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BIHAR ELECTRICITY REGULATORY COMMISSION

NOTIFICATION

The 21st May, 2013

No. BERC-Regl-01/2013-679-03-In exercise of the powers conferred under clauses (o) and (y) of sub section (2) of section 181 read with sections 41 and 51 of the Electricity Act 2003 (36 of 2003) and all other powers enabling the Commission in this behalf, the Bihar Electricity Regulatory Commission hereby makes the following regulations, namely:

1. Short title, extent and commencement.-

- (1) These regulations may be called the Bihar Electricity Regulatory Commission (Treatment of Income of Other Businesses of Transmission Licensees and Distribution Licensees) Regulations, 2013.
- (2) These Regulations extend to the whole of the State of Bihar.
- (3) These Regulations shall come into force on the date of their publication in the official Gazette.

2. Definitions.-

- (1) In these Regulations, unless the context otherwise requires, -
 - (a) "Act" means the Electricity Act, 2003 (36 of 2003);
 - (b) "Annexure" means annexure annexed to these Regulations;

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- (c) "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.
 - (d) "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;
 - (e) "Commission" means the Bihar Electricity Regulatory Commission;
 - (f) "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;
 - (g) "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;
 - (h) "Licensee" means a person who has been granted a licence or is a deemed licensee under the Act;
 - (i) "Nodal officer" means an officer of the licensee heading the cell established for the purpose of other business; and
 - (j) "Other Business" means any business of the licensee other than the Licensed Business.
- (2) Words or expressions occurring in these Regulations and not defined herein, but defined in the Act, shall have the same meaning as in the Act.

3. Intimation of other business :

- (1) The licensee, proposing to engage in other business for optimum utilisation of assets and associated facilities or proposing to discontinue or having discontinued Other Business, shall give intimation in writing to the Commission on the format in Annexure -'A'.
- (2) The intimation under sub-regulation (1) shall be given to the Commission in the months of April and October every year.
- (3) The licensee shall intimate the impact of the use of assets and associated facilities for the other business on the Licensed Business and on the ability of the licensee to carry out the duties and obligations of the licensed business.
- (4) The licensee shall intimate the manner in which the assets and facilities of the Licensed Business shall be used and justification that it will be used in an optimum manner without affecting the maintenance of the activities of the Licensed Business.

4. Account :

- (1) The Licensee shall -
 - (a) maintain separate accounting records including records of revenues, costs, assets, liabilities, reserves or provisions which have been charged from or to any Other Business together with a description of the basis of that charge or determined by apportionment or allocation between the various business activities together with a description;
 - (b) prepare, on a consistent basis, from such records accounting statements on the format given on Annexure – 'B' 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 account statements so 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 revenues, costs, assets, liabilities, reserves and provisions reasonably attributable to the business to which the statements relate;
 - (d) submit to the Commission such information that is required to review the additional cost incurred by the licensee for Other Business; and
 - (e) submit copies of the accounting statements and Auditor's report specified in clauses (b) and (c) above not later than six months after the close of the financial year to which they relate.
- (2) The licensee shall, if required by the Commission, establish to the satisfaction of the Commission that the Other Business duly bears an appropriate share of overhead costs and other common costs.
- (3) The licensee shall submit to the Commission such additional information as may be required to review in the additional cost incurred by the licensee for the other business.

5. Obligation of the Licensee:

- (1) The Licensee shall not in any manner utilize the assets and facilities of the Licensed Business for any other Business or otherwise directly or indirectly allow the activities to be undertaken in a manner that it results in the Licensed Business subsidising the Other Business in any manner.

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- (2) The Licensee shall be responsible to ensure that the utilization of the assets and facilities of the Licensed Business for the other Business shall not in any manner affect the performance of the obligations or the quality of service required from the Licensee under the Licensed Business and that any such utilization shall be entirely at the cost and risk of the Licensee.
 - (3) The Licensee shall not in any manner, directly or indirectly, encumber the assets and facilities of the Licensed Business for any Other Business or for any activities other than the Licensed Business.
 - (4) The Licensee shall duly account for all costs which have been incurred for Other Business from the Licensed Business and in the event of such costs being incurred commonly for both the Licensed Business and Other Business, the Licensee shall apportion such costs with the approval of the Commission. All such costs pertaining to Other Business shall be duly adjusted by the Licensee for the benefit of the Licensed Business.
 - (5) In addition to the sharing of costs under sub-regulation (4) the licensee shall account for and adjust in favour of the Licensed Business such percentage of the gross turnover of the Other Business as the Commission may decide each year at the time of determination of Aggregate Revenue Requirement (ARR)
 - (6) The costs to be shared from the Other Business under sub-regulation (4) above and the amount to be adjusted in favour of the Licensed Business in terms of sub-regulation (5) above shall be the income of the Licensed Business of the Licensee and shall be utilized for reducing the charges of transmission or wheeling, as the case may be, of electricity by the Licensee.
 - (7) The licensee shall not make any fresh capital investment for the purpose of other Business without approval of the Commission.

6. Orders of the Commission :

1. After receipt of intimation the Commission will determine the common costs and the turnover of the Licensee for each of the Other Business, based on the details submitted by the Licensee before the commencement of the Other Business under Regulation 3 and after exercising due diligence checks thereon.
2. After the closure of each financial year and rendering of annual statements as per Regulation 4, the Commission shall pass an

adjustment order, if required and considered proper, based upon annual accounting statements of each year.

7. **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 and call upon the licensee to furnish any information relating to Other Business to determine, -
 - (a) whether the costs and expenses are being appropriately adjusted and paid as mentioned in regulation 5.
 - (b) whether the revenues of the Other Business are properly accounted in calculation of 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-regulation (1) and submit a report to the Commission.
- (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.
8. **Issue of orders and practice directions.-** Subject to the provisions of the Electricity Act, 2003 (36 of 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.
9. **Power to remove difficulties .-** In case of any difficulty in giving effect to any of the provisions of these regulations, the Commission may, either suo motu or on application made to it, do or undertake to do things, or by general or special order direct the licensee to take suitable action, not being inconsistent with the Act, which appears to the Commission to be necessary or expedient for the purpose of removing the difficulty.
10. **Power to amend .-** The Commission may, at any time, add, vary, alter, modify or amend any provision of these Regulations.

By order of the Commission,
GANESH PRASAD,
Secretary,
Bihar Electricity Regulatory Commission.

Annexure 'A'
(See Regulation 3)

Sr. No.	Unique Code of Other Business	Nature of Other Business	Proposed date for engaging/discontinuing of Other Business	Details of Assets to be used for Other Business	Proposed capital investment in other Business	Manner /Justification For engaging in Other Business	Manner /Justification for discontinuation of Other Business	Details of Assets used in Other Business to Be discontinued	Impact of Other Business on Licensed Business (Yes/No)
1	2	3	4	5	6	7	8	9	10

Annexure 'B'
(See Regulation 4(1)(b))

Accounts Statement in respect of other business of the Licensee for the period ended _____
(Rs. In Lacs)

Sr No	Unique Code Of Other Business	Nature of Other Business	Fixed Costs attributable to the Other Business (which otherwise were being incurred in licensed business ie the % redundant part of Licensed Business)		Variable costs (Cost of material, Head Office prorata expenses and all other costs which are otherwise not incurred in Licensed Business ie the % redundant part of Licensed Business)		Total Costs	Total Receipts from Other Business	Net Income from Other Business
			A/C Head	Amt.	A/C Head	Amt.			
1	2	3	4	5	6	7	8	9	10