

**No. L-1/41/2010 - CERC
CENTRAL ELECTRICITY REGULATORY COMMISSION
(NEW DELHI)**

Coram :

- 1. Dr. Pramod Deo, Chairperson**
- 2. Shri S.Jayaraman, Member**
- 3. Shri V. S. Verma Member**
- 4. Shri M. Deena Dayalan, Member**

IN THE MATTER OF

Central Electricity Regulatory Commission (Grant of Regulatory Approval for Execution of Inter-State Transmission Scheme to Central Transmission Utility) Regulations, 2010.

Statement of Objects and Reasons

1. Introduction

- 1.1 In exercise of power conferred under clause (c) of sub-section (1) of section 79 read with sub-section (1) and clause (ze) of sub-section (2) of 178 of the Electricity Act, 2003 (36 of 2003), and all other powers enabling it in this behalf, and after previous publication, the Commission had circulated draft regulations Central Electricity Regulatory Commission (Grant of Regulatory Approval for capital investment to CTU for execution of inter-State Transmission Scheme) Regulations, 2010, seeking comments/suggestions/objections of the stakeholders, vide public notice dated 21st January,2009. Pursuant thereto, the comments and suggestions were received from the stakeholders. The list of the stake holders from whom comments were received is given at **Annexure-I**.
- 1.2 The regulations have been finalized after detailed analysis and due consideration of the various issues raised by the stakeholders. These are being discussed in the succeeding paragraphs.

2. Short Title and Commencement (Regulation 1)

- 2.1 UPPCL has commented that the Electricity Act, 2003 (hereinafter "the Act") does not bestow power on the CERC to approve the capital investment in the initial stages of inter-State scheme of CTU. It has been argued that the approval for capital investment is the prerogative of Board of Directors of the CTU and the Act does not bestow any power on CERC to over-ride the provisions of the Companies Act 1956.

- 2.2 In this regard, it is clarified that the objective of the Regulation is to facilitate adequate augmentation of transmission system commensurate with the addition of generation capacity. The National Electricity Policy has following mandate for network expansion by Central Transmission Utility:

“Network expansion should be planned and implemented keeping in view the anticipated transmission needs that would be incident on the system in the open access regime. Prior agreement with the beneficiaries would not be a pre-condition for network expansion. CTU/STU should undertake network expansion after identifying the requirements in consultation with stakeholders and taking up the execution after due regulatory approvals.”

The purpose of these regulations is to facilitate the execution of the transmission scheme identified by the CTU, in time, so as to ensure proper evacuation of power from the planned generation capacity addition as well as to ensure smooth flow of electricity in the entire grid by strengthening the existing transmission system. There may be delay in execution of the transmission schemes due to procedural delay in having prior agreement with all the beneficiaries. In such cases, regulatory approval by the Commission, in accordance with the spirit of the National Electricity Policy, would facilitate in timely execution of the schemes.

- 2.3 The objective of these regulations is to grant regulatory approval for the execution of the inter-State transmission schemes, identified by CTU and not to give approval for capital investment by CTU. These regulations do not interfere with the power of the Board of Directors of the CTU to decide on the investment approval. Keeping in view this objective, the title of the regulation has been amended. Now the title of the regulation shall read as “Central Electricity Regulatory Commission (Grant of Regulatory Approval for execution of Inter-State Transmission Scheme to Central Transmission Utility) Regulations, 2010”
- 2.4 The provision regarding actual implementation of the scheme is given in Regulation 6(2) also. In order to avoid repetition, regulation 1(3) has been deleted. The views of Power Grid on this issue have been considered in Regulation 6(2).

3. Definitions (Regulation 2)

- 3.1 In line with the objective of these regulations and amendment in the title, the word “Capital Investment” has not been used and accordingly, this phrase has been deleted from the definitions.

3.2 The definition of “Beneficiary” in the draft regulation was as under:

“beneficiary” means a person having a share in a Central Govt. Generating Stations owned or controlled by Central Government, generation projects under collaboration between a foreign government and Govt. of India whose allocation of power to beneficiaries are finalised by the Govt. of India, Ultra Mega Power Projects (UMPPs) or a person purchasing electricity from a generating station through long-term access

The definition of “Beneficiary” has been modified to include the users of the system strengthening schemes as the scope of these regulations includes such schemes also, for grant of regulatory approval. The modified definition is as under:

“beneficiary” in respect of the generation ISTS scheme means a person having a share in a Central Generating Stations, generation projects under collaboration between a foreign government and Government of India whose allocation of power to beneficiaries are finalised by the Government of India, Ultra Mega Power Projects (UMPPs) or a person purchasing electricity from a generating station through long-term access and in respect of the System Strengthening scheme means the identified stake-holders of such scheme

3.3 The definition of “Generators” , “ISTS Schemes” and “Users” have been included for the sake of clarity, as these terms are used at many places in these regulations.

3.4 The definition of “Project Inception Report” in the draft regulation read as under:

“Project Inception Report” means a preliminary report prepared by CTU on transmission scheme(s) covering the objective/justification of the Scheme, with cost-benefit analysis, brief scope of work, generation project/s and their target beneficiaries, time frame of commissioning, broad estimated cost based upon the unit rate derived from the latest awarded prices, consent / outcome of consultation with the stakeholders”

The definition of “Project Inception Report” has been modified to bring clarity in line with the other amended provisions of these regulations. The modified definition is as under:

“Project Inception Report” means a preliminary report prepared by CTU on the inter-State transmission scheme(s) covering the objective/justification of the Scheme, with cost-benefit analysis, scope of work, details of generation projects and their target beneficiaries or region in case of generation specific projects, time frame for commissioning of the projects,

broad estimated cost based upon the unit rate derived from the latest awarded prices of similar transmission system elements, consent / outcome of consultation with the Users”

4. Objective (Regulation 3 of Draft Regulation)

This regulation has been deleted as the preamble which has been included in the final regulation covers this aspect also.

5. Scope (Regulation 4 of draft Regulation)

5.1 The clause 4(1) in the draft regulation was as under:

“ (1) These regulations shall apply to capital investment for an Inter-State Transmission System (ISTS) Scheme proposed by CTU, for which Generators, i.e. Generating Stations owned or controlled by Central Government, Independent Power Producers (IPPs) and Captive Power Plants (CPPs), have sought Long-term Access as per the CERC (Grant Of Connectivity, Long-Term Access And Medium-Term Open Access to the Inter-State Transmission and Related Matters) Regulations, 2009, and for which consultation with CEA and beneficiaries has been held for setting up the ISTS Scheme, but for which Power Purchase Agreement with beneficiaries have not yet been signed.”

PGCIL suggested that regulation 4(1) may be modified by replacing the words “Generators, i.e. Generating Stations owned or controlled by Central Government, Independent Power Producers (IPPs) and Captive Power Plants (CPPs)’ by “ eligible long-term customers” in order to include other entities like traders, State utilities etc. besides generators.

PGCIL’s comment assumes that the long - term customers could be either the generator or the load, i.e. distribution utility or bulk consumer. However, it is seen that most of the times the problem encountered is evacuation of power from generating stations of Independent Power Producers (IPPs), who have not been able to tie up for the sale of power from their generating stations, or Central Generating Stations whose allocation has not yet been finalized by the Government of India. There may not be any case where the State, represented by distribution utilities or another body, or a bulk consumer, wants the transmission system built for procurement of power from a generator, because if it were so, it would have been eager to sign the

PPA. Therefore, we are of the view that no change in this regard is needed in this clause.

PGCIL had further, suggested that to cover the schemes other than that given in regulation 4(1), a new provision in the scope should be added. Considering the suggestion by PGCIL, a new sub-clause i.e. 3 (1) (ii) is added to cover the inter-state transmission strengthening schemes.

- 5.2 Gujrat Urja Vikas Nigam Ltd. (GUVNL) has suggested that there should be proper information dissemination. It was suggested that there should be collective involvement of all the stake-holders and their concurrences should be made part for granting regulatory approval. In this regard it is to be clarified that there are many regulations e.g. Regulations 3(1), 4(3), 4(5), 4(7), and 6(1), which have provisions for proper information dissemination and consultation with stake holders.
- 5.3 Sh. A. K. Asthana has suggested that the scope should also include ISTS schemes proposed through private sector. Application for regulatory approval for such schemes could be submitted by bid coordinating SPVs of PFC or REC or the selected private sector company, as the case may be.

We are of the view that CTU being responsible for development of over-all inter-sate transmission system should take into account all the transmission schemes, whether to be developed by private developers or CTU itself and approach the Commission for regulatory approval of the scheme. After getting regulatory approval the scheme may be executed by CTU itself or through a private transmission licensee.

The CTU shall consider all the schemes, whether to be implemented by Powergrid or a private party through the recommendation of empowered committee. However, the identification of the ISTS scheme for which approval is sought would be as per co-ordinated plan developed by CTU in consultation with CEA and stakeholders, since no private party can plan an ISTS transmission scheme in isolation. Therefore, we feel that no modification in the clause is needed.

- 5.4 The clause 4(2) of the draft regulation read as under:

“(2) These regulations shall not apply to an Inter-State Transmission System (ISTS) Scheme, for which the beneficiaries/respective STUs have signed a Bulk Power Transmission Agreement to share the transmission charges”

Assam Power Distribution Company Ltd. (APDCL) suggested to bring such new transmission systems which are conceived after issue of GOI Notification dated 06.01.2006, and are now at preliminary stages (i.e. not

yet put on commercial operation), within the ambit of this regulation even though the BPTA is signed without any requirement under law so that the spirit of tariff policy guide lines is not defeated.

We believe that if BPTA is signed, then there would not be need for regulatory approval. National Electricity Policy also indicates that those schemes for which prior agreement with beneficiaries has not been made may be executed after getting regulatory approval. Thus we feel that there is no need for any amendment in clause (2) of Regulation 4 of the draft regulation.

5.5 Assam Power Distribution Company Ltd. (APDCL) had also raised the issue of under-utilisation of some transmission system The concern of under utilization of ISTS system in the North - Eastern Region is appreciated and it is being dealt through the new transmission pricing scheme.

6. Inter- State Transmission System expansion (Regulation 5 of the draft regulation)

6.1 PGCIL has suggested that this paragraph may not be required as this is the standard mandate of CTU / its responsibility. UPPCL and Sh. Padamjit Singh has also suggested some minor amendments. After considering the comments we are of the view that this regulation is not required. Accordingly, it has been deleted.

7. Filing of Application (Regulation 6 of the draft Regulation)

7.1 Clause 6 (1) of the draft regulation provided as under:

“(1) CTU shall file its application for approval for capital Investment to CTU for execution of Inter-State Transmission Scheme along with Project Inception Report (PIR) for an ISTS Scheme for which Grant of Regulatory Approval for Capital Investment Scheme to CTU is required under these regulations.”

Reliance Power has suggested to add the provision of filing the clearance from Empowered Committee for implementation by CTU with the application in para 6(1).

It is to be clarified that this clause talks about filing of application for regulatory approval of the schemes identified by CTU. The empowered Committee identifies the transmission projects for development through process of Competitive Bidding. We do feel that the clearance of empowered committee is not needed at the stage of regulatory approval and therefore, no modification is needed on this account.

7.2 The clause 6(4) of the draft regulation regarding scope of the scheme for which regulatory approval is to be applied has been deleted as these aspect has been included in Regulation 4 i.e. Scope .

7.3 The clause 6 (5) in draft regulation read as under:

“(5) The PIR must clearly outline the scope and objectives of the proposed Transmission Scheme and explain how the Scheme meets the evaluation criteria mentioned in these Regulations justifying with cost benefit analysis.”

PGCIL has suggested for deleting the phrase “*justifying with cost benefit analysis*”. We do not agree with the suggestion as cost benefit analysis is an important input for making decision of regulatory approval for any scheme. Accordingly, no modification is made in this clause.

7.4 The clause 6(8) of the draft regulation reads as under:

“(8) The CTU shall within seven days after making such application, publish a notice of its application with brief particulars in leading national newspapers along with a notice of the date, not being less than one month after the date of such publication, before which any interested person may make a representation on such scheme before the Commission. Further, these newspaper publications of the transmission schemes shall be submitted to the Commission within 7 days.”

Reliance Power and Sh. Padamjit singh have suggested to place the application on web site of the CTU. We agree with the suggestion and the clause is modified accordingly. TNEB had suggested for serving copy of application to all beneficiaries. We feel that posting the application on website will serve the purpose and there would not be a need for serving copy on each beneficiary.

8. Evaluation criteria (Regulation 7 of the draft Regulation)

8.1 The clause 7 of the draft regulation was as under:

“7. The Capital Investment Scheme Proposals will be, inter alia, subjected to the following evaluation:

- (i) Need for the Investment*
 - a. Technical Justification*
 - b. Urgency*
 - c. Prudence of the Investment*
- (ii) Cost Assessment and Possible Phasing of Investment*

(iii) Cost-benefit to the beneficiaries.”

TNEB has pointed out that phasing of funding (borrowed funds and equity) has not been contemplated in the elements of evaluation criteria. It was stated that unscientific funding would result in higher IDC.

It is to be clarified that this regulation is for technical approval for execution of the scheme and not investment approval of the project. The funding details are not to be considered at Regulatory approval stage. In fact the name of the regulation itself has been changed to reflect only the technical approval. The tariff for such a line would be determined in accordance with CERC tariff regulations in force. It is, therefore, felt that suggestion of TNEB can not be accepted and no modification in this clause is required.

9. Regulatory Approval of Capital Investment Plan (Regulation 8 of the draft Regulation)

9.1 In the draft regulation there was a proviso under Regulation 8 (1) relating to change in scope of scheme as given here under:

“Provided that for any change in scope of work of the approved investment plan of minor nature duly consented by CEA/STUs, CTU shall go ahead with the implementation of such changes under intimation to the Commission and shall reflect the same in tariff petition thereof.”

Gujrat Urja Vikas Nigam Ltd. (GUVNL) has suggested that minor change should be elaborated as some specific number. We are of the view that at very initial stage of the scheme for which regulatory approval is sought, it would not be prudent to fix a specific number for variation in scope. The implementing agency may require to modify the scope of work slightly due to field requirements or changes, which it may do on its own. For example, it may need to add one or two bays to accommodate interconnections with new sub - station or pooling station which was not planned earlier, without the necessity of obtaining approval of the Commission. However, it shall intimate the same to the Commission, along with the reasons thereof. Accordingly, the clause has been modified.

9.2 Para 8.2 of the draft regulation was as under:

“CTU shall implement the transmission elements out of the total scheme in a coordinated manner considering the progress of the generation project(s)”

Regarding implementation of the scheme PGCIL suggested that in case, the completion of the generation project gets delayed from its schedule and it is not possible to match the completion of the transmission elements/ project with the generation project due to technical/ contractual reasons, and the transmission elements/ project gets completed prior to the commissioning of the generation project, Commission may allow commercial declaration of such transmission elements/project in accordance with the Regulation 3(12) (c) of the CERC (Terms and Conditions of Tariff) Regulations'2009 and may ensure revenue to CTU.

We are of the view that the generation specific transmission scheme should be matched with the generation project in order to ensure optimum utilization and to avoid operational and commercial problems, therefore, the suggestion of PGCIL can not be accepted.

- 9.3 Sh. A. K. Asthana has suggested that elements of a transmission scheme common to more than one generation plant should match with first one and the system strengthening scheme should be implemented as per initial schedule. We agree with this suggestion and accordingly provisos have been added in the clause.

10. Recovery of charges of approved Capital Investment Plan (Regulation 9 of the draft regulation) :

- 10.1 The clause 9(2) of the draft Regulation was as under:

“(2) The method of sharing of transmission charges among the users of the ISTS Scheme shall be based on sharing methodology as may be specified by the Commission from time to time.”

PGCIL has suggested to modify the para 9(2) by adding phrase “ensuring that CTU is fully paid for its investment.” so as to ensure full payment for its investment.

It is clarified that in any case the transmission tariff for the transmission scheme shall be allowed by the Commission in accordance with the prevailing regulation, which will ensure full recovery of investment. Thus, no modification in the para is required.

WBSETCL suggested that the method of sharing of Transmission charge among the users of the ISTS Scheme should be based on Regulation 33 of CERC (Terms and Condition of Tariff) Regulation 2009. It is clarified that the sharing of transmission charges shall be as specified by the Commission from time to time.

11. A new regulation regarding “Power to remove difficulties” has been included in order to make a provision for removing the difficulty if any, which may arise in giving effect to the provisions of these regulations.
12. In view of our decisions on various provisions as indicated above, we direct the Secretary of the Commission to finalise the regulations and to take steps to notify the same in the Official Gazette.

Sd/-
[M. DEENA DAYALAN]
MEMBER

Sd/-
[V. S. VERMA]
MEMBER

Sd/-
[S. JAYARAMAN]
MEMBER

Sd/-
[DR. PRAMOD DEO]
CHAIRPERSON

Annexure - I

**Name of the Stakeholders who submitted Comments/ Objections/
Suggestions**

Sl. No.	Name of Stakeholder
1	Power Grid Corporation of India Limited (PGCIL)
2	Utter Pradesh Power Corporation Limited (UPPCL)
3	Tamil Nadu Electricity Board (TNEB)
4	Gujrat Urja Vikas Nigam Ltd. (GUVNL)
5	West Bengal State Electricity Transmission Company Ltd. (WBSEDCL)
6	Reliance Power
7	Shri Padamjit Singh
8	Shri A. K. Asthana
9	Assam Power Distribution Company Ltd. (APDCL)