

31 March, 2017

The Secretary,
Central Electricity Regulatory Commission,
3rd and 4th Floor, Chanderlok Building,
36, Janpath, New Delhi-110001

Subject: Submission of Comments/Suggestions on Draft Central Electricity Regulatory Commission (Cross Border Trade of Electricity) Regulations, 2017

Dear Ms. Shubha Sarma,

This is with reference to the Draft Central Electricity Regulatory Commission (Cross Border Trade of Electricity) Regulations, 2017.

The comments/suggestions of the Independent Power Producers Association of India (IPPAI) on these are attached and we request the Hon'ble Commission to take these views into consideration while finalizing the Regulations.

Thanking you,

Yours sincerely,



Harry Dhaul
Director General
IPPAI

Enclosures:

1. Comments/suggestions of IPPAI on Draft Central Electricity Regulatory Commission (Cross Border Trade of Electricity) Regulations, 2017.
2. Suggestions of the sub-group on transmission constituted under the advisory group convened by Hon'ble Minister of State for Power (I/C), Government of India 2013

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**COMMENTS/SUGGESTIONS ON
DRAFT CERC (CROSS BORDER
TRADE OF ELECTRICITY)
REGULATIONS, 2017**

INDEPENDENT POWER PRODUCERS
ASSOCIATION OF INDIA (IPPAI)

EXECUTIVE SECRETARY, IPPAI

MARCH 2017

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Comments/Suggestions by IPPAI on Draft CERC (Cross Border Trade of Electricity) Regulations, 2017

- I. The Hon`ble Central Electricity Regulatory Commission (“CERC”) has jurisdiction for transactions of electricity within the boundary of India, except Jammu and Kashmir and to frame any Rules/ Regulations for such transactions.**

It is pertinent to mention herein that CERC has the necessary power to frame regulations under Section 178(2)(y) of Electricity Act 2003 (Act) with respect to development of market in power including trading. The scope and applicability of the provisions of the Act is extended to all the states in India except for the state of Jammu and Kashmir as per section 1(2). This implies that any regulation framed by CERC shall be with respect to India and not outside India. However, in the instant case, the matter/issue relates to framing of regulations for Cross Border Trade of Electricity, and thus the regulated entity being CERC exercising jurisdiction over trading of electricity beyond the territorial boundaries of India is outside the scope and purview of the CERC . The Act only covers the provisions for transaction of inter-state and intra-state trading of electricity within India. Therefore, in no cases, can the CERC have the jurisdiction to exercise powers under the Act to frame regulations wherein intra-country trading of electricity is involved.

It is also necessary to appreciate that before allowing the power exchanges to conduct or facilitate cross-border trade, clearances should be taken from the appropriate Ministries, since there are aspects and issues that relate and are concerning the said ministries and they alone are sole authorities to review the same.

- a. Under Chapter-2 Regulation 3 that deals with the ‘Scope’ of the Regulations, the following is stated:

“(1) These regulations shall be applicable to all the participating entities in India and its neighboring countries which are engaged in cross border trade of electricity...”

On perusal of the aforesaid, it is surprising that the scope of the said Regulations has been extended to India's neighboring countries which are engaged in cross border trade of electricity. At the first instance, the CERC does not have the jurisdiction to frame regulations for Cross Border trade of Electricity. Even assuming if at all it has such a jurisdiction, then its Regulations cannot in any fashion be extended to India's neighboring countries.

b. Under Chapter 2- Regulation 5- that deals with Compliance of Laws and Regulations-

The said Provision is ambiguous as it states that the participants of the Cross-Border Trade of Electricity shall adhere to and comply with all applicable Regulations. Under this provision, it shall be impossible for any participant to comply with all applicable Regulations since the participants shall be governed by the laws and regulations of their respective countries and there cannot be a sweeping Clause to apply and embed a regulation that shall fall outside the territory of India or otherwise. Therefore, the said Provision can be inconsistent with regulations framed by various policymakers in their respective countries.

Moreover, proviso to the Regulation 5 (2) provides that-

“Provided that in case of any ambiguity or conflict between the laws, rules and regulations of the neighboring countries and that of India, the Indian laws, rules and regulations will take precedence for the purpose of cross border trade of electricity with India...”

This again is an apparent flaw in the Regulation, as Indian Laws, Rules and Regulations have been given precedence in case of conflict or ambiguity as stated above. However, this cannot be imposed on a participant that is situated outside India and the same shall lead to a dispute in terms of the applicability of the laws/ regulations.

c. Under Chapter 6- Regulation 41:

In case of disputes not resolved amicably the same shall be referred to and finally settled by arbitration in accordance with **Singapore International Arbitration Centre (“SIAC Rules”)**. It is very surprising that **CERC itself being a regulatory body**, makes a Regulation for the adjudication of the disputes and formulating a mechanism to adjudicate by way of Arbitration. What is even more surprising is the fact that how CERC can decide the mode and seat of arbitration by stating the SIAC rules. This is particularly in light of the act that CERC cannot impose the mode of dispute resolution upon a party that it is situated outside India. Therefore, this Regulation shall not have any applicability in terms of its implementation upon a party situated outside the territory of India, which it is not within the Regulatory framework of CERC or the governing laws.

As per Regulation 20(2) of the Draft Regulation, the Meters shall be installed at the Generating Stations located outside India as per CERC (Installation and Operation of Meters) Regulations, 2006 and amendments thereof. In our humble opinion CERC regulations cannot be applicable on installation of meters in generating stations located outside India.

- d. In case the power is transacted from Bhutan to Bangladesh via India, how can CERC Regulations be applicable? These should be in the domain of the Ministry of External Affairs and Ministry of Power. Along with this, **there should be a transit procedure for the transaction of such power on the international border for deviation settlement and payment of Transmission Loss, Transmission Charge and Wheeling Charges.**

II. Objective of Cross Border trade of electricity

The Ministry of Power in consultation with the Ministry of External Affairs vide its Notification No. 14/1/2016-Trans dated 05.12.2016 has notified the guidelines on Cross border trade of electricity with a view to ensure transparency, consistency and predictability in regulatory approaches, to minimize the perceptions of regulatory risk and to meet the demand of the neighboring countries by utilizing the available resources in the region, as enumerated under Clause 2 (b) and (c) of the said notification. It is also pertinent to mention herein that the object of ensuring transparency, consistency and predictability in regulatory approaches can only be achieved by means of bilateral arrangements as rightly pointed out in Clause 3 of the said notification. In other words, the transparency and predictability of the price discovery mechanism can only be ensured if the trade of electricity between two or more entities takes place by means of mutual agreements, mutual negotiations etc. However, it may kindly be noted that **cross border trade of electricity through Indian Power Exchanges, as enumerated under Clause 7 of the said notification, shall defeat the object of ensuring transparency, consistency and predictability in regulatory approaches** as the trade of electricity through power exchanges involves a complex algorithm based non-transparent price discovery mechanism and the same has been rightly pointed out by CERC in its own order dated 10th July 2016 in Petition No.7/SM/2005 which indicates the non-transparent behavior of the Indian Power Exchanges.

Moreover, it is also submitted that sub clause (c) of Clause 2 of the said notification states the availability of transmission capacity or corridor availability in the regions is essential to meet the demand of the neighboring countries. This implies that **there must not be any transmission constraint in sourcing the power from one country to another country**. In the present case, transmission constraint prevails in the NR-WR region, ER-SR region which raises a serious concern over sourcing of power from (say) Bangladesh to India or Myanmar to India. However, it may also be highlighted before this Hon'ble Commission **that the transaction of electricity through Indian Power Exchanges is on day-ahead basis and therefore it will be very difficult to access the capacity available, settlement and clearance within such a short time frame.**

Therefore, may it please the commission, that the idea of involving Indian Power Exchange to trade electricity to neighboring countries is a very difficult proposition and the same can only be achieved through bilateral arrangements.

III. There is no provision in the Draft Regulations, if power is to be transacted between two neighboring countries via India i.e. transaction of power from Bhutan (Seller) to India and then from India to Bangladesh (Buyer).

IV. What shall be the Deviation Settlement Mechanism, if the actual schedule power varies and in case there is over-injection or under-injection of electricity by the Generating Station located outside India?

In case the Unscheduled Interchange Mechanism of the power system in India is suggested, then under what provision would it be applicable to entities outside India and outside the purview of the Act.

What currency shall be used for commercial settlement of deviations over a specified period?

V. Discrimination against Licensed Indian Power Traders

Under Chapter 2- Regulation 7-

“Eligibility criteria for participating Applicant

(1) Considering that cross border trade of electricity shall involve issues of strategic, economic and national importance, only the participating entities of India and the neighboring countries who comply with the following conditions shall be eligible to participate in cross border trade of electricity after obtaining one-time approval from the Designated Authority:

(c) Import of electricity by Indian entities from approved licensed traders of neighboring countries having ownership of more than 51% by Indian entity (ies), from the sources as indicated in Para (a) and (b) above... ”

The above regulation 7 (1) (c) approves the import of Electricity by an Indian Entity from licensed traders of neighboring countries. **Whereas, licensed Indian power traders are not explicitly mentioned** in the draft CERC (Cross Border Trading of Electricity) Regulations, 2017. This is because there is no procedure defined for undertaking bilateral agreements with the neighboring countries through Indian licensed traders in the said regulations.

This can be seen as being discriminatory towards the licensed Indian traders as opposed to the licensed traders of neighboring countries.

In our humble submission, CERC has also failed to appreciate that the neighboring license traders shall not be within its purview in terms of the Regulatory regime and if any violations occur at the instance of such traders, the CERC shall have no control over them in any manner.

VI. Power Exchanges are being given preferences over bilateral transactions, which is a discriminatory act in itself.

At the outset, the power exchanges, which were developed as a common platform for trading of electricity **do not possess any license** for carrying out such activities. On contrary, **the traders engaged in bilateral transactions possess a valid license from CERC** for carrying out the similar activity as being carried out by the power exchange.

- a. Further, such power exchanges **do not have any transparency mechanism** while carrying out operations, while the bilateral transactions do ensure such transparency through the process of mutual agreement. The power exchanges also **do not ensure fair, efficient and robust price**

discovery and this is against the National Tariff Policy (NTP). Also, how does this happen in case Bhutan wants to sell power to Nepal or Bangladesh?

The auction/algorithm on the market clearing price is still not transparent, in the case of the power exchanges. The Hon'ble CERC itself has pointed out the issue of transparency with respect to such power exchanges. The reference can be drawn by the order dated 10th June 2016, passed by the Hon'ble CERC.

Contrary to this, the traders involved in bilateral transactions ensure the fair and transparent price discovery as it is purely based on the negotiations between the parties.

- b. Regulation 12 of Open Access in inter- state transmission Regulations of 2008 (“Regulations 2008”) provides:

“12. All applications for bilateral transactions received within three days prior to the date of scheduling and up to 1500 hrs of the day immediately preceding the date of scheduling shall be clubbed and treated at par, and shall be processed after processing of the applications for collective transactions received till 1500 hrs”.

Hence, the aforesaid Regulations clearly give **preferential treatment to the power exchanges over the bilateral transactions**, which in itself violates the principal of non- discriminatory open access, which is a fundamental basis of the Act.

- c. If in case, this Hon'ble Commission permits such power exchanges to participate in cross border trade of electricity in name of market development, then this shall be a **mere extension of preferential treatment of collective transactions over bilateral transactions**, which is a

clear and direct promotion of a private company in the international market in the name of power market development.

By promoting such a private company in the international market, whose shareholder *i.e.* Financial Technologies India Ltd (“FTIL”) does not carry a good reputation and character, record of fairness, integrity or honesty, this Hon’ble Commission shall put the various generator and producers within the country into financial risk and liabilities.

Further, the Hon’ble Forward Market Commission and Security and Exchange Board of India has already held that the former promoters of IEX is “*not a fit and proper person*”. Such order may create a credibility issue in the international power market, effecting the reputation of various institutions related to power market.

Hence, promoting such a company in international platform will lead to a negative perception of the Indian power market and a loss of reputation for various institutions of India related to power market.

VII. Other issues with regard to functioning of Power Exchanges

- a. The preference given to Power Exchanges with respect to Cross Border Trade of Electricity is blatantly discriminatory in nature as at the first instance the Power Exchanges are **an unlicensed entity** that have been permitted to function **without any statutory backing in terms of the EA, 2003** and the same are liable to be challenged before an appropriate court of law. It may also be relevant to mention that the power exchanges as established under the governing regulations were permitted to trade power within the territory of India and if by virtue by these Regulations, they are allowed to participate in the Cross-Border Trade of Electricity the same shall be in violation to

the Power Market Regulations of CERC. Also, the rates at the power exchange vary from time to time on periodical basis as computed based on the non-transparent algorithm, therefore in case they are permitted to trade power across border, the same shall lead to grave complexities in terms of variation in the Tariff.

- b. **The power exchanges are debarred under the governing regulations to enter into any long-term contracts, which now by virtue of the Cross-Border regulations they may enter, thereby violating the Power Market regulations.**
- c. The power exchanges are created in contravention to the intent and spirit of the Act. Further, the power exchanges have been functioning in a manner which **compromises transparency in determination of the market clearing price and is against the consumer interest at large and also against the interest of the genuine investors who invest in power generation.**
- d. The power exchanges are **suppressing prices of electricity** artificially due to the volatile prices that fluctuate on daily basis and on the basis of the **non-transparent algorithm** adopted by the power exchanges to determine such prices. In a way, **there is no control of any Regulatory framework over such variation and determination of the power prices by the Power Exchanges.** This price suppression shall further hit the already suffering Power Sector.
- e. Also, it is a known fact that sourcing power from the power exchange is **highly unreliable and unsustainable** in the long run resulting from various dynamics and practical hardships.
- f. **There are number of power consumers and distributors, including large scale industries and state distribution companies who are procuring power on short term basis through the power**

exchange platform. As a direct result of this, 1000's of MWs of **power is lying stranded** on account of the Merit Order Despatch.

- g. Further, at various instances the functioning of the power exchanges in India has been under scrutiny by various statutory authorities on account of their financial irregularities and their non-transparent manner of function, this is in particular reference to IEX which holds a near monopoly in India.
- h. The IEX (Indian Energy Exchange Limited) has a market share of more than 95% on the short-term transaction of power. **What shall be the definite provision/solution, if IEX (Indian Power Exchange Limited) becomes a defaulter or becomes bankrupt or is shut down?**
- i. The **inter-state trading licensees are the ones who are highly regulated** by the appropriate regulatory commissions in terms of their functioning and compliances and whether or not they are in sync with the existing law and regulations, as applicable in their case. Such trading Licensees are also paying the appropriate License fee on annual basis to the Commission. They also have a transparent modality of executing the sale and Purchase of Power transaction without a flaw.
- j. Importantly there is already an **alternative e-Bidding & e-Reverse Auction portal for procurement of short term power by DISCOMs which has been launched by the Ministry of Power and is called DEEP (Discovery of Efficient Electricity Price)** and the same is effective as on date. By way of the said portal, the procurement of power by the utilities is routed throughout the same. The said portal is transparent, has clear guidelines from the Government as regards its functioning and it passes the test of fairness and reasonability without unduly enriching any party since it has no vested interest. Moreover, **the portal can be easily adopted within the framework of the existing regulations and the same will have a positive impact over cross border trades**

in terms of fairness and transparency of the transactions.

VIII. As per provision 25 (Cyber Security) of the Draft Regulations:

"All utilities shall have in place, a cyber-security framework to identify the critical cyber assets and protect them so as to support reliable operation of the grid. NLDC shall monitor the progress in this regard and furnish Annual Reports to the Designated Authority".

- a. *As per CERC (Communication System for inter-State transmission of electricity) Regulations, 2016:*

"The responsibility of 'formulating and notifying technical standards, cyber security requirements, protocol for the communication system for Power Sector within the country including the grid integration with the grid of the neighboring countries to the Central Electricity Authority (CEA)"

The technical standards, cyber security requirements and protocols related to cyber security in the power sector have to be formulated by the relevant authority, such as the Central Electricity Authority (CEA) as directed by CERC. This responsibility cannot be given to each utility as it will lead to different capabilities and standards.

- b. In order to identify critical cyber assets and have a cyber security policy in place, every organization has to have Chief Information Security Officers (CISOs) and a Cyber Security Division **with certified professionals**. As of now the **CISOs are being appointed from within the organization and they do not have the required technical ability to handle these threats**. In such a situation, integrating our grid with neighboring countries can have national security implications.

Therefore, the establishment of a Cyber Security Division along with having certified and trained CISOs must be made mandatory for every organization in the power sector through appropriate regulations.

- c. The protection of critical information infrastructure, such as the communication system of the power sector is the responsibility of the National Critical Information Protection Centre (NCIIPC) under the Information Technology Amendment Act, 2008 and as grid integration with neighboring countries makes this a greater national security threat, the CERC should **develop, monitor and implement cyber security requirements for cross border trade along with the CEA, NCIIPC and the Indian Computer Emergency Response Team (CERT-in) and not leave it to the utilities to develop it themselves .**

- d. There may also be a **CERT formulated to deal specially with Cross Border Trade of Electricity** and an agency mandated as the nodal agency, as has been done by appointing a CERT-in (Thermal), CERT-in (Hydro) etc. in the power sector in India.

While we recognise the need for International Trade of electricity, kindly refer to IPPAI's suggestions for a "Plug and Play" grid in the recommendations to the Ministry of Power (MoP), Government of India 2013-14 titled "Suggestions of the sub-group on transmission constituted under the advisory group convened by Hon'ble Minister of State for Power (I/C), Government of India 2013" with reference to a grid from "Tajikistan to Singapore". There needs to be a deeper discussion and understanding of the needs of the power market of neighbouring countries, something IPPAI has worked on in the past through SAARC and BIMSTEC.