

Draft CERC Tariff Regulation FY 2019-24 – Transmission Related Comments

Proposed in Draft 2019-24 Regulations	Existing 2014-19 Tariff Regulations	Explanation	Comments/ Suggestions
3(23) ‘Expansion project’ shall include any addition of new capacity to the existing generating station or the transmission system, as the case may be.	Not defined	New definition has been included mainly considering the clause on expansion projects as envisaged under Tariff Policy, which is valid in case of generation projects.	In case of a transmission system, the term used is ‘augmentation’ as used under Regulation 9 of CERC (Grant of Connectivity, Long-term Access and Medium-term Open Access in inter-State Transmission and related matters) Regulations, 2009. It is submitted that the term “Augmentation” be defined and used for transmission system.
<p>3(26) ‘Force Majeure’ for the purpose of these regulations means the event or circumstance or combination of events or circumstances including those stated below which partly or fully prevents the generating company or transmission licensee to complete the project within the time specified in the Investment Approval, and only if such events or circumstances are not within the control the generating company or transmission licensee and could not have been avoided, had the generating company or transmission licensee taken reasonable care or complied with prudent utility practices:</p> <p>(a) Act of God including lightning, drought, fire and explosion, earthquake, volcanic eruption, landslide, flood, cyclone, typhoon, tornado, geological surprises, or exceptionally adverse weather conditions which are in excess of the statistical measures for the last hundred years; or</p> <p>(b) Any act of war, invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, terrorist or military action; or</p> <p>(c) Industry wide strikes and labour disturbances having a nationwide impact in India;</p>	<p>3(25) ‘Force Majeure’ for the purpose of these regulations means the event or circumstance or combination of events or circumstances including those stated below which partly or fully prevents the generating company or transmission licensee to complete the project within the time specified in the Investment Approval, and only if such events or circumstances are not within the control the generating company or transmission licensee and could not have been avoided, had the generating company or transmission licensee taken reasonable care or complied with prudent utility practices:</p> <p>a) Act of God including lightning, drought, fire and explosion, earthquake, volcanic eruption, landslide, flood, cyclone, typhoon, tornado, geological surprises, or exceptionally adverse weather conditions which are in excess of the statistical measures for the last hundred years; or</p> <p>(b) Any act of war, invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, terrorist or military action; or</p> <p>(c) Industry wide strikes and labour</p>	<p>It is understood that the Clause 3(26)(d) has been introduced considering the challenges faced by generators and transmission licensee in securing the statutory approvals and the delays associated with it.</p> <p>In the existing regulations (2014-19), for getting the benefit of force majeure in the event of delays in obtaining statutory approvals, the burden of proof on the project developer is very high on account of the fact that any such delay has to fall under the general definition of force majeure.</p> <p>Hence, the aim of the above regulation is to straighten the angularities by providing a provision through which cost and time overruns on account of the above delays are easily granted.</p>	<p>It is submitted that under the Force Majeure provisions of model PPA/TSA for projects whose tariff is discovered under Sec 63 of Electricity Act, 2003, the Commission grants extension in SCOD of the projects but no monetary relief is provided to TSP in respect of delay due to force majeure as the same is not clearly defined under the TSA.</p> <p>It is submitted that from the point of view of ensuring a level-playing field between cost plus and competitive bid projects, the Force Majeure definition and events should be aligned with the events as defined under model PPA/TSA for competitively bid generation/ transmission projects or similar modifications as that of Draft regulations be made in the model PPA/TSA.</p> <p>Therefore, the Hon’ble Commission under Section 79(2) of the Electricity Act, 2003, should advise the Ministry of Power for including a similar provision relating to force majeure, as appearing in Regulation 3(26) of the Draft Regulations, in respect of projects implemented under Sec 63.</p>

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(d) Delay in obtaining statutory approval for the project except where the delay is attributable to project developer;	disturbances having a nationwide impact in India;		
<p>5. Date of Commercial Operation: (2) In case the transmission system or element thereof executed by a transmission licensee is ready for commercial operation but the interconnected generating station or the transmission system of other transmission licensee as per the agreed project implementation schedule is not ready for commercial operation, the transmission licensee may file petition before the Commission for approval of the date of commercial operation of such transmission system or element thereof:</p> <p>Provided that the transmission licensee seeking the approval of the date of commercial operation under this clause shall give prior notice to the generating company or the other transmission licensee and the long term customers of its transmission system, as the case may be, regarding the date of commercial operation;</p> <p>Provided further that the transmission licensee seeking the approval of the date of commercial operation of the transmission system under this clause shall be required to submit the following documents along with the petition:</p> <p>(a) Energisation certificate issued by the Regional Electrical Inspector under Central Electricity Authority;</p> <p>(b) Trial operation certificate issued by the concerned RLDC for charging element with or without electrical load;</p> <p>(c) Implementation Agreement, if any, executed by the parties;</p>	<p>4. Date of Commercial Operation: (3) Date of commercial operation in relation to a transmission system shall mean the date declared by the transmission licensee from 0000 hour of which an element of the transmission system is in regular service after successful trial operation for transmitting electricity and communication signal from sending end to receiving end:</p> <p>Provided that:</p> <p>(i) where the transmission line or substation is dedicated for evacuation of power from a particular generating station, the generating company and transmission licensee shall endeavour to commission the generating station and the transmission system simultaneously as far as practicable and shall ensure the same through appropriate Implementation Agreement in accordance with Regulation 12(2) of these Regulations:</p> <p>(ii) in case a transmission system or an element thereof is prevented from regular service for reasons not attributable to the transmission licensee or its supplier or its contractors but is on account of the delay in commissioning of the concerned generating station or in commissioning of the upstream or downstream transmission system, the transmission licensee shall approach the Commission through an appropriate application for approval of the date of commercial operation of such transmission system or an element thereof.</p>	<p>Regulations have clarified the process and documentation required for seeking approval of CoD on account of delay in commissioning due to other transmission system or the generation station.</p>	<p>The draft regulations have excluded/ taken out the provision relating to commissioning of the transmission asset simultaneously with the generation asset being developed by a generating company.</p> <p>This is a step in the right direction as there cannot be any argument used against a transmission licensee that they did not endeavour to commission the transmission system in line with the generating asset, when the said transmission system has come up only on or after the SCOD of the said generating asset.</p> <p>This will also enable projects (Sec 62/ Sec 63) to immediately receive tariff when their system is commissioned.</p>

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<p>(d) Minutes of the coordination meetings or related correspondences regarding the monitoring of the progress of the generating station and transmission systems;</p> <p>(e) Notice issued by the transmission licensee as per the first proviso under this clause and the response;</p> <p>(f) Certificate of the CEO or MD of the company regarding the completion of the transmission system including associated communication system in all respects.</p>			
<p>6. Treatment of mismatch in date of commercial operation:</p> <p>(1) In case of mismatch of the date of commercial operation of the generating station and the transmission system, the treatment of the transmission charges shall be determined as under:</p> <p>(a) Where the <u>generating station has not achieved the commercial operation</u> as on the date of commercial operation of the associated transmission system (which is not before the SCOD of the generating station) and the Commission has approved the date of commercial operation of such transmission system in terms of Regulation 5(2) of these regulations, <u>the generating company shall be liable to pay the transmission charges of the associated transmission system</u> in accordance with clause (5) of Regulation 14 of these regulations to the transmission licensee till the generating station or unit thereof achieves commercial operation;</p>	<p>4(3)(i) (i) where the transmission line or substation is dedicated for evacuation of power from a particular generating station, the generating company and transmission licensee shall endeavour to commission the generating station and the transmission system simultaneously as far as practicable and shall ensure the same through appropriate Implementation Agreement in accordance with Regulation 12(2) of these Regulations.</p>	<p>The introduction of regulations has clarified the amount of penalties applicable on the defaulting entity in situations of mismatch of COD of a thermal project with the COD of associated Transmission line or vis-versa.</p>	<p>While the intent of the draft regulation is clear that in the event the transmission system is ready for commercial operation, but the generating asset station is not ready, then it is the defaulting generating company which shall bear the transmission charges of the commissioned transmission system.</p> <p>What needs to be further clarified in Regulation 6(1)(a) is that such payment of transmission charges by generating company, is de-hors the Sharing Regulations. A clarification must be added that the Sharing Regulations will only apply once the asset of the defaulting entity is commissioned. This further means that the defaulting entity has to bear transmission charges as per the non-POC mechanism. This clarity should be inserted in order to avoid any future litigation, as witnessed presently when the Hon'ble Commission has to provide for non-POC dispensation through judicial orders. A clarity on the above lines would provide a statutory backup and will drastically reduce any scope of litigation.</p>

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<p>(b) Where the <u>associated transmission system has not achieved the commercial operation</u> as on the date of commercial operation of the concerned generating station or unit thereof, the <u>transmission licensee shall make alternate arrangement for the evacuation from the generating station at its own cost</u>, failing which, <u>the transmission licensee shall be liable to pay the transmission charges to the generating company at the rate of the applicable transmission charges of the region</u> as determined in accordance with the Sharing Regulations till the transmission system achieves the commercial operation.</p> <p>Provided that <u>despite making alternative arrangement of evacuation</u>, if the <u>associated transmission system does not achieve the date of commercial operation within the six months of date of commercial operation of the generating station</u>, the <u>transmission licensee shall be liable to pay to the generating company the applicable transmission charges of the region</u> as determined in accordance with the Sharing Regulations in addition to the above.</p>			<p>Further, similar provision should be incorporated in the implementation agreement (IA) for competitively bid transmission projects and generating stations.</p> <p>It is further necessary that the words “Alternate Arrangement” should be defined in the Regulations, in order to avoid any ambiguity. The same will also help in reducing any possible litigation.</p>
<p>6 Treatment of mismatch in date of commercial operation</p> <p>(2) In case of mismatch of the date of commercial operation of the transmission system and the transmission system of other transmission licensee, the treatment of the transmission charges shall be determined as under:</p> <p>(a) Where an interconnected transmission system of other transmission licensee has not achieved the commercial</p>		<p>The words “the date of commercial operation of the transmission system” and “the transmission system of other transmission licensee” is creating confusion. Further, “other transmission licensee” could be STU/Pvt Transmission Licensee developing a TBCB project/PGCIL developing a TBCB project.</p>	<p>What needs to be clarified in Regulation 6(2)(a) is that such payment of transmission charges by the defaulting transmission licensee, is de-hors the Sharing Regulations. A clarification must be added that the Sharing Regulations will only apply once the asset of the defaulting entity is commissioned. This further means that the defaulting entity has to bear transmission charges as per the non-POC mechanism. This clarity should be inserted in order to avoid any future</p>

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<p>operation as on the date of commercial operation of the transmission system (which is not before the SCOD of the interconnected transmission system) and the Commission has approved the date of commercial operation of such transmission system in terms of Regulation 5(2) of these regulations, the other transmission licensee shall be liable to pay the transmission charges of the transmission system in accordance with clause (5) of Regulation 14 of these regulations to the transmission licensee till the interconnected transmission system achieves commercial operation;</p> <p>(b) Where the transmission system has not achieved the commercial operation as on the date of commercial operation of the interconnected transmission system of other transmission licensee, the transmission licensee shall be liable to pay the transmission charges of such interconnected transmission system to the other transmission licensee and in the absence of transmission charges, at the applicable transmission charges of the region as determined in accordance with the Sharing Regulations till the transmission system achieves the commercial operation.</p>			<p>litigation, as witnessed presently when the Hon'ble Commission has to provide for non-POC dispensation through judicial orders. A clarity on the above lines would provide a statutory backup and will drastically reduce any scope of litigation.</p> <p>The regulation should be further modified to bring in better clarity and the terms 'upstream transmission system' and 'downstream transmission system' could be employed.</p> <p>Regulation 6(2) may be modified as under:</p> <p>“(2) In case of mismatch of the date of commercial operation of the transmission system implemented under cost-plus and the transmission system of other transmission licensee (STU or Transmission Licensee developing Section 63 project), the treatment of the transmission charges shall be determined as under:</p> <p>.....</p> <p><i>[Regulation 6(2)(a) and 6(2)(b) should also be modified accordingly]”</i></p> <p>Further, under Regulation 6(2)(b), it is understood that the interconnected transmission system of the other transmission licensee, is the transmission system of STU or developed under Section 63. In which case the transmission charges are already known and transmission licensee (developing the delayed cost plus project) should pay the transmission charges of the interconnected transmission system (of STU/ Section 63 Project licensee), under non-PoC mechanism.</p>

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			<p>Further, there has been cases where transmission lines are being implemented under TBCB and terminal bays by POWERGRID under cost-plus. In these cases, the timeline for implementation under TBCB and cost-plus route are different resulting into mismatch. This has been noted by the Commission in Petition No. 110/MP/2016.</p> <p>It is, therefore, submitted that CTU should ensure matching timeline for transmission lines being executed through competitive bidding and sub-station/ terminal bays being executed through PGCIL/ cost-plus so that entire project be put to use in a matching timeframe.</p>
<p>17. Debt-Equity Ratio:</p> <p>6) In case of generating station or a <u>transmission system including communication system which has completed its useful life</u> as on or after 1.4.2019, the <u>accumulated depreciation</u> as on the completion of the useful life less cumulative repayment of loan <u>shall be utilized for reduction of the equity</u> and depreciation admissible after the completion of useful life and the balance depreciation, if any, shall be first adjusted against the repayment of balance outstanding loan and thereafter shall be utilized for reduction of equity till the generating station continues to generate and supply electricity to the beneficiaries.</p>	-	<p>This is a welcome provision. This will ensure that the equity, which was perpetual in nature and earning 15.5% RoE is eventually paid off at the end of the useful life of the asset.</p>	<p>The last statement of the provision may be modified to cover transmission projects</p> <p><i>“... till the generating station continues to generate and supply electricity to the beneficiaries <u>and transmission system is continued to be used by the beneficiaries</u>:</i></p>
<p>19. Prudence Check of Capital Expenditure: The following principles shall be adopted for prudence check of capital cost of the existing or new projects:</p> <p>(1) In case of the thermal generating station</p>	<p>10. Prudence Check of Capital Expenditure: The following principles shall be adopted for prudence check of capital cost of the existing or new projects:</p>	<p>The provision relating to Specification of benchmark norms has been excluded in the draft regulations.</p>	<p>What needs to be added to Regulation 19 is that, as part of the prudence check exercise, the tariff discovered for similar transmission projects under competitive award (TBCB) should also be looked at while approving the capital expenditure</p>

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<p>and the transmission system, prudence check of capital cost shall include scrutiny of the capital expenditure, in the light of capital cost of similar projects based on past historical data, wherever available, reasonableness of financing plan, interest during construction, incidental expenditure during construction, use of efficient technology, cost over-run and time over-run, procurement of equipments and materials through competitive bidding and such other matters as may be considered appropriate by the Commission for determination of tariff:</p> <p>Provided that, while carrying out the prudence check, the Commission shall also examine whether the generating company or transmission licensee, as the case may be, has been careful in its judgments and decisions in execution of the project.</p>	<p>(1) In case of the thermal generating station and the transmission system, prudence check of capital cost may be carried out taking into consideration the benchmark norms specified/ to be specified by the Commission from time to time:</p> <p>Provided that in cases where benchmark norms have not been specified, prudence check may include scrutiny of the capital expenditure, financing plan, interest during construction, incidental expenditure during construction for its reasonableness, use of efficient technology, cost over-run and time over-run, competitive bidding for procurement and such other matters as may be considered appropriate by the Commission for determination of tariff:</p> <p>Provided further that in cases where benchmark norms have been specified, the generating company or transmission licensee shall submit the reasons for exceeding the capital cost from benchmark norms to the satisfaction of the Commission for allowing cost above benchmark norms.</p>		<p>of a cost-plus project. This will result in making cost plus projects more cost competitive.</p> <p>The Tariff Policy notified by the Central Government on 28th January, 2016 under Section 3 of the Electricity Act, 2003 provides that when allowing the total capital cost of the project, the Appropriate Commission would ensure that these are reasonable and to achieve this objective, requisite benchmarks on capital costs should be evolved by the Regulatory Commissions.</p> <p>As per Regulation 10(1) of the 2014 Tariff Regulations, the benchmark capital cost of Thermal generating station and the transmission system to be specified by the Commission from time to time may be used for prudence check.</p> <p>Therefore, the benchmark cost of transmission lines and sub-stations published by CERC vide orders dated 27/4/2010 and 16/6/2010 respectively needs to be updated from time to time so that an updated data be used for determining tariff for future transmission projects.</p>
<p>20. Interest During Construction (IDC) and Incidental Expenditure during Construction (IEDC)</p> <p>(3) In case of additional costs on account of IDC and IEDC due to delay in achieving the SCOD, the generating company or the transmission licensee as the case may be, shall be required to furnish detailed justifications with supporting documents for such delay including prudent phasing of funds in case of IDC and details of incidental</p>	<p>11 (A) Interest during Construction (IDC):</p> <p>(2) In case of additional costs on account of IDC due to delay in achieving the SCOD, the generating company or the transmission licensee as the case may be, shall be required to furnish detailed justifications with supporting documents for such delay including prudent phasing of funds:</p>	<p>It is submitted that provided in the 2014-19 regulations, only IDC on actual loan may be allowed beyond SCOD to the extent delay is found to be beyond the control of generation company or transmission licensee.</p>	<p>A similar provision should also be evolved and inserted in the TSAs of Sec 63 projects. A project developer under Section 63 route should also be allowed to claim cost overrun in the event of delays on account of uncontrollable or force majeure events. The above will greatly reduce the amount of litigation.</p> <p>In this regard, the Hon'ble Commission, as per Section 79(2) of the Electricity Act, 2003 may advise the Ministry of</p>

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<p>expenditure during the period of delay and liquidated damages recovered or recoverable corresponding to the delay in case of IEDC.</p> <p>(4) If the entire period of delay is not attributable to the generating company or the transmission licensee, IDC and IEDC beyond SCOD may be allowed after due prudence check and the liquidated damages, if any, recovered from the contractor or supplier or agency shall be adjusted in the capital cost of the generating station or the transmission system, as the case may be.</p> <p>(5) If the <u>delay is attributable</u> either in entirety on in part <u>to the generating company or the transmission</u> licensee or its contractor or supplier or agency, in such cases, <u>IDC and IEDC beyond SCOD may be disallowed</u> after due prudence check either in entirety or on pro-rata basis corresponding to the period of delay not condoned and the liquidated damages, if any, recovered from the contractor or supplier or agency shall be retained by the generating company or the transmission licensee, as the case may be.</p>	<p>Provided that if the delay is not attributable to the generating company or the transmission licensee as the case may be, and is due to uncontrollable factors as specified in Regulation 12 of these regulations, IDC may be allowed after due prudence check:</p> <p>Provided further that only IDC on actual loan may be allowed beyond the SCOD to the extent, the delay is found beyond the control of generating company or the transmission licensee, as the case may be, after due prudence and taking into account prudent phasing of funds.</p>		<p>Power for including a provision for cost overrun in TSAs even for Section 63 projects on account of occurrence of force majeure events.</p>
<p>21. Controllable and Uncontrollable factors: The following shall be considered as controllable and uncontrollable factors leading to cost escalation, IDC and IEDC of the project:</p> <p>(2) The “uncontrollable factors” shall include but shall not be limited to the following:</p> <p>a. Force Majeure events;</p> <p>b. Change in law; and</p> <p>c. <u>Time and cost over-runs on account of land acquisition except where the delay is attributable to the generating company or the</u></p>	<p>12. Controllable and Uncontrollable factors:</p> <p>The “uncontrollable factors” shall include but shall not be limited to the following:</p> <p>i. Force Majeure events.; and</p> <p>ii. Change in law.</p>	<p>The transmission projects acquire land only for setting up substations and seek right of way access for the towers and lines, which should be considered as controllable factors. MoP has issued notification for RoW compensation which are being implemented and adopted by States. This would reduce the risk associated with land acquisition and RoW. The delay of in land acquisition in a transmission project is usually due to disagreement in compensation to be paid to the land owner and compared with the value/ loss of revenue on account of delay of the transmission projects is very small and such</p>	<p>A similar provision should also be evolved and inserted in the TSAs under the Sec 63 route. A project developer under Section 63 route should also be allowed to claim time and cost overrun in the event of delays on account of uncontrollable events such as on account of land acquisition.</p> <p>The above will greatly reduce the amount of litigation. The Hon’ble Commission, as per Section 79(2) of the Electricity Act, 2003 should advise the Ministry of Power for including a provision on cost overrun even for</p>

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<u>transmission licensee;</u>		risk need to be borne by the transmission licensee and not made uncontrollable factor.	Section 63 projects on account of occurrence of uncontrollable factors and force majeure events.
<p>30. Return on Equity: (2) Return on equity shall be computed at the base rate of 15.50% for thermal generating station, transmission system including communication system and run of the river hydro generating station, and at the base rate of 16.50% for the storage type hydro generating stations including pumped storage hydro generating stations and run of river generating station with pondage:</p> <p>Provided that:</p> <p>i. Return on equity in respect of additional capitalization after cut off date within or beyond the original scope shall be computed at the weighted average rate of interest on actual loan portfolio of the generating station or the transmission system;</p>	<p>24. Return on Equity: (2) Return on equity shall be computed at the base rate of 15.50% for thermal generating stations, transmission system including communication system and run of the river hydro generating station, and at the base rate of 16.50% for the storage type hydro generating stations including pumped storage hydro generating stations and run of river generating station with pondage:</p> <p>Provided that:</p> <p>i. in case of projects commissioned on or after 1st April 2014, an additional return of 0.50 % shall be allowed, if such projects are completed within the timeline specified in Appendix-I:</p> <p>ii. the additional return of 0.5% shall not be admissible if the project is not completed within the timeline specified above for reasons whatsoever:</p> <p>iii. additional RoE of 0.50% may be allowed if any element of the transmission project is completed within the specified timeline and it is certified by the Regional Power Committee/National Power Committee that commissioning of the particular element will benefit the system operation in the regional/ national grid:</p>	<p>It is submitted that as compared to a generation project, a transmission projects implemented under cost-plus route faces fewer risks (no fuel risk, PPA risk, offtake risk, environment stipulations, etc.). Majority of the risk are related to land acquisition, RoW and statutory clearances (forest). Operational risks are very minimal for a transmission project. Since a provision has been introduced in these regulations that treat delay in statutory clearance as a force majeure, time and cost over runs due to land acquisition as uncontrollable factor, the developmental risks are further lowered for the transmission licensee under cost-plus. In this context, it is prudent to provide a lower RoE of 14% instead of 15.5%.</p> <p>The removal of additional RoE of 0.5% for completing the project within the timeline specified is welcomed. Incentive should be designed and provided for exceeding set targets and not for meeting normative targets.</p> <p>Further, the timeline defined for calculation of additional RoE under Appendix-I of Tariff Regulations, 2014 is acting as guidelines for setting targets for completion of transmission assets within that period. However, the Draft Regulations do not provide for any such timelines, nor there is any mention of Appendix I as was there in the 2014-19 Regulations.</p>	<p>The Hon'ble Commission should specify a normative timeline for implementation of transmission projects under cost-plus route, as was present in the 2014-19 Regulations.</p> <p>Further, as per Tariff Policy 2016 provisions, 7.1(7) exemption from competitive bidding process is given for “works to be done to cater to an urgent situation on case to case basis”, which implies that the commissioning timelines for such projects would be aggressive and shorter than required for a normal project.</p> <p>Hence, it is submitted that while inserting the timelines in the draft Regulations, qua implementation of transmission projects, reduced timelines may be considered as the timelines in the 2014-19 Regulations are on a higher side.</p>

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		<p>It may be noted that in case of no timelines being defined under Draft Regulations, the developers of Section 62 project may take unreasonable time to execute the project and this may lead to increase in cost. Further, the developer under Sec 63 project will be discriminated against developer under Section 62 project as Sec 63 project has to strictly comply with the timeline and the consequent liabilities provided under concerned documents executed between parties.</p>	