

**HIMACHAL PRADESH ELECTRICITY REGULATORY COMMISSION, SHIMLA**  
Vidyut Aayog Bhawan, Block No. 37, SDA Complex, Kasumpti, Shimla- 171009

**CORAM: Sh. Devendra Kumar Sharma, Chairman**  
**Sh. Yashwant Singh Chogal, Member (Law)**  
**Sh. Shashi Kant Joshi, Member**

**In the matter of:**

**Finalisation of the Himachal Pradesh Electricity Regulatory Commission (Treatment of Income of Other Businesses of Transmission Licensees and Distribution Licensees) (First Amendment) Regulations, 2023.**

**ORDER**

1. The Himachal Pradesh Electricity Regulatory Commission (hereinafter referred to as “the Commission”) notified the Himachal Pradesh Electricity Regulatory Commission (Treatment of Income of Other Businesses of Transmission Licensees and Distribution Licensees) Regulations 2005 on 4<sup>th</sup> January, 2006 and which were published in the Rajpatra on 12<sup>th</sup> January, 2006 (hereinafter referred as “the said Regulations”).
2. In order to incorporate special provisions for renting out the Distribution/Transmission Assets by the concerned licensees to the Telecommunication Companies so as to facilitate the Telecommunication activities in the State, the Commission notified the draft HPERC (Treatment of Income of Other Businesses of Transmission Licensees and Distribution Licensees) (First Amendment) Regulations, 2023 on 1st March, 2023 and published the same in the Rajpatra, Himachal Pradesh on 3rd March, 2023.
3. As required under Sub-section (3) of the Section 181 of the Act, the Commission invited public objections and suggestions by way of insertion a public notice in two News papers i.e. “Dainik Bhaskar” on 11<sup>th</sup> March, 2023 and “Indian Express” on 12<sup>th</sup> March, 2023 under Rule (3) of Electricity (Procedure of Previous Publication) Rules, 2005 and the full text of the draft amendment Regulations was made available on the Commission’s website: [www.hperc.org](http://www.hperc.org). The last date for filing objections/ suggestions was 4<sup>th</sup> April, 2023.
4. The Commission, vide letter dated 15.03.2023 requested the major stakeholders, including Small Hydro Project Developers Associations, State Government, HP Power Transmission Corporation Limited (HPPTCL), HP State Load Dispatch Centre (HPSLDC), B.B.N Industries Association, Parwanoo Industries Association and Distribution Licensee to send their objections/suggestions as per the aforesaid public notice.

5. The Commission has received comments/suggestions from three stakeholder(s) on the draft amendment Regulations i.e. the Himachal Pradesh State Electricity Board (HPSEBL), HP Power Transmission Corporation Limited (HPPTCL) and the B.B.N Industries Association.
6. **Consideration of written submissions of the stakeholder i.e. HPSEBL, HPPTCL, & B.B.N Industries Association and Commission's analysis/view:-**

The Commission has carefully perused the written submissions and analyses thereon is as under:-

(i) **Term of the Agreement:**

- (a) HPSEBL has suggested that the 'Term of the Agreement' to be signed as per sub-Regulation (2) of Regulation 4A of the draft Regulations should be 1 year at a time instead of 5 years proposed in draft Regulations.

**Commissions' View:**

The Commission feels that the term of 1 year, as proposed by the HPSEBL may be too short to provide business certainty & further planning, to a reasonable extent, to the Telecommunication Companies. However, in order to provide flexibility, the Commission decides to modify the draft Regulations to provide that the term of the agreement may be mutually decided by the parties but the same shall not exceed 3 years at a time. Moreover, the Commission also decides that the provisions made in the Regulation 4A of the draft Regulations shall be applicable only as a special provision for facilitating the Telecommunication activities in the State.

- (b) BBN Industries Association has suggested that the agreement should contain a provision for Termination of Agreement with Notice period in case of requirement arising out of main business of the licensee.

**Commission's View:**

The Commission agrees in principle to this suggestion and decides to include a proviso that either party may terminate the Agreement by serving a notice of not less than 90 days.

(ii) **Enhancement of Rent:**

- (a) HPSEBL has suggested that the amount of rent shall also be reviewed for its enhancement after every year irrespective of the period of extension beyond 1 year.

**Commission's View:**

The Commission agrees in principle to provide for automatic increase on annual basis during the term of the agreement. The amount of rentals shall also however be reviewed for enhancement on mutually agreed basis at the time of each renewal of the Agreement.

**(iii) Spare Capacity of Distribution/Transmission Assets:**

- (a) The BBN Industries Association has suggested that the Licensee shall ensure at least 25% spare capacity for expansion of defined Consumers and the particular company with whom the contract is proposed to be signed does not get more than 50% of its total distribution/transmission assets, as the case may be, for installation of infrastructure by the Company to deter the abuse of dominant position.

**Commission's View:**

The spare capacity of Distribution or transmission system(s) owned by the respective licensee should always be in-accordance with the permissible/redundancy limit required to be maintained for effective functioning of the system. The suggestion that the Licensee shall ensure 25% spare capacity for expansion of defined Consumers is not relevant in the context in which the amendment has been proposed.

**(iv) Sharing of the Income:**

- (a) HPSEBL has suggested that in addition to the sharing of costs under Sub-regulation (3) of Regulation 5 of the said Regulations, the Licensee shall account for and ensure due payment, equal to 50% of the gross turn over from the Other Business during a given financial year instead of 80% proposed in the draft Regulations.

**Commission's View:**

The Commission feels that in case of income from rentals, sharing on 80:20 basis may be quite reasonable. However, in other cases the provision already made in the said Regulations shall continue to be applicable.

- (b) HPPTCL has suggested that in addition to the provisions defined for treatment of 80% of Gross Turn Over from Other Business as Non-tariff income in corresponding ARR, provisions for treatment of remaining 20% of the income falling to the share of Licensee may also be defined in the Regulations.

**Commission's View:**

The Commission decides to make a provision that the amount falling to the share of Licensee may be used by it for any purposes in the interest of its Distribution/Transmission System.

Taking into Consideration the aforesaid findings of the Commission, the Commission decides to finalize the amendment Regulations by incorporating the changes on above lines and other need based consequential changes, as may be necessary, and to notify the Himachal Pradesh Electricity Regulatory Commission (Treatment of Income of Other Businesses of Transmission Licensees and Distribution Licensees) (First Amendment) Regulations, 2023, accordingly.

Place: Shimla.

Date: 15.05.2023

Sd/-  
(Shashi Kant Joshi)  
**Member**

Sd/-  
(Yashwant Singh Chogal)  
**Member (Law)**

Sd/-  
(Devendra Kumar Sharma)  
**(Chairman)**