

THROUGH
First – Email
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Date: October 05, 2021

To,

Department of Debt and Hybrid Securities (DDHS)
Securities and Exchange Board of India

Plot No.C4-A, 'G' Block

Bandra-Kurla Complex, Bandra (East),

Mumbai - 400051, Maharashtra

Tel No.: +91-22-26449000 / 40459000

Email: ashas@sebi.gov.in, deenar@sebi.gov.in

Respected Ma'am/Sir,

Sub: Request for informal guidance by way of “Interpretive Letter” under the provisions of Securities and Exchange Board of India (Informal Guidance) Scheme, 2003, as amended from time to time (“Informal Guidance Scheme”) in relation to the provisions of the Securities and Exchange Board of India (Infrastructure Investment Trusts) Regulations, 2014 (“InvIT Regulations”).

This is a request for an Interpretive Letter under the Informal Guidance Scheme:

1. Background

- 1.1. Genus Power Infrastructures Limited (“**Company**”) is a public limited company incorporated under the Companies Act, 1956, having corporate identification number L51909UP1992PLC051997, holding permanent account number AACCG1218P and its registered office located at G-123, Sector-63, Noida, Gautam Buddha Nagar, Uttar Pradesh - 201307, India. The equity shares of the Company are listed on BSE Limited (“**BSE**”) and National Stock Exchange of India Limited (“**NSE**”) with Symbol: GENUSPOWER and Security Code: **530343**.
- 1.2. The Company, an ISO 9001 & 14001 certified company has two business divisions offering highly innovative and sustainable solutions to the power sector. The metering solution division provides a complete range of electricity meters such as multi-functional single phase and three phase meters, electric and electronic meters , gas meters and water meters, smart energy meters, smart gas meters, smart water meters, Complete range of Smart postpaid and prepayment meters, Smart Metering Solutions, Communication modules, net meters, smart group meter, prepayment meter, DIN meters, street light management solutions, DCU, CT operated meters, ABT & grid meters, DT meters, pre-payment meters, , net meters, HHU,HES,MDMS, AMI, MDAS etc. The engineering construction and contracts division undertakes turnkey power projects such as sub-station erection up to 420kV, laying up of transmission & distribution lines, rural electrification, switchyard, network refurbishment etc.

- 1.3. India's Ministry of Power has Smart Meter National Programme (“**SMNP**”) under which it aims to replace 25 crore conventional meters with smart meters in India. Smart meters are connected through a web-based monitoring system that help to reduce commercial losses of utilities, enhance revenues and serve as an important tool in power sector reforms. In addition to the above, the Ministry of Power has recently issued a notification dated August 17, 2021 (“**Notification**”) under which it has notified the timelines for the nationwide replacement of existing meters with smart meters by 2025. A copy of the Notification is enclosed herewith and marked as “**Annexure A**” for your records and future reference.
- 1.4. Under the Notification, it is highlighted that in the rollout, all electricity consumers (other than agricultural consumers) in areas with communication network, shall be supplied electricity with Smart Meters working in prepayment mode, conforming to relevant Indian standards. Union territories and electrical divisions having more than 50% consumers in urban areas with aggregate technical and commercial (“**AT&C**”) losses of more than 15% in the financial year 2019-20 must be metered with smart meters by December 2023. Other electrical divisions with AT&C losses more than 25% in the financial year 2019-20 as well as all government offices at block level and above and all industrial and commercial consumers also must be metered with smart meters by December 2023.
- 1.5. In order to achieve the aforesaid vision, the Indian Government is enabling implementation of Smart meters through BOOT - Build. Own. Operate. Transfer (“**BOOT**”) model to expedite the deployment. In this regard, the Indian Government has formed Energy Efficiency Services Limited, a joint venture of public sector undertakings under the Ministry of Power (“**EESL**”). EESL has signed MoUs/Agreements for smart meters with the states of Andhra Pradesh, Assam, Tripura, Punjab, Uttar Pradesh, Haryana, Bihar, NDMC-Delhi, Rajasthan, Telangana and for prepaid meters with the states of Uttar Pradesh and Tripura.
- 1.6. In view of the aforesaid framework, various State Governments are inviting tender bids for appointing “**Advance Metering Infrastructure Service Provider**” for design, supply, installation, testing, commissioning, reading, analysis and AMC of Smart Meters at various location within the state. For instance, Assam Power Distribution Company Limited has issued open tender notice in February, 2021 for appointing “Advance Metering Infrastructure Service Provider (AMISP)” or for Design-Build-Finance-Own-Operate-Transfer -DBFOOT the Advance Metering Infrastructure (AMI) Project in the pre-paid/ post-paid mode in selected urban areas. AMISP shall be responsible to finance and implement the entire project. A copy of the aforesaid “Bid Document” is enclosed herewith and marked as “**Annexure B**” for your record and future reference.
- 1.7. Now, the Company is planning to float an Infrastructure Investment Trust (“**InvIT**”) in accordance with InvIT Regulations for carrying out the aforesaid nature projects of Smart Meters in BOOT model, which enables direct investment of monies from the possible institutional investors.

2. Legal Framework

- 2.1. In terms of regulation 2(1)(t) of the InvIT Regulations, “**Infrastructure**” read as follows:

““infrastructure” includes all infrastructure sub-sectors as defined vide notification of the Ministry of Finance dated October 07, 2013 and shall include any amendments or additions made thereof”

2.2. In terms of regulation 2(1)(u) of the InvIT Regulations, “**Infrastructure Project**” read as follows:

““infrastructure project” means any project in infrastructure sector;”

2.3. Notification of the Ministry of Finance dated October 07, 2013 as amended by Notification of the Ministry of Finance dated November 14, 2017 (“**Infra Notification**”) covers following infrastructures sub-sectors:

Sl.No.	Category	Infrastructure sub-sectors
1.	Transport and Logistics	<ul style="list-style-type: none"> • Roads and bridges • Ports¹ • Shipyards² • Inland Waterways • Airport • Railway Track, tunnels, viaducts, bridges, terminal infrastructure including stations and adjoining commercial infrastructure • Urban Public Transport (except rolling stock in case of urban road transport) • Logistics Infrastructure³
2.	Energy	<ul style="list-style-type: none"> • Electricity Generation • Electricity Transmission • Electricity Distribution • Oil pipelines • Oil/Gas/Liquefied Natural Gas (LNG) storage facility⁴ • Gas pipelines⁵

¹ Includes Capital Dredging

² “Shipyards” is defined as a floating or land-based facility with the essential features of waterfront, turning basin, berthing and docking facility, slipways and/or ship lifts, and which is self sufficient for carrying on shipbuilding/ repair/breaking activities.

³ “Logistics Infrastructure” means and includes Multimodal Logistics Park comprising Inland Container Depot (ICD) with minimum investment of Rs. 50 crore and minimum area of 10 acre, Cold Chain Facility with minimum investment of Rs. 15 crore and minimum area of 20,000 sft, and/or Warehousing Facility with investment of minimum Rs. 25 crore and minimum area of 1 lakh sq ft.

⁴ Includes strategic storage of crude oil.

3.	Water and Sanitation	<ul style="list-style-type: none"> • Solid Waste Management • Water supply pipelines • Water treatment plants • Sewage collection, treatment and disposal system • Irrigation (dams, channels, embankments, etc.) • Storm Water Drainage System • Slurry Pipelines
4.	Communication	<ul style="list-style-type: none"> • Telecommunication (fixed network)⁶ • Telecommunication towers • Telecommunication & Telecom Services
5.	Social and Commercial Infrastructure	<ul style="list-style-type: none"> • Education Institutions (capital stock) • Sports Infrastructure⁷ • Hospitals (capital stock)⁸ • Tourism infrastructure viz. (i) three-star or higher category classified hotels located outside cities with population of more than 1 million, (ii) ropeways and cable cars • Common infrastructure for Industrial Parks and other parks with industrial activity such as food parks, textile parks, Special Economic Zones, tourism facilities and agriculture markets • Post-harvest storage infrastructure for agriculture and horticultural produce including cold storage • Terminal markets • Soil-testing laboratories • Cold Chain⁹ • Affordable Housing¹⁰

⁵ Includes city gas distribution network.

⁶ Includes optic fibre/wire/cable networks which provide broadband / Internet.

⁷ Includes the provision of Sports Stadia and Infrastructure for Academies for Training/Research in Sports and Sports-related activities.

⁸ Includes Medical Colleges, Para Medical Training Institutes and Diagnostics Centres.

⁹ Includes cold room facility for farm level pre-cooling, for preservation or storage of agriculture and allied produce, marine products and meat.

2.4. In terms of section 2(23) of the Electricity Act, 2003, the definition of “**Electricity**” read as follows:

““electricity” means electrical energy-

(a) generated, transmitted, supplied or traded for any purpose; or

(b) used for any purpose except the transmission of a message;”

3. Queries

3.1. **Query 1:** Would the BOOT model for Smart Meters, as described in Paragraph 1 above, fall under the definitions of "infrastructure" and "infrastructure project" as stated in the InvIT Regulation and allowed activities for an InvIT?

Our Contentions: In terms of regulation 2(1)(t) of the InvIT Regulation read along with the Infra Notification, the term “**Infrastructure**” is an inclusive definition which gives a general description or the name of what is covered by the definition and thereafter by a specific inclusion mentions Infrastructure Definition that may not be strictly inside the scope of the general description. In this regard, we crave to rely on judgement of Hon’ble Supreme Court in the matter of **P. Kasilingam v. P.S.G. College of Technology (1995) Supp 2 SCC 348** which differentiate exhaustive and inclusive definitions in the following words:

“A particular expression is often defined by the Legislature by using the word ‘means’ or the word ‘includes’. Sometimes the words ‘means and includes’ are used. The use of the word ‘means’ indicates that “definition is a hard-and-fast definition, and no other meaning can be assigned to the expression than is put down in definition”. (See : Gough v. Gough; Punjab Land Development and Reclamation Corpn. Ltd. v. Presiding Officer, Labour Court.) The word ‘includes’ when used, enlarges the meaning of the expression defined so as to comprehend not only such things as they signify according to their natural import but also those things which the clause declares that they shall include.”

Further, in the matter of **N.D.P. Namboodripad v. Union of India (2007) 4 SCC 502**, the Hon’ble Supreme Court observed that:

*“The word “includes” has different meanings in different contexts. Standard dictionaries assign more than one meaning to the word “include”. Webster’s Dictionary defines the word “include” as synonymous with “comprise” or “contain”. Illustrated Oxford Dictionary defines the word “include” as: (i) comprise or reckon in as a part of a whole; (ii) treat or regard as so included. Collins Dictionary of English Language defines the word “includes” as: (i) to have as contents or part of the contents; be made up of or contain; (ii) to add as part of something else; put in as part of a set, group or a category; (iii) to contain as a secondary or minor ingredient or element. **It is no doubt true that generally when the word “include” is used in a definition clause, it is used as a word of enlargement, that is to make the definition extensive and not restrictive.***

¹⁰ “Affordable Housing” is defined as a housing project using at least 50% of the Floor Area Ratio (FAR)/Floor Space Index (FSI) for dwelling units with carpet area@ of not more than 60 square meters. “Carpet Area” shall have the same meaning as assigned to it in clause (k) of section 2 of the Real Estate (Regulation and Development) Act, 2016.

But the word “includes” is also used to connote a specific meaning, that is, as “means and includes” or “comprises” or “consists of”.

In view of the aforesaid Judicial Precedents, Infra Notification, and definition of electricity as per section 2(23) of the Electricity Act, 2003, we’re of the view that since “Infrastructure” **includes ‘Energy’ as infrastructure** and its sub-infrastructures includes Electricity Generation, Electricity Transmission, and Electricity Distribution, the ancillary activity of Electricity Transmission, and Electricity Distribution of Smart Meters under BOOT model shall come under the ambit of “**Energy Infrastructure**”. Thus, the BOOT model for Smart Meters which is installed through a web-based monitoring system help to reduce commercial losses of utilities, enhance revenues and serve as an important tool in power sector reforms, will come under the purview of the definition of “**Infrastructure**” as given under regulation 2(1)(t) of the InvIT Regulations read with the Infra Notification.

- 3.2. **Query 2:** If the answer to the Query 1 is in the affirmative, would subcontracting activities under the BOOT model for Smart Meters, including but not limited to manufacturing and designing Smart Meters, be covered under the definition of "Infrastructure" under regulation 2(1)(t) of the InvIT Regulations read with the Infra Notification?

Our Contentions: In view of the aforementioned judicial precedents, facts and legal framework, we’re of the view that since the main activity of Smart Meters under BOOT Model is covered under the purview of the definition of "Infrastructure" under regulation 2(1)(t) of the InvIT Regulations read with the Infra Notification, the sub-activities of the main activity shall be covered automatically.

- 3.3. **Query 3:** If the answer to the Query 1 is in the turndown, would the BOOT model for Smart Meters, be covered under the sector of “**Social and Commercial Infrastructure**” as mentioned in the Infra Notification, given the same facilitates the Government to ensure the lowest human intervention in electricity supply and is in public interest at large?

Our Contentions: In line with the Smart Meter National Programme (SMNP) of India's Ministry of Power and the Notification of the Ministry of Power, we see the BOOT model for Smart Meters as welcome move of the Ministry of Power considering that smart metering offers substantial benefits like reduced commercial losses, effective monitoring of energy (real-time or near real-time), energy theft detection, enhancements in grid reliability and better revenue management. Furthermore, it enables customers to keep track of their energy consumption, allowing them to adjust their usage as required. Thus, in view of the above commercial rationale, the activity of smart metering under the BOOT model may be covered under the sector of “**Social and Commercial Infrastructure**” as mentioned in the Infra Notification.

4. Compliance with Paragraph 6 & 11 of the Informal Guidance Scheme

- 4.1. In accordance with paragraph 6 of Informal Guidance Scheme, this letter is accompanied with a demand draft number 027989 for Rs. 25,000/- (Rupees Twenty-Five Thousand only) dated September 30, 2021 in favour of the Securities and Exchange Board of India drawn on IDBI Bank – Sunny Paradis, Tonk Road, Jaipur, Rajasthan payable at Mumbai towards fees for informal guidance.

- 4.2. In accordance with paragraph 11 of Informal Guidance Scheme, we request you to give confidential treatment to the application for a period of 90 days from the date of Department's response.
- 4.3. All material facts, circumstances and legal provisions which are in our opinion are relevant for the purpose of determination of this request are stated herein.
- 4.4. We humbly request you to reserve our right to make additional submissions as deemed appropriate in the matter on hand and grant us a personal hearing/interview on behalf of the Company in this regard to further its cause in the interest to your esteemed office that could facilitate explanation of the facts and circumstances for prudent decision making in accordance with para 7 of the Informal Guidance Scheme. We shall be pleased to furnish any additional information as may be required in support of this application. Any request for further information may be addressed to:

Name: Mr. Sumit Kochar

Email: sumit.koc@gmail.com

Phone: +91-9560019659

Address: First Floor, Flat No. 102, Tulips Apartment, Rebello Road, Ranwar, Near Mehboob Studio, Bandra West, Mumbai – 400050.

A copy of the letter authorizing **Mr. Sumit Kochar** to act as authorized representative of the Company is annexed herewith and marked as “**Annexure C**” for your reference and records.

We would highly appreciate your earliest action in relation to above.

Thanking you and Yours Sincerely,

For **Genus Power Infrastructures Limited**

Name: Ankit Jhanjhari

Designation: Company Secretary

Date: October 05, 2021

Place: Jaipur, Rajasthan

Enclosures: As stated above.