HARYANA ELECTRICITY REGULATORY COMMISSION

PANCHKULA

Notification

The 14th December, 2007

Regulation No. HERC/17/2007: In exercise of the powers conferred under sub-section 2 (o,y) of section 181 read with sections 41 and 51 of the Electricity Act, 2003 (36 of 2003), and all other powers enabling it in this behalf, the Haryana Electricity Regulatory Commission, after previous publication, proposes the following Regulations providing for the treatment of Other Business of Transmission and Distribution licensees and the proportion of revenues from Other Business to be utilized for Licensed Business and for matters incidental and ancillary thereto:

1. Short title, extent and commencement. –

1.1 These regulations may be called the Haryana Electricity Regulatory Commission (Treatment of Income of Other Businesses of Transmission Licensees and Distribution Licensees) Regulations 2007.

1.2 These regulations shall be applicable to all intra-state Transmission Licensees and the Distribution Licensees in the State of Haryana.

1.3 These regulations shall come into force from the date of their publication in the Haryana Government Gazette.

1.4 The Punjab General Clauses Act 1898(1 of 1898), as applicable to the state of Haryana shall apply to the interpretation of these Regulations.

2. Definitions . –

2.1 In these Regulations, unless the context otherwise requires, -

2.1.1 “Act” means the Electricity Act, 2003 (36 of 2003);

2.1.2 “assets” means the existing assets of the licensee, created initially for the Licensed Business and intended for part or full use, as the case may be, for other business.

2.1.3 “associated facilities” means the existing appurtenances and human resources associated with the assets intended for part or full use, as the case may be, for other business;

2.1.4 “Commission” means the Haryana Electricity Regulatory Commission;

2.1.5 “licence” means a licence granted under section 14 of the Act to undertake intra-state transmission or distribution of electricity and shall include the deemed licence for the purpose;

2.1.6 “Licensed Business” shall mean the function and activities, which the Licensee is required to undertake in terms of the licence granted or being a deemed licensee under the Act;

2.1.7 “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 Haryana.

2.1.8 “Other Business” for the purpose of these regulations means any business of the licensee (other than the Licensed Business)carried out using the assets and associated facilities of the licensed business and as defined under Section 41 and 51 of the Act;

2.1.9 “State” means the State of Haryana;

2.2 All other expressions used herein but not specifically defined herein but defined in the Act shall have the meaning assigned to them in the Act. The other expressions used herein but not specifically defined in these regulations or in the Act but defined under the Haryana Electricity Reform Act, 1997 shall have the meaning assigned to them under the said Act, provided that such definitions in the Haryana Electricity Reform Act, 1997 are not inconsistent with the provisions of the Electricity Act, 2003.

3. **Intimation of other business: -**

3.1 In the event a Licensee has engaged or proposes to engage 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

3.1.1 the nature of the Other Business;

3.1.2 the proposed capital investment in the Other Business;

3.1.3 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

3.1.4 proposal for sharing the revenue derived from the Other Business with the Licensed Business, in the manner envisaged in clause 5(4). 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):

3.2 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.

3.3 Failure to submit prior intimation in writing to the Commission shall be considered a breach of license conditions and will invite a penalty, which may extend up to the annual revenue of the Other Business.

4. **Accounting records**

4.1 The Licensee shall for each of the Other Business –

4.1.1 maintain separate account records, such as amounts of revenue, cost, asset, liability, reserve or provision which has been charged from or to any Other Business together with a description of the basis for the charge or its determination by apportionment or allocation between the various business activities together with a description;

4.1.2 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;

4.1.3 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;

4.1.4 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

4.1.5 submit to the Commission such additional information that the Commission requires from time to time.

4.2 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.

4.3 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:-

5.1 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.

5.2 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.

5.3 The Licensee shall duly pay for all costs accounted for in the Licensed Business which have been incurred for Other Business and in the event of such costs being incurred commonly for both the Licensed Business and Other Business, apportion such costs and ensure due payment of apportioned costs to the Licensed Business from Other Business.

5.4 In addition to the sharing of costs under sub-clause (3) above, the Licensee shall account for and ensure due payment to the Licensed Business of 50% of the revenue generated by such other business after deduction of all direct and indirect costs attributed to such other business.

5.5 The payment as specified in sub-regulation 5.4 received in the Licensed Business, from Other Business shall be utilised for reducing the transmission, distribution and/or wheeling charges, as the case may be, of the Licensed Business.

6. Powers of the Commission:-

6.1 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:

6.1.1 whether the costs and expenses are being appropriately adjusted and paid as specified in clause 5 above; and

6.1.2 whether the revenues of the Other Business are properly accounted for to determine the gross turnover and the amounts payable to the Licensed Business.

6.2 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.

6.3 The Commission may, after considering the report under sub-regulation (2) and after giving an opportunity of hearing to the Licensee, pass such orders as the Commission considers appropriate in regard to the costs and expenses to be shared by the Other Business and proportion of the turnover of the Other Business to be accounted as the income of the Licensed Business.

7. Issue of orders and practice directions:-

Subject to the provisions of the Electricity Act, 2003 and these Regulations, the Commission may, from time to time, issue orders and practice directions in regard to the implementation of these Regulations and procedure to be followed on various matters which the Commission has been empowered by these Regulations 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.

9. **Power to remove difficulties –** If any difficulty arises in giving effect to any of the provisions of these regulations, the Commission may, by general or special order, direct a transmission licensee or a distribution licensee to take suitable action, not being inconsistent with the Act, which in its opinion appears necessary or expedient to remove the difficulty.

By orders of the Commission

Secretary

Haryana Electricity Regulatory Commission