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To: secy@cercind.gov.in, shilpa@cercind.gov.in
Subject: **Suggestion and Comment draft for CERC sharing regulations 2019**

Our Ref: ICPPA/CEA/2020/062-AA

To
Secretary,
Central Electricity Regulatory Commission,
3rd & 4th Floor, Chandralok Building,
36, Janpath, New Delhi -110001

Ref: CEA REF. No. L-1/250/2019/CERC Dated: 31st October 2019

Dear Sir,

In exercise of the powers conferred under Section 178 read with Part V of the Electricity Act, 2003 (36 of 2003), and all other powers enabling it in this behalf, CERC has introduced in the public domain, Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2019.

That, in terms of the aforesaid draft Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2019. ("Draft Regulation"), it is submitted that the same require certain modifications, changes, in order to secure and ensure the interest of the captive generators, captive users in pan India, so that they remain balanced, in accordance with the Electricity Act 2003 (the "Act"). Thus, the following suggestions, comments and objections are submitted hereinafter, for the consideration of CERC and the same may be submitted to them

With Warm Regards

for Indian Captive Power Producers Association (ICPPA)

(Rajiv Agrawal)
Secretary General
M: 9871574111

**SUGGESTION AND COMMENTS ON DRAFT CERC
(SHARING OF INTER-STATE TRANSMISSION CHARGES
AND LOSSES) REGULATION, 2019**

1. Back Ground:

In exercise of the powers conferred under Section 178 read with Part V of the Electricity Act, 2003 (36 of 2003), and all other powers enabling it in this behalf, CERC has introduced in the public domain, Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2019.

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2. Further, these comments and suggestions are limited to the non-inclusion of the provision for netting-off, or setting-off, the quantum of Medium Term Open Access to any region availed during a month by a DIC having Long Term Access to a target region without identified beneficiaries shall be adjusted against the Long-term Access which are in line of Amendment clause (5) to Regulation 11, CERC (Sharing of

Inter-State Transmission Charges and Losses) (Fifth Amendment) Regulations, 2017.

3. In this context, reference be made to the following extract of the existing CERC Sharing Regulations, 2010 (hereinafter "Regulations, 2010"):

"4. Amendment to Clause (5) to Regulation 11 of the Principal Regulations:

Second proviso to clause (5) of Regulation 11 of the Principal Regulations shall be substituted as under:

Provided further that the quantum of Medium Term Open Access to any region availed during a month by a DIC having Long Term Access to a target region without identified beneficiaries shall be adjusted against the Long-term Access of such DIC limited to the granted quantum of Long Term Access."

The aforesaid proviso which envisaged netting off/setting off mechanism was added to the Sharing Regulations 2010, vide the fifth amendment dated 14.12.2017.

4. It is submitted that the "Statement of Reasons" (hereinafter "SOR") for carrying out the aforesaid fifth amendment, provided the following:

"7. Amendments related to offset provided for charges paid under MTOA/ STOA by LTA Customer

7.1 Second proviso to clause (5) of Regulation 11 of the Principal Regulations was proposed to be substituted as under:

Provided further that while billing transmission charges for next month, the quantum of Medium-term Open Access to any region shall be adjusted against the quantum of Long-term Access to the target region without identified beneficiaries limited up to quantum of Long Term Access."

7.2 The Commission had given the following rationale while proposing the above amendment:

5. The Regulations provides that a DIC with LTA to target region shall be given offset for STOA/MTOA to any region. However, it is required that more clarity is required in the same to clarify following.

(1) The offset shall be provided for the quantum only. A DIC may be paying an injection POC rate under LTA to target region which may be different from POC rates paid by it under STOA/MTOA. A DIC shall be provided offset in the LTA bill of next month for the quantum for which it has already paid under MTOA/ STOA in previous month.

(2) Such an offset shall be provided only if DIC which is paying charges for LTA under target region does STOA/ MTOA which effectively implies it has paid both for LTA and MTOA/ STOA. In case a DIC (or a trader on its behalf) has not sought STOA/MTOA and has not paid charges towards MTOA/STOA it shall not be given offset for same. Offset is to be provided only to entity which is paying charges for the same quantum twice."

7.4 Analysis and decision:

...

7.4.3 We do not agree to suggestion of ESSAR Power, JITPL and SEL that offset should be on Rupee terms. The concept of offset has been introduced to make sure an entity is not billed twice for the same quantum of power. An MTOA transaction is with identified beneficiary for which Withdrawal PoC rates shall be applicable. A DIC with LTA to target region should be liable to pay Withdrawal charges in case it agrees into firm contract for part/full of its power with a firm beneficiary subject to terms of its contract with beneficiary related to liability of the charge. Hence for such a transaction LTA quantum to be billed should reduce by the quantum for which firm contract has been entered into. Hence offset shall be on quantum only.

7.4.4 Accordingly, Second proviso to clause (5) of Regulation 11 of the Principal Regulations shall be substituted as under:

"Provided further that the quantum of Medium Term Open Access to any region availed during a month by a DIC having Long Term Access to a target region without identified beneficiaries shall be adjusted against the Long-term Access of such DIC limited to the granted quantum of Long Term Access."

[Underlines supplied]

It is abundantly clear from a reading of the SOR set-out hereinabove that the basic principle behind Provision that in case of Inter-State Open Access, for the same transmission capacity, CTU allows payments made towards such MTOA and STOA to be set-off against the LTA payment obligations. This allows the users to make use of transmission capacity granted

to them under LTA in the target region without identified beneficiaries for MTOA and / or STOA, without having to pay twice for the same capacity. The rationale behind the netting/ setting off mechanism, is to avoid double levying of transmission charges, for the same quantum of power availed under LTA and MTOA/ STOA as the same would result in double jeopardy, which is against commercial principles in the sector and market. **However, the proposed draft Regulation 2019 supports the adjustment STOA against LTA and silent on the question of adjustment of MTOA against LTA.**

5. That, this Hon'ble Commission, under its regulatory powers envisaged as per Section 79(1)(c) of the Electricity Act, 2003, regulates inter-state transmission of electricity. Further, the tariff for transmission system (which is called as transmission charges) is determined by this Hon'ble Commission under Section 62 of the Electricity Act, 2003. Further, the said determination of tariff is to be undertaken in accordance with the tariff principles provided under Section 61 of the said Act. For ready reference, Section 61 of the Electricity Act, 2003, is setout hereinbelow:

*"61. **Tariff regulations** – The Appropriate Commission shall, subject to the provisions of this Act, specify the terms and conditions for the determination of tariff, and in doing so, shall be guided by the following, namely:-*

(a) the principles and methodologies specified by the Central Commission for determination of the tariff applicable to generating companies and transmission licensees;

(b) the generation, transmission, distribution and supply of electricity are conducted on commercial principles;

(c) the factors which would encourage competition, efficiency, economical use of the resources, good performance and optimum investments;

(d) safeguarding of consumers' interest and at the same time, recovery of the cost of electricity in a reasonable manner;

(e) the principles rewarding efficiency in performance;

(f) multi-year tariff principles;

[(g)that the tariff progressively reflects the cost of supply of electricity and also reduces cross-subsidies in the manner specified by the Appropriate Commission;]

(h) the promotion of co-generation and generation of electricity from renewable sources of energy;

(i) the National Electricity Policy and tariff policy:

Provided that the terms and conditions for determination of tariff under the Electricity (Supply) Act, 1948 (54 of 1948), the Electricity Regulatory Commissions Act, 1998 (14 of 1998) and the enactments specified in the Schedule as they stood immediately before the appointed date, shall continue to apply for a period of one year or until the terms and conditions for tariff are specified under this section, whichever is earlier."

[Bold and Underlines Supplied]

6. From the aforesaid provision, the following vital principles can be culled out:
 - a) The principles and methodologies prescribed by this Hon'ble Commission, are guiding factors for all the State Commissions in the country;
 - b) The determination of tariff, including for transmission of electricity, has to be based on "commercial principles".
7. It is therefore submitted that the second proviso to Clause 5 of Regulation 11 of the Regulations 2010 was based upon the "commercial principle" that there should not be double charging of tariff for transmission, qua the same quantum of power in the same region. It is submitted that a commercial principle if based on sound logic, cannot change subsequently.

Under the ambit of the Electricity Act, 2003, there is no provision which allows a transmission licensee to collect double transmission charges for the same quantum of power in the same region. The transmission business, as contemplated under the above Act, is based on the principle of the transmission licensee being a **revenue neutral entity**. Further, Sections 38, 39, 40 and 42 of the Electricity Act, 2003, qua open access, provide that such access has to be "**non-discriminatory**", meaning thereby that there cannot be any occasion whereby an open access customer is charged transmission/ wheeling charges twice for the same quantum of power.

8. That, under the Draft Regulations proposed by this Hon'ble Commission, particularly Regulation 13(3), it has now been envisaged that no transmission charges shall be levied for inter-state transmission system in respect of short-term open access transactions. However, the STOA customer shall be subjected to deviation charges, if any. The said Regulation has been introduced since the transmission network is built on the basis of LTA applicants, and that the charges for the said network ought to be recovered through LTA charges, and MTOA charges.
9. **From the above, it is evident that the Draft Regulations provide for LTA charges, as well as STOA charges which are exempted. However, there is no provision which addresses a situation wherein an LTA customer, after the LTA is operationalized in a particular target region, is utilizing MTOA for the said region.**

With respect to the above omission in the Draft Regulations, there is neither any reasoning nor any rationale, which has been provided in the SOR or otherwise. Therefore, the conceivable intent behind such an omission maybe that a case / present example does not exist, in the inter-state transmission system, whereby an LTA customer utilizes MTOA, and not LTA, in a particular target region. This thought could have occurred especially after this Hon'ble Commission amended the definitions of "short-term", "medium-term" and "long-term" open access, vide the 6th amendment to the CERC (Grant of Connectivity, Long Term Access and Medium-term Open Access in inter-state Transmission and related matters) Regulations, 2009. Further, vide the said amendment, this

Hon'ble Commission had introduced Regulation 15B in the CERC (Grant of Connectivity, Long Term Access and Medium-term Open Access in inter-state Transmission and related matters) Regulations, 2009, whereby an entity with a power purchase agreement exceeding one year can utilize the LTA granted in the same target region.

However, just because an example does not exist today, it should not put any future such case into disadvantage / "loss due to payment of both MTOA and LTOA"; especially since existing CERC regulation takes care of such cases.

Moreover, many states resist in providing Long term Open Access to captive power producers and consumers, and in such situation, for the sake of continuity of business such entities avail MTOA. If CERC regulation do not provide expressed provision of set-off / net-off for MTOA, such entities would be disadvantaged and gets discriminated.

10. The aforesaid amendments result in migration of an MTOA customer to LTA the moment such LTA is operationalized, meaning thereby that there is no simultaneous usage of MTOA when LTA is also granted for the same region. In this context, further reference be made to clause 2 of Regulation 15B introduced vide the 6th amendment to the CERC Connectivity Regulations, 2009, whereby it was provided that for the aforesaid migration, i.e. from MTOA to LTA, no MTOA relinquishment charges would be levied.

The above completely obviated the need to schedule power under MTOA, when LTA for the same region is granted. It is, perhaps, for this region that the Draft Regulations do not provide for setting/ netting off MTOA charges with LTA charges for the same target region.

11. However, before issuing the final regulation, this Hon'ble Commission ought to appreciate the fact that its regulations, under Section 61(a), according which State Commissions are most of time rely and follow Regulations, SOR and guidance of Central Commission have a substantial impact on the policies, principles and methodologies prescribed by the various State Commissions across India. It is further stated that, it may happen that there may be a situation which does not happen inter-state transmission, however, the same does not mean that the said situation will not happen in intra-state transmission.

Therefore, a Regulation of this Hon'ble Commission which is based on sound commercial principle, need not be amended or repealed as the same may entail a ripple effect on the regulations promulgated by the various State Commissions.

12. It is in the above context, that reference be made to Regulation 21 of the Gujarat Electricity Regulatory Commission (Terms & Conditions for Intra-State Open Access) Regulations, 2011, which is reproduced herein below:

"21. Transmission Charges

Open Access customer using transmission system shall pay the charges as stated hereunder:

For use of inter-State transmission system:

As specified by the Central Commission from time to time.

For use of intra-State transmission system:

(i) By Long-Term and Medium-Term Open Access Customers:

The Total Transmission Cost (TTC) as determined by the Commission in the Annual Transmission Tariff Order of the STU shall be shared by all long-term and medium-term open access customers on monthly basis (including existing Distribution Licensees) in the ratio of their allotted capacities, in accordance with the following formula."

[Underlines Supplied]

From the above regulation of the Ld. GERC, it is evident that no set-off/ net-off is provided when an LTA customer schedules power under MTOA. In the state of Gujarat, there are no separate regions, as are there in the ISTS, and that when an LTA is granted, the same is qua the entire state network.

13. On account of the aforesaid regulation of Ld. GERC, an entity/ generator, which is granted an LTA may not be in a position to utilize the said LTA on account of the fact that the consumers/ beneficiaries require power under medium-term or short-term contracts. For sourcing of power to such consumers, the entity/ generator avails MTOA in the state of Gujarat.

As a result, the aforesaid entity has to pay MTOA charges to the Gujarat STU (Gujarat Energy Transmission Company Limited). However, it is pertinent to state that the said entity

is also subjected to bear LTA charges on account of the long-term open access granted by GETCO. This results in the entity being subjected to pay LTA charges, as well as MTOA charges, at the same time for the same quantum of power. There is a double recovery for GETCO on account of the above.

14. It is submitted that there are various Intra-State consumers who are affected by the aforesaid double charging of MTOA and LTA charges, and have made application before the Ld. GERC for amending its regulations so as to provide for set-off-net-off, on the lines of the existing sharing regulations of this Hon'ble Commission.

Therefore, the omission of the provision to set/ net off MTOA charges with LTA charges in the same target region, in the Draft Regulations, gives an impression that such setting off is not a commercial principle anymore. The same will not only adversely affect the aforesaid pending litigation, but will discourage Ld. GERC from providing any such mechanism towards netting/ setting off MTOA charges with LTA in the same region, thereby adversely affecting the open access customers in the state of Gujarat.

In this context, it is submitted that a petition, being Petition No. 1672 of 2017, is pending before the Ld. GERC seeking various amendments to the open access regulations, including the aforesaid issue of setting/ netting off. The said petition has been filed by our association, namely Indian Captive Power Producers Association (ICPPA).

15. Therefore, this Hon'ble Commission has to consider, and take into account, the fact that the regulations of the Hon'ble Commission have a precedential bearing upon the State Commissions in states across the country, and the regulatory environment existing therein. Simply because there may not be a case in the ISTS network with respect to an LTA customer utilizing MTOA in the same target region after the operationalization of such LTA, the same should not be the reason for doing away/ removing the provision qua setting off MTOA charges with LTA.

This Hon'ble Commission ought to consider that there may be such a case where the aforesaid set off may be required in the In STS network. Hence, through the present comments/ suggestions, requests this Hon'ble Commission to kindly address the aforesaid issue by providing a provision for setting off/ netting off MTOA charges with LTA in the same target region.