



CAPTIVE POWER PRODUCERS ASSOCIATION (Regi

Reg. No. 25 of CA 1956 & Cer.IT 12AA CIN: U91990MH2003GAP141611) GSTIN:27AACCC2900Q1ZK

Secretariat Office

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Date: 05/02/2020

To,
Secretary
Central Electricity Regulatory Commission
Chanderlok Building,36, Janpath,
New Delhi

Sub: Suggestion & Comments on CERC (Sharing of inter-state Transmission Charges and Losses) Regulations, 2019.

Ref: Public Notice for Inviting Comments CERC (Sharing of inter-state Transmission Charges and Losses) Regulations, 2019.

Dear Sir,

We take this opportunity to introduce us as Captive power producer association registered under section 25 now amended as Section 8 of Amended Company Act.2013 and MCA has categorised CPPA as "PUBLIC" as per the provisions under the act and it has all India jurisdiction

With reference to CERC Public Notice for submission of Comments & Suggestions on CERC (Sharing of inter-state Transmission Charges and Losses) Regulations, 2019. this letter attached herewith.

We are giving our submissions for your kind consideration against the draft CERC (Sharing of inter-state Transmission Charges and Losses) Regulations, 2019. Taking the same on records and informing us on deliberations needing any clarification which we are ready to offer.

Thanking you

Yours truly

For Captive Power Producer Association

Dr.S.L.Patil

Secretary & Authorised Person

**BEFORE THE HON'BLE CENTRAL ELECTRICITY REGULATORY
COMMISSION, NEW DELHI**

IN THE MATTER OF:

Public Hearing dated 29.01.2020 on Draft CERC (Sharing of Inter-state Transmission Charges and Losses) Regulation, 2019

AND IN THE MATTER OF:

Captive Power Producers Association

...OBJECTOR

**WRITTEN NOTE ON BEHALF OF THE OBJECTORS, ON THE DRAFT
CERC (SHARING OF INTER-STATE TRANSMISSION CHARGES
AND LOSSES) REGULATION), 2019**

1. These comments/ suggestions are limited to the omission of the provision for netting-off, or setting-off, the MTOA charges with LTA charges, when MTOA is availed, while LTA is also operationalized, in a particular target region.
2. That, the mechanism for setting-off transmission charges was introduced by way of Fifth Amendment, 2017, dated 14.12.2017 to the CERC (Sharing of Inter State Transmission Charges and Losses) Regulations, 2010. During the introduction of the said setting-off mechanism, a detailed "Statement of Reasons" was also brought along with the said amendment, wherein this Hon'ble Commission has provided the rationale behind introduction of the setting-off mechanism, is that an OA customer should not be subjected to double charging of transmission charges, for the same quantum of power. The relevant proviso is reproduced hereinbelow as:

"11. Billing

(1)

(5) The second part of the bill shall be raised to recover charges for Additional Approved Medium Term Open Access which shall be computed as follows:

.....

Provided further that the quantum of Medium Term Open Access to any region availed during a month by a DIC having Long Term Access to a target region without identified beneficiaries shall be adjusted against the Long-term Access of such DIC limited to the granted quantum of Long Term Access."

3. The aforesaid basic principle behind providing netting/ setting off the MTOA charges with LTA charges, in a particular target region, was based on the "Commercial Principle" that an entity cannot be charged twice for the same service. Hence, this Hon'ble Commission, in order to avoid a situation of double levying of transmission charges for the same quantum of power availed under LTA, MTOA or STOA, introduced the aforesaid amendment in order to align the Sharing Regulations with Section 61(b).
4. That, the inter-state transmission of electricity is regulated under Section 79(1)(c) of the Electricity Act, 2003 and determination of tariff, thereof, is guided under Section 62 of the Electricity Act, 2003. The said tariff is to be determined by this Hon'ble Commission in view of the principles and methodologies laid down under the provisions of Section

61 of the Electricity Act, 2003 and the same is treated as a guiding stone, under Section 61(a), by all the State Commissions to enact regulations for respective states, in the country.

5. In this regard, it is submitted that a "commercial principle", if based on sound logic, cannot change subsequently. Under the ambit of the Electricity Act, 2003, there is no provision which allows a transmission licensee to collect double transmission charges for the same quantum of power in the same region. Sections 38, 39, 40 and 42 of the Electricity Act, 2003, qua open access, provide that such access has to be "non-discriminatory", meaning thereby that there cannot be any occasion whereby an open access customer is charged transmission/ wheeling charges twice for the same quantum of power.
6. That by virtue of Regulation 13(3) of Draft Regulations, this Hon'ble Commission provided that no transmission charges shall be levied/ applicable for inter-state transmission system in respect of short-term open access (STOA) transactions, except for deviation charges. Therefore, in the draft regulations, the issue of parallel STOA and LTA in the same target region has been taken care off.
7. The above leaves the issue of setting/ netting off the MTOA and LTA charges in the same target region, unaddressed. The conceivable intent behind such an omission is that there may not be a case, in the inter-state transmission system, whereby an LTA customer utilizes MTOA, and not LTA, in a particular target region. This is especially after this Hon'ble Commission amended the definitions of "short-term", "medium-term" and "long-term" open access, vide the 6th amendment to the CERC Connectivity Regulations, 2009. Further, vide the said amendment, this Hon'ble Commission also introduced Regulation 15B, whereby, an entity

with a power purchase agreement exceeding one year can utilize the LTA granted in the same target region.

8. The aforesaid amendments result in migration of an MTOA customer to LTA the moment such LTA is operationalized, meaning thereby that there is no simultaneous usage of MTOA when LTA is also granted for the same target region. In this context, further reference be made to clause 2 of Regulation 15B introduced vide the 6th amendment to the CERC Connectivity Regulations, 2009, whereby it was provided that for the aforesaid migration, i.e. from MTOA to LTA, no MTOA relinquishment charges would be levied.
9. It is here that Section 61(a) assumes significance for the reason that the principles and methodologies (i.e. through Regulations and Orders) passed by this Hon'ble Commission, become a reference/ guiding principle for the State Commissions.

It is in this context, that the issue of netting off/ setting off MTOA charges with LTA charges in the same target region, becomes significant. Therefore, there may be a situation which does not happen at inter-state transmission system (which results in usage of MTOA, while the DIC has an LTA in the same region), however, the same does not mean that the said situation will not happen at the intra-state transmission network. As such, a Regulation of this Hon'ble Commission which is based on sound "commercial principle" (i.e. there cannot be double charging of transmission charges) need not be tweaked or amended or repealed as the same may entail a ripple effect on the regulations promulgated by the various State Commissions.

10. The objector refers to Regulation 21 of the GERC Open Regulations, 2011, which provides that an entity/ generator, which is granted an LTA

may not be in a position to utilize the said LTA on account of the fact that the consumers/ beneficiaries require power under medium-term or short-term contracts. For sourcing of power to such consumers, the entity/ generator avails MTOA in the state of Gujarat.

As a result, the aforesaid entity has to pay MTOA charges to the Gujarat STU (GETCO). The said entity is also subjected to bear LTA charges on account of LTA granted by GETCO. This results in the entity being subjected to pay LTA charges, as well as MTOA charges, at the same time, for the same quantum of power. As a consequence, GETCO is recovering double transmission charges, on account of the above.

11. In order to address the above anomaly, an association, namely Indian Captive Power Producers Association, has filed a petition, being Petition No. 1672 of 2017, before the Ld. GERC, seeking amendment of certain provisions of the GERC Open Access Regulations, 2011, including Regulation 21 which is presently resulting in double charging of transmission charges.
12. It is stated that one of the primary grounds in the aforesaid petition is that this Hon'ble Commission under the existing Regulation 11 of the CERC Sharing Regulations, 2010, provides for setting off/ netting off the MTOA charges with the LTA charges in the same target region, and that the said commercial principle is a guiding light/ reference point for the State Commission to undertake amendment in its Regulations.
13. That, the omission/ deletion of the provision for setting/ netting off MTOA charges with LTA charges in the same target region, from the Draft Regulations, 2019 gives an impression that such setting off/ netting off is not a commercial principle anymore. The same will not only

adversely affect the aforesaid pending litigation, but will discourage the Ld. GERC from providing any such mechanism towards netting/ setting off MTOA charges with LTA in the same region, thereby adversely affecting the open access customers in the state of Gujarat.

14. It is further submitted that in the event the draft regulations are finalized, without any provision for setting off MTOA charges with LTA, the same will mean that there is no guiding principle for the State Commissions, especially the Ld. GERC, to deal with a situation resulting in double charging of MTOA and LTA charges upon an LTA customer. The said omission of any guiding principle, would further result in manifesting arbitrariness in the functioning of the Ld. GERC.
15. Therefore, this Hon'ble Commission ought to consider the incorporation of off-setting mechanism before finalizing the Draft Regulations, 2019.