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PUBLIC WORKS NOTIFICATIONS

ANDHRA PRADESH ELECTRICITY REGULATORY COMMISSION

**REGULATION FOR TREATMENT OF OTHER BUSINESSES OF
TRANSMISSION LICENSEES AND DISTRIBUTION LICENSEES**

Regulation No.3 of 2005

Introduction

Section 41 of the Electricity Act, 2003, allows a transmission licensee, with prior intimation to the Commission, to engage in any business for optimum utilization of the Licensee's assets, on the condition that a proportion of revenues, derived from such business, and as specified by the Appropriate Commission, shall be utilised for reducing the Licensee's charges for transmission and wheeling. Similarly, Section 51 of the Act allows a distribution licensee with prior intimation to the Commission, to engage in any business for optimum utilization of its assets, subject to the Licensee utilising a proportion of revenues derived from such business and as specified by the Commission, reducing its charges for wheeling.

The Commission formulated a draft Regulation on these matters and sought comments/suggestions from interested persons by publishing the same in the A.P.Gazette on 10-09-2004, issue of a press release, and also putting it on the website of the Commission. Only two organisations, namely, APTRANSCO and APCPDCL have offered comments/suggestions on the draft Regulation. The Commission considered their comments/suggestions and finalized the Regulation herein.

In exercise of powers conferred by Sections 41 and 51 read with Section 181 of the Electricity Act 2003 (36 of 2003) and all other powers enabling it in that behalf, the Andhra Pradesh Electricity Regulatory Commission hereby makes the following Regulation providing for the treatment of Other Businesses of Transmission Licensees and Distribution Licensees, the proportion of revenues from Other Business to be utilised for Licensed Business and the matters incidental and ancillary thereto:

1. Short title, extent and commencement:-

- i. This Regulation may be called the Andhra Pradesh Electricity Regulatory Commission (Treatment of Other Businesses of Transmission Licensees and Distribution Licensees) Regulation, 2005.
- ii. This Regulation shall be applicable to all intra-State Transmission Licensees and the Distribution Licensees in the State of Andhra Pradesh.
- iii. This Regulation shall come into force on the date of its publication in the Andhra Pradesh gazette.

2. Definitions and interpretation:-

- i. In this Regulation, unless the context otherwise requires:
 - (a) "Act" means the Electricity Act, 2003;
 - (b) "Commission" means the Andhra Pradesh Electricity Regulatory Commission;
 - (c) "Licence" means a licence granted under Section 14 of the Act to undertake intra-State Transmission or Distribution of electricity;
 - (d) "Licensed Business" shall mean the function and activities the Licensee is required to undertake in terms of the Licence granted or as a deemed Licensee under the Act.
 - (e) "Licensee" means a person who has been granted a licence under Section 14 of the Act to undertake intra-State Transmission or Distribution of electricity and includes a deemed licensee undertaking intra-State Transmission or Distribution within the State of Andhra Pradesh.
 - (f) "Other Business" means any business of the Licensee other than the Licensed Business;
 - (g) "State" means the State of Andhra Pradesh.

3. Intimation of other business:-

(1) In the event a Licensee engages in any other business for optimum utilization of the assets, he shall give prior intimation in writing to the Commission of such Other Business, along with, inter-alia, the following details

- (a) the nature of the Other Business;
- (b) the proposed capital investment in the Other Business;
- (c) the impact of the use of assets and facilities of the Licensed Business for the Other Business;
- (d) the manner in which the assets and facilities of the Licensed Business and of the Other Business shall be used, demonstrating that there would be no adverse impact on the Licensed Business and on the ability of the Licensee to carry out the duties and obligations of the Licensed Business; and
- (e) proposal for sharing the revenue derived from the Other Business with the Licensed Business, in the manner envisaged in clause 5(3). The proposal should include the methodology used for arriving at the proposed sharing, supported by business plan of the Other Business (including expected annual revenues for the next five years):

Provided that a Transmission licensee shall not engage in the business of trading in electricity.

- (2) The Licensee shall have the absolute responsibility to ensure that the utilization of the assets and facilities of the Licensed Business for Other Business shall not in any manner affect the performance of the obligations under the Licensed Business or the quality of service required from the Licensee, and any such utilization shall be entirely at the cost and risk of the Licensee.
- (3) Failure to submit prior intimation in writing to the Commission will invite a penalty which may extend up to the annual revenue of the Other Business.

4. Accounts:-

- (1) The Licensee shall for each of the Other Business
 - (a) maintain separate accounting records, such as amount of revenue, costs, assets, liabilities, reserves, or provisions which have been charged from or to the Other Business. He shall maintain a description of the basis for the charge or its determination by apportionment or allocation between the various business activities;
 - (b) prepare on a consistent basis from such records accounting statements for each financial year comprising a profit and loss account, a balance sheet and a statement of sources and application of funds;

- (c) provide in respect of the accounting statements prepared, a report by the Auditors in respect of each financial year, stating whether in their opinion the statements have been properly prepared and give a true and fair view of the revenue, costs, assets, liabilities, reserves and provisions reasonably attributable to the business to which the statements relate;
 - (d) submit copies of the accounting statements and Auditor's report not later than six months after the close of the financial year to which they relate; and
 - (e) submit to the Commission such additional information that the Commission require from time to time.
- (2) The Licensee shall establish to the satisfaction of the Commission that the Other Business bears an appropriate share of overhead costs and other common costs.
- (3) Any person authorized by the Commission shall be entitled to inspect and verify the accounts of the Licensee and the licensee shall render all necessary assistance to such person.

5. Financial implications:-

- (1) The Licensee shall not in any manner utilize the assets and facilities of the Licensed Business or otherwise directly or indirectly allow the Other Business to be undertaken in a manner that the Licensed Business results in subsidising the Other Business.
- (2) The Licensee shall not in any manner, directly or indirectly encumber the assets and facilities of the Licensed Business for the Other Business or for any activities other than the Licensed Business.
- (3) The Other Business shall pay to the Licensed Business a reasonable proportion of the revenue of the Other Business, subject to a minimum amount which may reflect the allocable costs or market value of the assets and facilities of the Licensed Business utilised/being utilised for Other Business.
- (4) The Commission will determine the reasonable proportion of revenue of the Other Business and the minimum amount to be paid to the Licensed Business, on a case-to-case basis, as and when a licensee informs the Commission about his intention of utilizing the assets and facilities for use for any Other Business. In deciding the amount to be paid by the Other Business, the Commission will consider the submissions of the Licensee, but may use any alternate approach or methodology that it considers appropriate:

Provided that as and if deemed appropriate by it, the Commission may determine the reasonable proportion of revenues, etc. to be paid to the Licensed Business in respect of a class of Other Businesses as a whole, instead of on a case-to-case basis.

6. Powers of the Commission:-

- (1) The Commission may at any time direct investigation of the assets and facilities of the Licensed Business for the Other Business of the Licensee with a view to ascertaining adherence to this Regulation, covering inter alia:

- (a) whether the costs and expenses are being appropriately adjusted and paid as specified in clause 5 above; and
 - (b) whether the revenues of the Other Business are properly accounted for to determine the gross turnover and the amounts payable to the Licensed Business.
- (2) The Commission may authorize any officer of the Commission or any professional person or expert or consultant to carry out the investigation under sub-clause (1) above and submit a report to the Commission.

7. Issue of orders and practice directions:-

Subject to the provisions of the Electricity Act, 2003 and this Regulation, the Commission may, from time to time, issue orders and practice directions in regard to the implementation of this Regulation and procedure to be followed, and various matters which the Commission has been empowered by this Regulation to direct, and matters incidental or ancillary thereto.

8. Power to amend

The Commission may, at any time, add, vary, alter, modify or amend any of the provisions of this Regulation.

(BY ORDER OF THE COMMISSION)

S. SURYA PRAKASA RAO,
Secretary.