

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

Date: 31ST March, 2017

Ref: Comments and Suggestions on the Draft CERC (Cross Border Trade of Electricity) Regulations, 2017

Dear Sir,

This has reference to the above draft notification inviting comments/suggestions from stakeholders.

The Petitioner is an association of open access consumers including consumers from all over India . The Petitioner is a Registered Society formed under the Societies Registration Act, 1860. The main objective of the Association is to safeguard the interests of the open access consumers all over India. The Association aims to create a responsible forum to highlight consumer awareness on various types of Open Access Charges levied by different States and their implications. The Petitioner also aims at adhering to safety, security & commercial issues to all Open Access consumers in the Power Market. The Association represents the interest of the open access consumers and the present Comments and Suggestion has been filed by the Association in such capacity, We shall be most grateful if the Hon'ble Commission takes into account our comments and suggestion at the time of determination of the final regulation and provide us an opportunity to be heard in person during the public hearing in the above stated matter.

Thanking You,

Regards,


Abhinandan Das





Comments and Suggestions on the Draft CERC (Cross Border Trade of Electricity) Regulations, 2017:

S.No.	Clause	Comments/Suggestions	Rationale.
1	"2 (1) (e) (ii) For the purpose of grant of long-term access, medium-term open access or short-term open access the following entities located in India or a neighboring country: A generating station including a captive generating plant, a consumer, an inter-State trading licensee, a distribution licensee."	It is suggested that the term " A designated Agency of a neighbouring country " may be added at the end of the para.	In case of Cross Border Trade it is government nominated agencies that take care of the process due to which their structure and way of working might be different. Hence in such case they must be included.
2	"2 (f) Appropriate Commission means the Central Electricity Commission referred to in subsection (1) of section 76 or the State Electricity Regulatory Commission referred to in Section 82 and or the Joint Electricity Regulatory Commission constituted under subsection (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.	This is suggested in order to make the clause clear.
3	" 2 (1) (i) Definition: 'Buying Entity' means the entity which has been granted cross border transmission access and is purchasing electricity through a transaction involving India and a neighboring country and scheduled in accordance with these regulations under short-term open access, medium-term open access or long-term access. "	Clarification is required to the point that whether Trading Licensees be treated as Buying Entity or Selling Entity.	In case a DISCOM purchases cross border power through a Trading Licensee, and it is the Trading Licensee which applies for open access for sale to an entity/ Utility in India, who shall be treated as Buying Entity and who shall be treated as Selling Entity.
4	"2 (1) (s) Definition: 'Cross Border Transmission Access' or 'CBTA' means the access available to an applicant of a neighboring country to get connected to and use the Indian Grid, and the access available to an applicant of	It may be clarified that whether the CBTA is different from LTA & MTOA Agreements and is required to be signed for cross border trade even in case an Indian entity selling power to a	In case of Nepal, the existing Dhalkebar-Muzaffarpur line is a joint venture (JV) of NEA, PGCIL, IL&FS & SJVNL on Indian side and NEA, IL&FS



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	India to get connected to and use the grid of any neighboring country for cross border trade of electricity under Long term access or medium term open access or short term open access, as the case may be."	neighboring country with Delivery/off-take point as "Pooling Station on the Indian side of international boundary". The approval for CBTA may be jointly deliberated decided by the Regulatory Commission of both the Countries and adopted by the Designated Authority/Government of respective countries.	& PGCIL on Nepal side. It is a Public Private Partnership (PPP) cross border line wherein TSA is signed between NEA and each side's transmission licensee and charges are being collected by the respective transmission licensee. Therefore, sanctioning of CBTA in such cases may not be governed under this provision. Separate provision may be made for such PPP Projects.
5	"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."	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	This is suggested to avoid ambiguity .
6	"2.1.(bb) 'Deviation' in a time-block for a seller means its total actual injection minus its total scheduled generation and for a buyer means its total actual drawal minus its total scheduled drawal and shall be calculated at the Interconnection point."	We do hereby suggest the Hon'ble Commission to replace the word "Generation" in the second line of the clause with "Injection" That is it shall be read as below: "2.1.(bb) 'Deviation' in a time-block for a seller means its total actual injection minus its total scheduled injection and	

		for a buyer means its total actual drawal minus its total scheduled drawal and shall be calculated at the Interconnection point."	
7	"2 (1) (ii) Definition: 'Interface Meters' means interface meters as defined by the Central Electricity Authority under the Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006, as amended from time to time. "	It is suggested that CEA regulations be suitably modified to incorporate provisions related to cross border participants	
8	"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 cross border trade of electricity. Such point shall be at a pooling station within Indian periphery. "	"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 country shall be planned jointly by transmission planning agencies of the two countries with the approval of their respective govts"
9	"2.1.vv) 'Pooling Station' means the sub-station where pooling of connectivity lines of generators is done for interfacing with the same or next higher voltage level network of CTU or STU or Distribution Licensee. "	The word next appearing in the second line of definition should be deleted.	
10	"2.1.(rr) 'Medium-term Power Purchase Agreement' shall mean a Power Purchase Agreement for duration equal to or more than 1 year and less than 7 years. "	Under We do suggest the following change "2.1.(rr) 'Medium-term Power Purchase Agreement' shall mean a Power Purchase Agreement for duration	Term of PPA is mentioned as between 1 to 5 years .The same is also aligned with the medium term Open Access






		equal to or more than 1 year and less than 5 years. "	
11	" 2.(1)(bbb) 'Selling Entity' means the entity which has been granted cross border transmission access and is selling electricity through a transaction in the course of cross border trade of electricity and scheduled in accordance with the regulations applicable for short-term open access, medium-term open access or long-term access. "	'Selling Entity' means the entity which has been granted Cross Border Transmission Access and is selling electricity through a transaction in the course of cross border trade of electricity and scheduled in accordance with the regulations applicable for short-term open access, medium-term open access or long-term access.	Cross Border Transmission Access has been defined under the regulations hence must be mentioned in capital letters.
12	" Clause 3(1) These regulations shall be applicable to all the participating entities in India and its neighbouring countries which are engaged in cross border trade of electricity. "	These regulations shall be applicable to all the Participating Entities in India and its neighbouring countries which are engaged in cross border trade of electricity. Provided that unless expressly stated otherwise, nothing contained in these regulations shall apply or deemed to apply to a Participating Entity incorporated or established in India and selling power exclusively to a neighbouring country through an independent transmission system.	An Indian generating station supplying electricity exclusively to neighbouring countries through an independent transmission system will not require to apply for open access, connectivity to Indian grid etc. and hence should be excluded from the scope of these regulations. Therefore the clause may be modified as follows: These regulations shall be applicable to all the Participating Entities in India and its neighbouring countries which are engaged in cross border trade of electricity. Provided that unless expressly stated otherwise, nothing contained in these regulations shall

			<i>apply or deemed to apply to a Participating Entity incorporated or established in India and selling power exclusively to a neighboring country through an independent transmission system.</i>
13	<i>"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."</i>	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
14	<i>"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."</i>	We suggest replacing the word " allowed " with the word " administered " <i>Further along with bilateral agreement ,cross border through power exchange should also be included in view of cross border trading through Exchange in TAM segment.</i>	To make the context appropriate.
15	<i>"4 (1) Cross border trade of electricity through Government to Government negotiations: Where import/export of electricity is agreed between the Government of India and the Government of any neighbouring country involving the participating</i>	Regulations have to be in line and consistent with the Electricity Act 2003. The Act does not provide for any tariff fixation through negotiation and lays down only two processes - tariff determination under Section 62 and adoption of	



	entities of the two countries, the tariff for such transactions shall be determined through Government to Government negotiations, which shall be adopted by the Appropriate Commission."	tariff discovered through competitive bidding under Section 63. In order to avoid any discretionary selection of generators for negotiated tariff, the tariff for Government to Government transactions may also be determined through a clear cut and transparent process of competitive bidding.	
16	"4 (2) (a) Tariff for import of electricity by Indian entities (directly or through trading licensees) 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 Competitive bidding documents shall be revised to incorporate clauses related to cross border trade. For example - Force Majeure, Change in law etc. It may also be clarified that cross border projects will be permitted to participate along with Indian generators in tenders called by DISCOMs.	To make the context appropriate and flexible.
17	"5 (2) All entities of the neighboring countries participating in the cross-border electricity trade with the entities in India shall abide by the Policies, Laws, Rules and Regulations prevailing in their respective countries which shall be clearly enumerated in the Agreements."	Clarification sought - How would this enumeration be done? Will a reference to relevant regulations/acts suffice, as it may not be possible to enumerate the laws in detail in the Agreements.	Clarification sought
18	"5 (2) 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."	It is suggested that the clause may be modified as follows: "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, within the territory of India, for the purpose of cross border trade of electricity with India."	It may not be possible that Indian laws take precedence in neighboring countries.

19	<p>"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."</p>	<p>It is suggested that the "authority designated by the neighboring country" would be more appropriate to be used here.</p>	<p>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.</p>
20	<p>"6 (2) (b) Settlement Nodal Agency (SNA) shall be responsible for settling all charges pertaining to grid operations including operating charges, charges for deviation and other charges related to transactions with a particular neighboring country in the course of cross border trade of electricity. The SNA shall be a member of the deviation pool, reactive energy pool and other regulatory pools for payment and settlement of the corresponding charges in the pool accounts of the region having connectivity with any neighboring country. The neighboring country may also nominate/authorize an agency for such purpose. Ministry of Power, Government of India shall notify SNAs for each neighboring country."</p>	<p>It may please be clarified that whether the Nodal Agency as defined in the Guidelines and Settlement Nodal Agency defined in the Regulations are same for India?</p>	
21	<p>"Clause 7(2) Any other participating entity shall be eligible to participate in cross border trade of electricity after obtaining approval of the Designated Authority on case to case</p>	<p>"Except as provided in sub-regulation (4) any other Participating Entity" shall be eligible to participate in cross border trade of electricity after obtaining approval of the</p>	<p>Participating Entity has been defined under the regulations.</p>



	<i>basis."</i>	Designated Authority on case to case basis	
22	"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 entities under clause (1) and (2) above."	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.
23	7.(4) Any coal based thermal power projects in India other than those owned and operated by Public Sector Undertakings shall be eligible for export of electricity to any of the neighboring countries only if surplus capacity is certified by the Designated Authority.	Any coal based thermal power projects in India other projects / Hydro Electric than those owned and operated by Public Undertakings shall be eligible for export of electricity to any of the neighboring countries only if surplus capacity is certified by designated authority.	Hydro Projects with whom surplus capacity is available may also be allowed to export the power.
24	"8 (1) A Participating entity as specified in Regulation 7(1), with approval of the Designated Authority, after complying with the relevant regulations of the Commission, shall be eligible for cross border trade of electricity through Indian Power Exchange(s) under the categories of Term Ahead Contracts, Intra Day Contracts and Contingency Contracts as defined in the CERC (Power Market) Regulations, 2010."	It may be clarified that cross border Participating entity shall be permitted to access Power Exchange through trading licensees too. Further, as per Clause 7.3 of Guidelines on Cross Border Trade as issued by MoP, cross border trade of electricity can be extended to other categories of contracts based on review by MoP in consultation with CERC. In this regard, we would request Hon'ble Commission to consider collective transaction under other categories of contract.	The proposed term ahead, intraday and contingency contracts have very low trading volume as compare to day ahead collective transactions.
25	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.
26	10 (1) Any entity eligible to participate in cross border trade of electricity shall be required to seek connectivity and/or long term access or medium term open access or short term open access, as the case may be.	It is suggested that cross border entities already availing of open access may not need to apply again for open access till the time current open access has been granted.	It is suggested in order to ease the process.
27	(11) Application Fee	Para 11 stipulates the application fee in Indian Rupees, other equivalent currency should also be defined. The application fee and other charges stipulated in the Regulations are on higher side as compared to payable by domestic entities.	Since these Regulations are to hold field in international sphere, equivalent currency should be provided for in the Regulations. For the benefit of international 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.
28	"12. Time frame for processing (1) CTU shall process the Long-term access applications made under these Regulations requiring augmentation of transmission system in the Indian Grid in not later than ninety (90) days. Long-term access applications where augmentation of transmission system is not required shall be processed in not later than sixty (60) days. (2) CTU shall process the medium-term open access applications made under these Regulations in not later than thirty (30) days."	Time frame for processing Short Term access has not been mentioned, the same should also be included.	
29	"Clause 18(3) The CBTA Customer shall submit certificate regarding	The CBTA Customer shall submit certificate regarding Commercial	Cross Border Transmission Link has been defined




	Commercial Operation declaration of the generating station or transmission system as required under Grid Code. Provided that such certificate shall be submitted for Cross border transmission link including for the dedicated transmission line, wherever applicable."	Operation declaration of the generating station or transmission system as required under Grid Code. Provided that such certificate shall be submitted for Cross Border Transmission Link including for the dedicated transmission line, wherever applicable.	under the regulations.
30	"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 is replaced by "nominated/notified by the Central Govt.", which seems to be legally correct. 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.	Changes have been suggested to avoid ambiguity.
31	"17.1 Access Bank Guarantee 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 Crore/ per Mega Watt corresponding to the quantum of long-term CBTA sought."	It is suggested that the amount may be aligned to CERC (Grant of Connectivity, Long-term Access and Medium-term Open Access in inter-State Transmission and related matters) Regulations and therefore reduced to Rs 5 Lakh/MW.	Such high bank guarantees will result in increase of project cost and in turn will lead to higher cost power
32	"17.(4) In case, any of the developers fails to construct the generating station /dedicated transmission system by the timelines	it is suggested that in case of delay in construction of generating station, the penalty may be limited to transmission charges	the construction in project may be delayed for reasons which are beyond the control of the



	agreed in the CBTAA, CTU shall have the right to encash the Access Bank Guarantee in accordance with Regulation 29 of these regulations."	payable for the period of delay, provided the power evacuation system has been completed and also that adequate notice of a possible delay in completion of generating project was not made available to the agency executing the power evacuation system.	generator. Further, this would mean that even for small delay of 1 month the whole guarantee of Rs 1Cr/MW is forfeited.
33	"19.2.(b) In case PPA is signed for a duration of less than 1 year - Applicant shall have to seek STOA separately and energy shall be scheduled under short term open access as specified in CERC (Open Access In inter-State Transmission) Regulations 2008."	In case PPA is signed for a duration of less than 1 year Applicant shall have to seek STOA separately and energy shall be scheduled under short term open access as specified In CERC (Open Access In inter-State Transmission) Regulations 2008. In such case applicant would get an off-set from the charges paid for Long Term Open Access.	Since applicant is already paying the LTOA or MTOA charges for the same line, he can't be double charged and hence should be entitled to get the adjustment under STOA.
34	"27 (1) The selling entity/ buying entity shall inform their requisitions to the Settlement Nodal Agency in accordance with the procedure specified as per Part - 6 on Scheduling and Despatch Code of Grid Code."	It is proposed that scheduling part may be directly handled by the NLDC and SNA may look after settlement part only.	By including SNA in case of scheduling an additional layer will be created as eventually SNA will also coordinate with the NLDC. This will lead to unnecessary delays in the process.
35	28 (5) TPAs of a neighbouring country shall make arrangements to forward the readings of meters installed at both the ends of the cross border transmission link to respective System Operators on weekly basis.	(5) TPAs of a respective country shall make arrangements to forward the readings of meters installed at both the ends of the cross border transmission link to respective System Operators on weekly basis.	
36	"Clause 39(3) (3) Any selling entity/buying entity in India proposing to sell or buy electricity from or to the neighbouring country shall make payments to the	Any selling entity/buying entity in India proposing to sell or buy electricity from or to the neighbouring country shall make payments to the	Electricity from Indian generating stations supplying exclusively to neighbouring countries through

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	Settlement Nodal Agency in fees & charges of System Operation in India."	Settlement Nodal Agency in fees & charges of System Operation in India. Provided that such charges shall not apply to any sale of electricity from India to a neighbouring country through an exclusive and dedicated transmission system connected to the grid of that neighbouring country.	an independent transmission system would not be scheduled by NLDC etc. and hence should not be liable to pay charges.
37	37 (4) A suitable payment security mechanism for charges to be collected by Settlement Nodal Agency shall be put in place by the settlement nodal agency.	The following change is suggested in this clause: "A Payment Security Mechanism in the form of Letter of Credit equivalent to 2.1. times the monthly billing for charges to be collected by Settlement Nodal Agency shall be put in place by the settlement nodal agency"	It is suggested in order to bring it in line with the existing practice of Payment Security Mechanism obtained by CTU
38	"40 (2) 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 (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. (b) A irrevocable, unconditional and revolving Letter of Credit in favor of the SNA of	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". 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	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. This is suggested to incentivize cross-border trade/transmission




	<i>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."</i>	seen as discriminatory, we suggest pegging it at a lower rate.	
39	42. Force Majeure and Change in Law: All concerned entities shall make appropriate provision in the Long Term Cross Border Access Agreement and the Power Purchase Agreements for settlement of operational and commercial disputes arising out of the force majeure events and Change in Law.	The provision should be included in all the agreements, may it be long-term, medium-term or short-term access. The phrase regarding "events affecting the Procurer and Seller or its Contractors" must be added for bringing in clarity. Therefore, the clause may be modified as follows: "All concerned entities shall make appropriate provision in the Cross Border Access Agreement and the Power Purchase Agreements for settlement of operational and commercial disputes arising out of the Force Majeure events and Change in Law events affecting the Procurer and Seller or its Contractors."	

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