

**No.L-7/165(180)/2008-CERC
Central Electricity Regulatory Commission
New Delhi**

**Coram : Dr. Pramod Deo, Chairperson
Shri S.Jayaraman, Member
Shri V.S.Verma, Member
Shri M.Deena Dayalan, Member**

Date: 14.5.2010

In the matter of

Central Electricity Regulatory Commission (Procedure, Terms and
Conditions for grant of Transmission Licence and other related matters)
(Amendment) Regulations, 2010

STATEMENT OF REASONS

Ministry of Power, Government of India has issued guidelines for encouraging competition in development of transmission projects and competitive bidding for transmission service in April, 2006 which was subsequently revised during July, 2007 with the aim of developing transmission projects in an efficient and economical manner.

2. The Central Commission while considering the applications by various project developers for grant of transmission licence have observed that while the useful life of the transmission asset is normally considered as 35 years, transmission licences are issued for a period of 25 years under the provisions of Section 15 (8) of the Electricity Act, 2003 (the Act). In other words, the transmission assets will be in service even after the initial licence period of 25 years. As there is no provision of "transfer" in the agreement, there is every likelihood that the existing licensee may continue to operate even after the initial period of 25 years. Thus the question arises as to what should be the tariff of the transmission asset after initial licence period of 25 years if the licence is not renewed or the licensee does not apply for renewal. The Commission after detailed deliberation has decided to make appropriate regulations for tariff determination in

such cases. Accordingly, statutory advice to Government of India under Section 79(2) of the Act was sent to modify the Standard Bid Document (SBD) for development of transmission lines through competitive bidding and to consider tariff period upto 35 years while bidding for the new transmission projects. At the same time, Regulation 13 of the "Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of Transmission Licence and other related matters) Regulations, 2009 (hereinafter "transmission licence regulations") was proposed to be amended to meet the above requirement.

3. Accordingly, the draft amendment to Regulation 13 of transmission licence regulations alongwith an explanatory memorandum was put up in public domain inviting comments / suggestions/objections by 01.03.2010. The Commission has received the only one response from Reliance Power Transmission Limited (RPTL). The issues raised by RPTL are deliberated in subsequent paragraphs.

Regulation 13(2) of draft amendment regulations

4. RPTL has submitted that in case a transmission licensee does not apply for renewal of his licence before the expiry of its term, who will operate the transmission assets of that licensee after expiry of the period of his licence and upto the useful life of the asset. This aspect has not been dealt with either in the Act or in the transmission licence regulations. It may so happen that a transmission licensee may choose not to apply for renewal of licence before expiry of its terms of licence even though the transmission asset is left with useful life. The issue has been considered and we find merit in it. We have accordingly decided to insert a proviso under clause (1) of Regulation 13 as under:

"Provided that when the licensee does not make an application for grant of licence beyond the initial period of 25 years, the Commission may, to protect the interest of the consumer or in public interest, issue such directions or formulate

such schemes as it may deem necessary for operation of the transmission assets for the remaining part of its useful life.”

Regulation 13(4) of draft amendment regulations

5. As per the provision of Section 15 of the Act, the period of transmission licence shall be 25 years unless revoked earlier. The Standard Bid Document (SBD) issued by the Ministry of Power currently provides for the submission of bids by the bidders for 25 years. For the transmission projects for which bidding documents have already been issued or the projects which have been awarded through competitive bidding process, tariff for the period beyond 25 years would be determined on the basis of the norms specified by the Commission. This is because of the fact that the developers have already quoted their rates considering the life of 25 years during which they are expected to recover their entire investment including return. In such cases, other financial and technical norms, except the quantum of equity and depreciation, shall be governed by the norms of tariff prevalent during the said period. It is assumed that entire depreciation of the asset initially created for the transmission project would be collected during the licence period of 25 years. Hence, only salvage value to the extent of 10% may remain in the books of the accounts of the licensee. Hence, no provision of depreciation is envisaged after 25 years unless the licensee is required to go for Renovation & Modernization (R&M) on account of obsolescence, technology upgradation etc.

6. RPTL has further submitted that this clause has specified certain specific guidelines for projects falling under these categories. While this addresses the concern of “what would be the tariff payable in such cases after the first term of 25 years licence period, the need for fixing specific guidelines is not clear. Rather than specifying such specific guidelines under the Licence Regulations, it has been suggested that the tariff for these projects too shall be determined by the Commission under section 62 of the Act and deal with any specific issues under the tariff regulations. The Commission has

considered the views of RPTL and is of the opinion that specific guidelines are being proposed to give a sense of regulatory certainty to the investors and the beneficiaries.

7. In case the transmission licensee feels the need of R & M after end of 25 years, he shall make an application for approval alongwith the application for extension of licence period, which shall be considered by the Commission on the basis of relevant norms prevailing at that point of time. The application for grant of licence shall ideally be made two years before the end of initial licence period of 25 years in order to maintain continuity.

8. Under Gross Fixed Asset Method currently followed by the Commission for determining tariff on cost plus basis, there is a provision of equity upto 30% of the gross block which remains constant during the life of the assets. The same principle has been adopted for determination of tariff of the transmission assets beyond the initial period of 25 years. In other words, the developer would continue to get return on the actual equity invested in the project subject to maximum of 30% of the gross block after 25th year at the rate as per norms of the Commission prevalent during the relevant period.

9. RPTL has also submitted that in case the suggestion to completely delete Regulation 13 (4) (i) is not considered, than the term 'Capital Base' may be modified with equity base under Regulation 13 (4) (i). The above suggestion has been accepted by the Commission and necessary modifications have been made in Regulation 13(4)(i) in the final regulations.

10. As regards the new projects, bidders would be asked to quote their tariff considering the life of the project as 35 years although the licence would be given for 25 years. In such cases, once the licence is extended for another term, the tariff quoted for relevant years would be applicable beyond the initial period of 25 years.

11. In case of transmission assets where tariff has been determined by the

Commission under Section 62 of the Act, the tariff of such assets beyond the period of 25 years shall be determined in accordance with the tariff regulation prevalent at that point of time.

Regulation 13(5) of draft amendment regulations

12. RPTL under Regulation 13 (5) has submitted that the competitive bidding procedure and the Standard Bid Documents have been notified by the Ministry of Power. As per the current Standard Bid Documents, bidders are to quote transmission charges from date of commercial operation till 25th anniversary of transmission licence, which works out to around 22 to 23 years. Specifying the number of years for which bidders are to quote in the competitive bid under the transmission licence regulation may lead to unnecessary cross linkages. RPTL has also mentioned that the “useful life” of different types of transmission assets is different and if the period for which transmission charges are to be quoted is to be made equal to the period of useful life, the current documents need to be modified significantly. To simplify and provide a uniform policy to alleviate the concerns of beneficiaries and developers, it has been suggested that the tariff for assets for the period during which competitively bid tariff is not available, for whatever reason and circumstances, be determined by the Commission under Section 62 of the Act.

13. The Commission has considered the suggestions of the RPTL. While we are in agreement with the views of RPTL partially to the extent of applicability of the provision of Section 62 of the Act after expiry of the initial licence period, we are of the view that the transmission assets are expected to have life of 35 years and the bidders can bid for the entire life of 35 years. This will provide level playing field as well as regulatory certainty to all the bidders so that they can take an informed decision based on the risks perceived upto 35 years. From consumers’ point of view, better competitive price could be discovered as recovery period for investment is extended from 25 years to 35 years.

14. RPTL has also suggested that renovation and modernization may be necessary in both the categories covered under regulation 13 (4) and 13 (5) and therefore, the procedure for such situation may be made uniform. We have accepted this suggestion and accordingly, deleted Regulation 13 (4) (iii) and inserted a new clause namely, clause (6) covering both the cases appropriately as under:

“In case the transmission licensee covered under clauses (4) and (5) of this regulation decides to undertake renovation & modernization of the transmission system after the initial period of licence, it shall make an application for approval of the cost of renovation and modernization alongwith the application for grant of fresh licence, which shall be considered by the Commission in accordance with the prevalent norms.”

15. We direct the Secretary of the Commission to finalize the amendment to the transmission licence regulations in terms of our decisions given herein above and take steps for notification of the regulations.

sd/-

[M DEENA DAYALAN]
MEMBER

Sd/-

[V.S.VERMA]
MEMBER

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[S. JAYARAMAN]
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[Dr. PRAMOD DEO]
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