

DRAFT CONNECTIVITY & GNA REGULATIONS

COMMENTS

1) DEFINITIONS

Paras 2.1(x) & 2.1(y) – As per the definitions the Long-term contracts are defined as those that exceed 7 years while the Medium-Term Contracts are defined as those exceeding one year but not exceeding 5 years. Therefore, the PPA's for a period exceeding 5 years but not exceeding 7 years do not fall under either of the two. This anomaly therefore needs to be corrected.

2) GENERAL OBSERVATIONS

An important aspect of the provisions of the proposed Regulations issued by CERC is that they need to comply with the statute in letter and spirit. The following are a few but significant observations:

- a) While the section 38 of the EA act 2003 clearly casts a responsibility on CTU to provide “non-discriminatory open access in transmission system”, several proposed provisions discriminate between Utilities under different ownerships.
- b) Further the section 38 of the EA act 2003 also limits the activities of CTU to ‘inter-state transmission system’. This provision of the statute also appears as to being violated.

The EA Act 2003 identifies a specified set of functions as that of the CTU. These functions can be assigned to any ‘Government Company’ by the Central Government through a notification. The Central Government therefore, vide its notification of Dec 2003 has notified POWERGRID as CTU. It is vital to note that in doing so the functions of CTU, being statutory, must remain distinct from the role & responsibilities of POWERGRID as they are not statutory in nature. Therefore, it is essential that the proposed Regulations safeguard and ensure that CTU maintains a separate identity and is not seen as ‘POWERGRID’ or the vis-a-versa.

As an example, CTU must correspond on its own letterhead and not that of POWERGRID. Similarly, the GNA agreement must be signed between CTU and the Applicant of GNA and not between POWERGRID and the Applicant as the ‘meshed network’ consists of the transmission assets owned by several other Transmission licensees.

- c) The EA act 2003 does not provide any powers to any other entity/authority to assign additional functions to CTU.

- d) The EA Act 2003 does not provide for levy of 'charges' by CTU against delivery of its functions. The CTU is a 'non-commercial' body which carries out specified statutory functions. It is noteworthy that POWERGRID is a 'commercial Utility' registered under the Company's Act. In view of such diverse characteristics, the Govt of India nominated POWERGRID as CTU after receipt of a written assurance by POWERGRID that CTU shall be "ring fenced" within POWERGRID so as to maintain its 'non-commercial' identity.
- e) In view of the foregoing it emerges that because of its 'non-commercial character', CTU must function as a "no profit no loss" body and not be seen as financially resting on any commercial entity including POWERGRID.
- f) Therefore, in keeping with the 'non-commercial' and 'no profit no loss' character of CTU, the Regulations can at most provide for payment of application fee to CTU against the cost of services performed by it. Further no commercial document (BG/LG etc) can/shall be assigned to be furnished to CTU against a commercial activity to be performed by any Transmission licensee including POWERGRID.
- g) Lastly the spirit of "what cannot be done directly, cannot be permitted to be done indirectly" needs to be enshrined in the Regulations.

3) SCOPE

- a) **Para 3.2** allows persons connected to the State Grid to seek connectivity & GNA to ISTS.

However, the draft regulations additionally need to allow a person having connectivity & GNA with ISTS to seek connectivity & network access to a State grid. Such a provision would particularly enable a generator to inject the share of the home state directly into the State's network thus relieving the ISTS from carrying such share of generation.

- b) **Para 5.2** Application fee for seeking Connectivity & GNA.

The quantum of effort by CTU for processing an application for Connectivity does not vary in proportion of the quantum of power (MW) for which the application is made. The same logic is true in respect of processing an application by CTU for grant of GNA. Therefore, there is no logic for specifying higher application fee for an application for a higher quantum of power (MW). It is therefore suggested that a uniform application fee be specified irrespective of the quantum of power.

- c) **Para 5.2 & 5.4** Application fee for seeking Connectivity & GNA.

The section 38 of the Electricity Act 2003 does not provide for CTU to receive/charge any fee and/or charges for carrying out its responsibilities. It is therefore suggested that all such fee received by

CTU be adjusted against the PoC charges for that Region. Our comments at para 2(a) above may also be referred.

- d) **Para 5.3** – No application fee to be levied on STU for GNA.

This provision amounts to a violation of section 38(d) of the EA 2003 which provides for 'nondiscriminatory grant of Open access'. The provision may therefore be suitably modified.

- e) **Para 5 & Para 6.1**–Time limits for processing Connectivity applications.

It is noticed that the processing time for Connectivity applications provided to CTU in respect of applications from Renewables is 120 days (Stage 1 + Stage 2) and for all others is only 60 days. In the spirit of being fair to both, it is suggested that the total processing time of both of these categories be kept the same that is in respect of renewables a total of 60 days for both Stage 1 and Stage 2.

- f) **Para 6.2** – return of application fee by CTU.

In the past, it has been observed that in respect of return of BGs etc CTU accords the lowest priority and therefore takes considerable time to respond. In view of the same it is suggested that a max time of 15 days be specified for CTU to return the application fee following the expiry of the application processing time specified in the Regulations.

- g) **Paras 7.9(d)(ii), 7.22 & 7.9(d)(ii)** provides that the Applicant shall be eligible to apply for Stage II connectivity on completion of at least 50% of the tower erection of the dedicated line. Further the para 7.22 provides that the Applicant shall enter into a 'Bay Implementation Agreement' within 30 days of grant of Stage II Connectivity.

In the case of Renewables, the project size would generally be 50-60 MW and the dedicated lines would generally, in majority of the cases, be of 132 kV or in a few cases of 220 kV with line lengths around 20-30 kms. Dedicated line of 400 kV may be required for evacuating more than 400 MW over distances in excess of 50 km. Normally the Developer takes less than 12 months to complete such dedicated lines. After completing erection of 50% of the towers the line is likely to be ready for service within 6 months' time thereof.

Further it is obvious that the Utility owning the substation would initiate the work of constructing the substation bay only after the 'Bay implementation agreement' has been executed. It is common knowledge that the activities from award of work to commissioning of a AIS substation bay cannot be completed earlier than 18-24 months for even a AIS 132 kV bay (includes award of contract, civil works, supply & erection of equipment and testing and commissioning).

From the above it emerges, from the provisions of the draft regulations, that the dedicated line would be ready after approx. 6 months of applying for Stage II Connectivity and the substation bay would be ready after (2+1+18) months of applying for Stage II connectivity. Which means that the dedicated line would be completed approx. 15 months prior to its substation bay.

The para 7.9(d)(ii) therefore needs to be deleted.

h) **Para 7.9(e)** – BG or LG @ Rs 5 lakh/MW for bay implementation.

It is noticed that in most cases the specified value of the BG/LG is turning out to be higher than the capital cost of the asset to be developed. This is highly irrational and needs to be corrected.

Further the purpose of this BG/LG is to secure the investment by the owner of the Substation. The capital cost of a substation bay has nothing to do with the MW it is required to transmit (substation bays being of a fixed MW rating). In fact, for higher MWs the number of bays has to be increased. It will therefore be logical to have a relationship of the value of the BG/LG with the Capital cost of the substation bays required to be built by the owner of the substation. The industry practice of the Transmission sector in India is that the owner of the Transmission assets obtains a BG/LG having a value of 10% of the capital cost of his assets in order to secure his investment.

Therefore, in view of the prevailing market prices, the subject provision be modified to specify the value of the BG/LG as Rs 10 lakhs per 132 kV bay, Rs 15.0 lakhs per 220 kV bay and so on.

i) **Para 7.21, 7.25 & 8.1** – Nodal agency shall specify the broad design specs of the dedicated Transmission line and its timeframe. The Dedicated Transmission line shall be handed over to CTU for operation and maintenance and further CTU shall be entitled for normative O&M charges.

Further in terms of the provision under section 38(2)(a) of the EA 2003, the CTU can undertake transmission of electricity through inter-state transmission system. In terms of this provision the jurisdiction of CTU is limited to the inter-state transmission system (ISTS) only. Therefore, any provision amounting to handing over a non-ISTS line to CTU for any purpose shall amount to a violation of the EA 2003.

Several of the Solar/Wind projects have entered into PPAs for sale of the electricity generated by them. The tariff, under such PPAs, includes the total operating costs of all assets of the project, including the cost of O&M of the dedicated transmission line owned by the generator. The handing over of the O&M of such transmission lines to CTU (through a Regulation issued by CERC) is going to adversely impact the operating costs and therefore the tariff agreed under the existing PPAs.

Further several of our Solar/Wind projects have been awarded through a competitive bidding process wherein the Developer who quotes the lowest tariff wins the bid. The Developer is required to quote the tariff based on the Terms & conditions including the technical, commercial and other conditions specified in the Bidding documents. It is legally not possible to modify the terms & conditions after the award of such projects.

The proposed provisions would impact the financials of the existing Solar/Wind generating plants. The proposed provisions therefore impact the quoted tariff and the financial viability of all existing Solar/Wind plants.

It is therefore suggested that

- the proposed provisions shall not apply to the existing Solar/Wind plants whose PPAs have been finalized.
- The proposed provisions shall apply to such dedicated lines that fall under the category of ISTS.
- Our comments at para 2 above may also be referred.

- j) **Para 8.4(i)** – It is proposed that when the dedicated line is constructed by a ISTS licensee the onus of paying the transmission charges for the period commencing from the COD of the dedicated line to the operationalization of the GNA shall be that of the generating plant.

It may be appreciated that the generating plant has no role to play in the construction of the dedicated line by a ISTS licensee and operationalization of GNA by CTU. It would be logical to provide that the onus would lie on the agency which is responsible for the mismatch (ISTS licensee or the CTU). However, in the event of the delay being on account of the non-readiness of the generating station, then the generating station shall be liable to pay the IDC plus the IEDC costs (limited to the period of delay) in respect of the dedicated line to the Transmission licensee.

- k) **Para 9.2** - provides for injection of infirm power after grant of Connectivity & GNA.

In the case of Merchant power (untied power), while the generating plant shall seek connectivity but without a PPA cannot apply for GNA. The proposed provision would therefore 'bottle-up' all such untied power. This would not be in national interest. The proposed provision may thus be modified to permit untied power to be injected under Medium-term and/or Short-term subject to establishing connectivity, COD of its dedicated line and COD of its generating unit(s).

4) APPLICATION FOR GNA

- a) **Para 11.5-** Processing of pending application for Connectivity etc by CTU.

In spirit of being fair while processing the pending applications for Connectivity and Long Term & Medium term open access under the new Regulations, CTU must ensure that such applicant is not put to any disadvantage in any form including payment of fee, value of BG/LG to be furnished including priority for grant and/or operationalization of Connectivity and/or GNA. This aspect needs to be incorporated.

- b) **Para 11.8(d) read with Para 11.1** – These provisions specify a) GNA application is to be made with two and a half months of grant of connectivity b) PPA to be submitted along with an application of GNA.

Past experience has shown that in majority of the cases for grant of Long term access, the augmentation of ISTS system (generally consisting of multiple elements) has been essential. It takes almost 48-60 months from the date of submission of such application to the operationalization of the Long-Term access. This amounts to that the generating plant will be able to deliver power against any new PPA not earlier than 48-60 months from the date of signing of the PPA. As per the past several years the State Utilities entering into a long term PPA specify a delivery period of at most 12 months from the date of signing the PPA.

The above issue needs to be addressed in the proposed Regulations. It is noted that the para 5.32 of the National Electricity Policy 2005 of Govt of India directs that the Network expansion shall be planned and developed by CTU keeping in view the anticipated Transmission needs. Recently this aspect has been stressed once again by the GoI under para 7.1(4) of the National Tariff Policy 2016. In view of the foregoing it is suggested that the proposed Regulations should provide the following:

- i. GNA would be operationalized by CTU not later than 12 months of its grant and in line with the requirements of the PPA.
- ii. In case of a delay in operationalization, the GNA applicant shall be free to approach the Commission for seeking suitable financial compensation in lieu of such delay.

- c) **Para 11.11& Para 11.13-** Return of Access BG.

Based on past experience in the delays for return of BGs by CTU, it is suggested that the provision should also specify the max time in which the Access BG is to be returned by CTU. A max time of 15 days from the date it has become due to be returned is suggested.

- d) **Para 11.12** – Modification in planned ISTS after grant of GNA.

The following maybe incorporated in the provision:

“After grant of GNA to an applicant, if it becomes necessary for the nodal agency to unilaterally modify the planned ISTS, it shall do so in a manner that the applicant is not put to any form of disadvantage particularly in regard to the target date of operationalization of GNA”.

e) **Para 11.12** – Relinquishment following material change in the application by the Applicant

Although the concept of payment of Relinquishment charges as a tool to weed away non-serious applications is in order, but it needs to be ensured that the same is not be applied in an indiscriminate manner failing which it is likely to lead to disputes and avoidable litigation. The following cases may be considered in case of material change in the application by the applicant:

- i. Application submitted prior to grant of Connectivity: - No Relinquishment charges should be payable.
- ii. Application submitted after grant of Connectivity but CTU has received other applications for connectivity at the same substation: - No relinquishment charges should be payable.
- iii. Application submitted after grant of connectivity but requires no material change in the planned ISTS and no investments have been made by CTU for providing the connectivity:- No Relinquishment charges should be payable.
- iv. Application submitted after grant of connectivity but requires no material change in the planned ISTS however investments have been made by CTU: - Relinquishment charges should be payable subject to CTU establishing the value of the investments made. The Relinquishment charges shall however be limited to the value of investments by CTU or the provisions under para 24 of these Regulations, whichever is less.
- v. Application submitted after grant of connectivity but requires material change in the planned ISTS but no investments have been made by CTU: - No Relinquishment charges should be payable
- vi. Application submitted after grant of connectivity but requires material change in the planned ISTS and investments have been made by CTU: - Relinquishment charges should be payable subject to CTU establishing the value of the investments made. The Relinquishment charges shall however be limited to the value of investments by CTU or the provisions under para 24 of these Regulations, whichever is less.

It is suggested that objectives of imposing ‘relinquishment charges’ charges should be clearly recorded in the Regulations with a direction to the nodal agency to apply the provision with care and caution as per its defined objectives. Further an act of CTU to the contrary would invite Regulatory intervention.

The provision shall also provide for the utilization of the amounts received by CTU as relinquishment charges. It is suggested that the balance amounts after paying the value of the investments by CTU, if any, shall be credited to the PSDF fund maintained by POSOCO.

- f) **Para 11.5** – CTU to grant GNA to an Applicant within the timelines specified in the Regulations.

In the spirit of equity both the Applicant and the CTU needs to be held accountable against the specified timelines. The proposed provision provides for actions against the Applicant for failing to comply with the specified timelines etc. On similar grounds the following maybe added:

In case CTU fails to adhere to the specified timelines the applicant's request shall be deemed to have been granted and CTU shall return the Application fee within a period not exceeding 15 days from the date of default.

- g) **Para 11.16-** Release of min 10% advance to the suppliers by a Generating company.

There have been several instances in Government Company's where a Supplier/Contractor opts not to draw the said 10% advance. The proposed provision cannot compel the supplier/contractor to draw the said advance.

Further the generating company and its supplier/contractor may agree on a lower percentage of advances. The proposed Regulations need to recognize that the generating company enjoys complete freedom to agree on any commercial terms and conditions suited to its prudence. The proposed provision amounts to an infringement into such freedom.

The proposed provision is therefore, against ethics and amounts to infringement in the commercial activities of a generating company.

The proposed provision should be deleted in totality.

5) **RELATIVE PRIORITY**

- a) **Para 12.2** – GNA applications shall be processed quarterly by CTU.

The proposed provision amounts to contributing to the excessive time taken/delays by CTU in grant of GNA. The reasons as to why the applications cannot be processed by CTU in the month following the month, in which the applications have been received, have not been stated.

The provision may be modified to state that the processing of the applications shall be completed by CTU in timeframe as specified in Regulation 6.

- b) **Para 12.7(b)** – The para provides for the extension letter of an existing BG needs to be filed at least 30 days prior to its date of expiry.

The reason for the requirement has not been stated. The proposed provision gives an impression that an attempt is being made to cover-up the slow pace of work by CTU. While on one hand the GoI is been promoting the digitalization of all of its systems with a view to speed up its services, the proposed provision appears to legalize the excessive time taken by CTU in discharging its duties.

The para may thus be deleted.

6) GNA BY GENERATORS

- a) **Para 16.1** – provides for a GNA application to be submitted at least 5 years prior to the date of commissioning of the first unit of a generating plant.

In view of the severity of the provisions under para 24 of these Draft Regulations it would be advisable for any applicant to make a GNA application only after entering into a PPA. Further the para 11.1 provides that the GNA application be made within two and a half years of the grant of connectivity. In other words, the GNA applicant must enter into a PPA within two and a half years of the grant of Connectivity and that the GNA would most likely be operationalized thereafter in around 5 years' time.

It is common knowledge that due to reasons, which are beyond the control of any Generator, currently the beneficiaries offer to sign a PPA with a delivery time of max 12 months. In the near future time horizon of around 5-7 years, there are no indications that the market behavior is likely to undergo major change such that the beneficiaries would sign a PPA with a delivery time of 5 years or so.

Unless this aspect of market behavior is incorporated in the proposed Regulations the objective of Hon'ble Commission to make the proposed Regulations leak-proof and objective is not likely to be achieved.

It is therefore suggested that the provision of '5 years' be replaced by '12 months'.

- b) **Para 16.3** – Early operationalization of GNA.

The provision is welcome subject to the applicant consenting for the same. In the past, there have been instances to the contrary.

7) ACCESS BANK GUARANTEE

Para 19.2 – STUs is not required to provide Access BG.

This provision is a clear violation of the provision under section 38(d) of EA Act 2003. This section casts a statutory responsibility on CTU to provide non-discriminatory' open access to the transmission system. Any provision in a Regulation to the contrary would therefore amount to a violation of the statute. It is therefore suggested the opening sentence of the para 19.2 may be deleted.

8) EFFECTIVE DATE OF GNA

Para 22.3 – Applicants liability to pay Transmission charges.

The GNA applicant's liability to pay transmission charges shall be limited to only the 'dedicated lines'. In case the transmission lines form a part of the meshed network (ISTS) OR play the role of enhancing the reliability of the grid OR are utilized for medium & short-term transactions, the monthly transmission charges of such line may be recovered through the PoC mechanism.

Further it is the responsibility of CTU, through the meetings of JCC to review and ensure that the mismatch between the COD of generating unit and that of the associated transmission elements is minimal. Therefore, in case of a mismatch, it is CTU that should be held responsible for its failure rather than any other party.

The provision may therefore be modified to state that "The inability of a GNA Applicant to generate or supply electricity shall not absolve it from liability to pay transmission charges of its Dedicated Transmission Line.

9) RELINQUISHMENT OF GNA

- a) Our Submissions against para 11.12 as above, in respect of the proposed Regulations may be read along with the following.
- b) **Para 24.1** – Liability to pay Relinquishment charges.

The objective of applying Relinquishment charges need to be clearly stated that is that it is a penalty for violating the terms of the TSA or a compensation to CTU to make good a commercial loss. In the case of the former the EA 2003 does not empower the Regulators to apply such penalty. In the case of the latter the commercial loss shall first need to be established before it can be imposed. It would also be necessary to have a provision towards 'force majeure' conditions such as cancellation of the PPA by the beneficiary or reasons that were beyond the control of the Generator would be necessary.

All the three sub-paras under this para therefore need to be recasted.

10) TRANSITION PHASE BETWEEN PREVAILING LTA REGULATIONS AND NEW PROPOSED GNA MECHANISM

Para 25.3 – Provides that in respect of Generating stations falling under para 25.2 if no GNA application is received within 3 months of the notification of the new Regulations, they would not be allowed to schedule power beyond the quantum of LTA.

This provision amounts to that such generating stations not being allowed to undertake Medium-Term or Short-term transactions till they apply for balance GNA. This provision is rather unfair and therefore, it is suggested that a sentence be added to state that “However such generators shall be free to transact their untied power under Medium / Short term transactions and further that the RLDCs/SLDCs shall schedule the same”.

11) TREATMENT OF DELAY IN TRANSMISSION SYSTEM OR GENERATION PROJECTS

Para 27.8 – Provides that in case alternative arrangements cannot be made, the transmission license shall pay proportionate transmission charges to the generator.

The term ‘proportionate’ needs more clarity.

Further the payment should be less than the ‘loss of profit’ by the generator.

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