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Sent: 09 January 2020 19:01

To: Sanoj Kumar Jha Secretary

Cc: P.K. Pujari; sreya.majumder@cii.in; sukanya.bhadra@cii.in

Subject: CII Comments on CERC draft sharing of ISTS Charges and Losses Regulation 2019

Dear Sir,

Writing to share with you CII Comments on CERC draft sharing of ISTS Charges and Losses Regulation, 2019. The Comments have been compiled on behalf of CII Core Group on Transmission under the aegis of the CII National Committee on Power. We are also sending the hard copy of this document by hand delivery to your office.

Request for your kind consideration of the above and also request you to please give us some time next week to be able to present to CERC on our recommendations at a date and time convenient to you please.

Looking forward to your comments.

Regards

Sukanya Bhadra

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CII Comments on CERC (Sharing of Transmission Charges and Losses) Regulations, 2019

No	Regulation No.	Clause	Comments
1.	3(3)	The transmission charges for transmission system after such transmission system has achieved COD with regular service, shall be shared by DICs in accordance with Regulations 5 to 8 of these regulations.	<ul style="list-style-type: none">• The CERC Tariff Regulations 2014 had defined “Regular Service” as (53) “Regular Service” means putting into use a transmission system or element thereof after successful trial operation and a certificate to that effect has been issued by the concerned Regional Load Dispatch Centre;• With the notification of CERC Tariff Regulations 2019, the 2014 Regulations are no longer in force. Further, Tariff Regulations 2019 have not provided or used the term “Regular Service”.• The term “regular service” needs to be appropriately defined.• This provision is basically ignoring the fact that while TL is providing number of non-regular service to others e.g. startup power/auxiliary supply of power to generating companies, these transmission charges shall not be shared by DICs and remain unpaid to TL.• Therefore, it is requested to bring clarity regarding Transmission charges for Startup power/Auxiliary Supply of power after CoD
2.		<p>Long Term Access or Medium Term Open Access for projects covered under clause (1) of Regulation 11 shall not be considered for apportionment of transmission charges under regulations 5 to 8 of these regulations.</p> <p>As per Rule 11(1), inter alia, no transmission charges and losses for the use of ISTS shall be payable for solar and wind generation for the useful life of the projects.</p>	<p>Section 86 (1) (e) of the Act, 2013 provides as under:</p> <p>“The State Commission shall discharge the following functions, namely:</p> <ul style="list-style-type: none">• (e) promote congeneration and generation of electricity from renewable sources of energy by providing suitable measures for connectivity with the grid and sale of electricity to any person, and also specify, for purchase of electricity from such sources, a percentage of the total consumption of electricity in the area of a distribution license”• However, the Central commission doesn’t have such power of promoting the Renewable Energy. Therefore, the proposal of the Hon’ble Commission under Regulation 11(1) to exempt the Renewable energy generators from



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			paying the transmission charges and losses may be against the Law.
3.	Regulation 5 (3) & (d) – Components and sharing of National Component (NC) and Regulation 6(1) (a) - Regional Component (RC)	National Component-HVDC shall comprise of the following: (a) 100% transmission charges for “Back to Back HVDC” Transmission System; (b) 100% transmission charges for Biswanath Chariali/Alipurdwara – Agra HVDC Transmission System; (c) Proportionate transmission charges of Mundra–Mohindergarh HVDC Transmission System corresponding to 1005 MW capacity; and (d) 30% of transmission charge for all other HVDC Transmission Systems	<ul style="list-style-type: none"> Proposed regulation 5(3)(d) and 6(1)(a) Transmission charges of HVDC system other than Back to back HVDC, Bishwanath Chanicali – Agra, Mundra – Mohindergarh system should be proportion of 30% and 70% for NC and RC respectively. We request Hon’ble Commission to provide rationale for such proportion. Further, the Transmission licensee should be able to recover full transmission charges in all respects
4.	5(5) 6(2) 6(5) 8(6)	5(5) Transmission charges for National Component in respect of injecting DICs with untied LTA capacity shall be shared by such injecting DICs in the ratio of their untied LTA capacity. 6(3) Transmission charges covered under sub-clause (a) of clause (1) of this Regulation in respect of injecting DICs with untied LTA capacity, shall be shared by such injecting DICs in the ratio of their untied LTA capacity for the respective target region. 6(5) Transmission charges covered under sub-clause (b) of clause (1) of this Regulation, in respect of injecting DICs with untied LTA capacity, shall be shared by such injecting DICs in the ratio of their untied LTA capacity for the respective target region. 8(6) Transmission charges covered under AC-BC in respect of injecting DICs with untied LTA capacity shall be shared by such injecting DICs in the ratio of their untied LTA capacity.	<ul style="list-style-type: none"> As per the draft regulations the Transmission Charges for the NC, RC and AC-BC in respect of the untied LTA capacity are to be borne by such Injecting DICs viz are the generators. As per public information available, about 21228 MW (Coal – 18189 MW, Gas – 1634, Hydro – 1405 MW) of commissioned generation capacity is untied i.e. without PPA. If 100% LTA has been taken by these projects then, 21228 MW can be considered as the untied LTA component and the corresponding transmission charges are to be paid by these Injecting DICs. Given the situation of low demand for power with no state calling for power procurement tenders, the recovery of transmission charges from the injecting DICs is a huge risk and the principle of sharing transmission charges which state YTC are fully recovered will be broken. Sufficient payment security mechanism needs to be built to ensure that recovery of transmission charges from Injecting DICs are ensured.



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5.	Regulation 11 (5) – Transmission charges in specific cases	Where Long Term Access to ISTS is granted to a generating station on existing margins and COD of the generating station or unit(s) thereof is delayed, the generating station shall pay transmission charges @10% of transmission charge for the State where it is located for the quantum of such Long Term Access.	<ul style="list-style-type: none"> The Hon'ble Commission has proposed that Generating stations are required to pay 10% of transmission charges for the state where it is located where LTA is granted and CoD of generating station is delayed. In this regard, it may kindly be noted that the LTA is operated only when the downstream transmission network has achieved CoD. Hence, in such cases, if only 10% of transmission charges will be paid then the Transmission licensee would not be able to recover the full transmission charges. Therefore, we request the Hon'ble Commission to amend the Regulation 11(5) suitably so that 100% of Transmission charges can be recovered in cases where LTA is granted and CoD of Generating station is delayed.
6.	Regulation 11 (7) and (11) – Transmission Charges in Specific case.	<p>Regulation 11(7): In case the generating station or unit(s) thereof has achieved COD and transmission system is delayed, the concerned transmission licensee(s) shall make alternate arrangement for dispatch of power in consultation with Central Transmission Utility at the cost of the transmission licensee(s).</p> <p>Provided that till such alternative arrangement is made, the transmission licensee(s) shall pay to the generating station the transmission charges proportionate to Long Term Access for the transmission system which is delayed.</p> <p>Regulation 11(11): Where a transmission system has been declared to have achieved deemed COD in terms of Transmission Service Agreement under Tariff Based Competitive Bidding (TBCB) or the Commission has approved the date of commercial operation of such transmission system in terms of clause (2) of Regulation 5 of Tariff Regulations, 2019 or proviso (ii) to clause (3) of Regulation 4 of the Tariff Regulations, 2014, the</p>	<ul style="list-style-type: none"> The responsibilities and liabilities of Transmission Licensee (TL) and the Generation Developers are defined in the TSA and PPA respectively. Therefore, in case of any delay, the TL or the Generation Developer should be held liable as per the provisions of TSA/PPA and accordingly LD should be imposed as per the provisions of these agreements. The TL or the Generation Developer cannot be held liable beyond what is specified and agreed in the TSA/PPA; otherwise this would tantamount to unlimited liability and it will become impossible to get these projects financed. It may also be appreciated that there may be a substantial difference between the Capex of TL & Generation Developer and one cannot compensate the other by any stretch of imagination. It may also be appreciated that it was the decision of the beneficiaries through the planning agencies, to have separate contracts with Generation Developer and TL. Therefore, the benefits of such structuring of contracts accrue to the beneficiaries in the form of lower tariff. Therefore, in case of delay in CoD of any of the assets, the tariff for other assets should be borne by the beneficiaries, through the pool account.



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		<p>transmission licensee or generating company whose transmission system or generating station or unit thereof is delayed shall pay the transmission charges of the transmission system till the generating station or unit thereof or the transmission system achieves COD. Provided that where more than one transmission licensee or both transmission licensee and generating station are getting delayed, the proportionate sharing of above transmission charges shall be as decided by Commission.</p>	<ul style="list-style-type: none"> The obligations of all the parties are well defined in TSAs and all commercial decisions should be in line with the provisions of TSA. Moreover, one party cannot be made to suffer on account of inefficiency of other party, on whose action the first party does not have any control. In the past, there have been decisions wherein the defaulting parties have been asked to make payments beyond the provisions of TSAs, which is against the set doctrines of legal process. The delay in commissioning of the project can also be on account of uncontrollable force majeure (FM) events, which are beyond the control of the licensee. In such a case of delay due to FM, the other party needs to be paid their dues. Therefore, the proposed Regulation is not good in law and should be removed. In all such cases, the payment to party who has completed its obligations, should be made from pool account. Proposed regulation also suggests that the concerned TL shall make alternate arrangement for dispatch of power in consultation with Central Transmission Utility at the cost of the TL. Practically, it would be very difficult for TL to make alternate arrangement for dispatch of power. Also, we would need to appreciate the fact that CTU is also one of the largest commercial player and is obviously conflicted.
7.	Regulation 11(12) – Transmission Charges in Specific cases	<p>An Intra-State Transmission System already certified by the respective Regional Power Committees being used for inter-State transmission of electricity and for which tariff has already been approved by the Commission, shall be covered under these Regulations: Provided that such intra-State Transmission System shall be included under these Regulations only for the tariff period for which tariff has already been approved by this Commission.</p>	<ul style="list-style-type: none"> For any Intra State Transmission system, tariff is being determined by State Commission. Proposed regulation is published by CERC while the powers are conferred with State Commission. Would need to appreciate the fact that some of State commissions are not determining tariff transmission line wise. E.g. Uttarakhand Commission determined the tariff on overall basis and not at the transmission line level.
8.	13(2) (c) (iii) – Billing	<p>Transmission Deviation Rate shall be calculated as follows:</p>	<ul style="list-style-type: none"> The treatment of TDR charges collected from DIC or generator is not explained.



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		a. Transmission Deviation Rate for a State shall be charged at 1.20 X (transmission charges of the State for the Billing month)/ (quantum of Long Term Access plus Medium-Term Open Access of the State for the Billing Month	<ul style="list-style-type: none">TDR is a penal rate, the recovery of TDR will result in excess recovery above YTC and it cannot be used to reimburse DICs or to reduce the transmission charges for the following month, since it would lose its penal nature and mean cross-subsidization amongst the DICs.Since the YTC is to be recovered completely through NC, RC, TC, AC-UBC and AC-BC components, in the proportion of LTA/MTOA and untied LTA, there would be situations when the MTC/ YTC is not fully recovered, leading to a shortfall in the pool. In such scenarios, without extinguishing the liability on the defaulting DICs, the TDR charges should be added to the pool to ensure complete recovery of transmission charges.Any excess TDR remaining in the pool should be routed to the PSDF fund, and once the outstanding liability on the defaulting DIC is paid, the proportionate TDR portion should flow to the PSDF fund.
9.		b. No transmission Charges shall be levied for Inter-State transmission system in respect of Short Term Open Access transactions	<ul style="list-style-type: none">The proposed regulation gives contradictory treatment to Long term, Medium term and Short term open access transaction. Under such situation, DICs will be discouraged to take Long Term/ Medium Term access.Furthermore, such regulation would create a lot of discrimination for usage of different types of open access transactions.This proposed regulation should have been mentioned in regulation 11 under the head of Transmission charges in specific case. It is inappropriate to mention in the regulation 13 where CERC has described Billing and its procedure. This important issue might be overlooked by other stakeholders who are interested in Billing and other procedures.
10.	13(4)	(4) Central Transmission Utility shall be responsible for raising the bilateral bills for transmission systems covered under Regulation 11 of these regulations.	<ul style="list-style-type: none">Based on our understanding of the draft regulations, bilateral bills are bills raised under Regulation 11 (4), (7) (9) and (11), these will be raised by CTU as per Regulation 13(4). It is submitted that recovery of these bills too should be routed through CTU. In case the generator fails to pay the bilateral bills



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			<p>or becomes insolvent, what is the recourse available to the transmission licensee?</p> <ul style="list-style-type: none"> It is suggested that in such a scenario, since the project has been commissioned as per the TSA, the LTTCs should pay the transmission charges due. This is in line with the Clause 6.2.2 of the TSA <i>“6.2.2 Once any Element of the Project has been declared to have achieved deemed COD as per Article 6.2.1 above, such Element of the Project shall be deemed to have Availability equal to the Target Availability till the actual charging of the Element and to this extent, shall be eligible for payment of the Monthly Transmission Charges applicable for such Element.”</i>
11.	14 – Due Date	Due date in relation to any Bill shall mean the forty fifth (45th) day from the date on which such Bill is raised by the Central Transmission Utility	<ul style="list-style-type: none"> Billing, Collection and Disbursement Procedure under CERC (Sharing of ISTS Charges & Losses) Regulations, 2010, Para 3.1.1, “Due date in relation to any Bill shall mean the thirtieth (30th) day from the date on which such Bill is raised and published on the website of CTU for payment by the DIC.”Further, as per the TSA, the due date is defined as 30th day after the date on which any Invoice is received. Hence, to maintain consistency, we propose that the definition of the due date should be amended to 30th day from the date on which bill is raised. Proposed <u>Amendment</u>: <i>“Due date in relation to any bill shall mean <u>THIRTY (30th) day</u> from the date on which such Bill is raised by the Central Transmission Utility</i>
12.	Regulation 15 – Rebate and Late payment charges	The rebate and late payment surcharge shall be governed in accordance with the Tariff Regulations, 2019 or the Tariff Regulations for subsequent period to be notified by the Commission, as the case may be.	<ul style="list-style-type: none"> In order to bring discipline in the payment by the Discoms, LPS rate of 1.5% per month may be retained. Tariff Regulations do not specify the priority of apportionment of Payment among Late Payment Surcharge, past dues, Current dues etc. This encourages Discoms to delay the payments as the LPS remains static. Consequently, Transmission Licensee would have to incur higher working capital.



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			<ul style="list-style-type: none">• We would further like to submit that interest should also be charged on LPS as Discoms typically delay payment of the same.• This anomaly was addressed in the competitive bidding PPA's by stipulating priority of apportionment of payment. Similar provision may be included in the Regulation with payment appropriation priority as follows:• Amount Received is first adjusted against Outstanding Late Payment Surcharge.• Balance Amount if any is adjusted against Past Arrears if any.• Balance Amount if any is adjusted against Current Months Dues. Alternatively, LPS should be allowed on compounding basis. This is appropriate considering the fact that all the accounting is on compounding basis.
13.	Regulation 16(2) : Letter of Credit	The Letter of Credit shall have a term of 12 (twelve) months and shall be for an amount equal to 1.05 (one point zero five) times the average amount of the First Bill for a year, where tripartite agreement for securitization on account of arrears against the transmission charges with the Government of India exist	<ul style="list-style-type: none">• The Hon'ble Commission, in its draft regulation, has proposed to calculate letter of credit equal to 1.05 times the amount of first bill for a year. In this regard, we would like to submit that the regulation specifies calculation of First bill on various components of transmission charges e.g. National Component, Regional Component, transformers component and AC system Component. Ideally the Letter of credit is to be produced before the initiation of Billing cycle. Hence, there is no point in linking Letter of credit to First bill. Therefore, we request Hon'ble Commission to calculate the Letter of credit on the basis of approved Yearly transmission charges and suggest the following amendment in the proposed regulation:• <i>The Letter of Credit shall have a term of 12 (twelve) months and shall be for an amount equal to 1.05 (one point zero five) times the amount of 1/12th of the Approved Yearly Transmission Charges, where tripartite agreement for securitization on account of arrears against the transmission charges with the Government of India exist</i>



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14.	16(7) – Letter of Credit	<p>If a DIC fails to pay any bill or part thereof on or before the Due Date, the Central Transmission Utility may encash the Letter of Credit, and, for amount of the bill or part thereof that is overdue plus Late Payment Surcharge, if applicable, by presenting to the scheduled bank issuing the Letter of Credit, the following documents:</p> <p>(a) a copy of the Bill, which has remained unpaid or partially paid by such DIC; and</p> <p>(b) a certificate from the Central Transmission Utility to the effect that the Bill at item (a) above, or specified part thereof, is in accordance with these Regulations and that it has remained unpaid or partially paid beyond the Due Date; and</p> <p>(c) Calculations of applicable Late Payment Surcharge, if any.</p> <p>Provided that the failure on the part of the Central Transmission Utility to present the documents for encashment of the Letter of Credit shall not attract any Late Payment Surcharge, for the duration of such failure on part of the Central Transmission Utility, on the DIC.</p>	<ul style="list-style-type: none"> • The proposed regulation mentions that the CTU 'may encash Letter of Credit' if a DIC fails to pay any bill. • It is requested that the Hon'ble Commission must replace the word "may" with "shall" to ensure that the spirit of the regulation is maintained. • The regulation also states failure on part of CTU to present the documents for LC will not attract any Late Payment Surcharge. • It is to be noted by the Hon'ble Commission that the transmission licensee would suffer in case the documents for LC are delayed on account of CTU. • Hence, we request that the Transmission Licensee shall be eligible for the Late Payment Surcharge
15.	17(1)(2)(3) – Collection	<p>(1) The Central Transmission Utility shall collect transmission charges on account of the First Bill and redistribute the transmission charges collected to inter-State Transmission Licensees in proportion to their Yearly Transmission Charges;</p> <p>(2) The Central Transmission Utility shall collect transmission charges on account of the Second Bill and transfer the same to respective inter-State Transmission Licensees;</p> <p>(3) The Central Transmission Utility shall collect transmission charges on account of the Third Bill raised in accordance with sub-clause (c) of clause (2) of Regulation 13 of these regulations and the transmission charges collected shall be reimbursed</p>	<ul style="list-style-type: none"> • Billing, Collection and Disbursement Procedure under CERC (Sharing of ISTS Charges & Losses) Regulations, 2010, Para 4.4.1 "The disbursement of transmission charges to ISTS Licensees for each Bill shall be made within three (3) Working Days of receiving the payment from the DIC on a rolling basis. For the avoidance of any doubt, after the day of raising and uploading the Bill, any payment that is received from the DICs during a day shall be disbursed within three (3) Working Days from the date of such receipt to all the ISTS Licensees on a rolling basis." • As there is no mention on the timelines for disbursement by the CTU, we request the Hon'ble Commission to include the same para as given in the BCD Procedure for Disbursement of transmission charges



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		to the DICs, in the following month, in proportion to the First Bill of the respective month.	
16.	17(5)	(5) If payment against any bill raised by Central Transmission Utility under this Regulation is outstanding, the Central Transmission Utility may undertake Regulation of Power Supply on behalf of inter-State Transmission Licensees under the provisions of the Central Electricity Regulatory Commission (Regulation of Power Supply) Regulations, 2010 as amended from time to time and any subsequent enactment thereof.	<ul style="list-style-type: none"> It is submitted that number of days from due date be specified for CTU to invoke Regulation of Power Supply, as was provided for in the Model TSA approved by CERC. The proposed modification is as follows: “If payment against any bill raised by Central Transmission Utility under this Regulation is outstanding <u>for 30 days after due date</u>, the Central Transmission Utility may undertake Regulation of Power Supply on behalf of inter-State Transmission Licensees under the provisions of the Central Electricity Regulatory Commission (Regulation of Power Supply) Regulations, 2010 as amended from time to time and any subsequent enactment thereof..”
17.	18 (1)(2)(3) – Event of Default of a DIC	<p>The occurrence and continuation of the following events shall constitute a DIC Event of Default:</p> <p>(a) A DIC fails to comply with the prevailing regulations including the provisions of the Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2010 as amended from time to time including any subsequent re-enactment thereof or is in material breach of these Regulations and such material breach is not rectified by the said DIC within 60 (sixty) days of receipt of notice in this regard from the concerned inter-State Transmission Licensee or the Central Transmission Utility; or</p> <p>(b) DIC fails to make payments against bills raised by the Central Transmission Utility under these Regulations within 60 days beyond Due Date.</p> <p>(2) Upon the occurrence and continuance of a DIC Event of Default, the Central Transmission Utility may serve notice on the concerned DIC, specifying the circumstances giving rise to such Notice.</p>	<ul style="list-style-type: none"> As per the draft regulations, 45 days is the due date given to the DIC from the date CTU has raised the bill. Failure to make payments against bills raised by CTU within <u>60 days</u> beyond Due Date is construed as an Event of Default. In such case, the CTU shall serve notice on the concerned DIC, and the concerned DIC shall take steps to remedy the default within 60 days of issue of such notice. After the expiry of <u>60 days</u> from the date of issue of notice, the concerned DIC shall cease to be a DIC under these Regulations and CTU shall issue a Termination Notice of <u>30 days</u> to this effect with a copy to the Commission. This indicates that the total time available for a DIC to remedy the default is 150 days (60+60+30) from the due date of the bill and 195 days (45+60+60+30) days from the date of issuance of the bill. It is submitted that 195 days for remedying the default is unreasonably long. The cash flows would be impacted leading to increase in working capital requirement for the transmission licensee, which would manifest in increase in the tariffs. Following revised timelines are proposed for consideration. <ul style="list-style-type: none"> a due date of 30 days from the date of issuance of bill



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		<p>(3) Following the issue of such notice by the DIC, the concerned DIC shall take steps to remedy the default within 60 (sixty) days of issue of such notice.</p> <p>(4) After the expiry of 60 (sixty) days from the date of issue of notice, unless the circumstances giving rise to such notice as mentioned in clause (1) of this regulation shall have ceased to exist or have been remedied, the concerned DIC shall cease to be a DIC under these Regulations and the Central Transmission Utility shall issue a Termination Notice of 30 (thirty) days to this effect with a copy to the Commission and the Implementing Agency. Provided that in case of termination as DIC of an entity on account of DIC's event of default, the Long-Term Access or Medium-Term Open Access or both of such entity shall be cancelled. Such cancellation shall be treated as relinquishment of Long-Term Access or Medium-Term Open Access in terms of Central Electricity Regulatory Commission (Grant of Connectivity, Long-term Access and Medium-term Open Access in inter-State Transmission and related matters) Regulations, 2009 and the said entity shall pay the relinquishment charges accordingly.</p>	<ul style="list-style-type: none"> ○ failure to make payments against bills raised by the CTU under these Regulations within 15 days beyond Due Date is construed as an Event of Default. ○ Upon the occurrence and continuance of a DIC Event of Default, the CTU may serve notice on the concerned DIC, specifying the circumstances giving rise to such Notice. ○ DIC to take steps to remedy the default within 15 days from issue of such notice. ○ After the expiry of 15 days from the date of issue of notice, termination as DIC of an entity on account of DIC's event of default, the Long-Term Access or Medium-Term Open Access or both of such entity shall be cancelled. <p>The revised timeline available to a DIC is 90 days (30+15+15+30) from date of billing.</p>
18.	23 – Savings and Repeal	<p>(1) Save as otherwise provided in these regulations, Central Electricity Regulatory Commission (Sharing of inter-state transmission charges and losses) Regulations, 2010, as amended from time to time, is hereby repealed.</p> <p>(2) Notwithstanding such repeal anything done, or any action taken or purported to have been done or taken under the repealed regulations shall be deemed to have been done or taken under these regulations.</p>	<ul style="list-style-type: none"> • The status of TSA, RSA and BCD Procedure in light of these regulations may please be clarified in the regulations itself. • Further, the order dated 29.04.2011 approving the TSA, RSA and BCD procedure, connected the SBD TSA and the Model TSA. Whereby it was clearly states in the Recital D of the Model TSA that <i>D. The development of an ISTS Scheme including any scheme which is under construction would continue to be governed in accordance with the Indemnification Agreement or Bulk Power Transmission Agreement or Transmission Service Agreement or any such agreement, as entered into between the concerned ISTS Licensee and the concerned DIC (s)(erstwhile beneficiary) to the extent relevant to the development,</i>



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			<p><i>construction and commissioning of the elements referred therein till such time the said element is for commercial operation and actually brought into the operations, post which the terms and conditions of this TSA would come into force;</i></p> <ul style="list-style-type: none">• Similarly, it needs to be clarified in these Regulations that the commercial operations shall be as per these Regulations.