given by the Commission in the Order dated 30.11.2022 in Petition No. 247/MP/2021, a request letter dated 13.01.2023 was sent to the Director, Department of Town & Country Planning (DTCP), Haryana, intimating POWERGRID's plan to establish Data Centre at its Manesar Sub-Station through its WOS namely POWERTEL. In the aforementioned communication the authority has been requested to provide details of any obligations which need to be complied with for the establishment of the Data Centre. The letter was thereafter directed to the concerned CEO, Gurugram Metropolitan Development Authority (GMDA), for further action. The matter is being pursued with various meetings held with the officials of GMDA, including their CEO. In order to expedite the same, a further request letter was sent on 09.06.2023 to the CEO, GMDA. The matter is under active consideration in GMDA.
 - b) A similar exercise will be done by the Petitioner in other cases where Data Centres are being envisaged and any adherence/approval required as per the prevailing Law of the Central Government/ State Government/ Local Authorities regarding CLU in any of the locations will be complied with prior to the establishment of Data Centre at that Substation Location.
 - c) The Petitioner has submitted the Model/draft licence agreement to be entered into between the Petitioner and its wholly owned subsidiary company after receipt of approval from the Commission to establish the Data Centres at the envisaged sub-stations.

As per market practises/demands, generally, there is a requirement for a back-up data centre as redundancy for the main data centre. Accordingly, activities for the establishment of a Disaster Recovery Data Centre at Yehalanka, Bengaluru, as a back-up for the Data Centre being established at Manesar, are in the advanced stages. The layout of the proposed data centre at the Yelahanka substation has been submitted. Further, there cannot be any extension of the switchyard at the substation for evacuation as the area in front of the extension area is fully developed and densely populated.
 - d) As regards the plans for the establishment of Data Centres at other substations, the same is at a nascent state and the size and capacity of the Data Centres

along with land area requirements will be finalised once market demand and experience from the pilot Data Centre are established.

- e) Requirement for power system expansion will be the primary priority, and only spare land, if available, will be utilized for the establishment of Data Centres. 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. Moreover, the Petitioner shall ensure that in case of requirement of the leased out or licensed land (for Data Centre) 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.
- f) Petitioner, at present, is not in a position to provide the exact requirement of proposed land which is to be leased for Data Centre activity (other than the Bengaluru substation) though there is potential for data centres at the proposed substation areas, based on the preliminary market survey. However, the exact scope and demand of the Data Centre can only be exactly ascertained once the approval is granted by this Commission.
- g) A High level of security and restricted access need to be ensured in data centres, considering the confidentiality of the information and data stored in them. Hence, dedicated buildings, security personnel, boundary walls, etc., need to be established to maintain the requisite security levels. In case the sharing of any resources must be done in any circumstance in future, the proportionate cost of the same will be evaluated separately and shared at arm's length and on a transparent basis to ensure that there is no cross subsidisation by the transmission activities to the Data Centre activities as has been already submitted by the Petitioner in Petition No. 247/MP/2021.

Rejoinder by the Petitioner

- 7. Petitioner filed a rejoinder vide affidavit dated 20.07.2023 to the submission of MPPMCL as under:
 - a) In terms of the directions given in the order by this Commission in Petition No. 247/MP/2021, it is clear that the Petitioner, in any way, directly or indirectly, cannot encumber the transmission assets to support the Data Centre Business.
 - b) The Petitioner, through WOS, is neither giving the license nor ROW to any entity over the vacant spaces of sub-stations by way of the Data Centre. The Petitioner

has already submitted the Model/draft licence agreement to be entered into between the Petitioner and its WOS in the present Petition, wherein it has been clarified that the Petitioner will not provide any license/right to Data Centre customers over vacant space of substation land.

- c) The lease rent will be decided by a certified valuer. Further approval from the Audit Committee of POWERGRID will be taken on related party transactions between POWERGRID and POWERTEL as per requirements of the Company Act-2013 and other applicable rules and Regulations. The Petitioner has also provided Memorandum of Association and Article of Association of WOS- POWERGRID TELELESERVICES, registered with the Registrar of the Company.
- d) There is no relevance of Petition No. 544/MP/2020 to the present Petition. The facts and circumstances of the above case and the present case are different. The petitioner has already addressed the concerns of the Respondent as submitted in the Petition & Reply to the Record of Proceedings issued by this Commission.
- e) The Petitioner shall ensure that the Data Centre does not, in any way, affect the existing and all future extensions of the switchyard; moreover, in case of requirement of the leased out or licensed land (for the Data Centre) 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.
- f) As per direction given by the Commission in the order dated 30.11.2022 passed by this Commission in petition 247/MP/2021, the revenue to be derived from leasing out or licensing of the portion of the land in the substations 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.
- g) It is denied that, being a related party transaction the revenue earned by WOS from Data Centre Business will be the revenue of Petitioner. It is submitted that, in law, POWERGRID and its WOS are separate entities. The contents raised by MPPMCL in the present reply cannot be considered again in the present Petition as the primary issue of allowing the Petitioner/WOS to utilize the vacant land, etc. has already been considered by this Commission in the order dated 30.11.2022 in the petition 247/MP/2021.

Hearing dated 23.08.2023

8. In response to a query of the Commission regarding whether approval from the concerned State Authorities for utilisation of the land at the concerned sub-station for the proposed activity of the Data Centre has been obtained, the learned senior counsel for the Petitioner submitted that after 'in principle' approval of the Commission, the Petitioner would approach the State/ Revenue Authorities and thereafter shall come before the Commission for final approval of the Data Centre as well as regarding the sharing of revenue earned from the proposed Data Centre. The Commission directed the Respondents, as a last opportunity, to file their reply. The Commission reserved the order in the matter.

Hearing dated 06.12.2023

9. The matter was heard on 06.12.2023 on the Respondent MPPMCL submission that they were not given an opportunity to present their case in person. The Commission reserved the order in the matter. The relevant extract of the RoP of the hearing dated 06.12.2023 is as under:

"2. Learned counsel for the Petitioner submitted that he has already completed his arguments and has also filed its rejoinder to the reply of MPPMCL and will advance his argument after the learned counsel for MPPMCL completes his submissions.

3. The learned counsel for MPPMCL made elaborate submissions on the issues of like whether a Wholly Owned Subsidiary (WOS) can undertake a telecommunication business on land associated with the sub-station, whether rental leasing is impermissible to the third party and whether sharing of revenue generated from the data centre with the beneficiaries as proposed, is satisfactory. He further submitted that the Commission in the RoP dated 25.4.2023 in Petition No. 160/MP/2022, has observed that a WOS cannot take up a telecommunication business on behalf of the transmission licensee.

4. In response, the learned counsel for the Petitioner submitted that Petition No.

160/MP/2022 is a different matter related to granting certain limited rights to the telecom operators, and the instant petition is for the establishment of data centres in 15 sub-stations owned by the Petitioner. He submitted that as per the directions of the Commission in an order dated 30.11.2022 in Petition No. 247/MP/2021, the Petitioner has included the condition, in its model agreement with WOS, that in case the leased land is required for the transmission business, the same shall be returned by WOS in the same condition as it was taken over. He further submitted that the issues raised by MPPMCL have already been addressed by the Commission in the aforementioned order dated 30.11.2022.

5. Learned counsel for the Petitioner submitted that a backup data centre in Yelahanka Sub-station is proposed for the data centre in Manesar Sub-Station and requested to also grant permission for the same. He submitted that the Petitioner has submitted the details of the proposed backup data centre in Yelahanka Sub-station along with the layout on the affidavit, and the same does not interfere with the normal working of the Yelahanka Sub-station.

6. The Commission directed the parties to file their written submission by 25.12.2023 with an advance copy to each other and also observed that no extension of time will be granted.

7. Subject to the above, the Commission reserved the order in the matter.”

10. None of the parties has filed any submission in compliance with the RoP of the hearing dated 23.08.2023.

Analysis and Decision

11. The present Petition has been filed by the Petitioner under Section 17(3) of the Electricity Act, 2003 ('the Act') and Regulation 5(1)(b) Sharing of Revenue Regulations, inter-alia seeking approval for providing the buffer land available at 15 no. of sub-stations of the Petitioner viz. Trivandrum, Yelahanka, Chennai, Puducherry, Hyderabad, Mapusa, Pune, Padghe, Indore, Bachau, Jhatikara, Kishenpur, Subhashgram, Pandiabili, Silchar, on a lease/licence basis to its Wholly Owned Subsidiary (WOS) Company, Powergrid Teleservices Limited (PTL) for undertaking Data Centre activities. The Petitioner is also seeking permission to share the rental or lease for the use of land at petitioner sub-stations, which is consistent with the permission granted by the Commission in an order dated 30.11.2022 in Petition No. 247/MP/2021. Petitioner has submitted that the Commission, vide order dated 30.11.2022 in Petition No. 247/MP/2021, inter alia, allowed the Petitioner to set up the pilot data centre at Manesar. Petitioner has submitted that he undertakes to comply with all the conditions mentioned in the order in petition No. 247/MP/2021, passed by the commission on 30.11.2022.
12. Respondent MPPMCL submitted that the proposed business model of granting a 'limited license or providing limited right" to another person to use assets would not happen unless certain types of encumbrances are created in favour of such 'other person' which is contrary to Regulation 8 of the Sharing of Revenue Regulations, which prohibits the creation of encumbrances on the transmission assets. MPPMCL further submitted that this Commission has made the law settled on Limited License or providing limited right very clear that the same cannot be granted to WOS or to any third party in its order dated 08.01.2022 passed in Petition No 544/MP/2020.
13. Respondent MPPCL submitted that transactions between the Petitioner, PGCIL and WOS company qualify as related party transactions and need to comply with the relevant restrictions on related party transactions. To enter into a relationship

between a holding company and a subsidiary company, the concerned entities have to abide by the rights and liabilities as enshrined under the Companies Act 2013 and have to frame Articles of Association and Memorandum of Association accordingly and duly get them registered with the Registrar of Companies. Leasing of land would create undue hardship in the transmission business as spare land available at the substation cannot be used for capacity addition. The Petitioner has failed to give an estimated Revenue to be derived from the Business. Assigning or authorizing WOS to undertake the Telecom Business on behalf of Petitioners means a certain type of transfer of some part of 'utility' which includes but not limited to the use of its lands at sub-stations of the Petitioner to some other person, whereas Section 17(3) of the Electricity Act, 2003 provides that no licensee shall at any time assign its license or transfer its utility or any part thereof, by sale, lease, exchange or otherwise without the prior approval of the appropriate Commission.

14. Respondent MPPMCL, in its alternative submission, has submitted that if the spare or buffer land or building at the sub-station is put to any business for its optimum utilisation, 100% of the revenue earned by Petitioner or its WOS should be passed upon to the end beneficiaries.
15. The Petitioner has submitted that the required adherence/approval, as per the prevailing Law of the Central Government/ State Government/ Local Authorities regarding CLU in any of the locations, will be complied with prior to the establishment of the Data Centre at that Substation Location.
16. Petitioner has submitted the Layout of the proposed data centre at Yelahanka substation and further submitted that the establishment of Data Centres at other substations is at a nascent stage and the size and capacity of the Data Centres along with land area requirement will be finalised once market demand and experience from pilot Data Centre is established. Petitioner further submitted that the primary business of the Petitioner as transmission licensee would not be compromised under any condition, and also, the commercial interest of the long-term transmission customers shall be protected; moreover, the Petitioner shall ensure that in case of requirement of the leased out or licensed land (for Data Centre) 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.

17. Petitioner also submitted that dedicated buildings, security personnel, boundary walls, etc., need to be established to maintain the requisite security levels; in case sharing of any resources must be done in any circumstance in future, the proportionate cost of the same will be evaluated separately and shared on arm's length and on a transparent basis to ensure that there is no cross subsidisation by the transmission activities to the Data Centre activities as has been already submitted by the Petitioner in Petition No. 247/MP/2021.
18. Petitioner has submitted the approval from the Audit Committee of POWERGRID will be taken on related party transactions between POWERGRID and POWERTEL as per requirements of the Company Act, 2013 and other applicable rules and Regulations. The Petitioner has also provided the Memorandum of Association and Article of Association of WOS- POWERGRID TELELESERVICES, registered with the Registrar of the Company.
19. Petitioner has submitted that there is no relevance of Petition No. 544/MP/2020 to the present Petition. The facts and circumstances of the above case and the present case are different. Petitioner submitted that the revenue to be derived from leasing out or licensing of the portion of the land in the substations should 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.
20. We have considered the submission of the Petitioner and the Respondents. Regulation 4 of the 2020 Sharing of Revenue Regulations 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."

As per the above, for business other than telecommunication business, the transmission licensee shall seek prior approval of the Commission by filing a petition in regards to sharing of revenues derived from such other business.
21. Regulation 4 (2) & (3) of the 2020 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.”

As per the above, when seeking approval for other businesses, Petitioner has to provide data as provided for in the regulations.

22. We observe that the Petitioner, in compliance with Regulations 4 (2) & (3) of the 2020 Sharing of Revenue Regulations, has submitted the following:

i. Nature of other business;

A Data Centre is a physical space that is used to store 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 Building, Electrical & UPS Systems, Air-conditioning system, racks, routers, firewalls, storage systems, servers, and application-delivery controllers. These Data Centres can operate with negligible physical interaction with the public at large, and the operation is restricted to a well-defined area.

ii. Transmission assets utilized or proposed to be utilized for other business;

The utilization of the transmission assets for Data Centres is only to the extent of setting up facilities in the land available, which can be effectively used for placing Data Centres with the least interference by third parties. The details of the Land proposed to be utilized at the Petitioner sub-stations are as under:

S. No.	Name of the Sub-Station	Total Land of Substation (Acres)	Proposed Area for Data Centre (Acres)
1	Trivandrum	56.69	2
2	Yelahanka	35	2
3	Sriperumbudur, Chennai	45.32	4
4	Ramanathapuram, Puducherry	25.16	1
5	Hyderabad,	111.37	10
6	Mapusa	76.46	2
7	Pune	41.48	2
8	Padghe	47.12	4
9	Indore	96.31	2.00
10	Bachau	40	1

S. No.	Name of the Sub-Station	Total Land of Substation (Acres)	Proposed Area for Data Centre (Acres)
11	Jhatikara	103.35	4
12	Kishenpur	136.31	2.00
13	Subhashgram	43.01	2.00
14	Pandiabili	36	2
15	Silchar	40.26	1

iii. Cost of such transmission assets utilized or proposed to be utilized;

The total net cost of land proposed to be utilized for Data Centres as per the land acquisition cost are as under:

S. No.	Name of the Sub-Station	Total cost of Land of Substation (Lakhs)	Cost of Land utilized for Data Centre (Lakhs)
1	Trivandrum	441.45	15.57
2	Yelahanka	3317.19	189.55
3	Sriperumbudur, Chennai	7	0.62
4	Ramanathapuram, Puducherry	231.81	9.21
5	Hyderabad,	161.71	14.52
6	Mapusa	47.07	1.23
7	Pune	1138.787	54.91
8	Padghe	1725.14	146.45
9	Indore	172.22	3.58
10	Bachau	639.41	15.99
11	Jhatikara	8104	313.65
12	Kishenpur	123.19	1.81
13	Subhashgram	223.05	10.37
14	Pandiabili	758.92	42.16
15	Silchar	109.18	2.71

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 in the substations 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 an arm's length basis at the time utilization for Data Centre activities.

v. Underlying assumptions and justifications for estimated revenue;

Lease or licensing charges of the portion of the land in the substations to be utilized for Data Centre Business will be determined through a certified external valuer to transparently determine the lease charges to be paid by the WOS on an arm's length basis **at the time of actual utilization** for Data Centre activities.

vi. Impact, if any, of use of transmission assets for other business on interstate transmission of electricity; and

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, if any, caused due to establishing the Data Centre by WOS in the Petitioner's sub-stations.

vii. any other details required by the Commission.

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

23. We observe that the Respondent MPPMCL has placed reliance on the Order dated 08.01.2022 passed in Petition No 544/MP/2020, stating that granting such 'limited license or providing such limited right' to another person to use assets would not happen unless the certain type of encumbrances is created in favour of such 'other person' which is contrary to Regulation 8 of the 2020 Revenue Sharing Regulations. We have perused the Order dated 18.01.2022 in Petition No. 544/MP/2020 quoted as under:

"The Petitioner has proposed a business model based on giving a limited license over the vacant spaces of its transmission towers, its sub-stations along with unused optical ground wire containing optical fibre ("OPGW") and Right of Way ("RoW") to various entities eligible under the telecom regulatory framework and similar entities engaged in the business of providing and utilising telecommunication infrastructure.

38. It is a consistent case of the Petitioner that it is the holding company of the transmission licensee SPVs for the proposed business and has filed the present petition in the capacity of the parent company after obtaining NOCs from the said SPVs. The claim of the Petitioner hinges around the NOCs provided by the SPVs for the proposed business.

.....
41 We observe from the pleadings of the Petitioner and replies of the Respondents that the Petitioner has moved this petition merely on the basis of the NOCs given by the transmission licensee SPVs, which as transmission licensees are mandated to comply with various obligations as stipulated in the licenses. The Petitioner has not produced any documents regarding inter se rights and obligations/liabilities between the petitioner and subsidiaries relating to the proposed business.

.....
43. We note that the Petitioner has submitted that the transmission licensee SPVs themselves will not be undertaking the telecom business, but as part of the business model, grant 'limited license' for use of vacant spaces on their transmission towers, sub-stations and unutilized OPGW assets of its subsidiary companies to some other person and provide 'limited rights' to lay down additional OPGW assets by utilizing the corridors created by its subsidiary companies to some other person.

44. We have examined the business model proposed by the Petitioner. We are in agreement with the Respondents that granting such 'limited license' or providing such 'limited right' to other person to use assets would not happen unless certain type of

encumbrances are created in favour of such 'other person' which is contrary to Regulation 8 of the 2020 Revenue Sharing Regulations, which prohibits creation of encumbrances on the transmission assets.

.....

46. We note that the Petitioner itself has submitted that the proposed business model is different from the one envisaged for telecommunication business in the 2020 Revenue Sharing Regulations and is not technically mentioned in the same Regulations. And on this count, the Petitioner has requested the Commission to invoke the provisions of Regulation 10 of the 2020 Revenue Sharing Regulations.

47. In view of the discussions in the foregoing paragraphs, we do not find that it is a fit case for invoking the provisions of Regulation 10 of the 2020 Revenue Sharing Regulations and we are of the considered opinion that the petition in the present form on behalf of the transmission licensee SPVs for approval and adoption of the proposed business model and revenue sharing mechanism and carrying out the proposed business model cannot not be allowed."

24. We observe from the above that the prayer made by the petitioner under Petition No. 544/MP/2020 was to provide a limited license over the vacant spaces of its transmission towers, its sub-stations along with unused optical ground wire containing optical fibre ("OPGW") and Right of Way ("RoW") to various entities eligible under the telecom regulatory framework and similar entities engaged in the business of providing and utilising telecommunication infrastructure. Further, the petition was filed by the Petitioner merely on the basis of the NOCs given by the transmission licensee SPVs, which, as transmission licensees, are mandated to comply with various obligations as stipulated in the licenses. We have assigned cogent reasons in the cited order for not accepting the prayers, as stated above. The Commission specifically held that Petition No. 544/MP/2020 in the present form on behalf of the transmission licensee SPVs for approval and adoption of the proposed business model and revenue sharing mechanism and carrying out the proposed business model can not be allowed.

However, the instant Petition No. 83/MP/2022 is filed by the petitioner which is the Transmission licensee itself, under Section 17(3) of the Electricity Act, 2003 ('the Act') and Regulation 5(1)(b) Sharing of Revenue Regulations, inter-alia seeking approval for providing on a lease/licence basis the buffer land available at 15 no. of substation of the petitioner to its Wholly Owned Subsidiary (WOS) Company.

Considering the above, we do not find any relevance between the instant Petition and Petition No. 544/MP/2020.

25. We observe that in response to MPPMCL's contentions on related party transactions, the Petitioner has submitted that the approval from Audit

Committee of POWERGRID will be taken on related party transactions between POWERGRID and WOS (POWERTEL) as per requirements of Company Act, 2013 and other applicable rules and Regulations and has also submitted Memorandum of Association and Article of Association of WOS, registered with Registrar of Company.

26. We note that vide Order dated 30.11.2022 in Petition No. 247/MP/2021, similar approval as in the instant Petition was granted to the Petitioner for its sub-station at Manesar. The relevant extract of the order dated 30.11.2022 in Petition No. 247/MP/2021 are as under:

“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 substation 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.

As per the above, the Commission allowed the Petitioner to enter into a lease of the vacant land and space in the building of its sub-station at Manesar with its WOS under Section 17(3) of the Act subject to certain conditions.

27. Considering the above discussion, we hereby accord approval to the Petitioner for providing the spare land and space in building available at 15 no. of sub-stations (provided in Paragraph 22 of this Order) of the Petitioner on lease basis to its Wholly Owned Subsidiary (WOS) Company, Powergrid Teleservices Limited (PTL) for undertaking Data Centre activities, 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 and further 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 interests of the long-term transmission customers shall be protected.
 - ii. The ownership of the leased or licensed portion of the land or space in the building shall continue to rest with the Petitioner.
 - iii. The main utilisation of land or space in the building at sub-station shall continue to be for the Transmission System.
 - iv. The leased or licensed land or space in the building shall be utilised by Petitioner's WOS only for establishing the Data Centre and the said land or space shall not be sold, transferred, shared, or otherwise used by the WOS for any other purpose.
 - v. 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.

- vi. The Petitioner shall indemnify all long-term transmission customers for any additional cost losses, or damages caused due to Data Centre activity being carried by the Petitioner's WOS.
- vii. Considering the criticality of the sub-station operation, the 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.
- viii. 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.
- ix. The Petitioner shall not use any other existing facility of the Petitioner's substation for Data Centre Activities.
- x. The Petitioner and WOS, as applicable, shall comply with necessary statutory requirements and approvals as required, including that for the use of land for data centre activity, from relevant Government Authorities.
- xi. The Petitioner shall furnish the details to the Commission as per Sub Regulation (3) of Regulation 4 of the Sharing of Revenue Regulations, 2020, every year.
- xii. 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.
- xiii. 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 the transaction shall be at arms' length.

We have noted Petitioner's submissions that current layout of the proposed data centre at Yelahanka substation has only been finalised and that the establishment of Data Centres at other substations is at a nascent stage and the size and capacity of the Data Centres along with land area requirement will be finalised once market demand and experience from pilot Data Centre is established. We direct the Petitioner that the status of entering into data centre business for such 15 No. substations as above shall be filed under Regulation 4(2) of 2020 Sharing of Revenue Regulations every financial year.

28. The Petitioner has submitted a copy of the Model Agreement to be entered into between the Petitioner and its wholly owned subsidiary company. In this regard,

we are not inclined to examine or approve the model agreement. However, the Petitioner shall ensure compliance with the applicable Regulations and directions in this Order while finalizing the Agreement with its WOS.

29. We observe from the Petitioner's submission that the petitioner has proposed to allow to share the revenue to be derived from leasing out or licensing of the portion of the land in the substations in terms of Regulation 5(1)(b) of the 2020 Sharing of Revenue Regulations quoted 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."

As per the above, in case the other business is not a telecommunication business, the sharing of revenue shall be decided by the Commission on a 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 2020 Sharing of Revenue Regulations.

30. We observe that the Petitioner has not provided an estimate revenue from leasing out or licensing the portion of the land in the substations and has submitted that the same shall be determined through a certified external valuer to transparently determine the lease charges to be paid by the subsidiary on an arm's length basis at the time utilization for Data Centre activities. 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.

31. Further, the Commission, in its Order dated 30.11.2022 in Petition No. 247/MP/2021, held as under:

“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.”

As per the above, the Commission directed that the 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.

32. Considering the above, we direct that the entire gross rental/ lease revenue (based on evaluation of external independent valuer) as received by the Petitioner from its WOS for use of the spare land and space in the building at the 15 no. of substation (provided in Paragraph 22 of this Order) 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 2020 Sharing of Revenue Regulations.

33. The Petition No. 83/MP/2023 is disposed of in terms of the above.

(P.K. Singh)
Member

(Arun Goyal)
Member

(Jishnu Barua)
Chairperson

