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The Secretary,
Central Electricity Regulatory Commission
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Subject: Comments/ Suggestions on draft Central Electricity Regulatory Commission (Grant of Connectivity, Long-term Access and Medium-term Open Access in inter-State Transmission and related matters) (Sixth Amendment) Regulations, 2015 and draft Central Electricity Regulatory Commission (Sharing of Inter State Transmission Charges and Losses) Regulations, Fifth Amendment 2016—regarding.

Reference: CERC Public Notice No. : L-1/(3)/2009-CERC & L-1/44/2010-CERC
Dated: 28th October, 2016

Sir,

This has reference to above referred draft amendment regulations notified by the Hon'ble Central Electricity Regulatory Commission (hereinafter referred as "**Hon'ble Commission**") and inviting Comments/ Suggestions thereon. In this regard, we humbly submit the following Comments /Suggestions, for the kind consideration of the Hon'ble Commission, in finalizing the proposed draft regulations- as referred above. Our comments on the proposed draft are as follows-

[A] Background

Hon'ble Commission has brought out the gradual shift in electricity market towards short/medium term causing possibility of congestion in transmission system as transmission planning is based on long term access (LTA). Hon'ble Commission has proposed to amend the Open Access and Sharing of Losses Regulations to handle this

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issue. This is pertinent and relevant issue, we have made some more suggestions to deal with this issue at relevant portions in the following paragraphs.

[B] Proposed Amendments to CERC (Grant of Connectivity, Long-term Access and Medium-term Open Access in inter-State Transmission and related matters)

1. Provisions related to Long term Access

The Hon'ble Commission, in the draft Regulations has proposed as follows-

“15B Firming up of Drawl or Injection by LTA Customers:

...

Provided that scheduling of power shall be contingent upon the availability of last mile transmission links in the target region:”

It is submitted that this provision leaves a scope of uncertainty of Open Access Customer (DIC) as the last mile transmission links in the target region are generally within the domain of State Utilities. But it may also be with the CTU. Thus, even if CTU system upto last mile is available the DIC is not able to avail Open Access for want of State/CTU links, which might have contractual/financial implications for either the buyer or the seller. It may kindly be noted that even though the last mile link may belong to the State Utility, it falls within the definition of Inter-state Transmission System for inter-state transmission of power under the Electricity Act, 2003. Strictly speaking last line link being part of inter-state transmission system be the responsibility of CTU and it may have proper arrangements with State Utilities for fulfilling their obligations. Therefore, Hon'ble Commission may include a provision laying responsibility on both CTU and State Utilities to co-ordinate with each other for timely availability of both Central and State links. In case of failure to provide the requisite link, responsibility may be fixed and financial implication on DIC/seller/buyer may be passed on to the responsible Central/State Utility.

3. Provisions related to grant of MTOA

The Hon'ble Commission has proposed to delete the words “or the transmission system under execution” in the present Regulations, clause (2) of Regulation 9 while calculating the margin for the purpose of deciding the ATC for grant of MTOA. In this regard it is

submitted that the reasons for unforeseen delays cited by CTU, which are rare and case specific not general, should be guiding the general provision for calculating ATC. The removal of these words gives infinite time to CTU to complete scheme under execution and may result in laxity at a time when market itself needs more and more margins. There may be provisions for handling specific cases. In any case, at present also the Open Access is not operationalized until the lines under execution are not available. On the other hand, there is no harm in retaining the existing provision, which promotes open access. Therefore, the proposed deletion may not be carried out.

4. Provisions related to Dedicated transmission lines

Hon'ble Commission has brought out that CTU has proposed to transfer the responsibility of construction of dedicated transmission line on the generator as they cannot delay the construction of transmission line due to contractual obligations. Further, in terms of Hon'ble APTEL's Order in Appeal No. 145 of 2011 dated 23.5.2012, construction of dedicated transmission line is the responsibility of the generator.

In this regard, it is submitted that transmission line planning, financing, construction and operation are different activities and can be done by different entities. Thus, taking the responsibility of bearing cost of construction of dedicated transmission line by generator as per provisions of the Electricity Act, 2003 and actually getting it constructed through CTU/STU on behalf of the generator are two different things. When cost is to be borne by generator, it has to form part of project cost, which may not have been contractually agreed with buyers in existing contracts. Even Hon'ble APTEL has recognised that to avoid delay the generator may get it constructed by CTU/STU, who are in the core business of and have core strength in transmission business. Further, doing it for all future projects would be discriminatory as earlier projects have not borne the cost of transmission line as the delivery point is generally defined to be generating station bus-bar. This may also have implications for accounting of losses in the dedicated transmission line in the existing/future contracts. To avoid this discrimination, the existing contracts of generators already supplying power and about to supply power need to be aligned with the amended regulations. It is, therefore, proposed to include a provision for alignment of contracts with amended regulations. Further, in cases where CTU cannot further delay construction of transmission line, the issue of contractual

implications on CTU towards its contractors for delay in CoD of generating station can be easily addressed by including a provision of back to back passing on of penalty on the generator. Therefore, the provision of CTU's responsibility for construction of transmission line may be retained with option being given to generator to construct it himself. Commercial implications of either side may be suitably incorporated in the regulations.

It is further submitted that the charges for dedicated transmission line should not be levied on the generator when (i) LTA has not been operationalized even though dedicated transmission line has achieved CoD and (ii) the generator itself has constructed the transmission line.

In either case, the responsibility of operation and maintenance of dedicated transmission line should lie with the CTU being the licensee and having core competence to do the same.

5. Additional Provisions

Hon'ble Commission is requested to incorporate the following through additional amendments regulations:

(i) Because of absence of specific regulations on part operationalization of LTA/MTOA, generators are facing difficulties in getting open access. It is, therefore, proposed that specific regulation allowing part operationalization of LTA/MTOA may kindly be included.

(ii) Pending availability of LTA, generators are required to take MTOA in the interim to cater to the requirement of their beneficiary. Upon availability of LTA, this MTOA has to be relinquished though there is no change in utilisation by the generator. Mere change of form of Open Access from one to another should not attract relinquishment charges as actually there is no relinquishment of any capacity. It is, therefore, proposed that no relinquishment charges be levied for conversion of STOA/MTOA to MTOA/LTA, which may be included through suitable amendment in the Regulations.

C. Draft Amendments to Central Electricity Regulatory Commission (Sharing of Inter State Transmission Charges and Losses) Regulations

1. Introduction of Reliability Support Charge for Connectivity

Hon'ble Commission has proposed to levy Reliability Support Charges on generators for the Capacity for which Connectivity has been granted but there is no identified buyer/PPA. For existing PPAs/buyers, the Reliability Charge is being levied at drawal end.

Sir, we humbly submit that this levy on generators would not be correct even if connectivity for a higher capacity than existing PPAs is approved but the same is not utilised for any injection by generator as the transmission planning and investments are done to take care of LTA for which charges are borne by concerned DIC. Even for infirm power injection or inadvertent flows to grid, the injected power is actually utilised by unidentified/not previously known drawees through UI as the power injected has to be consumed simultaneously by some consumer at the same time. Ideally, these drawees should bear the Reliability Support Charges as the generator has no means to pay these charges in existing contractual framework. Further, the benefit of Reliability Support in such a case is actually taken by such drawees and it is only fair to transfer this burden, if any, on them. There is no rationale or fairness for charging Reliability Support Charges for Capacity that is not injecting any power to the grid and, hence, not availing any reliability service of the grid. Moreover, this may lead to taking lower capacity connectivity approvals by generators making it more difficult to plan and operate the system effectively. Therefore, it is proposed that proposed levy on generators may not be applied.

2. Rates of STOA/MTOA

The Rates of STOA/MTOA has been proposed to raised to 1.35/1.25 times the normal POC charges respectively, which have been increased in the past from 25% to 50% and then to present 100% of MTOA/LTA charges (in equivalent Rs./kWh terms). The move is primarily to tackle transmission planning, which is based on LTA and since market

trend including that of buying DISCOMs is towards short/medium term PPAs, the generators are seeking short/medium term Open Access. Thereby causing lack in additional transmission capacity planning and consequent congestion.

In this regard, it is humbly submitted that penalising generators through higher than normal charges for market (buyers') behaviour of only short/medium term commitments is not the right approach. Hon'ble Commission has brought out in the Explanatory Note that State Utilities are nowadays favouring short/medium term contracts. The generators should not be punished for something for which they are not responsible. They are already paying the charges equivalent to 100% of the average cost of transmission. Further, at present there is general lack of demand in the market compared to installed capacity and capacity likely to come up in near future. The surplus capacity in the market is reflected in the low trading prices of electricity quoted by Hon'ble Commission in its Explanatory Note as Rs. 2.50/unit. Most of the power generation companies are bleeding due to the present lack of demand. It may kindly be appreciated that in the present market scenario these generators have no choice but to take short/medium term access corresponding to their current PPA periods in the market. In the absence of long term PPAs, taking a LTA and, hence, committing to pay transmission charges for long term would not be feasible for them at this juncture for two reasons (i) they will be saddled with fixed transmission charges even though they may not find any buyer to sell their electricity for some of the periods in the LTA period and (ii) even if buyers are available and identified for short terms after each short term PPA, they may not be in the same region or location thereby rendering the LTA totally useless for them. Burdening them with additional charges would only lead to exaction of extra money for short/medium term access without in any way improving the additional transmission capacity planning as it is still based on LTA. Another reason which Hon'ble Commission has given is that STOA charges being on Rs./kWh basis are beneficial for generators as they pay only for units actually injected and, hence, if they are operating at low load factor/CUF they end up paying lesser transmission charges than other beneficiaries. In this regard, it is humbly submitted that lower CUF is inherently there in renewable energy sources like solar and wind. The generators are not intentionally keeping the CUF low. Since renewable energy rates are presently higher than conventional power in order to promote investments in such sources and make them competitive, it is necessary to continue similar charging for

them. No generator whether conventional or renewable would intentionally keep the PLF/CUF low as the loss of revenue due to generation is much higher than the cost of transmission charges involved in the system. In fact, if short term access generators are able to achieve higher than average PLF, they end up giving higher transmission charges than other beneficiaries. Thus, it would not be fair to say that such short term access generators are paying less than other beneficiaries. The burden of transmission charges for lower PLF due to lack of demand in market should not, therefore, be totally loaded on the generators and needs to be shared by all as at present.

The concern of Hon'ble Commission may be addressed by changing the transmission planning criteria itself based on present and future market scenario of surplus generation capacities as compared to the past power shortages scenario. There is a need to build the transmission system with redundancies in a similar way as Hon'ble Commission has laid down a path for reserve generation capacity addition in the Indian Power System. These redundancies can never be achieved if the transmission planning criteria is based on LTA. Thus, existing and planned generation capacities alongwith present and future demand projections should guide the transmission planning irrespective of whether LTA for such projections is there or not. If such forecasts are accurately done, there is no reason why the transmission capacity so added would not be utilised. The only difference would be that there may not be identified long term users for such transmission system, which would be known only as and when such transmission capacity is called to be booked. Further, this would need investments by CTU and STUs based on expected demand and supply in the system and planned redundancies, but such investments may not have presently visible revenue stream. But as CTU and STUs have been mandated for co-ordinated and planned development of their respective transmission systems under the Electricity Act, 2003, Hon'ble Commission may direct them to carry out such system strengthening on their own without linking it with LTA as shift in planning criteria is need of the hour.

3. ISTS charges and losses for wind and solar projects

Hon'ble Commission has proposed changes in the existing regulations to make it consistent with MoP notification dated 30.09.2016.

The Government of India has set an ambitious target of achieving 175 GW power capacity from renewable energy resources by 2022 and out of this 100 GW is to come from Solar power. In order to achieve the same, the Hon'ble Commission notified the CERC (Sharing of Inter-State Transmission Charges and Losses) (Third Amendment) Regulations, 2015 and under the Regulation 7, waived off the applicable inter-state transmission charges and losses of solar Power Projects as given below;

“No Transmission charges for the use of ISTS network shall be charged to solar based generation. This shall be applicable for the useful life of the project commissioned in next three years.

(Provided that the above provision shall also be applicable for the useful life of the project commissioned during the period 1.7.2014 to 30.06.2017)”

Above amendment of the CERC Regulation is allowing waiver of inter-state transmission charges and losses for the projects to be commissioned on or before 30.06.2017.

In order to facilitate transmission of solar and power from resource rich States to resource deficit States, the Central Government amended the Tariff Policy on 28/01/2016, wherein it is specified as under:

*“In order to further encourage renewable sources of energy, **no inter-State transmission charges and losses may be levied till such period as may be notified by the Central Government on transmission of the electricity generated from solar and wind sources of energy through the inter-state transmission system for sale”***

Accordingly, the Ministry of Power, vide notification no. 23/12/2016-R&R dated 30.09.2016 notified that no inter-state transmission charges and losses will be applicable on wind and solar power. The same is reproduced as under:

*“3 (i) For generation projects based on wind resources, no inter-state transmission charges and losses will be levied on transmission of electricity through the inter-state transmission system for sale by such **projects commissioned till 31.03.2019.**”*

(ii) For generation projects based on solar resources, no inter-state transmission charges and losses will be charged for use of inter-state transmission system (ISTS) network by such projects commissioned till 30.06.2017 as per the CERC (Sharing of Inter – State Transmission Charges and Losses) (Third Amendment) Regulation, 2015.”

It is clear from above that the applicability of waiver of transmission charges and losses for entire life for solar project commissioned till 30.06.2017 and wind projects commissioned by 31.03.2019.

The ambitious target of 100GW of solar power can only be achieved by establishing large scale projects in the States, where ample barren lands are available with high solar irradiation. From such States, the solar power can be transmitted to other solar resource deficit States. We feel that it would be imprudent to put a solar power project on the fertile land. The MNRE in December, 2014 issued Scheme for setting up at least 25 solar parks each with a capacity of 500 MW and above with a target of over 20,000 MW of solar power installed capacity in a span of 5 years from 2014-15 to 2018-19. Out of 20,000 MW, major stakes are from the states like Rajasthan, Madhya Pradesh and Gujarat with a capacity of 3351 MW, 2750 MW and 700 MW respectively.

Since states like, Gujarat and Rajasthan have already fulfilled their Solar Power Purchase Obligation (SPPO), these solar resource rich states are not willing to buy more than their SPPO target. Such power is required to be transmitted to other States.

Based on existing provision, the CTU Connected solar power projects in solar resource rich states would be able to sell of power to other Non-Solar resource rich states only at the same cost of generation which is there in the solar resources rich state. The landed cost of solar power will increase, if inter-state transmission charges and losses are levied on transmission of electricity through the Solar Power Projects leaving these projects stranded. Therefore, not extending the waiver of inter-state transmission charges and losses beyond 30th June 2016 would have negative impact on the upcoming solar power parks in such States. Thus, it would be difficult to attract investment in the upcoming solar parks and the flagship scheme of MNRE to achieve a target of 20,000 MW solar power form solar park may not be possible.

The Notification issued by Ministry of Power vide notification no. 23/12/2016-R&R dated 30.09.2016 after consultation with MNRE, CEA, CERC & POSOCO has considered waiver of inter-state transmission charges and losses from energy generated from Wind & Solar Power Projects till 31.03.2019 and 30.06.2017 respectively. It may kindly be noted that out of 175 GW RE target for 2022, 100 GW is to come from solar and 60 GW from wind. Existing installed capacity of Solar is around 8 GW and that of wind is 27 GW, leaving a target of 92 GW for solar and 33 GW for wind, i.e. solar target is almost 3 times that of wind. Therefore, solar projects need to be given more incentive or at least same treatment as that to wind to achieve this target. We, therefore, request that there should not be any discrimination between the Solar & Wind sources and similar dispensation should be allowed to solar energy. The Solar power projects should also be

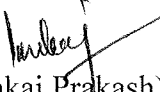
considered in line of wind and the applicability period of waiver of inter-state transmission charges & losses should be extended till 31.03.2019, if not upto 31.03.2022 initially, to meet the JNNSM targets and to protect the interests of solar power developer as well as solar power park developers to give them visibility for making investments in solar projects. It may kindly be noted that extending it beyond existing 30.06.2017 will not in any way violate the MoP notification dated 30.09.2016. Rather it will further the object and statutory function cast upon Hon'ble Commission in the Electricity Act, 2003, the Tariff Policy and Mission Statement of JNNSM to promote renewable energy, particularly solar energy to meet 100 GW target.

It is requested that Hon'ble Commission may kindly consider the above suggestions and amend the regulations accordingly.

We shall be glad to provide any further information in this regard.

On behalf of Hindustan EPC Company Limited

(Formerly Moser Baer Engineering and Constructions Limited)


(Pankaj Prakash)

Associate Vice President