

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Coram

- 1. Dr. Pramod Deo, Chairperson**
- 2. Shri Rakesh Nath, Member (EO)**
- 3. Shri R. Krishnamoorthy, Member**
- 4. Shri S. Jayaraman, Member**
- 5. Shri V. S. Verma, Member**

In the matter of

Regulations on procedure, terms and conditions for grant of transmission licence and other related matters.

STATEMENT OF REASONS

The Commission, by virtue of its powers under section 178 of the Electricity Act, 2003 (the Act) had published the draft regulations on procedure, terms and conditions for grant of transmission licence and other related matters and had invited suggestions and comments from the stakeholders on the draft regulations through the public notice dated 3.12.2008. The suggestions and comments have been received on the draft regulations from the persons listed in the Annexure attached to this statement of reasons. Our decisions on the suggestions and comments received are discussed in the succeeding paras.

Regulation 2, clause (1), insertion of new sub-clause (t)

2. In keeping with the spirit of the tariff policy, it is proposed to explicitly provide that the state owned or controlled companies identified as project developer on or before 5.1.2011 may be granted licence for undertaking inter-State transmission in electricity, even without being selected through competitive

bidding. Accordingly, definition of the term “state owned or controlled company” has been inserted. Consequential changes have been made in regulations 4 and 7 of the published draft.

Regulation 2, clause (1), sub-clause (t)

3. Sub-clause (t) of clause (1) of regulation 2 of defines the term “transmission plan” as the perspective plan or short-term plan prepared by the Central Electricity Authority or network plan prepared by the Central Transmission Utility in accordance with the guidelines (of the Central Government) for encouraging competition in development of inter-State transmission projects. As the network plan prepared by the Central Transmission Utility is provided for in the National Electricity Plan, an explicit reference has been made to the National Electricity Plan.

4. It has been pointed out that the words “the guidelines for encouraging competition in development of inter-State transmission projects” be substituted by the words “provisions under section 3, 38 and 73 of Electricity Act 2003 read with clause 3.2 of the National Electricity Policy”.

5. We have considered the suggestion. The guidelines for competitive bidding issued by the Central Government vide Ministry of Power resolution dated 17.4.2006 contain the necessary guidance for preparation of the transmission plan. The amendment of the definition on the suggested line will make it more complicated. The definition given in the draft regulations sufficiently

addresses the concerns expressed. However, the words “guidelines for encouraging competition in development of inter-State transmission projects” have been replaced by the words “the National Electricity Policy”. Further, in view of insertion of new sub-clause (t), this sub-clause has been re-numbered as clause (u).

Regulations 3 and 4

6. Regulations 3 and 4 of the draft regulations refer to the selection of projects under the guidelines for competitive bidding and implementation of the projects by the Empowered Committee, respectively.

7. It has been suggested that these regulations may be omitted since, as suggested, they are not relevant to the subject matter, which primarily relates to grant of licence for inter-State transmission of electricity.

8. We are not impressed by the argument. Regulation 7 of the draft regulations deals with the eligibility criterion for grant of transmission licence. According to this criterion, persons selected through the process of competitive bidding are eligible for grant of licence for inter-State transmission of electricity. Therefore, to provide link with regulation 7 of the draft regulations, regulations 3 and 4 are considered necessary.

9. Para 5.1 of the tariff policy provides that the state owned or controlled companies identified as project developer on or before 5.1.2011 may be granted licence for undertaking inter-State transmission in electricity even without being

selected through competitive bidding. It has, therefore, been decided that such a state owned or controlled company as an identified developer should also be eligible for grant of licence up to 5.1.2011. Accordingly, clause (2) of regulation 4 and regulation 7 of the draft regulations have been suitably revised, to include the state owned or controlled company, along with others.

Regulation 7

10. Regulation 7 of the draft regulations specifies the eligibility criterion for grant of transmission licence. According to this provision, a person selected through the process prescribed under the guidelines for competitive bidding, or a generating company which has established the dedicated transmission line but intends to use such a line as the main transmission line and part of the inter-State transmission system is eligible for grant of transmission licence.

11. It has been submitted that the eligibility criterion proposed in regulation 7 of the draft regulations is restrictive and will allow limited entry into the transmission sector. Accordingly, suggestion has been made to make the provision more elaborate and broad-based so that large number of players may be able to enter the sector.

12. The eligibility criteria have been proposed after taking into consideration the provisions of the Act and the tariff policy. Accordingly, no modification, except as given in para 9 above is considered necessary. The changes as per para 9 above widens the scope.

Regulation 8, clauses (5) and (7)

13. Clause (5) of regulation 8 of the draft regulations mandates that immediately on making the application, the applicant shall forward a copy of the application to the Central Transmission Utility. Clause (7) thereof provides that the applicant shall post the complete application along with annexures and enclosures on its website.

14. It has been suggested that the two clauses should be merged into one. It has been further suggested that application made for grant of inter-State transmission licence should also be sent to the State Transmission Utility for its comments and suggestions. It has also been suggested that the application for grant of transmission licence should be posted on the website immediately after filing thereof.

15. In terms of sub-section (3) of section 15 of the Act, an application made for grant of inter-State transmission licence is to be forwarded to the Central Transmission Utility who is required to make its recommendations to the Commission. Apparently, the State Transmission Utility does not have any significant role in the grant of licence for inter-State transmission. In any case, the application is published by the applicant in the newspapers to invite suggestions and objections from the general public. In response to such a notice, it will always be open to the State Transmission Utility or any other interested person to file its suggestions and objections which will be duly considered by the Commission. The suggestion made for posting of application on the website has

been considered and the relevant clause is being amended to provide that the application shall be posted on the website before making the application.

Regulation 8, clause (9)

16. According to clause (9) of regulation 8 of the draft regulations, while making the application, the applicant shall indicate the address of the website whereon the application has been posted.

17. It has been suggested that the address of the website on which the application has been posted should also be indicated in the notice published.

18. The notices are to be published by the applicant in format attached as Form II of the draft regulations. This form contains provisions for giving website address in the publication. Therefore, no change in the draft regulations is considered necessary.

Regulation 8, clause (13)

19. Clause (13) of regulation 8 of the draft regulations proposes to afford an opportunity to the applicant to file its comments, on the suggestions and objections, if any, received in response to the public notice published by it, within a period of 45 days of its publication in the newspapers, with a copy to the person who has filed the suggestions and objections on the proposal made in the application.

20. A suggestion has been made that all the objections received and replies or responses of the applicant should also be posted on the website.

21. We do not consider this suggestion to be practical. Clause (13) already contains a provision that reply or response of the applicant shall also be furnished to the person who has filed its suggestions or objections. In our view, this meets the requirement of justice.

Regulation 8, clauses (15) and (18)

22. As per clause (15) of regulation 8 of the draft regulations, the Commission after considering the suggestions and objections received in response to the public notice published by the applicant and the recommendations, if any, of the Central Transmission Utility may, for reasons to be recorded in writing, reject the application or propose to grant the licence. Further, in accordance with clause (18) of regulation 8 of the draft regulations, the Commission may, before granting licence or rejecting the application provide an opportunity of hearing to the applicant, the Central Transmission Utility, the long-term customers, or the person who has filed suggestions and objections, or any other person. However, the applicant is proposed to be always given a reasonable opportunity of being heard before rejecting the application.

23. It has been suggested that the Commission should always hold a public hearing before taking a final decision on the application for grant of transmission licence.

24. The Act does not make it mandatory to hold public hearing while considering the applications for grant of licences of various kinds. However, the

Commission which has been functioning in a transparent manner has been holding hearings in all such matters. Thus, even though there is no specific provision in the draft regulations for holding the public hearing, in practice, such an opportunity is generally available. It may not be necessary to introduce rigidity in the matter by incorporating a specific provision to that effect in the regulations. Therefore, the suggestion made is not being acted upon.

Regulation 9, clause (2)

25. Under clause (2) of regulation 9 of the draft regulations, in case of transmission licensees, other than those selected through the process of competitive bidding, the transmission charges, incentive, and disincentive shall be determined in accordance with the terms and conditions for determination of tariff specified by the Commission under section 61 of the Act and in force from time to time.

26. It has been suggested that a reference to section 62 of the Act should also be made for the purpose of fixation of transmission charges.

27. We do not consider it necessary to accept this suggestion. The transmission charges for the transmission assets not procured through the process of competitive bidding are required to be determined in accordance with the terms and conditions specified by the Commission under section 61 of the Act. Therefore, it is not necessary to refer to section 62 for this purpose. In fact, section 62 itself is consequential to the provisions of section 61.

Regulation 11, clauses (a), (b) and (d)

28. Regulation 11 of the draft regulations deals with the obligations of the transmission licensee. According to clause (a) thereof, the licensee shall within 3 months of the date of achieving financial closure of the project, contract and maintain during the validity of the licence, insurance in accordance with prudent utility practices or as may be necessary under any of the agreements and the laws in force in India. However, the licensee is proposed to be permitted to opt for self-insurance. Further, under clause (b), the licensee is proposed to be mandated to build the project in a time-bound, efficient, coordinated and economical manner.

29. The suggestions have been received to the effect that time for achieving financial closure should be specified in the regulations. A further suggestion has also been made that the provision should be made more elaborate.

30. We do not consider it necessary that the provisions for financial closure should be made in the regulations. This is a step, which can be covered by the parties in the agreements to be signed by them. No further deliberation is considered necessary for the reason that all related aspects are to be covered in the agreements.

31. However, we feel that there is no need to link the insurance with the financial closure. Accordingly, the relevant clause has been amended to mandate

the licensee to maintain insurance during the entire period of validity of the licence.

32. We also feel that it is necessary to invite the attention of the licensees specifically to the need for complying with the directions of the National Load Despatch Centre and the Regional Load Despatch Centre under the provisions of the Electricity Rules, 2005. Therefore, clause (d) has been suitably amended.

Regulation 13

33. Regulation 13 of the draft regulations provides for assignment of licence by the Commission to a nominee of the lenders in case of default by the transmission licensee in loan repayment, on an application made by the lenders.

34. It has been suggested that the long-term transmission customers be heard before assigning the licence. Further, the question of incorporation of the conditions in the agreements is also raised. Yet another question on this provision is as to what will happen to the irrevocable revolving LCs opened in favour of the original licensee.

35. We have given our anxious considerations to these questions raised by the stakeholders. The Act requires the Commission to act in a transparent manner. However, it is not mandatory to hold hearing for each and every purpose. All the agreements have to be drafted keeping in view the provisions of the regulations. All the consequential issues like LC etc., may be duly taken care

of in the proceedings before the Commission while the licence is being assigned. In view of this, we do not consider it necessary to make any amendments to the draft regulations on this account.

Regulation 14

36. It has been provided in regulation 14 of the draft regulations that the term of the licence shall be 25 years from the date of issue, unless revoked earlier. Further, after expiry of the term of licence, the Commission has proposed to grant fresh licence for such further period or periods and on such terms and conditions as the Commission may consider appropriate after an application to that effect is made by the licensee, and after following the procedure for making application for grant of licence contained in these regulations.

37. It has been suggested that issue of revocation of licence before the term, has not been covered appropriately. A question has also been raised as to the status/validity of agreements signed with the transmission licensee if licence is revoked before the period of 25 years.

38. The issue of revocation of licence has been covered in further detail under regulation 21 of the draft. We do not consider it necessary to amplify it any further. As regards the validity of the agreements consequent to revocation of licences, we feel that the matter needs to be addressed in the agreements to be signed by the parties. In any case, when the licence is cancelled, some other

person may be assigned licence by the Commission. Such person steps into the shoes of the transmission licensee for all intents and purposes.

Regulation 17

39. It has been proposed in regulation 17 of the draft regulations that any person authorised by the Commission shall be entitled to inspect and verify the accounts of the transmission licensee who shall be under obligation to render all necessary assistance to the person so authorized for inspection and verification.

40. It has been suggested that this clause needs to be made more exhaustive and specific in view of sections 94 and 95 of the Act.

41. The provision made is supplementary to the provisions of the Act which are operative of their own force. Therefore, we do not consider it necessary to reiterate the provisions of the Act in the regulations.

Regulation 18

42. Regulation 18 of the draft regulations proposes that the transmission licensee shall submit such information, as may be called for by the Commission from time to time or the Regional Load Despatch Centres, in order to fulfil responsibility of supervision and control over the inter-State transmission system entrusted under the Act. Further, it provides that the Regional Load Despatch Centres or the Central Electricity Authority may from time to time, report to the

Commission, such of the developments, as they consider appropriate in regard to performance of licensee.

43. It has been proposed that reporting by the Regional Power Committee may be included.

44. We accept the suggestion and direct that the Regional Power Committee be included in the main clause as well as in the proviso to regulation 18 of the draft regulations. In view of this change, there remains no necessity for reporting by the Central Electricity Authority, and proviso to regulation 18 of the draft regulations has been suitably amended.

Regulation 19

45. Regulation 19 of the draft regulations enjoins upon the transmission licensee to report to the Commission, any change in major shareholding, ownership or management of the licensee and any proceedings initiated by one or more of the parties signing the agreement for interpretation, amendment or termination of the agreement.

46. A suggestion has been made that in addition reports of violation of agreements should also be included.

47. We do not consider any change is required in this regard. The parties themselves need to safeguard their commercial interests. The provisions as proposed in the draft regulations are considered adequate.

Regulation 20

48. In accordance with clause (1) of regulation 20 of the draft regulations, the Commission either of its own motion or on an application made by the licensee may make such alterations and amendments in the terms and conditions of licence in public interest after publishing notice in two such daily newspapers as it considers necessary with the relevant particulars.

49. It has been proposed that beneficiaries should also be able to propose an amendment. It has also been proposed that the amendment proposed to be made be posted on the website of the Commission.

50. We accept the first suggestion and the clause has been amended in line with section 18 of the Act. However, since applications for licence are not posted on the website of the Commission, we do not consider it necessary to post on the website proposal for amendment for the same.

Regulation 21

51. Clause (1) of regulation 21 of the draft regulations provides for revocation of licence. According to sub-clause (v) the licence is liable to be revoked where licensee has failed or neglected to undertake transmission in electricity.

52. It has been suggested that clause (v) may be made more specific to cover cases of delay in achieving financial closure and other important construction milestones. It has also been suggested that action to revoke licence should be

taken after hearing long-term customers and deciding about the compensation to be paid to them.

53. Construction, maintenance and operation of the transmission project are covered under the obligations of the transmission licensee. Breach of these obligations is sufficient condition for revocation of licence under sub-clauses (i) and (ii) of clause (1) of regulation 21 of the draft regulations. In view of this, no changes are called for.

54. We do not consider it necessary to hear long-term customers, beneficiaries, etc. before revocation of licence. It is pertinent that holding of hearing is not mandatory under the Act for every purpose. The issue of compensation to be paid, if any, has to be decided in the appropriate judicial forum for which appropriate provisions need to be made in the agreements. It, however, appears that the question of compensation should not normally arise because the licence is likely to be assigned to some other person.

55. It has been pointed out that it has not been specified that the Commission may take up proceedings for revocation of licence in case of breach of terms and conditions of Transmission Service Agreement during the construction or operations phase. We accept the suggestion made and accordingly direct that a new clause be added to this effect.

56. We also consider it necessary to incorporate in the regulations the protection given to the licensee in section 19(3) of the Act regarding notice period of notice period of not less than three months. Accordingly, we direct that a

proviso be added to clause (1) providing for the three months notice and specifically stating that the enquiry under the revocation provisions be held in accordance with the principles of natural justice.

Regulation 22, clause (1)

57. As proposed in clause (1) of regulation 22, where the Commission, on the basis of material in its possession is satisfied that the licensee is contravening, or is likely to contravene, the terms and conditions of licence, it shall serve a notice to the transmission licensee narrating the terms and conditions of licence contravened or likely to be contravened by him to invite his objections.

58. It has been suggested that copy of the notice should also be served to long-term customers, generators, RLDCs and RPCs.

59. Clause (3) of regulation 22 of the draft regulations already provides that Commission, if it considers necessary, may publish notices in newspapers to bring contraventions of terms and conditions of licence to the knowledge of the stakeholders. Long-term customers, generators, RLDCs and RPCs are at liberty to respond to the notice published in the newspapers. Therefore there is no need to make any amendment to the provision made in the draft regulations, on the line suggested.

Regulation 22, clause (3)

60. Clause (3) of regulation 22 further provides that if the Commission, considers it necessary to bring any matters to the attention of persons affected or

likely to be affected by such contravention, it shall publish a notice in one or more newspapers specifying the terms and conditions contravened or likely to be contravened by the licensee to invite suggestions.

61. It has been pointed out that irrespective of whether or not the long-term customer/generator is affected, notice must be served on them.

62. The Commission will take a decision in this regard on case to case basis on consideration of the gravity of the matter. There does not appear any need to make a general provision in the regulations.

Regulation 23

63. Regulation 23 of the draft regulations lays down the procedure for resolution of disputes regarding the transmission licence. According to these provisions, all disputes or differences arising out of or connected with the interpretation of the licence or the terms and conditions thereof, shall, as far as possible, be resolved by mutual consultation and reconciliation in accordance with the agreements and in the event of their failure to resolve the disputes or differences through mutual consultation or conciliation, these are to be referred by the licensee to the Commission for adjudication or arbitration, within one month of recording of such failure.

64. It has been suggested that dispute resolution provisions should be incorporated in the agreements.

65. The parties are at liberty to adopt these provisions while signing the agreements. However, to the extent the terms incorporated in the agreements will be contrary to the statutory provisions, these will be unenforceable.

Form 1

66. It has been proposed that more technical and financial details may be obtained from the applicant.

67. As per regulation 7 of the draft regulations, primarily the persons selected through the transparent process of competitive bidding are eligible for grant of transmission licence. Accordingly, issues regarding technical and financial capabilities of the person making application for grant of transmission licence should be settled at the time of selection. Therefore, it is not necessary to include any further technical and financial parameters in the application form. However, we have decided to add column with the heading "Type of conductor along with number of sub-conductors" in the form against serial no. 2 (a). Further, since in accordance with guidelines for competitive bidding only levelised transmission charges need to be indicated by the bidders, item 3 of Form I has been suitably revised so that in case of persons selected through the transparent process of competitive bidding, levelised transmission charges should be indicated.

68. We may note that regulation 6 and onwards of the draft regulations are wrongly numbered. In fact regulation 6 ought to have been numbered as regulation 5 and serial numbers of the succeeding regulations are to follow

accordingly. While finalising the regulations, necessary correction has been carried out.

69. We direct that the regulations be finalised based on the above observations and sent for publication in the Official Gazette.

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| Sd/- (V.S.Verma) Member | Sd/- (S. Jayaraman) Member | Sd/- (R. Krishnamoorthy) Member | Sd/- (Rakesh Nath) Member (EO) | Sd/- (Dr. Pramod Deo) Chairperson |
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New Delhi, dated the 26th May, 2009

REGULATIONS ON PROCEDURE, TERMS AND CONDITIONS
FOR GRANT OF TRANSMISSION LICENCE AND OTHER
RELATED MATTERS

NAME OF RESPONDENTS

1. IDFC PROJECTS LTD.
2. M.P. POWER TRADING CO. LTD.
3. HIMACHAL PRADESH STATE ELECTRICITY BOARD
4. Er. PADAMJIT SINGH
5. SHRI KARTIK DEUSKAR