



Transmission

Ref: FBTL/CERC/31122019
Date: 31st Dec 2019

To,
The Secretary
Central Electricity Regulatory Commission,
3rd and 4th Floor,
Chanderlok Building,
36, Janpath,
New Delhi-110 001

Sub: Comments on Draft Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2019

Dear Sir/ Ma'am,

The Hon'ble Commission, vide public notice dated 31st Oct, 2019 invited comments/suggestions/objections on the subjected draft regulations. Our comments on the same has been annexed as Annexure-1. As required by public notice, we have also uploaded our comments on E-portal of CERC.

We would also like to submit our viewpoint during public hearing for which we request for allocation of time slot.

We request the Hon'ble Commission to take our views on record.

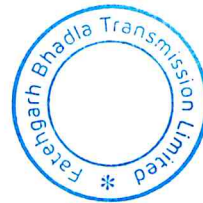
Thanking You.

Yours Faithfully

For Fatehgarh Bhadla Transmission Limited

P. Sundarlingam
Authorized Signatory

Enclosure: As Above



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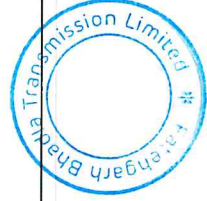
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Annexure 1

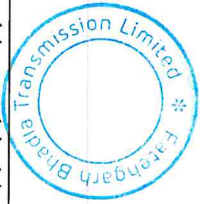
Comments on Draft CERC (Sharing of Inter-State Transmission Charges and Losses) Regulation, 2019

- At the outset, we would like to place on record the commendable job being done by the Hon'ble Commission to bring out Sharing of Inter-State Transmission Charges and Losses Regulations, 2019 in a progressive, clean and structured manner. We are sure that the consultative approach being followed by the Commission in finalizing the Sharing of Inter-State Transmission Charges and losses will go a long way in protecting the interest of all the stakeholders.
- Our comments on Draft Regulation are as under:

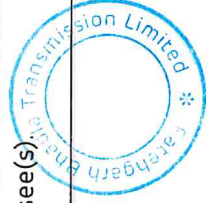
Sr. No.	Regulation No.	Existing Regulations - CERC (Sharing of Inter-State Transmission Charges and Losses) Regulation 2010	Proposed Regulations - CERC (Sharing of Inter-State Transmission Charges and Losses) Regulation 2010	Comment
1	Regulation 3 (3) - Principle of Sharing Transmission Charges	Similar Clause not present in CERC (Sharing of Inter-State Transmission Charges and Losses) regulations, 2010	The transmission charges for transmission system after such transmission system has achieved COD with regular service, shall be shared by DICs in accordance with Regulations 5 to 8 of these regulations.	<p><u>Suggested modification:</u></p> <ul style="list-style-type: none"> • Under the proposed regulation, DICs are required to share transmission charges for which transmission system has achieved COD with <i>regular service</i>. • As per provision of TSA, once any element or project has declared to have achieved COD, Transmission licensee (TL) should be eligible for Transmission Charges irrespective of whether that is regular or non-regular Services. • Definition of regular service has not been defined in Regulation. • This provision is basically ignoring the fact that while TL is providing number of non-regular service to others e.g. startup power/auxiliary supply of power to generating companies, these transmission charges shall not be shared by DICs and remain unpaid to TL. • Therefore, it is requested to bring clarity regarding Transmission charges for Startup power/Auxiliary Supply of power after CoD



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2	Regulation 5 (3) & (d) - Components and sharing of National Component (NC) and Regulation 6(1) (a) - Regional Component (RC)	Similar Clause not present in CERC (Sharing of Inter-State Transmission Charges and Losses) regulations, 2010	<p>National Component-HVDC shall comprise of the following:</p> <p>(a) 100% transmission charges for "Back to Back HVDC" Transmission System;</p> <p>(b) 100% transmission charges for Biswanath Chariali/Alipurwar – Agra HVDC Transmission System;</p> <p>(c) Proportionate transmission charges of Mundra–Mohindergarh HVDC Transmission System corresponding to 1005 MW capacity; and</p> <p>(d) 30% of transmission charge for all other HVDC Transmission Systems</p> <p>except those covered under sub clauses (a), (b) and (c) of</p>	<ul style="list-style-type: none"> Proposed regulation 5(3)(d) and 6(1)(a) Transmission charges of HVDC system other than Back to back HVDC, Biswanath Chariali – Agra, Mundra – Mohindergarh system should be proportion of 30% and 70% for NC and RC respectively. We request Hon'ble Commission to provide rationale for such proportion. Further, the Transmission licensee should be able to recover full transmission charges in all respects.



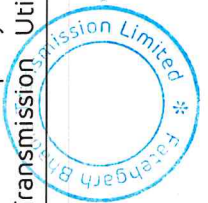
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3	Regulation 11 (5) - Transmission charges in specific cases	Similar Clause not present in CERC (Sharing of Inter-State Transmission Charges and Losses) regulations, 2010	this Clause of these regulations. Where Long Term Access to ISTS is granted to a generating station on existing margins and COD of the generating station or unit(s) thereof is delayed, the generating station shall pay transmission charges @10% of transmission charge for the State where it is located for the quantum of such Long Term Access.	<ul style="list-style-type: none"> The Hon'ble Commission has proposed that Generating stations are required to pay 10% of transmission charges for the state where it is located where LTA is granted and CoD of generating station is delayed. In this regard, it may kindly be noted that the LTA is operated only when the downstream transmission network has achieved CoD. Hence, in such cases, if only 10% of transmission charges will be paid then the Transmission licensee would not be able to recover the full transmission charges. Therefore, we request the Hon'ble Commission to amend the Regulation 11(5) suitably so that 100% of Transmission charges can be recovered in cases where LTA is granted and CoD of Generating station is delayed.
4	Regulation 11 (7) and (11) - Transmission Charges in Specific case.	Similar Clause not present in CERC (Sharing of Inter-State Transmission Charges and Losses) regulations, 2010	Regulation 11(7): In case the generating station or unit(s) thereof has achieved COD and transmission system is delayed, the concerned transmission licensee(s) shall make alternate arrangement for dispatch of power in consultation with Central Transmission Utility at the cost of the transmission licensee(s)	<ul style="list-style-type: none"> It may be noted that the obligations of the transmission licensee (TL) are clearly defined in the Transmission service agreement (TSA) and once the TL has completed its obligations, as per TSA, then the TL has full right to claim the tariff defined under the TSA. Please appreciate the fact that if the tariff can be stopped or delayed for reason not attributable to TL, it will increase the risk associated with the project tremendously and no financial institute will be willing to finance such project with unclear sight of revenue generation. The responsibilities and liabilities of Transmission Licensee (TL) and the Generation Developers are defined in the TSA and PPA respectively. Therefore, in



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			<p>Provided that till such alternative arrangement is made, the transmission licensee(s) shall pay to the generating station the transmission charges proportionate to Long Term Access for the transmission system which is delayed.</p> <p>Regulation 11(11): Where a transmission system has been declared to have achieved deemed COD in terms of Transmission Service Agreement under Tariff Based Competitive Bidding (TBCB) or the Commission has approved the date of commercial operation of such transmission system in terms of clause (2) of Regulation 5 of Tariff Regulations, 2019 or proviso (ii) to clause (3) of Regulation 4 of the Tariff Regulations, 2014, the transmission licensee or generating company whose transmission system or generating station or unit thereof is delayed shall pay</p>	<p>case of any delay, the TL or the Generation Developer should be held liable as per the provisions of TSA/PPA and accordingly LD should be imposed as per the provisions of these agreements. The TL or the Generation Developer cannot be held liable beyond what is specified and agreed in the TSA/PPA; otherwise this would tantamount to unlimited liability and it will become impossible to get these projects financed.</p> <ul style="list-style-type: none"> • It may also be appreciated that there may be a substantial difference between the Capex of TL & Generation Developer and one cannot compensate the other by any stretch of imagination. • It was the decision of the beneficiaries through the planning agencies, to have separate contracts with Generation Developer and TL. Therefore, the benefits of such structuring of contracts accrue to the beneficiaries in the form of lower tariff. Therefore, in case of delay in CoD of any of the assets, the tariff for other assets should be borne by the beneficiaries, through the pool account. • The obligations of all the parties are well defined in TSAs and all commercial decisions should be in line with the provisions of TSA. Moreover, one party cannot be made to suffer on account of inefficiency of other party, on whose action the first party does not have any control. In the past, there have been decisions wherein the defaulting parties have been asked to make payments beyond the provisions of TSAs, which is against the set doctrines of legal process.



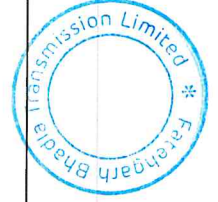
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			<p>the transmission charges of the transmission system till the generating station or unit thereof or the transmission system achieves COD. Provided that where more than one transmission licensee or both transmission licensee and generating station are getting delayed, the proportionate sharing of above transmission charges shall be as decided by Commission.</p>	<ul style="list-style-type: none"> The delay in commissioning of the project can also be on account of uncontrollable force majeure (FM) events, which are beyond the control of the licensee. In such a case of delay due to FM, the other party needs to be paid their dues. Therefore, the proposed Regulation is not good in law and should be removed. In all such cases, the payment to party who has completed its obligations, should be made from pool account. Proposed regulation also suggests that the concerned TL shall make alternate arrangement for dispatch of power in consultation with Central Transmission Utility at the cost of the TL. Practically, it would be very difficult for TL to make alternate arrangement for dispatch of power. Also, we would need to appreciate the fact that CTU is also one of the largest commercial player and is obviously conflicted. Overall, this will lead to increasing the risk associated with transmission projects tremendously, with the result that the financial institutions will either refrain from financing such project or will charge very high interest rates. Both of which are against the interest of sector as it will derail the entire process of developing transmission projects through TBCB process, which is against the spirit of the Electricity Act, 2003, which aims to promote competition in the sector.
5	Regulation	Similar Clause not present in CERC (Sharing of Inter-State	Where construction of dedicated transmission line has been taken up by the Central Transmission Utility	<ul style="list-style-type: none"> Section 10 of Electricity Act, 2003 defines the duties of generating companies as "Subject to the provisions of this Act, the duties of a generating company shall be to establish, operate and maintain generating



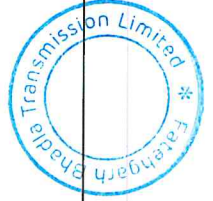
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	11 (8) - Transmission Charges in Specific case.	Transmission Charges and Losses) regulations, 2010	as part of coordinated transmission planning and is constructed by an inter-State transmission licensee, the Yearly Transmission Charges for such dedicated transmission line shall be payable by the generating station in proportion to the Connectivity granted and for which Long Term Access is not operational. Such transmission charges shall be payable to the inter-state transmission licensee who has constructed such dedicated line.	<p>stations, tie-lines, sub-stations and dedicated transmission lines connected therewith in accordance with the provisions of this Act or the rules or regulations made thereunder.”</p> <ul style="list-style-type: none"> • Therefore, dedicated transmission line shall be constructed by generating companies, while proposed regulation emphasizes the construction of dedicated transmission line by Inter State Transmission Licensee. • Proposed regulation is in conflict of the duties spell out as per provision of Electricity Act, 2003. Request CERC to come up with detailed understanding note under what circumstance ISTS may construct the dedicated transmission line and justification thereof.
6	Regulation 11(12) - Transmission Charges in Specific cases	Similar Clause not present in CERC (Sharing of Inter-State Transmission Charges and Losses) regulations, 2010	An Intra-State Transmission System already certified by the respective Regional Power Committees being used for inter-State transmission of electricity and for which tariff has already been approved by the Commission, shall be covered under these Regulations:	<ul style="list-style-type: none"> • For any Intra State Transmission system, tariff is being determined by State Commission. • Proposed regulation is published by CERC while the powers are conferred with State Commission. • Would need to appreciate the fact that some of State commissions are not determining tariff transmission line wise. E.g. Uttarakhnad Commission determined the tariff on overall basis and not at the transmission line level.



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7	Regulation 15 - Rebate and Late payment charges	Similar Clause not present in CERC (Sharing of Inter-State Transmission Charges and Losses) regulations, 2010	<p>Provided that such intra-State Transmission System shall be included under these Regulations only for the tariff period for which tariff has already been approved by this Commission.</p> <p>The rebate and late payment surcharge shall be governed in accordance with the Tariff Regulations, 2019 or the Tariff Regulations for subsequent period to be notified by the Commission, as the case may be.</p>	<ul style="list-style-type: none"> In order to bring discipline in the payment by the Discoms, LPS rate of 1.5% per month may be retained. Tariff Regulations do not specify the priority of apportionment of Payment among Late Payment Surcharge, past dues, Current dues etc. This encourages Discoms to delay the payments as the LPS remains static. Consequently, Transmission Licensee would have to incur higher working capital. We would further like to submit that interest should also be charged on LPS as Discoms typically delay payment of the same. This anomaly was addressed in the competitive bidding PPA's by stipulating priority of apportionment of payment. Similar provision may be included in the Regulation with payment appropriation priority as follows: <ul style="list-style-type: none"> i. Amount Received is first adjusted against Outstanding Late Payment Surcharge. ii. Balance Amount if any is adjusted against Past Arrears if any.



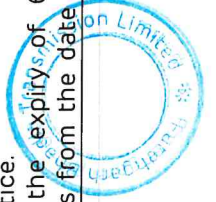
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8	Regulation 16(2) : Letter of Credit	Similar Clause not present in CERC (Sharing of Inter-State Transmission Charges and Losses) regulations, 2010	The Letter of Credit shall have a term of 12 (twelve) months and shall be for an amount equal to 1.05 (one point zero five) times the average amount of the First Bill for a year, where tripartite agreement for securitization on account of arrears against the transmission charges with the Government of India exist	<p>iii. Balance Amount if any is adjusted against Current Months Dues. Alternatively, LPS should be allowed on compounding basis. This is appropriate considering the fact that all the accounting is on compounding basis.</p> <ul style="list-style-type: none"> The Hon'ble Commission, in its draft regulation, has proposed to calculate letter of credit equal to 1.05 times the amount of first bill for a year. In this regard, we would like to submit that the regulation specifies calculation of First bill on various components of transmission charges e.g. National Component, Regional Component, transformers component and AC system Component. Ideally the Letter of credit is to be produced before the initiation of Billing cycle. Hence, there is no point in linking Letter of credit to First bill. Therefore, we request Hon'ble Commission to calculate the Letter of credit on the basis of approved Yearly transmission charges and suggest the following amendment in the proposed regulation: <i>The Letter of Credit shall have a term of 12 (twelve) months and shall be for an amount equal to 1.05 (one point zero five) times the amount of 1/12th of the Approved Yearly Transmission Charges, where tripartite agreement for securitization on account of arrears against the transmission charges with the Government of India exist</i>



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9	Regulation 16(7) - Letter of Credit	Similar Clause not present in CERC (Sharing of Inter-State Transmission Charges and Losses) regulations, 2010	<p>If a DIC fails to pay any bill or part thereof on or before the Due Date, the Central Transmission Utility may encash the Letter of Credit, and, for amount of the bill or part thereof that is overdue plus Late Payment Surcharge, if applicable, by presenting to the scheduled bank issuing the Letter of Credit, the following documents:</p> <p>(a) a copy of the Bill, which has remained unpaid or partially paid by such DIC; and</p> <p>(b) a certificate from the Central Transmission Utility to the effect that the Bill at item (a) above, or specified part thereof, is in accordance with these Regulations and that it has remained unpaid or partially paid beyond the Due Date; and</p> <p>(c) Calculations of applicable Late Payment Surcharge, if any.</p> <p>Provided that the failure on the part of the Central Transmission Utility to present the documents for</p>	<ul style="list-style-type: none"> The Proposed regulation has specified that the Transmission Utility MAY encash the Letter of Credit in case DICs fail to pay bill. In this regard, it may kindly be noted that in case of default of payment by DIC, the Transmission licensees SHALL encash the Letter of Credit. Hence, we request the Hon'ble Commission to replace the Word 'MAY' with 'SHALL'. Further, Proposed regulations proviso emphasizes that any failure or delay in presenting the document to Banker for encashment of LC shall not attract any LPS on DIC. <p>In this regard, we would like to submit that since transmission licensee would suffer delays in realization from encashment of LCs, any delay due to presentation of documents to Bank should be to the account of DICs or CTU and TL shall be eligible for LPS on such delay days.</p>



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10	Regulation 18 (b) (c) - Event of Default of a DIC	Similar Clause not present in CERC (Sharing of Inter-State Transmission Charges and Losses) regulations, 2010	<p>encashment of the Letter of Credit shall not attract any Late Payment Surcharge, for the duration of such failure on part of the Central Transmission Utility, on the DIC.</p> <p>The occurrence and continuation of the following events shall constitute a DIC Event of Default:</p> <p>(b) DIC fails to make payments against bills raised by the Central Transmission Utility under these Regulations within 60 days beyond Due Date.</p> <p>(2) Upon the occurrence and continuance of a DIC Event of Default, the Central Transmission Utility may serve notice on the concerned DIC, specifying the circumstances giving rise to such Notice.</p> <p>(3) Following the issue of such notice by the DIC, the concerned DIC shall take steps to remedy the default within 60 (sixty) days of issue of such notice.</p> <p>(4) After the expiry of 60 (sixty) days from the date of</p>	<ul style="list-style-type: none"> • Due date in relation to any bill shall be 45 days as per Regulation 14 of the proposed regulation. However, Hon'ble Commission has proposed following timeline in case of event of default of a DIC <ul style="list-style-type: none"> ○ In case DIC fails to make payment within 60 days beyond due date than it will construed as event of default of DIC. CTU shall serve notice to DIC in such cases ○ The concerned DIC shall take steps to remedy the default within 60 days of issue of notice ○ The CTU shall issue termination notice of 30 days after expiry of 60 days from date of issue of notice. • Therefore, it is clear from above that DICs will get 195 (45+60+60+30) days from date of bill to take steps to remedy the default. • It is pertinent to note that granting 195 days to take remedial steps is unreasonable as Transmission licenses will have to manage the cash flow in the intermediate period of 195 days and Licenses may face default in repayment of their debt and working capital loans. Hence, we request Hon'ble Commission



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			<p>issue of notice, unless the circumstances giving rise to such notice as mentioned in clause (1) of this regulation shall have ceased to exist or have been remedied, the concerned DIC shall cease to be a DIC under these Regulations and the Central Transmission Utility shall issue a Termination Notice of 30 (thirty) days to this effect with a copy to the Commission and the Implementing Agency. Provided that in case of termination as DIC of an entity on account of DIC's event of default, the Long Term Access or Medium Term Open Access or both of such entity shall be cancelled. Such cancellation shall be treated as relinquishment of Long Term Access or Medium Term Open Access in terms of Central Electricity Regulatory Commission (Grant of Connectivity, Long-term Access and Medium-term Open Access in Inter-State Transmission and Related</p>	<p>to restrict the time line of termination to the period of maximum 90 days.</p>



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			<p>and the said entity shall pay the relinquishment charges accordingly.</p> <p>(5) Upon termination of the status of DIC, the entity shall not be eligible for interchange of power under any form of open access unless such entity remedies the default and makes payment of all outstanding charges including relinquishment charges.</p>	

