

Comments on behalf of GMR Energy on Draft Cross Border Trade of Electricity Regulations, 2017

S.no	Clause	Existing clause	Suggested changes in Clause	Rationale for suggested changes
1.	Definitions and Interpretation 2 (f)	Appropriate Commission means the Central Electricity Commission referred to in sub-section (1) of section 76 or the State Electricity Regulatory Commission referred to in Section 82 and or the Joint Electricity Regulatory Commission constituted under sub-section (1) of section 83 of the Act.	The 'Appropriate Commission' has been defined as any of the Commissions. It would be better if the words "as the context may require" be added.	To make it clearer.
2.	Definitions and Interpretation 2 (q)	Control Area means an electrical system bounded by inter-connections (tie lines), metering and telemetry which controls the generation and/or load within the area to maintain its interchange schedule with other control areas whenever required to do so and contributes to frequency regulation of the synchronously operating system. Any neighboring country inter-connected with Indian Grid shall be treated as a separate control area .	<ul style="list-style-type: none"> • In para (q) in the last line of the definition of Control Area, we suggest to change the word "Any" with "Each." • Definition of 'Separate Control Area' term should also be included. 	Changes have been suggested to avoid ambiguity.
3.			Following terms to be defined: <ul style="list-style-type: none"> • Neighbouring Countries • Entity - Indian Entity / Selling Entity / Buying Entity • System Operator • Generator 	These words have been used very often in the regulations and for the sake of clarity, the terms should be defined.
4.	Definitions and Interpretation 2 (kk)	Interconnection point means the point of interconnection between India and any of its neighboring countries where scheduling, metering, accounting and billing of electricity shall be done for the purpose of	"Such point shall be at a pooling point station within Indian Periphery" should be removed	This is in contradiction with Clause 9(1) of the regulations, where it is mentioned that "The transmission interconnection between India and a neighboring

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		cross border trade of electricity. Such point shall be at a pooling station within Indian periphery.		country shall be planned jointly by transmission planning agencies of the two countries with the approval of their respective govts”
5.	Scope: para 3(2)	The CERC (Grant of connectivity, long-term access and medium-term open access in inter-state transmission and related matters) regulations, 2009 and any amendments thereof shall be applicable to the entities located in India who are seeking connectivity for long-term and medium term open access to the inter-state transmission system in India in the course of cross border trade of electricity between India and a neighboring country.	We suggest removal of words “located in India”.	The provision has been made applicable to entities located in India, while we understand that it should be not restricted to India only. Therefore, removal of words suggested.
6.	Scope : para 3(3)	Any cross border trade in electricity between India and a neighboring country shall be allowed through bilateral agreements between an Indian entity and an entity of the neighboring country under the overall framework of agreements signed between the governments of two countries.	We suggest replacing the word “allowed” with the word “administered”.	To make the context appropriate.
7.	Tariff Determination 4(2)(a)	Tariff for import of electricity by Indian entities (directly or through trading licenses) from the generating stations located outside India shall be determined under long-term/medium term/short term agreement, through a process of competitive bidding, which shall be adopted by the appropriate Commission under section 63 of the Electricity Act, 2003.	It is suggested that Generator and Indian Entity may be required to apply jointly for the tariff determination, obviously, within the frame work of overall trade agreement between the countries. CERC Regulations for tariff	This clause requires the generator to apply through govt. of neighboring country for tariff determination, which seems to be out of place. Requiring Govt. of sovereign country to be party before CERC may not bode well for the Govt. The funding for projects would

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		Provided that in case of hydro generation projects, the tariff shall be determined by the Central Commission as per the tariff regulations notified from time to time, if approached by the generator through the government of the neighboring country and agreed by the Indian entities, including public utilities/Discom(s).	determination do not have the provision for determining tariff in international currency terms, the necessary changes needs to be incorporated. No time limit is prescribed for CERC to determine the Tariff.	be done by multi-lateral organization or international agencies in foreign currency. Therefore, it is pertinent that the tariff is calculated accordingly. Also, in local currency, hedging may not be possible. A Timeline will help the parties plan and chalk out their project schedule with certainty.
8.	Compliance of laws and regulations Para (5)	Compliance of Laws and regulations	We are of the view that Para 5 as such is not required. Alternatively, mutual agreements and understandings shall also have to be complied having force of law.	The compliance of law is, in any case, required to be adhered to by all the parties. Even otherwise such stipulation is standard clause for all the PPAs.
9.	Institutional Framework, Para 6(1)	Designated authority shall be an authority as designated by Ministry of power, Government of India, for facilitating the process of approval and laying down the procedure for cross border transaction and trade in electricity. The designated authority shall be responsible for coordination with the nodal agency of the neighboring country for all purposes as stated in the guidelines on cross border trade of electricity issued by Ministry of power.	It is suggested that the “authority designated by the neighboring country” would be more appropriate to be used here.	The said clause uses the word nodal agency of the neighboring country. It is better left to the neighboring country to designate a nodal agency separately or to authorize any existing govt. department for the purpose.
10.	Eligibility criteria for participating applicant, Para 7(3)	Any change in the equity pattern of the participating agencies after the date of approval shall be duly intimated to the Designated authority and fresh approval shall be obtained by the participating	It is suggested that change in equity pattern vis-à-vis more than 51 % should not require fresh approvals rather intimation should suffice.	A change in the Regulations on these lines will enable the ease of doing business.

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		entities under clause (1) and (2) above.		
11.	Transmission Planning, Para 9(3)	The mode of interconnection between a neighboring country and India will preferably through DC Links.	The mode of interconnection between a neighboring country and India shall be such that it is technically feasible.	The links shall be as per system of the neighboring country and could vary depending upon the system requirements.
12.	Para 9(4)	Generating stations located in India and supplying electricity exclusively to neighboring countries may be allowed to build independent transmission systems for connecting to the neighboring country's transmission systems keeping the technical and strategic considerations in view and with the approval of the Government of India at the cost inbuilt in the agreement signed between Indian entity and the entity of the neighboring country. Such approval will be under applicable section(s) of the Electricity Act, 2003 subject to complying with the technical and safety standards notified under various section of the Electricity Act,2003	Generating stations located in India or outside India and supplying or importing electricity exclusively to/ from neighboring countries may be allowed to build independent transmission systems for connecting to the neighboring country's transmission systems keeping the technical and strategic considerations in view and with the approval of the Government of India at the cost inbuilt in the agreement signed between Indian entity and the entity of the neighboring country. Such approval will be under applicable section(s) of the Electricity Act, 2003 subject to complying with the technical and safety standards notified under various section of the Electricity Act,2003	This clause should take care of import as well as export of electricity from/to India.
13.	Para (11)	Application Fee	Para 11 stipulates the application fee in Indian Rupees, other equivalent currency should also be defined. The application fee and other	Since these Regulations are to hold field in international sphere, equivalent currency should be provided for in the Regulations. For the benefit of international

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			charges stipulated in the Regulations are on higher side as compared to payable by domestic entities.	trade of electricity, it is suggested that all the charges stipulated in the Regulations should act as an incentive to the prospective entities. We request for reduction in the charges.
14.	Para 12	Time frame for processing	Time frame for processing Short Term access has not been mentioned, the same should also be included.	
15.	Application for Grant of connectivity Para 13 (5)	Such application seeking long term access has to be filed within 2 years of grant of connectivity failing which connectivity granted shall be withdrawn and application fees shall be fortified.	Para 13 (5) stipulates a period of 2 years from the date of grant of connectivity, for filing of application seeking long term access. It is suggested that this time line may be considered for removal from the Regulations.	Such stipulation is not there for domestic entities and may be termed as discriminatory.
16.	Implementation of Cross Border Transmission Link Para 15 (1)	The cross border transmission link shall consist of transmission line and associated system from the pooling station within India till the Indian border and transmission line from Indian border till the pooling station of the neighboring country.	In Para 15 the words, “Indian Border” has been used. We suggest using the words “International Border” to be optically correct.	Changes have been suggested to avoid ambiguity.
17.	Implementation of Cross Border Transmission Link Para 15 (2)	The CTU shall be responsible for the implementation of cross border transmission link between the pooling stations within India till the Indian border . Beyond the Indian border the responsibility of the implementation shall be that of the applicant or the TPA of the neighboring country .	In Para 15 the words, “Indian Border” has been used. We suggest using the words “International Border” to be optically correct. The CTU has been stated to be responsible for the implementation of Cross Border Transmission link. It would be appropriate if the CTU	Changes have been suggested to avoid ambiguity.

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			<p>is replaced by “nominated/notified by the Central Govt.”, which seems to be legally correct.</p> <p>The responsibility of the implementation has been stated to be that of the Applicant or the TPA of the neighbouring country. It is better left to the neighbouring country to designate the authority in its own wisdom.</p>	
18.	Access Bank Guarantee Para 17	<p>(1) The CBTA applicant applying for long term access shall be required to furnish to the CTU, an access bank guarantee, along with application, for an amount of INR 1 Cr/MW corresponding to the quantum of long-term CBTA sought.</p> <p>(4) In case, any of the developers fails to construct the generating station/ dedicated transmission system by the timelines agreed in the CBTAA, CTU shall have the right to encash the access bank guarantee in accordance with Regulation 29 of these regulations.</p> <p>(6) The quantum of access Bank Guarantee shall be progressively reduced each year after operationalization of long term access corresponding to one fifth of</p>	<p>In sub para (1), the Access Bank Guarantee has been stipulated for an amount of Rs. 1 crore/per MW, which seems to be on very high side.</p> <p>In sub para (4) right to encash the BG has been given to the CTU but we request to consider the following:</p> <ul style="list-style-type: none"> i. Giving of discretion to CTU for encashment of BG is prone to misuse. ii. There may be genuine delays not attributable to the developer like Force Majeure. iii. The project may be nearing completion but missed the deadline by a whisker. 	<p>Since for domestic entities in India it is Rs. 5 lakh/per MW, it may be termed as discriminatory. It is suggested that this amount should be less than the domestic BG so as to incentivise the cross border trade/transmission.</p>

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		<p>its total value. Each year, one fifth of the value of access bank guarantee shall be returned to the applicant such that the entire access bank guarantee shall be discharged in 5 years from the date of operationalization of long term access.</p>	<ul style="list-style-type: none"> iv. What if the project is completed with a little delay of few months? v. The transmission line shall remain stranded. vi. The forfeiture amount shall not be available to the Transmission Licensee as compensation. vii. Even otherwise the developer is bound to pay the transmission charges, even if he is not able to use the Transmission lines as per time lines of CBTAA. viii. Though BG is being allowed to be encashed but there are no mitigation provisions for the developer or the Transmission Licensee. ix. Long Stop Date for treating the project abandoned? <p>We wish to propose that the time lines under CBTAA may be allowed to be extended for genuine reasons and penalty may be imposed for the delay but not the encashment of BG.</p> <p>In sub para (6) progressive reduction in the amount of BG has been proposed by 1/5th each year. But our submission is that once the</p>	

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			<p>payment security mechanism/LC is put in place after Operationalization of Long Term Access, there remains no need to have this BG separately. Please consider removing this requirement of BG for Access BG.</p>	
19.	<p>Payment Security Mechanism Para 40 (2) (a&b)</p>	<p>Cross Border Transmission Access Customer shall establish payment security towards transmission charges at least 90 days prior to the intimated date of commencement of cross border transmission access which inter-alia shall include the following for availing long term access and medium term open access</p> <p>(a) A irrevocable, unconditional and revolving Letter of Credit in favor of the CTU through a bank as specified in regulation 44 equivalent to 2.5 times of the average bill amount towards transmission charge for 3 months of the application period with a validity of one year.</p> <p>(b) A irrevocable, unconditional and revolving Letter of Credit in favor of the SNA of India through bank as specified in Regulation 44 equivalent to 2.5 times the average bill amount towards grid related charge for 3 months with a validity of 1 year</p>	<p>The Clause should be modified as “Cross Border Transmission Access Customer shall establish payment security towards transmission charges at least 90 days prior to the intimated date of commencement of cross border transmission access which inter-alia shall include the following for availing long term access, medium term open access and short term open access”.</p> <p>In para 40(2) (a & b) LC has been proposed in favor of CTU/SNA. This can at the best be Standby LC and not revolving LC. While for domestic entities and PSUs, the requirement is 2.1 times and 1.05 times of monthly billing, respectively, seeking it at 2.5 times for cross border trade/transmission may be seen as discriminatory, we suggest pegging it at a lower rate.</p>	<p>The sub- points under para 40 (2) mentions about payment security mechanism for LTOA, MTOA and STOA. Accordingly, “STOA” should be added for completeness of the clause.</p> <p>This is suggested to incentivize cross-border trade/transmission</p>

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		as informed by SNA of India.		
20.	Dispute settlement and resolution mechanism, Para 41 (3)	The seat and venue of arbitration shall be Singapore and the arbitration proceedings shall be conducted in English Language. The arbitration award shall be final and binding on both the parties.	The said Clause for Dispute Resolutions is imposition of SIAC on the parties with Seat of Arbitration at Singapore. A flexible regime, with consent and agreement between the parties is desirable to provide for the neutral venue/country for Arbitration and resolution of disputes arising therefrom.	Freedom of choosing the Arbitration procedure and Venue is fundamental to the freedom of choice to be available to the contracting parties in International Trade. While agreeing for mutually agreed seat of arbitration instead of SIAC should be linked with convention countries i.e. signatory to the New York convention for enforcement of Foreign awards.
21.	Data uploading & sharing Para 43 (1)	The entities of neighboring country shall be required to share and update technical data and information to the CEA as per the format to be specified by Designated authority.	In par 43(1) the word “entities may” be replaced with the word “participating entities” for clarity.	Suggested for the sake of clarity
22.	Other suggestions		<ul style="list-style-type: none"> No regulatory framework for determination of tariff for a dedicated transmission line for a project located outside India. Actual cost of delivered power till international border in terms of tariff should be done by CERC. Clarification required in terms of ABT, commercial settlements for UI and system synchronisation. 	<p>.It is suggested that the tariff for the dedicated transmission line owned by SPV (and not necessarily owned by Genco) should be determined by CERC, if it is being used for importing/supplying power to/ from neighboring countries.</p> <p>Relevant clauses not addressed in the regulations.</p>

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			<ul style="list-style-type: none"> No provision has been laid down in case the where flow of power is through India from one neighbouring country to another neighbouring country. Ex: Power flows from Nepal to Bangladesh through India. The generator should be given open access for such kind of an arrangement. CERC has made reference to the existing regulations in which detailed set of procedures & rules are defined, the same might not be applicable in toto for cross-border arrangements. So, is CERC is planning to issue another set of formats to cater to such arrangement or the present rules that are applicable in the domestic market going to prevail for cross border transactions? 	<p>Relevant clauses not addressed in the regulations.</p> <p>This may be clarified in the regulations.</p>