

MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION, BHOPAL

Subject: In the matter of MPPTCL's petition regarding approval for Leasing of spare Dark Fibers of OPGW Network of MPPTCL for Commercial use.

Petition No. 33 / 2023

ORDER

(Date of Order: 2nd November, 2023)

M. P. Power Transmission Company Ltd.

Shakti Bhawan, Jabalpur

- **Petitioner**

V/s

1) M.P. Poorv Kshetra Vidyut Vitaran Co. Ltd., Jabalpur

2) M.P. Madhya Kshetra Vidyut Vitaran Co. Ltd., Bhopal

3) M.P. Paschim Kshetra Vidyut Vitaran Co. Ltd., Indore

4) M.P. Industrial Development Corporation Ltd., Indore

5) West Central Railways, Jabalpur

- **Respondents**

Shri V. S. Pani, ACE and Shri Abhinav Anand, AE appeared on behalf of the petitioner.

The petitioner has filed the subject petition invoking the following legal provisions:

- a. Section 17 of the Electricity Act, 2003 (Licensee not to do certain things).
- b. Section 41 of the Electricity Act, 2003 (Other Business of Transmission Licensee).

Petitioner's submissions:

2. The petitioner has broadly submitted as under:

- i. *MPPTCL has installed about 4000 Km of 24 Fiber OPGW network and now it is in the process of establishing 11000 Km of OPGW network under PSDF Scheme of Govt. of India.*
- ii. *The Board of Directors of MPPTCL in its 117th Meeting held on 24.03.2023 has approved that request for proposal be issued for leasing of spare Dark Fibers.*
- iii. *The RFP has been invited for Leasing of spare Dark Fibers of OPGW Network for commercial use. Initially, it has been proposed to lease out 4 pairs of dark Fibers, out of 8 pairs available for leasing. The floor price has been considered as Rs. 16,500/- per fiber pair per Km per annum (including O&M charges but excluding GST) for 1st year*

and 5% escalation in lease rent in subsequent years. The bidders are required to quote their leasing rate per pair of Dark Fibers per Km per annum for a particular route for first year. The bid rate shall not be less than floor price mentioned in the RFP. Further, allotment of fibers shall be made at highest rate only, which will be determined after finalization of RFP. The agreement period has been considered as 10 years extendable up to 5 years on mutually agreed terms.

*iv. It requested the Commission to accord approval for leasing of spare Dark Fibers of OPGW network of MPPTCL for Commercial use. **The revenue earned on account of leasing of Spare Dark Fibers of OPGW network of MPPTCL will be treated as Non-tariff / Other income.***

v. The instant petition was filed under the following provisions:

(a) Other Business of Transmission Licensee: As per Clause 5.14 of ‘The Conditions of Transmission License for Transmission Licensee (including deemed Licensee)’ Regulations, 2004; *“The Licensee may engage in any business to optimize the utilization of assets, but only with the prior approval of the Commission. Any such engagement shall be for the purpose of gainful employment of assets only”.*

(b) Section 17 of the Electricity Act, 2003. (Licensee not to do certain things):
“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”.

(c) Section 41 of the Electricity Act, 2003. (Other Business of Transmission Licensee):
“A transmission licensee may, with prior intimation to the Appropriate Commission, engage in any business for optimum utilization of its assets: Provided that a proportion of the revenues derived from such business shall, as may be specified by the Appropriate Commission, be utilized for reducing its charges for transmission and wheeling: Provided further that the transmission licensee shall maintain separate accounts for each such business undertaking to ensure that transmission business neither subsidizes in any way such business undertaking nor encumbers its transmission assets in any way to support such business: Provided also that no transmission licensee shall enter into any contract or otherwise engage in the business of trading in electricity.”

vi. The petitioner prayed as under:

Kindly accord approval for leasing of Spare Dark Fibres of OPGW network of MPPTCL.

3. **Procedural history:**

- i. Motion hearing in the matter was held on 1st August, 2023. The petitioner was heard and the petition was admitted. Vide daily Order dated 01/08/2023, the petitioner was directed to serve a copy of the petition on respondents within a week and the respondents were directed to submit their reply within two weeks' thereafter. In compliance thereof, MPPTCL vide its letter no. 3411 dated 28/08/2023 submitted that it had served the petition on respondents vide its letter no. 2887 dated 02/08/2023. It submitted that none of the respondents have offered their comments on the petition, till date. MPPTCL further submitted draft of the public notice in Hindi & English.
 - ii. At the hearing held on 05/09/2023, the petitioner reiterated that it served petition to respondents vide its letter dated 02/08/2023 and has not received any comments. Vide daily Order dated 05/09/2023, the Commission directed that the petition shall be listed for public hearing. Further vide Commission's letter No. 2058 dated 11/09/2023, the petitioner was directed to submit response on the information gaps and to publish the approved public notice.
4. MPPTCL vide letter No. 4006 dated 25/09/2023 submitted response on issues raised by the Commission and has informed that public notice was published in 3 newspapers (Dainik Bhaskar, Jabalpur & Raj Express, Bhopal in Hindi and Free Press Journal, Indore in English) on 13/09/2023. The petition and its Annexures were also uploaded on MPPTCL's website on 13/09/2023. No comment / response received from any stakeholder, till due date. MPPTCL submitted reply on the issues raised by the Commission. The pointwise details of the issue raised by the Commission and MPPTCL's reply are as under:

i. **Issue:**

The petition mentions that MPPTCL has installed about 4000 KM of 24 fiber OPGW network and now is in the process of establishing 11000 KM of OPGW network under PSDF scheme of Govt. of India. The entire OPGW network was expected to be ready by May, 2023. Updated status was sought.

MPPTCL's reply:

Presently MPPTCL has installed about 10226 Km of OPGW Network under PSDF Scheme of Government of India. The entire OPGW Network is expected to be ready by November, 2023.

ii. **Issue:**

Guaranteed availability of fibers under service level agreement has been mentioned as 98%. The information on relevant availability of fiber under own use for FY 2022-23 and for first 5 months of FY 2023-24 was sought.

MPPTCL's reply:

OPGW is being installed in place of conventional Earth Wire and tripping/breakdown in EHV lines due to failure of OPGW has not been observed during FY 2022-23. Based on the same, availability of fiber under own use for FY 2022-23 is about 100%. On the same principle availability of fiber under own use for first 5 months of FY 2023-24 may be consider as 100%.

iii. Issue:

Latest status of the case regarding Request for Proposal (RfP), bidding along with latest information regarding bidding undertaken by any other State Transco during FY 2023-24 was sought.

MPPTCL's reply:

Request for Proposal (RFP), floated by MPPTCL in subject matter is due for opening on 20.10.2023. Further, a copy of RFP floated by UPPTCL for leasing of Dark Fiber was submitted for kind consideration of the Commission.

iv. Issue:

Comparative statement of Tenders floated by State Transco of UP, Bihar & West Bengal have been mentioned. Copy of relevant Orders passed by appropriate SERCs along with copy of such Order(s) passed by CERC, if any was also sought.

MPPTCL's reply:

Copy of Order dated 02.11.2022 passed by UP State Electricity Regulatory Commission regarding leasing of Dark Fiber is submitted herein for kind consideration of the Commission. It is also to submit that no such orders have been passed by Electricity Regulatory Commission of West Bengal and Bihar as they have only given intimation to respective SERCs under Section 41 of Electricity Act 2003.

5. At the public hearing held on 10/10/2023 through Video Conferencing, the representatives of MPPTCL appeared in the public hearing and submitted that no comment/objection/suggestion was received from the public/person(s) in the matter. The Commission reserved the case for Order.

Commission's observations:

6. i. The Commission observed that provisions under section 41 of the Electricity Act, 2003 allows the transmission licensee to engage in any business for optimum utilization of its assets with condition of prior intimation to the Commission and after fulfilling other provisions of the Act. The proportion of revenue derived from such business as specified by the Commission shall be utilized for reducing its charges for transmission and wheeling. Further provisions under section 17 of the Act provides for transfer of any part of utility of the Licensee only with the prior approval of the Commission.

- ii. It is also observed that MPERC {the conditions of Transmission License for Transmission Licensee (including deemed Licensee)} Regulations, 2004 has enabling provisions for Other business of the Licensee, with restriction of prior approval of the Commission. Further MPERC (Treatment of Income of other business of Transmission Licensee and Distribution Licensee) Regulations, 2004 also has enabling provisions in this regard.
- iii. Petitioner has submitted that similar projects are being taken up in other parts of India. The tender floated by the petitioner is yet to be finalized and the final financial cost is yet to emerge.
- iv. In view of the observations made above, the Commission grants approval for other business of leasing of spare Dark fibre of OPGW network to the Petitioner subject to the following terms and conditions:
- (a) MPPTCL shall exercise due diligence and observe complete transparency in finalization of tender and award of contract.
- (b) The relevant Rules and Regulations, as amended from time to time by the appropriate Government / CEA / CERC / MPERC shall be adhered to and complied by the petitioner.
- (c) Before proposing final costs and revenue implications of leasing of spare Dark fibre to the Commission, MPPTCL shall undertake prudence checks and perform due diligence at its end.
- (d) It must be ensured that the utilization of assets and facilities of the licensed transmission business for other business of the petitioner shall not in any manner affect the license conditions, performance, obligations or quality of service of MPPTCL under licensed business.
- (e) The revenues derived from proposed business shall be treated similar to non - tariff/ other income and be fully utilized for reduction of charges for transmission and wheeling as proposed by the petitioner.
- (f) MPPTCL shall maintain proper and separate accounts of proposed business duly taking into account the bank interest earned upon funds pertaining to this business activity. It shall also maintain updated status of the proposed works under other business. The details of such works and relevant funds/accounts shall have to be submitted to the Commission in all tariff / True-up petitions.

Ordered Accordingly.

(Prashant Chaturvedi)
Member

(Gopal Srivastava)
Member (Law)

(S. P. S. Parihar)
Chairman